

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANE P. WOOD and U.S. POSTAL SERVICE,
POST OFFICE, Birmingham, AL

*Docket No. 00-996; Submitted on the Record;
Issued April 18, 2001*

DECISION and ORDER

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

The issue is whether appellant sustained an emotional condition in the performance of duty, as alleged.

On May 5, 1998 appellant, then a 52-year-old postmaster, filed an occupational disease claim Form CA-2, alleging stress at work. Specifically, appellant stated that on June 11, 1997 when she was on sick leave, a new supervisor, Doris Roden, whom she had never worked for went into her office and told her (appellant's) employees that she would "never" be promoted. Appellant stated that in January 1998 she contacted Ms. Roden to request a replacement of her full-time clerk position but Ms. Roden denied her request and when appellant asked her why she was reducing her staff by 50 percent, she "screamed at [her,] did you hear what I said?" Appellant stated that she felt extreme anxiety because she was unable to have any form of communication. She stated that when she notified Ms. Roden's boss about her concerns, he "turned the matter back to [appellant's] supervisor to resolve" and this added to her stress because it made communication difficult.

Appellant stated that on February 26, 1998 when she requested the use of two hours overtime, Ms. Roden told her that she (*i.e.*, appellant) would "need to think about taking a demotion if [she] could not run [her] office." When appellant explained that she had been working long hours without any lunch break and her doctor did not want her standing so much, Ms. Roden told her that "it was [her] problem," that she was an "exempt employee" and "to deal with it." Appellant stated that she felt Ms. Roden was trying to intimidate her and made it clear that she did not want to be bothered by her for any reason.

Appellant stated that on March 4, 1998 she felt she had to file an Equal Employment Opportunity (EEO) complaint for "constant discrimination" and intimidation and on March 17 and 25, 1998, two audits of her office were taken and appellant felt they were done in "retaliation of her situation." She stated that the continuing "pattern and practice of harassment, discrimination and failure to accommodate her reasonable request" concerning her medical problems was increasing her stress. Appellant also stated that Ms. Roden was the former

postmaster of her office and now that she, was postmaster, Ms. Roden was depriving her of the "same staffing that she acknowledged was necessary to run the office when she was postmaster." Appellant stated that on April 21, 1998 she met with Ms. Roden to discuss the results of the audits and although appellant stated that both audit teams said her office was in good condition, Ms. Roden told her she was deciding what discipline to give her.

Appellant stated that since June 1997 and continuing, all communication with Ms. Roden was hostile and her staff had been reduced, forcing her to work long hours without a break. She also explained that she was constantly sick to her stomach, had lost weight, had dizzy spells with increasing frequency and intensity, felt extreme tension when she drove, had difficulty sleeping, headaches, difficulty seeing, nervousness to the point of being unable to relax and leg and foot problems.

In a statement dated May 29, 1998, Ms. Roden responded, stating that appellant supervised five full-time career employees, three rural carriers, one part-time flexible clerk and one full-time clerk. She stated that one clerk was promoted to the position of postmaster at another office. Ms. Roden stated that a staffing shortage was created due to the promotion of that employee and since the Office received an undetermined amount of automated mail, she requested a review of the office staffing to determine if the clerk position should be filled or abolished. Ms. Roden stated that, to compensate for the staffing shortage, she advised appellant to use rural carrier associates or detail employees or both at different intervals from surrounding post offices to assist with the work duties until a determination was made. On April 21, 1993 Ms. Roden met with appellant to discuss the results of the clerk audit and stated that it was determined that the employing establishment required daily clerk hours of 10.63. She stated that she advised appellant to continue to utilize rural carrier associates and other employees to assist with the work duties until another clerk could be hired. Ms. Roden stated that appellant had been "very irate" since her request for review of the employing establishment but the review was normal procedure and did not reflect a personal vendetta against her.

In a report dated April 29, 1998, appellant's treating physician, Dr. Jack G. Modell, a Board-certified psychiatrist and neurologist, opined that appellant had symptoms of depression and anxiety which she related to on-the-job stress. He stated that appellant found that her symptoms developed when her new supervisor made "demands that were impossible to meet" and began treating her in a way that she perceived as being demeaning and hostile. Dr. Modell opined that appellant required a medical leave of absence. In an attending physician's report, Form CA-20, dated May 15, 1998 he diagnosed acute stress disorder, major depression and panic disorder and checked the "yes" box that he believed appellant's condition was work related.

By decision dated June 16, 1998, the Office requested additional information from appellant including a detailed medical narrative from her doctor addressing how her condition arose from her employment.

Appellant stated that in late December 1997 when she returned from vacation, Ms. Roden had transferred her regular clerk to another office. She stated that she had to run the window operations by herself and very little assistance with anything else on the busiest days of the year. Appellant stated that the computer was "left out of balance," there was no scheduling made for help and the lines in the lobby "never ended." Appellant said when she told Ms. Roden of the

situation, she said that “must have been a misunderstanding.” She stated that when her part-time clerk returned, they had to do the busiest month of the year with little assistance and the part-time clerk had to do the regular clerk’s duties without any training. Appellant stated that on February 1, 1998 she was having increasing problems with her health, but she had to do some of the clerk’s new duties so that she would not fall behind.

By letter dated June 18, 1998, Dr. Modell stated that appellant could return to her usual job on June 22, 1998 but must only work four hours a day, not have an excessive workload and must have adequate assistance to perform her duties.

In a memorandum dated July 2, 1998, Ms. Roden stated that the employing establishment disagreed with appellant’s allegation of never being promoted, being intimidated and being screamed at. She stated that appellant did not apply for any higher level position and was treated with dignity and respect as any employee with the employing establishment. Ms. Roden reiterated that a staffing shortage was created due to the promotion of an employee to another office and that appellant was instructed to use rural carrier associates or detail employees whenever possible to compensate.

In a note dated July 14, 1998, Dr. Modell stated that appellant could return to work on July 20, 1998.

In a report dated July 14, 1998, Dr. Modell stated that Ms. Roden gave appellant unusually heavy workloads, did not provide her with promised and necessary assistance to complete her job responsibilities without undue stress or considerable overtime and appellant was either denied or unable to take lunch breaks because of the work demands. He stated that these factors, combined with having to stand continuously on the job without breaks for most of the day appeared to have led to her fainting episodes. Dr. Modell stated that appellant’s symptoms of depression and panic began when appellant found that her repeated attempts to resolve the work and supervisory problems with Ms. Roden were met with “only criticism and hostility.” He also stated that on April 29, 1998 when appellant was talking with Ms. Roden in her office, her employees could hear Ms. Roden’s voice “loud and distinct” over the telephone from a few feet away.

On April 6, 1998 appellant filed a complaint with the EEO, seeking to have “the harassment, hostility and ill treatment at the hands of the discriminating official” stopped and to receive compensatory damages for her injuries and attorney’s fees.

On May 14, 1998 the employing establishment accepted appellant’s complaint of being denied overtime as worthy of being investigated.

By decision dated June 10, 1999, the Office denied appellant’s claim, stating that the evidence of record failed to establish that the injury occurred in the performance of duty.

Appellant requested a review of the written record by an Office hearing representative and submitted additional evidence.

In a statement dated July 7, 1999, a witness, Dorothy Box, a postmaster, stated that on June 11, 1997 Ms. Roden entered the employing establishment, was cool and unfriendly and

stated in a loud voice that neither she nor appellant would ever get a promotion and, in fact, no one in the office would ever get promoted. Appellant submitted documentation showing that Ms. Roden put her on nonpay leave status for no apparent reason and that it took her filing the EEO complaint and numerous requests and intervention by an adverse action counselor to finally receive her paycheck of September 4, 1998, four months after she should have received it. She stated that Ms. Roden was aware that she had requested sick leave for this time by her leave request dated April 30, 1998 and talking to her on April 29, 1998, that on April 29, 1998, Ms. Roden screamed at her and stated that she did not believe her.

A note dated May 8, 1998 from Ms. Roden to "PSDS" [presumably payroll], stated that appellant should receive 40 hours of leave without pay for pay period 10, fiscal year 1998 "pending documentation or 3971 received by the "employing establishment" operations. A note from Dan Hone dated February 10, 1999 stated, Ms. Roden informed him that she was going on sick leave herself, that she never intended to withhold appellant's pay and "it was all just a mix-up" in the paper work, although he noted that what Ms. Roden told him contradicted the May 8, 1998 memorandum. Appellant stated that Ms. Roden's comment in her absence to her coworkers that she would never get promoted was indicative of the hostile environment Ms. Roden created and her treatment to "force [her] out of [her] office." Appellant noted that Ms. Roden stopped her pay a second time as well.

Appellant alleged that when she was out of the office, her replacement asked for help and got it. She believed that this treatment was in retaliation of her filing the EEO complaints and showed discrimination against her as a single, white female.

Appellant stated that on April 30, 1998 she called Ms. Roden from Dr. Model's office to tell her that she was suffering from extreme stress and required time off from work and left that message on her answering machine. Ms. Roden called her back at the doctor's office and accused her of lying in a very hostile tone and demanded to speak with the doctor. Appellant stated that after four business days while she was out on sick leave, Ms. Roden approved a second clerk position for her office and this position was approved on May 6, 1998. Appellant also stated that Ms. Roden refused to accommodate her disabilities and for making her work long days without a break. Appellant stated that her letter to the district manager, Walter Moon, dated February 11, 1998 addressing her staffing problem met with hostility and retaliation from Ms. Roden.

By decision dated October 18, 1999, the Office hearing representative affirmed the Office's June 10, 1999 decision.

By letter dated November 18, 1999, appellant requested reconsideration of the Office's decision and stated that she was submitting her "sworn testimony" of time cards which showed that she was not allowed enough help, had to work under the stress of long hours without a lunch break and had no future help to allow her clerk and herself any days off. Appellant stated that the time cards were confidential and could only be released through the Injury Compensation Office at the Alabama District and, therefore, she was giving her sworn testimony that the time cards exist. Appellant stated that the fact that she was assigned only one clerk compelled her to cover the clerk while the clerk did workroom floor duties and then stay late to do her postmaster duties. For comparison, she stated that Ms. Roden used two clerks almost 40 hours each and

“RCA’s” [rural carrier associates] up to 30 hours each week. Appellant stated that she had to schedule an available RCA to help her.

By decision dated December 23, 1999, the Office denied appellant’s request for reconsideration.

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

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 or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees’ Compensation Act.¹ 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 frustration from not being permitted to work in a particular environment or to hold a particular position.²

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the conditions for which he claims compensation were caused or adversely affected by factors of his federal employment.³ This burden includes the submission of a detailed description of the employment conditions or factors which appellant believes caused or adversely affected the condition or conditions for which he claims compensation. This burden also includes the submission of rationalized medical opinion evidence, based on a complete factual and medical background of the employee, which shows a causal relationship between the conditions for which compensation is claimed and the implicated employment factors or incidents.⁴

Where an employee alleges harassment and cites to specific incidents and the employer denies that harassment occurred, the Office or some other appropriate fact finder must make a determination as to the truth of the allegations.⁵ The issue is not whether the claimant has established harassment or discrimination under standards applied by the EEO. Rather the issue is whether the claimant under the Act has submitted evidence sufficient to establish an injury arising in the performance of duty.⁶ To establish entitlement to benefits, the claimant must

¹ *Dinna M. Ramirez*, 48 ECAB 308, 312 (1997); *see Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991).

² *Michael Ewanichak*, 48 ECAB 364 (1977); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *June A. Mesarick*, 41 ECAB 898 (1990); *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Id.*; *see Walter D. Morehead*, 31 ECAB 188, 194 (1979).

⁵ *Michael Ewanichak*, *supra* note 2; *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

⁶ *See Martha L. Cook*, 47 ECAB 226, 231(1995).

establish a factual basis for the claim by supporting allegations with probative and reliable evidence.⁷

Appellant's allegations that Ms. Roden intimidated her, discriminated against her and overall harassed her as well as treated her in a hostile manner was not corroborated by the evidence of record. Although Dr. Modell stated that he heard Ms. Roden talking loudly to appellant over the telephone at his office, there is no corroborating evidence that Ms. Roden spoke to appellant in a very hostile tone or screamed at her on that occasion or that she screamed at appellant when she asked Ms. Roden why her staff was being reduced by 50 percent. Further, although in her July 7, 1999 statement, the postmaster, Ms. Box, stated that in front of her and others, in appellant's absence, Ms. Roden stated that she, appellant and everyone in the post office would never get promoted and, therefore, corroborates appellant's statement that Ms. Roden said those words, it does not appear Ms. Roden singled appellant out for a negative comment. The record does not show that the EEO complaint was ever conclusively decided for or against appellant. The record also does not show that Ms. Roden failed to accommodate appellant's physical disabilities other than by appellant's allegation that under Ms. Roden's management, she was forced to work overtime and the overtime work aggravated her physical condition.

Regarding appellant's allegation that Ms. Roden placed her on leave without pay when appellant asked for sick leave and she (appellant) did not receive her proper paycheck until four months later, the issuance of leave is an administrative matter and as such, is compensable only if appellant shows that management acted abusively or unreasonably.⁸ Appellant has not made this showing.

Appellant has established, however, that she sustained a staff shortage when one of her clerks was promoted to a permanent position in another office, that she was short of staff even over the Christmas season in December 1997 when it was particularly busy and that she had to work long hours without a break over a period of several months. In her February 26 and May 29, 1998 statements, Ms. Roden acknowledged that a staffing shortage was created when a clerk was promoted to another position and she advised appellant to either utilize rural carrier associates and other employees who were available. Having an extra workload due to the staffing shortage which required appellant to work long hours without a break is part of appellant's regular duties and, therefore, appellant has established that her excessive workload and long hours constitute a compensable factor of employment.⁹

Since appellant must also show the medical evidence establishes that the compensable factor or employment contributed to her condition, the case must be remanded for further development. Dr. Modell's April 29 and July 14, 1998 reports stated that appellant's unusually heavy workloads and considerable overtime caused her stress and led to her having fainting episodes. He stated that appellant sustained symptoms of depression and panic when her

⁷ *Barbara E. Hamm*, 45 ECAB 843, 851 (1994).

⁸ *See Joe L. Wilkerson*, 47 ECAB 604, 606-07 (1996).

⁹ *See Richard H. Ruth*, 49 ECAB 503, 508 (1998); *Ezra D. Long*, 46 ECAB 791, 797-98 (1995).

repeated attempts to resolve the work and supervisory problems with Ms. Roden were met with only criticism and hostility. Dr. Modell's opinion is supportive that the overwork caused or contributed to appellant's stress but does not contain sufficient medical rationale in itself to establish the requisite causation. On remand, the case record, a statement of accepted facts and appellant should be referred to an appropriate medical specialist for an evaluation and medical opinion to determine whether appellant's emotional condition resulted from her increased workload and overtime hours. Upon any further development that it deems necessary, the Office shall issue a *de novo* decision.

The decisions of the Office of Workers' Compensation Programs dated December 23, October 18 and June 10, 1999 are vacated and the case remanded for further action consistent with this decision.

Dated, Washington, DC
April 18, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member