

**United States Department of Labor
Employees' Compensation Appeals Board**

CASSANDRA M. ALSTON-DAYE, Appellant)	
)	
and)	Docket No. 04-889
)	Issued: September 1, 2004
U.S. POSTAL SERVICE, CHURCH STREET)	
STATION POST OFFICE, New York, NY,)	
Employer)	
)	

Appearances:
Cassandra M. Alston-Daye, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On February 17, 2004 appellant filed an appeal from a January 13, 2004 merit decision of the Office of Workers' Compensation Programs denying her emotional condition claim.¹ Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has merit jurisdiction over the emotional condition issue in this case.²

¹ In her February 4, 2004 letter requesting an appeal, appellant stated that her "representative [would] be Michael Poole, Coordinating Vice President, NY Metro Postal Union." See 20 C.F.R. § 501.3(c). However, the Board notes that appellant did not provide an address or any other contact information for Mr. Poole. Thus, the Clerk of the Board does not have sufficient information to contact Mr. Poole. The Board's Rules of Procedure provide that, if an "applicant is being represented by another person in the proceeding, the name *and address* of such representative should be stated." (Emphasis added.) *Id.*

² Following the issuance of the Office's January 13, 2004 decision, appellant submitted additional evidence. The Board may not consider evidence for the first time on appeal that was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c).

ISSUE

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

FACTUAL HISTORY

On June 16, 2003 appellant, then a 41-year-old mobile unit sales service associate, filed a claim alleging that, on June 10, 2003, she sustained “chest pain, anxiety attack [and] stress” which she attributed to a meeting that day with Cheryl Ann Franco, her supervisor. Appellant stopped work on June 11, 2003 and returned to work on June 17, 2003. On June 30, 2003 appellant filed a notice of recurrence of disability commencing June 20, 2003. She stated that she experienced “a lack of concentration, anxiety and nervous feelings” when she returned to work from June 18 to 20, 2003. Appellant again stopped work on June 20, 2003 and did not return.

Appellant attributed her emotional condition to four incidents of harassment or intimidation. On March 3, 2003 Ms. Franco requested that appellant meet with her approximately 15 minutes after the end of her shift, physically blocked the door when she attempted to leave and touched appellant’s chest with her arm. Ms. Franco then yelled for Valerie Babb, her supervisor, to call Stanley Cottrell, a manager. Appellant also alleged that, on May 27, 2003, Ms. Franco harassed her and violated her “Freedom of Information” by telephoning her at home to advise that appellant had not skipped a line in the sign-in book as instructed and used blue ink instead of black. Ms. Franco allegedly stated that she knew appellant would tell others of the call but that she did not care. On May 28, 2003 at 7:30 a.m., Ms. Franco harassed appellant by coming in three-and-a-half hours early to speak to her again about remembering to skip a line in the log book and to use black ink. She also alleged that on June 17, 2003 she encountered a “negative environment” at work and that Ms. Babb and Ms. Franco rolled their eyes at her in an intimidating manner.

Appellant also attributed her condition to being denied overtime on June 17, 2003 and in pay period 12 of 2003, Ms. Franco did not make calls or complete paperwork to authorize overtime work. She asserted that Ms. Franco caused her to incur unwanted overtime by requiring her to read and sign “service talks” which were distributed prior to the end of her shift. She alleged that Ms. Franco denied her “wash up” time at the end of her shift. Appellant also alleged that, as Ms. Franco did not give her sufficient change, she had to go to the bank which jeopardized her safety. She noted that a change in her mobile unit reporting time from 7:00 a.m. to 8:00 a.m. following the September 11, 2001 terrorist attacks reduced her number of customers, decreased her revenue and eliminated her time for truck maintenance. She also expressed her dislike that Ms. Franco placed the clerk sign-in book in the vault and requested that only black ink pens be used for log entries.³

³ Appellant also mentioned filing grievances and Equal Employment Opportunity (EEO) complaints against Ms. Franco. However, these grievances, complaints and any related resolutions or settlements are not of record.

In a June 25, 2003 statement, Ms. Franco noted that, on March 3, 2003, Mr. Cottrell instructed her to speak with appellant regarding her schedule. After appellant entered the room, Ms. Franco closed the door but did not touch appellant. Ms. Franco alleged that she asked Ms. Babb to call Mr. Cottrell as appellant had become “loud and belligerent.” Regarding appellant’s allegations concerning overtime, Ms. Franco asserted that neither she nor Ms. Babb “were aware that [appellant] was gainfully employed when she was on the clock past her regular hours. As a result [Ms. Franco] was not authorizing any time that could not be accounted for.” Regarding appellant’s assertion that she was not given an adequate supply of change, Ms. Franco confirmed that, while she attempted to provide all clerks with sufficient currency, it was sometimes necessary to go to the bank for change. Appellant had gone to the bank and said it was “no problem at all.” Regarding appellant’s allegation that she was not given sufficient time to wash up after returning to the station, Ms. Franco explained that she had informed appellant that she was “entitled to wash up time” and had adequate time to do so after verifying her money.

In a June 25, 2003 statement, Mr. Cottrell asserted that, on June 10, 2003, at appellant’s request, he met with her, Ms. Franco and two union officials to discuss “issues ... she was having with” Ms. Franco. Mr. Cottrell recalled that, when he concurred with Ms. Franco’s assessment that appellant’s “constant talking to other employees” caused difficulties with maintaining her schedule, appellant became loud and shouted at Ms. Franco. Mr. Cottrell instructed Ms. Franco to leave the meeting. Appellant calmed down and stated that she wished to continue the meeting. All parties then reached an agreement regarding the issues discussed and Mr. Cottrell later instructed Ms. Franco to have as little contact with appellant as possible.

In a July 10, 2003 letter, the Office advised appellant of the additional medical and factual evidence needed to establish her claim, noting that an employer’s administrative actions were not considered compensable unless she substantiated error or abuse in the performance of those actions.

In an August 27, 2003 statement, Ms. Franco and Ms. Babb noted calling appellant at her home at approximately 4:30 p.m. on May 27, 2003. Ms. Franco stated that she did not realize that calling appellant would create a problem since appellant had told Ms. Franco previously that she could call her at any time. Ms. Franco explained that this was her only opportunity to inform appellant regarding the new sign-in book procedures prior to the start of her tour at 6:00 a.m. the following morning. Ms. Franco requested that appellant use only black ink to write in the sign-in book. She alleged that appellant then became argumentative and hung up. Ms. Franco noted that she denied appellant’s request for overtime on June 17, 2003 because appellant did not perform any work after her tour had ended and did not follow instructions to inform her supervisors if she desired overtime.

By decision dated January 13, 2004, the Office denied appellant’s claim on the grounds that she had not established any compensable factors of employment. The Office found that the schedule change, June 10, 2003 meeting and denial of overtime were administrative actions of the employer and that no error or abuse was shown. The Office further found that supervisory statements refuted appellant’s allegations that Ms. Franco touched her or prevented her from leaving her office on March 3, 2003 or that she was not provided time to wash up prior to the end of her tour. The Office further found that the May 27, 2003 telephone call was not harassment as

it concerned legitimate work matters and appellant previously advised her supervisor to call her at home at any time. The Office noted that, as appellant's emotional condition claim was not accepted, the claimed June 20, 2003 recurrence of disability could not be addressed.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment of compensation for personal injuries sustained while in the performance of duty.⁴ Where disability results from an employee's reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.⁵ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁶ 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.⁷

In cases involving emotional conditions, the Board has held that when working conditions are alleged as factors in causing 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.⁸ If a claimant implicates 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.⁹

ANALYSIS

Appellant alleged that she sustained an anxiety disorder as a result of a number of employment incidents and conditions which the Office found to be noncompensable. Therefore, the Board must determine whether these alleged incidents and conditions are compensable employment factors under the terms of the Act.

Appellant attributed her condition, in part, to being required to work overtime, including needing to stay after her work shift to read and sign "service talks" and Ms. Franco asking to stay beyond the end of her shift on March 3, 2003. Overwork may be a compensable factor of employment but must be established on a factual basis.¹⁰ In this case, however, appellant has not

⁴ 5 U.S.C. § 8102(a).

⁵ 5 U.S.C. §§ 8101-8193. *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁷ *Effie O. Morris*, 44 ECAB 470 (1993).

⁸ *See Norma L. Blank*, 43 ECAB 384 (1992).

⁹ *Marlon Vera*, 54 ECAB ____ (Docket No. 03-907, issued September 29, 2003).

¹⁰ *Robert Bartlett*, 51 ECAB 664, 666 (2000); *Sherry L. McFall*, 51 ECAB 436, 439 (2000).

established either that she was required to work overtime or that she performed overtime work. Ms. Franco explained that she was unaware that appellant was “gainfully employed when she was on the clock past her regular hours” and that overtime could not be granted for unaccounted activities. Appellant did not submit work schedules, time sheets, clock records, duty rosters or other personnel documents establishing overtime work on March 3, 2003 or any other date. Thus, she has not provided sufficient evidence to establish overtime work as a compensable factor of employment.

Appellant also attributed her condition to being denied opportunities for overtime and not being compensated for overtime work allegedly performed on June 17, 2003 and on unspecified dates during pay period 12 in 2003. She alleged that Ms. Franco refused to make calls or complete the forms necessary to authorize overtime work. These allegations relate to administrative or personnel matters, unrelated to the employee’s regular or specially assigned work duties and do not fall within the coverage of the Act.¹¹ 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.¹²

The Board finds that appellant has not submitted sufficient evidence to show that the employing establishment committed error or abuse regarding these administrative matters. Ms. Franco explained that she did not grant appellant’s request for overtime on June 17, 2003 as she did not perform any work after the end of her tour. Ms. Franco noted that appellant failed to follow previous instructions to inform her supervisors if she desired overtime work. The Board finds that evidence establishes that the employing establishment acted reasonably in denying appellant’s requests for overtime work. Appellant has not submitted evidence corroborating that the employing establishment acted unreasonably with regard to denying her overtime work in pay period 12 of 2003. Thus, she has not established a compensable employment factor in regard to being denied overtime work or overtime pay.

Appellant attributed her condition to unspecified aspects of a June 10, 2003 administrative meeting with Ms. Franco and Mr. Cottrell, who submitted a June 25, 2003 statement explaining that, when he and Ms. Franco concurred that appellant’s problems in maintaining her schedule were caused by her “constant talking to other employees,” she began shouting at Ms. Franco. It appears that appellant became upset at criticism about her job performance. The Board has held that a claimant’s own feeling or perception that a form of criticism by or disagreement with a supervisor is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under the Act absent evidence that the interaction was, in fact, erroneous or abusive. This principle recognizes that a supervisor or

¹¹ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566, 572-73 (1991) (proper pay and overtime are administrative or personnel matters and an employee’s emotional reaction to the actions 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).

¹² See *Charles D. Edwards*, 55 ECAB ____ (Docket No. 02-1956, issued January 15, 2004); see *Richard J. Dube*, 42 ECAB 916, 920 (1991).

manager must be allowed to perform his or her duties and that, in performing such duties, employees will at times dislike actions taken.¹³ Appellant has not established a compensable employment factor in this regard. Mr. Cottrell directed Ms. Franco to have only minimal contact with appellant and there is no evidence of record that Ms. Franco was found to have committed any wrongdoing in her interactions with appellant.

Appellant also alleged that Ms. Franco harassed her by calling her at home on May 27, 2003 and speaking to her at work on May 28, 2003 regarding the sign-in book procedures. Incidents of harassment by supervisors and coworkers, if established as occurring and arising from the employee's performance of his or her regular duties, could constitute employment factors.¹⁴ For harassment to give rise to a compensable disability under the Act, there must be probative and reliable evidence that harassment did in fact occur.¹⁵ Mere perceptions of harassment are not compensable under the Act.¹⁶

Appellant asserted that the May 27, 2003 telephone call and May 28, 2003 instructions were unnecessary and meant to harass her. Ms. Franco explained that she needed to inform appellant of new sign-in procedures prior to the start of appellant's tour of duty at 6:00 a.m. the next day, noting that appellant had hung up on her during the May 27, 2003 call. The Board finds that the May 27, 2003 call was a reasonable exercise of supervisory authority. While Ms. Franco did not specifically address the May 28, 2003 conversation, the Board finds that it was also a reasonable exercise of supervisory authority. Appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

Appellant also alleged that, during the May 27, 2003 telephone call, Ms. Franco stated that she knew that appellant was going to tell others of the call and that she did not care. While verbal abuse is compensable in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.¹⁷ Appellant has not shown how such an isolated comment, if made, would rise to the level of verbal abuse or otherwise fall within the coverage of the Act.¹⁸ Thus, appellant has not established a compensable employment factor under the Act with respect to this allegation.

¹³ See *Linda J. Edwards-Delgado*, 55 ECAB ____ (Docket No. 03-823, issued March 25, 2004). See also *Michael A. Deas*, 53 ECAB ____ (Docket No. 00-1090, issued November 14, 2001) (while the Board has recognized the compensability of threats in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to compensability).

¹⁴ *Janice I. Moore*, 53 ECAB ____ (Docket No. 01-2066, issued September 11, 2002). See *David W. Shirey*, 42 ECAB 783 (1991).

¹⁵ *Marlon Vera*, *supra* note 9.

¹⁶ *Kim Nguyen*, 53 ECAB ____ (Docket No. 01-505, issued October 1, 2001).

¹⁷ *Harriet J. Landry*, 47 ECAB 543, 547 (1996).

¹⁸ See, e.g., *Alfred Arts*, 45 ECAB 530, 543-44 (1994) and cases cited therein (finding that the employee's reaction to coworkers' comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction). Compare *Abe E. Scott*, 45 ECAB 164, 173 (1993) and cases cited therein (finding that a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

Appellant also expressed her dislike that Ms. Franco moved the sign-in book to the vault and required employees to make their entries in black ink only. However, an employee's complaints concerning the manner in which a supervisor performs her duties or exercises her supervisory discretion generally fall outside the scope of coverage provided by the Act.¹⁹ This principle recognizes that a supervisor or manager in general must be allowed to perform their duties and that absent error or abuse, an employee's mere disagreement or dislike of a supervisory or management action will not be actionable.²⁰ Ms. Franco, as a supervisor, had the authority to determine work matters such as the location of log books used by the employees and the appropriate method of completing entries. There is no evidence of record that the location of the sign-in book or the required recordkeeping method constituted error or abuse. Consequently, appellant's reaction to Ms. Franco's supervisory directives is not a compensable employment factor.

Appellant alleged that Ms. Franco did not supply her with sufficient change to cover her stock, necessitating that she go to the bank to make change, thus jeopardizing her safety. Ms. Franco noted that, while she attempted to supply all clerks with sufficient change, it was sometimes necessary for clerks to go to the bank for change and that appellant had done so with no apparent difficulty. The Board notes that appellant did not claim to have sustained any injury in the course of going to or from the bank. Thus, her allegations pertain to a fear of future injury, which is not compensable under the Act.²¹

Appellant also stated that she experienced stress as the time she was to report to her mobile location was changed from 7:00 a.m. to 8:00 a.m. which she alleged decreased her number of customers, reduced revenue and eliminated needed maintenance time. However, she did not submit evidence corroborating that the time change resulted in not having adequate time to perform truck maintenance. Also, appellant's frustration at having fewer customers is noncompensable as it pertains to her desire for a different job with more customers and greater revenue.²²

Appellant also cited several incidents that have not been established as factual. She alleged that, on March 3, 2003, Ms. Franco tried to prevent appellant from leaving her office by blocking the doorway and touching appellant's chest with her arm. Ms. Franco refuted this allegation, stating that she closed the door so she could speak privately with appellant regarding her schedule difficulties, but emphasized that she did not touch appellant. Appellant also alleged that Ms. Franco denied her sufficient "wash up" time at the end of her tour. However, Ms. Franco asserted that she had explained to appellant that she was entitled to wash up time and that she had adequate time to do so after verifying her money. Appellant also alleged that, on June 17, 2003, she encountered a "negative environment" at work and that Ms. Franco and Ms. Babb rolled their eyes at her in an intimidating way. However, appellant did not submit

¹⁹ See *Marguerite Toland*, 52 ECAB 294 (2001).

²⁰ *Id.*

²¹ *Virginia Dorsett*, 50 ECAB 478, 482 (1999).

²² *Lillian Cutler*, *supra* note 5.

witness statements or other evidence corroborating her account of events. Therefore, the Board finds that appellant has not established these incidents as factual.

CONCLUSION

The Board finds that, as appellant has not established a compensable employment factor, she has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty as alleged.²³

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 13, 2004 is affirmed.

Issued: September 1, 2004
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

²³ 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, 503-03 (1992).