United States Department of Labor
Employees' Compensation Appeals Board

WANDA S. KUSY CARPENTER, Appellant	)	
and	)	**Docket No. 05-1195**
	)	**Issued: September 19, 2005**
U.S. POSTAL SERVICE, MEMORIAL PARK STATION, Houston, TX, Employer	)	

Appearances:
Wanda S. Kusy Carpenter, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 2, 2005[1] appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated May 3, 2004 denying her emotional condition claim and a February 11, 2005 decision denying reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof in establishing an emotional condition due to factors of her federal employment; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

[1] Appellant's appeal was postmarked on May 2, 2005. The Board has jurisdiction over all final decisions of the Office within one year of the date of the postmark of the appeal. *See* 20 C.F.R. § 501.3(d)(3)(ii).

FACTUAL HISTORY

On January 28, 2003 appellant, then a 43-year-old letter carrier, filed an occupational disease claim alleging that she developed stress, anxiety and depression due to downgrading, demeaning, belittling and stressful actions taken at the employing establishment.

In a letter dated February 3, 2003, the Office requested additional factual and medical evidence in support of appellant's claim. In a January 25, 2003 statement, appellant noted that she began treatment with antidepressant medication in 2001 following the events of September 11, 2001 and subsequent anthrax contaminations. She noted that she was evaluated twice during August and September 2001.

Regarding her current condition, appellant alleged that George Lopez, an area manager, made a false statement on December 9, 2002 that she was casing mail in the mailroom and that the mail needed to be picked up. Appellant's supervisor, Benita Clark, confronted appellant regarding this allegation on December 9 and 10, 2002.

On December 13, 2002 Sarah Johnson, union steward, informed appellant that postal inspectors were watching her. Ms. Clark informed appellant that a customer had complained that she was not working. Ms. Johnson completed a statement on January 8, 2003 which confirmed that Ms. Clark informed her that inspectors were watching appellant and reported that she was standing around doing nothing.

On December 16, 2002 a supervisor, Mr. J. Johnson, informed appellant that he was performing a street inspection. Appellant noted that Mr. Johnson had been accused of sexual harassment and was not allowed on the street with female carriers. When appellant returned to the employing establishment, she overheard Ms. Clark and Mr. Johnson discussing Mr. Lopez, appellant approached Ms. Clark, who allegedly told appellant, "Get out of here, I didn't invite you." On December 17, 2002 Mr. Johnson refused to sign a form regarding his inspection of appellant's route, but initially offered to provide her with a copy of the observation, which he did not do. Mr. Johnson requested appellant's accountable mail and mailroom keys on December 19, 2002. Appellant contracted Prissy Grace, the union president, and requested that the harassment stop. Mr. Johnson informed appellant on December 21, 2002 that a route count would be conducted on her assigned route on December 23, 2002. Mrs. A. Smith counted appellant's mail on December 23, 2002 and informed her that she would be accompanying appellant on her route on December 24, 2002. Appellant alleged that no other carrier was counted or observed so near Christmas. On December 24, 2002 Mrs. Smith informed appellant that she had done nothing wrong on December 23, or 24, 2002 and that she sorted mail approximately 30 minutes faster than required by her standards.

Appellant stated that on January 7, 2003 four or five supervisors were at her case when she reported for work and began to question her regarding the mail. She began to cry. In a statement dated January 16, 2003, James Ferguson, a union steward, stated that several supervisors were at appellant's case asking "ignorant" questions. He informed Ms. Clark that appellant was being harassed but Ms. Clark disagreed. Appellant began to cry hysterically and sought medical treatment. In a statement dated January 23, 2003, Betty Munson, a carrier, stated that on January 7, 2003 five persons were observing appellant at her route case. Ms. Munson

stated, "This situation has created and continues to create a hostile and stressful work environment for the whole station and especially for [appellant]."

Appellant noted that her stress and depression escalated during an Equal Employment Opportunity (EEO) mediation hearing on November 13, 2002, at which Ms. Clark stated that appellant was a "sorry carrier and that she never stayed at her case and worked." In support of this claim, appellant submitted a statement from Mr. Ferguson noting that, at the EEO meeting, Ms. Clark accused appellant of unprofessional and incorrect tendencies, that she was continually away from her case, walking and talking with other carriers, and that she did not work proficiently.

Appellant stated that she was always under pressure to deliver all the mail and be back at the employing establishment by 5:00 p.m. or face disciplinary action.

Dr. Wanda Henao, a Board-certified psychiatrist, completed a report on February 20, 2003 and diagnosed major depressive disorder, recurrent, with anxiety. She stated that incidents in appellant's employment had been major contributors to her current depression, including 5:00 p.m. deadlines, feeling belittled at an EEO hearing, fear of the anthrax scare, continued stress of constant observation, as well as feelings of harassment, resulted in her current state.

Appellant submitted an additional statement on March 3, 2003 repeating her allegations.

Ms. Clark submitted a statement dated February 25, 2003 and asserted that appellant could complete her route in eight hours. She received customer complaints on December 9, 2002 and that an area manager informed her that appellant had a case in her mailroom on December 10, 2002 which she discussed with appellant. Ms. Clark denied informing Ms. Johnson that appellant was under observation by postal inspectors. She also denied that Mr. Johnson was precluded from performing street inspections of female carriers.

On February 24, 2003 Sharhonda Wilks Marcrum, a supervisor, denied that Ms. Clark informed Ms. Johnson that postal inspectors were watching appellant. She stated that on January 7, 2003 additional supervisors were in the building to continue working on operational changes of appellant's route, and that questions asked by the supervisors were not meant to intimidate appellant, but to gather information. Ms. Marcrum explained to appellant that she was not in trouble but needed to provide the supervisors with the requested information. She also noted that Mr. Johnson was not prohibited from street inspections. Ms. Marcrum stated that appellant was evaluated in August and September 2001 due to a clerical error in her original evaluation of May 2001. She stated that on December 17, 2002 Mr. Johnson drew a diagram of the mailboxes in appellant's mailroom. This diagram needed to be verified, which required the use of appellant's keys on December 18, 2002. Ms. Marcrum did not agree that route counts were done only for poor workers, and noted that in appellant's case there were operational changes to assist in a reduction of work hours to complete a route. She noted that five other routes were counted during the week prior or after December 23, 2002.

By decision dated June 20, 2003, the Office denied appellant's claim finding that appellant failed to substantiate a compensable factor of employment.

Appellant requested an oral hearing on July 1, 2003. She submitted copies of several grievance resolutions which were reached without prejudice. Appellant filed a grievance on July 17, 2003 requesting that harassment by management cease and that Mr. Johnson not perform any additional route reviews. This grievance was settled without prejudice with the finding that management would cease and desist from harassing appellant.

Appellant appeared at the oral hearing on February 5, 2004 and submitted evidence. By decision dated May 3, 2004, the hearing representative found that appellant had not established a compensable factor of employment as causing or contributing to her emotional condition.

Appellant requested reconsideration on February 1, 2005 and resubmitted grievances and statements already included in the record. She also submitted medical evidence regarding a July 25, 2003 arthrogram of the lumbar spine. By decision dated February 11, 2005, the Office denied reconsideration of the merits on the grounds that she failed to submit relevant new evidence or argument in support of her claim.

LEGAL PRECEDENT -- ISSUE 1

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 her regular of 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.[3]

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 with the coverage of the Act.[4] While an administrative or personnel matter will be considered an employment factor where the evidence discloses error abuse on the part of the employing establishment, mere perceptions are insufficient. In determining whether the employing establishment erred or acted abusively, the Board determines whether the employing establishment acted reasonably.[5]

Reactions to disciplinary matters such as letters of warning and inquiries regarding conduct pertain to actions taken in an administrative capacity and are not compensable until it is

[2] 5 U.S.C. §§ 8101-8193.

[3] *See Thomas D. McEuen,* 41 ECAB 387, 390-91 (1990), *reaff'd on recon.,* 42 ECAB 566 (1991); *Lillian Cutler,* 28 ECAB 125, 129 (1976).

[4] *James E. Norris,* 52 ECAB 93, 100 (2000).

[5] *Bonnie Goodman,* 50 ECAB 139, 143-44 (1998).

established that the employing establishment erred or acted abusively in such capacity.[6] The fact that personnel actions were later modified or rescinded, does not in and of itself, establish error or abuse. The fact that a claimant filed complaints and grievances does not substantiate the allegations contained therein and the mere settlement of such complaints and grievances does not establish error or abuse by the employing establishment.[7] For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[8]

ANALYSIS -- ISSUE 1

Appellant attributed her diagnosed emotional condition to actions by her supervisors including discussions involving her work habits, observation of her work and route counts. These allegations relate to administrative matters. The Board has held that the manner in which a supervisor exercises his or her discretion generally fall outside the coverage of the Act, absent evidence of error or abuse. This principal recognizes that a supervisor or manager must be allowed to perform their duties and that employee's will at times disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.[9] Appellant has not submitted evidence that her supervisors erred or acted abusively in these actions. The evidence does not reflect error or abuse in the route observation or in the interactions of the supervisors on January 7, 2003.

Although appellant filed grievances regarding denial of overtime, improper inspections and harassment, the Board has held that the fact that a complaint filed does not substantiate the allegations contained therein. The evidence of record pertaining to the resolution of these matters do not contain any factual findings of fault or error by any management personnel and note that the position of the parties are not to be cited for my precedent purposes.

Appellant also attributed her emotional condition to derogatory remarks regarding her work practices by her supervisor. Verbal altercations or abuse by supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. Although the Board has recognized the compensability of verbal abuse in certain circumstances this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.[10] The Board finds that appellant has not substantiated that the language used by Ms. Clark in critiquing appellant's performance as unprofessional and describing her as away from her case, do not rise to the level of verbal abuse.

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[6] *Sherry L. McFall*, 51 ECAB 436, 440 (2000).

[7] *Michael A. Salvato*, 53 ECAB 666, 668 (2002).

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

[9] *Linda J. Edwards-Delgado*, 55 ECAB ___ (Docket No. 03-823, issued March 25, 2004).

[10] *Marguerite J. Toland*, 52 ECAB 294 (2001).

Appellant alleged harassment by her supervisors. There is no evidence of record to substantiate that appellant's route counts, supervision while sorting and other actions were harassment or in retaliation for her grievances. The Board has consistently held that the mere perceptions of harassment or discrimination are not compensable under the Act.[11] As appellant has not substantiated a compensable factor of employment, the Office properly denied her claim for an emotional condition.[12]

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[13] the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[14] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[15]

ANALYSIS -- ISSUE 2

In her February 1, 2005 letter requesting reconsideration, appellant stated that she was resubmitting evidence already in the record at the time of the hearing representative's decision. Appellant stated that she did not feel that the grievances and statements were adequately weighed by the hearing representative. These documents were in the record at the time of the hearing representative's May 3, 2004 decision, and therefore the evidence is not new. As appellant did not submit relevant new evidence, the Board finds that the Office properly declined to reopen her claim for consideration of the merits.

CONCLUSION

The Board finds that appellant did not substantiate a compensable factor of employment as causing or contributing to her emotional condition. The Board further finds that appellant's request for reconsideration did not include relevant new evidence requiring the Office to reopen her claim for consideration of the merits. For these reasons, the decisions of the Office are affirmed.

[11] *Reco Roncoglione, supra* note 8.

[12] 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).

[13] 5 U.S.C. §§ 8101-8193, § 8128(a).

[14] 20 C.F.R. § 10.606(b)(2).

[15] 20 C.F.R. § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the February 11, 2005 and May 3, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 19, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board