

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FAYE MATTHEWS and U.S. POSTAL SERVICE,
INJURY COMPENSATION OFFICE, Tampa, Fla.

*Docket No. 97-107; Submitted on the Record;
Issued June 8, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

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

On June 15, 1994 appellant, a 45-year-old letter carrier, filed a Form CA-2, claim for occupational disease, alleging that she had sustained an emotional condition caused by factors of employment. Appellant alleged that employment-related job pressures, strict regimentation, negative work environment, overwork, and overly close supervision and control by her superiors had resulted in her emotional breakdown. In a statement dated June 15, 1994, appellant alleged that she faced job pressures to continually meet unrealistic schedules, continued overtime, constant intimidation, abusive harassment, gender harassment and verbal abuse. Appellant alleged that the style of management on the part of the employing establishment resulted in feelings of anger, hostility, humiliation, dejection and feelings of worthlessness and ultimately in an emotional condition. Appellant stated that she became aware of her condition on March 21, 1994 when her family physician informed her that she was suffering from stress-induced depression.

Appellant consulted Dr. Norma Henriquez, a specialist in psychiatry, who in a report dated March 30, 1994, diagnosed major depressive episode, single without psychotic features. Dr. Henriquez also noted appellant's assertion that "I am stressed out with the [employing establishment] and I am very depressed." The employing establishment granted her a medical disability based on a chronic depression condition, which was approved retroactive to November 9, 1994.

In a letter dated June 30, 1994, the employing establishment controverted the claim, asserting that appellant's allegations ran contrary to the facts. Her supervisor stated that appellant voluntarily requested to be placed on the 12-hour desired overtime list on two occasions within one year, and denied her allegations of harassment, sexual harassment, intimidation and abuse charges as completely unfounded and unsupported. The employing

establishment also submitted a letter from its human resources specialist, dated July 18, 1994, who stated that appellant did not provide a single incident at work to support her allegations on the part of the employing establishment.

By decision dated December 28, 1994, the Office of Workers' Compensation Programs found that appellant failed to establish that she had sustained an emotional condition in the performance of duty. The Office stated that she had failed to provide sufficient evidence to support her allegations.

In a letter dated March 26, 1995, appellant requested an oral hearing, which the Office ultimately scheduled for May 8, 1996 in a letter dated April 1, 1996.

Appellant submitted a statement dated November 15, 1995, in which she contended that the employing establishment placed pressure on her on a daily basis to accomplish more than what she was physically capable of performing through intimidation and harassment. She alleged that on a daily basis, her morning supervisor would make the rounds asking her leaving and returning time or to estimate the amount of auxiliary assistance required for her to return on a punctual basis. Appellant claimed that management always disputed her replies to these inquiries, made her feel as though she should be performing at a higher level and told her that she had no right to factor in street problems, traffic or additional mail volume.

Appellant alleged that upon her return from her regular mail routes, management would be standing outside the worksite waiting for her, subjecting her to abuse by pointing to their watches, asking where she had been and what took her so long. She stated that she viewed these accusations as implying that she had "goofed off", when in fact she had always given her best effort. Appellant further stated that management would proceed to follow her inside, watching her every move and tell her to just leave the premises. She alleged that she was frequently criticized for failing to do her job properly because management did not want her to take the necessary time to complete her tasks in the proper manner.

Appellant further alleged that management overlooked the erratic, bizarre, and abusive behavior of a coworker who constantly subjected his fellow employees to harassment, threats of violence, disruptive behavior and abuse for several years until he resigned from the employing establishment. She alleged that this coworker threatened to shoot everyone at the worksite on several occasions, engaged in sexually harassing behavior toward herself and other female employees, engaged in imaginary conversations with "Elvis", and would often sit on the floor by the mail tray, throw mail around and disrupt the mail-gathering process. Appellant alleged that management was aware of this person's behavior but did nothing about it.

Appellant also submitted a statement dated April 26, 1996, from Kim Coutcher, a former coworker, who stated that she could attest to the events which appellant described. Ms. Coutcher, however, did not provide any specific description pertaining to appellant's allegations.

Appellant also submitted a statement dated April 24, 1996, from Denny Jones, a union vice-president, who stated that he agreed that the problems mentioned by appellant existed at the employing establishment. He stated that, as branch officer, he had to deal with numerous

problems involving letter carriers in appellant's workplace. He noted that grievances were filed on appellant's behalf involving overtime, work conditions, constant challenging of medical documentation and an attempt to terminate her employment. Mr. Jones stated he had known appellant for several years and could clearly discern the effects of management's "game playing" on her self-esteem, self-confidence, morale and mental state, which "finally took their toll on her." Mr. Jones added that he could verify appellant's statements regarding the conduct of a fellow male employee. He contended that the employing establishment tolerated obscene gestures and language, in addition to erratic and bizarre behavior.

Appellant also submitted additional medical evidence prior to the hearing. Dr. E.W. Williams, an osteopath, submitted a medical report dated April 2, 1996, in which he stated that he had read appellant's November 15, 1995 statement regarding conditions at the employing establishment. Dr. Williams found that the examination and tests he had performed on appellant, together with her symptoms -- which were substantiated through her previous medical documentation -- showed a conclusive diagnosis of chronic fatigue syndrome pursuant to the guidelines of the centers for disease control. He stated that her disease was aggravated and accelerated by the conditions of employment as described. Dr. Williams advised that the factors appellant described showed that she was also under a lot of emotional stress and had been subjected to abuse causing her stress. Dr. Williams opined that the "emotional stress ... was caused by her managers using intimidation through their looks, words, actions and gestures. The emotional abuse was caused by them criticizing her work, making her feel bad about her herself and making her feel guilty." With regard to the abusive coworker, Dr. Williams stated that "this factor caused her emotional stress because the mind can only handle a certain amount of aggravation or violence, even if subtle or implied. It is unfortunate when people who are in charge of an organization do not defuse potential problems as they develop [sic], before they reach this damaging level." Dr. Williams noted that appellant was on disability retirement and had been totally disabled as a letter carrier due to chronic fatigue syndrome since March 25, 1994. Dr. Williams concluded that appellant had a poor prognosis for recovery and would probably never be able to work again in any physical capacity.

Appellant also submitted an updated April 29, 1996, medical report from her treating physician, Dr. Henriquez, who stated that she had read appellant's November 15, 1995 statement and concluded that appellant had a major depressive episode, recurrent, without psychotic syndrome and had recently been diagnosed with chronic fatigue syndrome. Dr. Henriquez stated that a person with these conditions who was exposed to workplace stressors, such as those described, would experience an exacerbation of symptoms. Dr. Henriquez, therefore, advised that psychological as well as physical aspects of her job contributed to appellant's disability.

By decision dated July 15, 1996, an Office hearing representative found that appellant failed to establish she had suffered an emotional condition in the performance of duty. The hearing representative stated that appellant failed to meet her burden of showing that she sustained the employment incidents, as alleged, finding that her statements were vague as she did not describe specific names and dates in connection with her allegations. The hearing representative further found that appellant failed to establish any error or abuse on the part of the employing establishment in administrative or personnel matters such as setting schedules, requesting leave or in administering discipline. The hearing representative found that appellant

established one compensable factor of employment; the erratic behavior of a male coworker. The hearing representative found, however, that appellant failed to submit a rationalized medical opinion explaining why or how this employment factor caused or contributed to her claimed condition.

The Board finds that the case is not in posture for decision.

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.¹ There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.²

The first issue to be addressed is whether appellant has cited factors of employment that contributed to her alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³ On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.⁴

In this case, the Office accepted as a compensable factor that appellant was harassed by a male coworker. The Board notes that appellant's burden of proof is not discharged by the fact that she has established an employment factor which may give rise to a compensable disability under the Act. Appellant also has the burden of submitting sufficient medical evidence to support her claim that the accepted harassment resulted in an employment-related emotional condition.⁵

In this case, appellant has submitted evidence consisting of medical reports from Drs. Williams and Henriquez indicating that harassment by her male coworker resulted in her emotional condition and disability.

Dr. Williams had appellant undergo a thorough examination, performed several diagnostic tests on appellant, researched her medical history and symptoms, and, after reading

¹ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

² See *Ruth C. Borden*, 43 ECAB 146 (1991).

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ See *id.*

⁵ *Chester R. Henderson*, 42 ECAB 352 (1991).

her November 15, 1995 statement describing the pattern of abusive conduct and harassment on the part of the employing establishment, arrived at a diagnosis of chronic fatigue syndrome. Dr. Williams found that this condition, chronic fatigue syndrome, was aggravated and accelerated by the conditions of employment described in appellant's November 15, 1995 statement and opined that the employment factors appellant described indicated that she had been subjected to abuse, causing her emotional stress. Dr. Williams addressed the employment factors mentioned by appellant, stating that her emotional stress was caused by her managers using intimidation through their looks, words, actions and gestures. Dr. Williams further noted that the employing establishment caused emotional abuse by unfairly criticizing her work, damaging her self-esteem and instilling feelings of guilt in appellant. However, the Board notes that these allegations have not been established by appellant in this case.

However, Dr. Williams did discuss the emotional stress caused appellant by bizarre, threatening and erratic behavior by a male coworker, whose conduct was accepted by the Office as a factor of employment. Dr. Williams stated that "this factor caused her emotional stress because the mind can only handle a certain amount of aggravation or violence, even if subtle or implied. It is unfortunate when people who are in charge of an organization [*i.e.*, the employing establishment] do not defuse potential problems as they develop [*sic*], before they reach this damaging level." Dr. Williams described appellant's symptoms and how the accepted employment factor would have been competent to cause her emotional condition, chronic fatigue syndrome.

The record also contains the April 29, 1996 medical report from Dr. Henriquez, who advised that a person exposed to workplace stresses like those described by appellant in her November 15, 1995 statement; *i.e.*, daily pressure on her to accomplish more than what she was physically capable of performing through intimidation and harassment; constantly watching her and questioning her time management; and overlooking and/or tolerating for several years the erratic, bizarre, and abusive behavior of a coworker who constantly subjected his fellow employees to harassment, threats of violence, disruptive behavior and abuse. Dr. Henriquez further stated that psychological as well as physical aspects of her job, as described by appellant, would have contributed to this disability.

The Board finds that the evidence submitted by appellant, which contains a history of the development of the alleged condition, chronic fatigue syndrome and medical opinions that the condition found was consistent with the history of development, given the absence of any opposing medical evidence, is sufficient to require further development of the record.⁶ Although the medical evidence submitted by appellant is not sufficient to meet appellant's burden of proof, the medical evidence of record raises an uncontroverted inference that identified factors of her federal employment may have contributed to her alleged emotional condition or disability and is sufficient to require further development of the case record by the Office.

On remand, therefore, the Office should further develop the medical evidence by preparing a statement of accepted facts and referral to a Board-certified psychiatrist to submit a medical opinion on whether appellant sustained an emotional condition causally related to the

⁶ John J. Carlone, 41 ECAB 354 (1989).

accepted factor of her federal employment. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated July 15, 1996 is set aside and the case is remanded for further action in accordance with this decision.

Dated, Washington, D.C.
June 8, 1999

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member