United States Department of Labor
Employees' Compensation Appeals Board

S.S., Appellant	)	
and	)	**Docket No. 08-544**
	)	**Issued: July 14, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Pembroke Pines, FL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 10, 2007 appellant filed a timely appeal of a November 8, 2007 merit decision of the Office of Workers' Compensation Programs, finding that she did not sustain an emotional condition in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this appeal.

ISSUE

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On September 21, 2007 appellant, then a 33-year-old letter carrier, filed a traumatic injury claim (Form CA-1), alleging that on that date she experienced a headache, dizziness, chest pain, a fast heart rate and inability to breathe as a result of being exposed to strong fumes in an improperly ventilated building and around her case at work. She stated that a fan was blowing the fumes directly at her. Appellant stopped work on September 21, 2007. On the claim form,

Cheryl Rhoden, a coworker, stated that a very strong odor was in the building. The odor caused her to experience light-headedness, a headache and difficulty breathing. Ms. Rhoden spoke to appellant who also experienced the same symptoms.

Appellant submitted the employing establishment's procedures for obtaining medical treatment for an on-the-job injury or recurrence.

Susan Witt, an employing establishment manager, stated that, on that date, Ms. Rhoden, through appellant as a union representative, advised her that she was not feeling well due to an odor from floor wax that custodians used earlier in the morning. She was later advised by Keith Edgley, a supervisor, that appellant requested 911 service. After the paramedics arrived, Ms. Witt provided them with a material safety data sheet (MSDS) for the floor wax. Both appellant and Ms. Rhoden were treated by paramedics and were deemed fine. A paramedic read the MSDS and instructed Ms. Witt to open the doors to provide ventilation. The paramedic viewed the area that was waxed and confirmed that a light odor was present and that it affected people differently. Ms. Witt reported that appellant wanted to leave work to seek other medical treatment. Appellant requested a CA-1 form and an authorization for medical treatment (Form CA-15) which Ms. Witt completed but which appellant refused to sign.

In an undated narrative statement, Mr. Edgley stated that appellant was having trouble breathing on September 21, 2007 and requested 911 services. He subsequently denied her request for union time because no one was available to cover her route. Mr. Edgley stated that, while appellant was waiting outside for paramedics, she did not appear to experience any trouble breathing.

By letter dated September 27, 2007, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It addressed the factual and medical evidence she needed to submit. Also on September 27, 2007 the Office requested that the employing establishment provide comments regarding appellant's allegations, her exposure to potentially harmful substances, when the floor stripper and wax were applied and details about air circulation/ventilation in her work area.

In a September 22, 2007 letter, appellant further described her symptoms. She stated that she experienced tightness in her chest when she thought about the September 21, 2007 incident. Appellant also experienced anxiety and stress because she believed that her manager and management team directed the fumes blown by the fan towards her case and face and failed to open windows or doors for ventilation. She stated that the fire department provided the employing establishment with a citation for improper ventilation. Ms. Witt told appellant that the fan was blowing in her direction so that the floor wax could dry. Appellant contended that Ms. Witt did not like her and handled her complaints in an unprofessional manner.

Appellant submitted a September 20, 2007 form report of Dr. Joseph Poitier, a Board-certified psychiatrist, who stated that she suffered from anxiety. In a September 24, 2007 narrative medical report, Dr. Poitier stated that appellant was ill. He opined that she was unable to return to work for about two weeks. In a September 22, 2007 CA-15 form, Dr. Poitier indicated with an affirmative mark that appellant's anxiety was caused by an employment activity.

A form report and hospital report of Dr. Thomas Logan, Board-certified in emergency medicine, indicated that appellant was evaluated on September 21, 2007. He stated that she sustained chemical inhalation at work. In an undated CA-15 form, Dr. Logan indicated with an affirmative mark that appellant's chemical inhalation was causally related to chemical exposure in an enclosed space.

By letter dated October 3, 2007, the Office requested that appellant submit additional evidence regarding her allegation that management deliberately exposed her to fumes and committed safety violations by not opening the windows. It advised her that the medical evidence submitted failed to establish that she sustained an injury due to the alleged chemical exposure.

In a September 28, 2007 letter, appellant contended that management discriminated and retaliated against her on September 21, 2007 because she was a shop steward who brought a safety issue regarding strong fumes in the building to their attention on that date. She stated that if she were a white person then Ms. Witt would have responded appropriately by ventilating the building and properly handling the employees that were aggravated by the fumes. Appellant alleged that Ms. Witt told lies about her to a case worker about the September 21, 2007 incident. She stated that Ms. Witt did not like her because she was black and had represented employees who filed complaints against Ms. Witt with the Equal Employment Opportunity (EEO) Commission. Appellant alleged that she was harassed by Ms. Witt on September 17, 2007 when she intentionally put the wrong amount of mail in her "DOIS" so that it showed less time for her route. In a September 29, 2007 letter, appellant further described the September 21, 2007 incident. She reiterated her allegation that she was being harassed by management, including Ms. Witt.

On September 21, 2007 appellant submitted a complaint that she filed on September 21, 2007 with the employing establishment against Ms. Witt for discrimination and retaliation. She also submitted correspondence from the Occupational Safety and Health Administration (OSHA) regarding her complaint of health and/or safety hazards at the employing establishment.

The employing establishment submitted an October 2, 2007 investigative report from its inspector general's office regarding Ms. Witt's contention that appellant filed a false claim regarding the September 21, 2007 incident to receive unwarranted compensation as a result of a disagreement she had with management. It was determined that the case would be referred to the Office for appropriate action.

The inspector general's office conducted several interviews on September 26, 2007. Ms. Witt stated that appellant was targeting her and utilizing the September 21, 2007 incident as a means to sabotage management. George Simpson, a custodian, verified that he waxed the floors on September 21, 2007. He started early at approximately 4:00 a.m. so that the odor would be gone by the time the carriers arrived at work. Mr. Simpson related that he placed the fan in a position where the air did not blow towards appellant's case. The air blew down and not up. Mr. Simpson finished waxing the floor by 5:30 a.m. and started to dry it. It took approximately 20 minutes for the floor to dry and by the time the carriers arrived, the floor was already dry. Mr. Simpson stated that a few of them mentioned an odor. Mr. Edgley stated that

appellant did not complain about the odor from the waxed floors until Ms. Rhoden complained about it.

By decision dated November 8, 2007, the Office denied appellant's emotional condition claim. It found that her chemical exposure on September 21, 2007 was established as factual and, thus, constituted a compensable employment factor. The Office, however, found the medical evidence of record insufficient to establish that appellant sustained an emotional condition caused by the accepted employment factor.

LEGAL PRECEDENT

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.[1] To establish that she sustained an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.[2]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,[3] the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.[4] There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage under the Act.[5] When an employee experiences emotional stress in carrying out her employment duties and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of her work.[6] There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage under the Act.

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are

[1] *Pamela R. Rice*, 38 ECAB 838 (1987).

[2] *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

[3] 28 ECAB 125 (1976).

[4] 5 U.S.C. §§ 8101-8193.

[5] *See Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

[6] *Lillian Cutler, supra* note 3.

deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.[7] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[8]

Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.[9] Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act.[10] However, an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.[11]

ANALYSIS

Appellant alleged that she sustained an emotional condition causally related to factors of her federal employment. The Office has accepted as a compensable factor, appellant's exposure on September 21, 2007 to chemical fumes from floor wax.

Appellant alleged that she was harassed and discriminated against by the employing establishment. She contended that management deliberately exposed her to fumes and committed safety violations by not opening the windows. Appellant stated that the fire department cited management for failing to ventilate the building while the floors were being waxed. She stated that Ms. Witt told her that the fan blew directly towards her so that the floor wax could dry. Appellant stated that Ms. Witt did not like her because she was black and a shop steward who had represented employees who filed EEO complaints against her. She also alleged that Ms. Witt acted unprofessionally in handling appellant's complaints of fumes. Appellant contended that, if she were a white person, Ms. Witt would have properly ventilated the building and handled the employees who were aggravated by the fumes. She further contended that Ms. Witt told lies about her to a case worker regarding the September 21, 2007 employment incident. Appellant alleged that, on September 17, 2007, Ms. Witt intentionally put the wrong amount of mail in her "DOIS" so that it showed less time for her route.

[7] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[8] *Id.*

[9] *Lillian Cutler, supra* note 3.

[10] *Michael L. Malone*, 46 ECAB 957 (1995).

[11] *Charles D. Edwards*, 55 ECAB 258 (2004).

The Board has held that actions of an employer which the employee characterized as harassment may constitute a factor of employment giving rise to coverage under the Act, but there must be some evidence that the harassment did in fact occur.[12] Mere perceptions and feelings of harassment or discrimination will not support an award of compensation.[13] Appellant did not submit any witness statements in support of her allegation of harassment and discrimination by the employing establishment. Ms. Witt contended that appellant was targeting her and using the September 21, 2007 employment incident as a means to sabotage management. Mr. Simpson, the custodian who waxed the floor, stated that he placed the fan in a position that did not blow air towards appellant's case and that the air was blown down and not up. Mr. Edgley, a supervisor, stated that appellant only complained about the odor from the waxed floor after Ms. Rhoden, a coworker, complained about it. Based on appellant's failure to submit any witness statements and the statements of Ms. Witt, Mr. Simpson and Mr. Edgley, the Board finds that she has not established a factual basis for her allegation of harassment and discrimination by the employing establishment. Appellant did not provide any probative evidence that harassment or discrimination occurred as alleged.[14] Therefore, she did not establish a compensable employment factor with respect to harassment and discrimination.[15]

Appellant's allegations regarding the complaints she filed against Ms. Witt for discrimination and retaliation and the employing establishment for OSHA violations,[16] the denial of her request for union time[17] and the investigation[18] involve noncompensable administrative and personnel matters. Although she stated that the employing establishment was cited for failing to properly ventilate the building, she did not submit a copy of the citation. Ms. Witt stated that she opened the doors to ventilate the building as instructed by a paramedic. There is no decision regarding appellant's complaints finding that the employing establishment committed error or abuse. Mr. Edgley stated that he denied appellant's request for union time because no one was available to cover her route. Appellant did not submit any evidence substantiating that the employing establishment erred or acted abusively in handling the stated administrative and personnel matters. Thus, the Board finds that she did not establish compensable factors of employment.

As stated, the Office found that appellant sustained a factor of employment, namely, a single exposure to chemical fumes on September 21, 2007. Appellant's burden of proof, however, is not discharged by the fact that she has established an employment factor. To establish her claim for an emotional condition, she must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is

[12] *James E. Norris*, 52 ECAB 93 (2000).

[13] *Reco Roncoglione*, 52 ECAB 454, 456 (2001).

[14] *James E. Norris*, *supra* note 12.

[15] *Jamel A. White*, 54 ECAB 224 (2002).

[16] *Michael A. Salvato*, 53 ECB 666, 668 (2002).

[17] *Wanda G. Bailey*, 45 ECAB 835 (1994).

[18] *Garry M. Carlo*, 47 ECAB 299 (1996); *Jimmy B. Copeland*, 43 ECAB 339 (1991).

causally related to the accepted employment factor.[19] The Board finds that, while it is not disputed that appellant may have or have had emotional condition, the medical evidence does not explain how or why the accepted employment factor caused or contributed to the emotional condition.

Dr. Poitier's September 20 and 24, 2007 reports, stated that appellant suffered from anxiety and that she was totally disabled for work. However, he did not opine that appellant's emotional condition and disability were causally related to the accepted employment factor.

In a September 22, 2007 form report, Dr. Poitier indicated with an affirmative mark that appellant's anxiety was caused by an employment activity. His report is insufficient to establish appellant's claim as a report which only addresses causal relationship with a checkmark without more by way of medical rationale explaining how the incident caused the injury, is insufficient to establish causal relationship and is of diminished probative value.[20] Dr. Poitier did not identify any employment factor and did not provide any medical rationale explaining how or why appellant's emotional condition was caused by an accepted employment factor.

Similarly, Dr. Logan's reports which stated that appellant's chemical inhalation was caused by the September 21, 2007 employment incident is of diminished probative value. He also failed to provide any medical rationale explaining how the employment factor caused appellant's emotional condition.

The Board finds that appellant has not submitted rationalized medical evidence establishing that her claimed emotional condition is causally related to the accepted compensable employment factor.

CONCLUSION

Appellant has not met her burden of proof in establishing that she developed an emotional condition in the performance of duty.

[19] *William P. George*, 43 ECAB 1159, 1168 (1992).

[20] *See Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

ORDER

IT IS HEREBY ORDERED THAT the November 8, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 14, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board