

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MELODY S. SWENSON and U.S. POSTAL SERVICE,  
POST OFFICE, San Francisco, Calif.

*Docket No. 97-1649; Submitted on the Record;  
Issued May 18, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant sustained an injury in the performance of duty on May 25, 1995, as alleged.

The record shows that appellant developed a post-traumatic stress disorder while in the performance of duty beginning in 1993. Appellant claimed that she was subjected to sexual harassment by another employee, Phil J. Feiner, Jr., and felt threatened after reporting the problem to management. The Office of Workers' Compensation Programs found that the evidence supported appellant's contention that she was being harassed by Mr. Feiner in the form of unwanted attention. The Office also found that the evidence supported that on January 24, 1994 Mr. Feiner attempted to have appellant kiss him, that he grabbed her hand and pulled her towards him. As the medical evidence supported that appellant sustained a post-traumatic stress disorder as a result of the claimed incidents, the Office accepted appellant's claim. Appellant was able to return to work after she was reassigned to another area where she had no contact with Mr. Feiner. The Office paid appropriate compensation for disability from February 6 to April 5, 1994, with a brief return of disability in June 1994.

Appellant subsequently filed a claim for a traumatic injury. She asserted that on May 25, 1995 Mr. Feiner approached her table and stared at her with a very angry look after the employing establishment received a decision in appellant's favor to her charge of sexual harassment.<sup>1</sup> Appellant stated that she became frightened, nauseous, and sick and had a

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<sup>1</sup> After a formal complaint to the Equal Employment Opportunity Commission and a hearing, an administrative law judge issued findings of fact and conclusions of law. The judge found that the evidence clearly established a *prima facie* case of hostile sexual harassment by Mr. Feiner and that a preponderance of the evidence supported a finding of discrimination based upon sex. The judge found, pursuant to appellant's continuing reasonable fear of retaliation against her by Mr. Feiner, that she be protected from contact with Mr. Feiner and that she be escorted to and from her vehicle in the parking lot of the employing establishment. The judge explained that this remedy was supported not only by appellant's testimony but also by the judge's observations of Mr. Feiner at the hearing.

throbbing headache. She stated that she sat in the bathroom and cried from fear and sadness. Appellant stated that she became dysfunctional from fear and was afraid to tell her supervisor because coworkers were told to stay away from appellant because she was trouble.

Appellant stopped work on June 19, 1995 and saw her attending psychiatrist, Dr. George Demetrius Karalis, who reported that appellant remained “overtly symptomatic from sexual discrimination stress (Mr. Feiner) and cannot return to work until June 26, 1995.” On October 26, 1995 Dr. Karalis reported that appellant could not work that day or next due to emotional stress “and should not work anywhere near Phil Feiner ever in the future.”

In a decision dated May 8, 1996, the Office denied appellant’s claim of a traumatic injury on May 25, 1995 on the grounds that the evidence failed to establish that an injury occurred at the time, place and in the manner alleged.

The Board finds that the evidence fails to establish the incident alleged.

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>2</sup> has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.<sup>3</sup>

Appellant asserts that on May 25, 1995 Mr. Feiner approached her table and stared at her with a very angry look. The employing establishment interviewed Mr. Feiner regarding this allegation, however, and reported as follows: “He is very sincere to the fact that he has not come in contact with [appellant] in any wa[y] since her EEO [hearing] regarding a prior incident was held early in May 1995, where he was called to testify.” The record indicates that there may have been two witnesses to what occurred on May 25, 1995, a “hearing man” named Ed and a coworker named Heri. Although appellant indicated in a December 11, 1995 response to the Office that a witness statement from Heri was attached, no such statement appears in the record. The evidence thus consists of an unsupported allegation that has been denied. Appellant has not submitted statements from witnesses or other evidence to support her allegation that on May 25, 1995 Mr. Feiner approached appellant’s table and stared at her with a very angry look. The Board finds that the weight of the factual evidence currently of record fails to support that she experienced the specific event or incident at the time, place and in the manner alleged. For this reason she has not met her burden of proof.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See generally *John J. Carlone*, 41 ECAB 354 (1989); *Abe E. Scott*, 45 ECAB 164 (1993); see also 5 U.S.C. § 8101(5) (“injury” defined); 20 C.F.R. §§ 10.5(a)(15)-.5(a)(16) (“traumatic injury” and “occupational disease or illness” defined).

The May 8, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.

May 18, 1999

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member