

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TANTE M. ROBINSON and U.S. POSTAL SERVICE,
OAKLAND DIVISION, Oakland, CA

*Docket No. 01-1669; Submitted on the Record;
Issued April 18, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issue is whether appellant sustained an emotional condition in the performance of duty.

On August 20, 1999 appellant, then a 57-year-old supervisor, filed a CA-2 claim alleging that "working in a stressful work environment between May 6 and June 20, 1999 resulted in stress and a myocardial infarction. She explained that she had been detailed to a higher management position for approximately two years before the alleged incidents that led to her medical condition.

Appellant had worked for the employing establishment in various capacities for 33 years including as a supervisor. Between April 1997 and May 18, 1999 she was detailed to the position of Acting Manager of Distribution (AMDO). During most of this time as AMDO appellant had good working relationship with her supervisor, Nathan Griffin. While on detail she alleges that Mr. Griffin overheard her say that she was considering retiring in July 2000 when she would have her "high three" which was reference to her salary as it related to her pension. According to appellant, it was after learning of her preliminary retirement plans that Mr. Griffin decided to promote other employees as ADMO which lead to her stress.

Appellant attributed her stress to several specific factors:

- (1) When she asked her supervisor, Mr. Griffin what his plans were for her, he responded that "he did not know. There were no higher-level positions for her." According to appellant "this meant that my career goal of achieving my high three before retiring was out the window ... that I was tossed aside like [an] old dish cloth since I was no longer serving their purpose."
- (2) She overheard a conversation between Ms. Bell and Mr. Griffin in which Sharon Bell asked Mr. Griffin to not have her take over as AMDO. Had

Mr. Griffin “obliged her it would have allowed him to utilize myself as AMDO.”

- (3) Appellant heard rumors among co-workers that Edna Gray, a younger female was to fill another AMDO position.
- (4) When appellant confronted Mr. Griffin about these rumors, he confirmed them.
- (5) Other employees asked appellant why she did not get the AMDO position. According to appellant “This was stressful, embarrassing and humiliated me because I had trained Ms. Bell.”
- (6) Appellant requested a meeting with Mr. Griffin to discuss her inability to continue to replace Ms. Bell as ADMO when she was less qualified than appellant. This caused appellant mental duress and she was under stress and in pain because she could not suppress her feelings of anger.
- (7) On May 28, 1999 appellant met with Mr. Griffin again to let him know she could no longer work under Ms. Bell or Ms. Gray because of the stress and humiliation she felt at not being not selected for the ADMO position.
- (8) On June 17, 1999 Sharon Hall made a decision that appellant disagreed with. According to appellant, she had already evaluated the problem situation and made arrangements to resolve the problem. Ms. Hall made a decision contrary to appellant’s earlier decision in order to “pull rank” and show appellant “who was the boss.”

In summary appellant wrote that “the most stressful situation was to work under a person I had trained, that was insecure ... and to see what I had accomplished go down the drain ... to be reminded by Ms. Hall who was the boss.”

Appellant later expanded her claim to include charges that she was discriminated against based on age and filed a claim with the Equal Employment Opportunity Commission (EEOC) for age discrimination. She also alleged that she was not provided a “safe, hostile free work environment and her privacy was violated when “he [Mr. Griffin] took the information about my pending retirement and retaliated against me.”

Appellant supported her allegations with statements from four witnesses. Each of these statements supports appellant’s version of events to the extent that appellant was an outstanding worker and supervisor who was very upset by Mr. Griffin’s decision to promote Ms. Bell and Ms. Gray over appellant. None of the witness statements discuss Mr. Griffin’s motivation for choosing Ms. Bell and Ms. Gray for the supervisory positions.

In a letter dated October 6, 1999, the Office requested a response to appellant’s allegations from the employing establishment. In a letter dated November 12, 1999, Mr. Griffin wrote that while he was aware of appellant’s retirement plans that information was not why he selected Ms. Gray and Ms. Hall. According to Mr. Griffin, he selected Ms. Gray and Ms. Hall to

fill the temporary supervisory positions to assess their skills, knowledge and abilities. He wrote that he offered to help appellant find a way to achieve her “high 3,” but that appellant refused his assistance because she said she wanted to “earn her money.”

In a January 25, 2000 decision, the Office denied the claim finding none of appellant’s allegations were in the performance of duty.

In a February 17, 2000 letter, appellant requested an oral hearing. The hearing was held on June 22, 2000. At the hearing, she testified to the specific factors and allegations described above; that she was a long-time employee of the employing establishment with wide range of experience, that she believed Mr. Griffin was going to promote her to AMDO until he learned of her retirement plans. He then assigned her to another position and assigned younger workers to the job she desired and felt she was most qualified to have. Appellant also testified that there was no final result from her EEOC complaint and that she did not file a union grievance related to her allegations.

In a decision dated September 11, 2000, the hearing representative affirmed the Offices’ decision denying appellant’s claim finding no compensable factors had been established.

In a December 7, 2000 letter, appellant requested reconsideration. In support of her request appellant submitted an EEOC investigation file, excerpts from Employees Compensation Appeal Board and EEOC decisions, postal regulations and medical reports. She also argued that supervisor Griffin’s stated reasons for choosing employees other than herself to fill the AMDO position was a violation of postal regulations. Appellant repeated her argument of age discrimination and finally, appellant argued that the hearing representative ignored several portions of the record including the medical reports that establish appellant was under stress and stress can contribute to heart disease.

In a merit review dated February 26, 2001, the Office denied modification finding the evidence of age discrimination inconclusive, not credible and repetitive. The allegations that the hearing representative ignored important portions of the record were found to lack credibility. The medical evidence was found not relevant because no employment factors had yet been established. Appellant’s argument that postal regulations were not followed was found to be unsupported and therefore not established.

The Board finds that appellant has not met her burden of proof to establish a compensable factor of employment. The factors that appellant alleges to have caused her stress are not in the performance of duty and appellant has not established error or abuse on behalf of the employing establishment.

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment. 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 of workers’ compensation. Where the disability results from an employee’s emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees’ Compensation

Act.¹ 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 his frustration from not being permitted to work in a particular environment or to hold a particular position.²

Appellant 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 employment factors.³ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

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 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.⁵ 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.⁶

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decisions dated January 25, 1999 and September 11, 2000, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant has alleged that discrimination by her supervisor, Mr. Griffin, caused her stress-related condition and that stress contributed to her heart attack. To the extent that disputes and incidents alleged as constituting discrimination by supervisors are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.⁷ However, for allegations of discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

⁷ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

occur. Mere perceptions of discrimination are not compensable under the Act.⁸ In the present case, the employing establishment denied that appellant was subjected to discrimination and appellant has not submitted sufficient evidence to establish that she was discriminated against by her supervisor.⁹

Mr. Griffin explained that he selected other employees to fill temporary supervisory positions to assess their skills and that appellant had already served in a temporary supervisor's position. He also indicated that he had indicated to appellant that he would help her find a higher graded position but she refused his help.

The Board finds that appellant has not submitted sufficient evidence to establish age discrimination. Appellant's statements of specific factors causing her stress are refuted by Mr. Griffin's response. The witness statements support that appellant was upset by Mr. Griffin's decision, but this evidence is insufficient to show error or abuse inasmuch as Mr. Griffin explained why he picked different people for the job appellant thought that she should have final determination, does not establish age discrimination. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed discrimination.

To the extent that appellant is alleging denial of promotions, the Board has held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve an appellant's ability to perform his or her regular or specially assigned work duties, but rather constitute an appellant's desire to work in a different position.¹⁰ Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's allegations that the employing establishment did not provide a safe free work environment, appellant has not submitted any evidence to support these allegations, other than her own statements of factors that led to her stress. Since her stress has not been established as arising from a compensable work factor, it is deemed self-generated and not in the performance of duty. Appellant submitted no evidence on the issue of violation of her privacy. For the foregoing reasons, she has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹¹

⁸ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

⁹ *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁰ *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

¹¹ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

The decisions of the Office of Workers' Compensation dated February 26, 2001 and September 11, 2000 are affirmed.

Dated, Washington, DC
April 18, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member