

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CATHERINE M. TAYLOR and U.S. POSTAL SERVICE,
POST OFFICE, Kingman, AZ

*Docket No. 01-1389; Submitted on the Record;
Issued March 12, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On July 19, 2000 appellant, then a 40-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that she developed an emotional condition as a result of a stressful work environment which resulted in anxiety and depression. She resigned from the employing establishment on January 2, 2000.¹

Accompanying appellant's claim was a letter from Dr. Joseph H. Tedesco, an osteopath, dated February 23, 2000; and a narrative statement dated July 19, 2000. Dr. Tedesco's letter noted that appellant was provided with gynelological care in 1999 during her pregnancy. He noted that in November 1999 appellant sustained a miscarriage and indicated that, at that time, appellant's blood pressure was slightly elevated. Dr. Tedesco noted that appellant was complaining of increased stress and discomfort at work. He further indicated that appellant developed cramping and bleeding after lifting and loading trays. Dr. Tedesco indicated that it was likely that these events contributed to appellant's miscarriage although he was not able to provide an opinion with any degree of medical certainty.

Appellant's statement raised the following allegations: (1) she experienced intense migraine headaches as a result of receiving an August 17, 1999 letter of warning regarding an investigation for fraudulent record keeping; (2) she was wrongfully accused of irregular attendance during a November 9, 2000 performance evaluation and fact finding investigation because she used sick leave for dependent care from November 2 to 5, 1999; (3) her supervisor denied her union representation for the November 9, 2000 fact finding investigation; (4) the employment establishment wrongfully issued her an accident prevention letter dated August 17,

¹ Appellant filed a claim for a traumatic injury alleging that on November 23, 1999 she was lifting trays which led to a miscarriage. The claim was denied.

2000 which noted that her automobile accidents were monitored and that she was involved in four accidents over the prior five years.

The employing establishment controverted the claim, indicating that appellant failed to establish any work-related stress arising in the performance of duty. Appellant's supervisor conducted a performance evaluation on November 9, 1999 regarding appellant's irregular attendance and reviewed documentation supporting appellant's request for dependent sick leave.

In a letter dated August 25, 2000, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office advised appellant of the type of evidence needed to establish her claim and requested that she submit such evidence.

Appellant submitted union steward notes from August 14, 1999 and September 9, 2000; medical reports from Dr. Tedesco dated January 12 and July 20, 2000; a hospital investigation report dated January 17, 2000; narrative statements dated August 23, 2000 and September 19, 2000; and a medical certification form. The union representative's report dated August 14, 1999 indicated that he attended a fact finding investigation regarding appellant's tardiness on August 7, 1999 and her subsequent request for 48 hours of sick leave for dependent care. He noted that the manager refused to accept appellant's medical documentation pertaining to her children's illnesses. The representative's report dated September 9, 2000 indicated that appellant was represented at the November 9, 1999 fact finding investigation. He indicated that appellant had been questioned three times in the past three months regarding her use of sick leave for dependent care. The representative noted that a letter of warning was issued to appellant on August 17, 1999. This letter was later rescinded as part of a settlement of appellant's grievance claim against the employing establishment. Dr. Tedesco's report of July 20, 2000 noted that on November 23, 1999 appellant was lifting several trays at work and developed cramping and bleeding and subsequently had a miscarriage. He indicated that the increased strain and activity may have caused some increased pressure and changes resulting in her miscarriage, but he could not provide an opinion with any degree of medical certainty. Dr. Tedesco's January 12, 2000 letter noted that he was unsure what caused the spontaneous abortion, he indicated that it was quite possible that it was initiated because of her work activity. The hospital investigation report was prepared by appellant and noted that she was unsure if her migraine headaches were caused solely from her job stress. Appellant indicated that she monitored her diet and hormones which reduced the severity of her headaches. She noted that since she left employment she had not experienced any headaches. Appellant's statement dated August 23, 2000 contested the employing establishment accident prevention letter of August 17, 2000. She noted that she was not involved in the January 1995 accident, and was not at fault for the September 1998 accident. Appellant also noted that she received the safe driver award in 1998. Her September 19, 2000 letter indicated that she did have union representation at the November 9, 1999 fact finding investigation. She further indicated that she believed the hostile work environment caused her migraine headaches. The medical certification form noted that appellant was treated for radiculopathy, migraine headaches and cervical radiculopathy since 1995.

In a January 22, 2001 letter, the employing establishment indicated that the accident prevention letter sent to appellant on August 17, 1999 was a standard agency letter issued to all employees who experienced a work-related accident. The employing establishment further noted that appellant was never denied representation at her performance evaluation on

November 9, 1999. It was noted that the union contract does not stipulate representation when a supervisor conducts a performance evaluation. Additionally, the employing establishment indicated that the letter of warning issued to appellant August 17, 1999 was rescinded.

By decision dated January 23, 2001, the Office denied appellant's claim for compensation on the basis that appellant failed to establish that the claimed injury occurred in the performance of duty.

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

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 or her 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.² 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 or her frustration from not being permitted to work in a particular environment or to hold a particular position.³

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.⁴ 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.⁵

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.⁶ 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

² 5 U.S.C. §§ 8101-8193.

³ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁵ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁶ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁷

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated January 23, 2001, 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 alleged harassment on the part of her supervisor. To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.⁸ However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.⁹ In the present case, the employing establishment admitted that appellant was questioned regarding her tardiness and use of sick leave for dependent care and that on August 17, 1999 appellant was issued a letter of warning for failure to maintain regular attendance. The employing establishment also noted that the letter of warning was later rescinded as part of a grievance settlement. However, general allegations of harassment are not sufficient¹⁰ and appellant has not detailed specific instances of harassment. Appellant has not submitted sufficient evidence to establish that she was harassed by her supervisor.¹¹ She alleged that her supervisor engaged in actions which she believed constituted harassment, but she provided insufficient corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.¹² Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

Appellant's other allegations of employment factors that caused or contributed to her condition fall into the category of administrative or personnel actions. In *Thomas D. McEuen*,¹³ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would

⁷ *Id.*

⁸ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁰ *See Paul Trotman-Hall*, 45 ECAB 229 (1993).

¹¹ *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).

¹² *See William P. George*, 43 ECAB 1159, 1167 (1992).

¹³ *See Thomas D. McEuen*, supra note 3.

attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated.

Appellant alleged that she experienced migraine headaches and stress after she received the August 17, 1999 letter of warning from the employing establishment regarding an investigation of appellant for fraudulent record keeping. Appellant also alleged that the employing establishment, in the November 9, 2000 performance evaluation, wrongfully performed a fact finding investigation regarding the allegation of irregular attendance, including the sick leave used for dependent care from November 2 to November 5, 1999. The Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regularly or specially assigned employment duties are not considered to be employment factors.¹⁴ However, the Board has also found that 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. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁵ Although appellant has made allegations that the employing establishment erred and acted abusively in conducting its investigation, appellant has not provided sufficient evidence to support such a claim. A review of the evidence indicates that appellant has not shown that the employing establishment's actions in connection with its investigation of her were unreasonable. Appellant alleged that her supervisor wrongfully investigated her for fraudulent record keeping and for irregular attendance, but she provided no corroborating evidence, such as witness statements, to establish that such action was unreasonable.¹⁶ Thus, she has not established a compensable employment factor under the Act in this respect.

Appellant indicated that she was deprived of her right to union representation for the November 9, 1999 performance evaluation and fact finding investigation. However, the record does not substantiate this allegation, as appellant submitted notes from a union steward present at the November 9, 1999 meeting and in her letter of September 19, 2000 indicated that she obtained representation for the meeting. Additionally, appellant alleges that the employing establishment wrongfully issued her a letter dated August 17, 2000 regarding accident prevention, and monitored appellant's automobile accidents noting that she was involved in four accidents in the past five years.¹⁷ Although the monitoring of activities at work is generally related to the employment, it is an administrative function of the employer, and not a duty of the employee. Appellant did not submit evidence supporting her claims that the employing establishment committed error or abuse in monitoring work activities such that she did not establish a compensable employment factor. The employing establishment has either denied

¹⁴ *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

¹⁵ *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁶ *See Larry J. Thomas*, 44 ECAB 291, 300 (1992).

¹⁷ *See John Polito*, 50 ECAB 347 (1999).

these allegations or contended that it acted reasonably in these administrative matters. Appellant has presented insufficient evidence to support that the employing establishment erred or acted abusively with regard to these allegations. Thus she has not established administrative error or abuse in the performance of these actions and therefore they are not compensable under the Act.

The decision of the Office of Workers' Compensation Programs dated January 23, 2001 is affirmed.

Dated, Washington, DC
March 12, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member