

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JANICE DOZIER and U.S. POSTAL SERVICE,  
MAIN POST OFFICE, St. Louis, MO

*Docket No. 00-1716; Submitted on the Record;  
Issued April 24, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

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

On April 7, 1999 appellant, then a 49-year-old mailhandler, filed a notice of occupational disease, claiming that her post-traumatic stress disorder was caused after her employer searched her purse at work because someone said she had a gun. On March 23, 1999 appellant had been working when she was approached by her supervisor and two employing establishment's police officers, who informed her that she needed to get her purse and go with them. Appellant told the police that she desired to have a steward present. When they reached the employing establishment's police office, an officer searched appellant's purse without having a steward present. When a gun was not found, appellant was told that she may go back to work. She went to see the on-site nurse instead because she was upset and she stayed in the nurse's office until she was sent home. Appellant also included a personal statement with her claim, stating that the actions of the police officers in front of her coworkers and in the police office made her feel embarrassed, like a criminal, violated as a female, harassed and dehumanized. She stated that, since the incident, she has had trouble sleeping, she has been crying, has had high blood pressure, loss of appetite and feelings of fear and invasion of privacy.

The Office of Workers' Compensation Programs also received a statement from appellant's employer, stating: "It is unfortunate that this occurred." "But the front line supervisors, the employing establishment's police and the postal inspection service cannot take any report of an employee carrying a gun at work lightly." "Better safe than sorry." In a later statement dated May 5, 1999, appellant's employer stated:

"I would like again to state if it had been anyone else, male or female, this person would have been treated in the same manner. An allegation of a weapon in the workplace is a very serious matter which cannot be taken lightly. The supervisor has to be able to exercise his supervisory discretion in this situation."

By letter dated April 27, 1999, the Office requested that appellant submit additional evidence, as the record was insufficient to decide the claim.

On April 30, 1999 the Office received medical evidence in support of appellant's claim. Appellant submitted a report from Dr. Pacita Dee, a Board-certified psychiatrist and neurologist, dated April 8, 1999, stating that she had treated appellant on March 26, 1999, three days after the incident. Dr. Dee diagnosed appellant with "acute post-traumatic stress disorder." Also received was a treatment note from the on-site nurse dated the day of the incident, diagnosing appellant with "trauma-stress" and sending her home for the day. Appellant also submitted an incident report and, an attending physician's report from Dr. Dee dated March 26, 1999, diagnosing appellant with "post-traumatic stress."

In addition, appellant submitted several grievance reports in support of her claim, dating from December 7, 1998 to May 20, 1999. In these reports, appellant alleged that her supervisor had made sexual remarks towards her and had discriminated against her. Appellant also submitted a treatment note dated May 6, 1999 from the on-site nurse, diagnosing her with "stress" and a treatment note from her psychologist, Dr. Sherman Sklar, stating that he had treated appellant on May 19, 1999. An additional report was received from Dr. Dee dated May 26, 1999, in which she again diagnosed appellant with "acute post-traumatic stress disorder."

By decision dated June 1, 1999, the Office denied appellant's claim since the evidence submitted did not establish that an injury occurred in the performance of duty as alleged. By letter dated June 24, 1999, appellant requested an oral hearing, which was held on November 17, 1999.

Appellant also submitted additional information after the Office's June 1, 1999 decision. In a report from Dr. Sklar dated May 19, 1999, he diagnosed appellant with "post-traumatic stress disorder" and "adjustment disorder with mixed anxiety and depressed mood." Appellant also submitted treatment notes from Dr. Dee dated April 14, May 21, June 18 and November 11, 1999.

By decision dated February 10, 2000, the hearing representative affirmed the Office's June 1, 1999 decision, finding that appellant did not establish any compensable factors of employment.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment. To establish that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder;

and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>1</sup>

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.<sup>2</sup> There are distinctions regarding the type of situation giving rise to an emotional condition which will be covered under the Act.<sup>3</sup> For example, disability resulting from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employing establishment is covered.<sup>4</sup> However, an employee's emotional reaction to an administrative or personnel matter is generally not covered<sup>5</sup> and disabling conditions caused by an employee's fear of termination or frustration from lack of promotion are not compensable. In such cases, the employee's feelings are self-generated in that they are not related to assigned duties.

Nonetheless, if the evidence demonstrates that the employing establishment erred or acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.<sup>6</sup> However, a claimant must support her allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>7</sup>

The initial question is whether appellant has alleged compensable employment factors as contributing to her condition;<sup>8</sup> if appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.<sup>9</sup>

Appellant's primary allegation was that her emotional condition was related to the search done by the employing establishment's police on March 23, 1999. The Board has held that investigations into alleged illegal or improper acts are not within an employee's performance of duty.<sup>10</sup> An employing establishment must retain the right to investigate an employee if wrong doing is suspected. The investigation itself is not a compensable factor under the Act, but is rather performance of an administrative function.<sup>11</sup> As such, investigative functions are not

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<sup>1</sup> *Vaile F. Walders*, 46 ECAB 822 (1995).

<sup>2</sup> *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995).

<sup>5</sup> *Sharon J. McIntosh*, 47 ECAB 754 (1996).

<sup>6</sup> *Margreate Lublin*, 44 ECAB 945, 956 (1993).

<sup>7</sup> *Ruthie M. Evans*, 41 ECAB 416, 425 (1990).

<sup>8</sup> *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

<sup>9</sup> See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992) (noting that, if appellant fails to substantiate with probative and reliable evidence a compensable factor of employment, the medical evidence need not be discussed).

<sup>10</sup> *Arthur F. Hougens*, 42 ECAB 455 (1991).

<sup>11</sup> *Larry J. Thomas*, 44 ECAB 291 (1992).

compensable factors of employment unless there is affirmative evidence that the employer either erred or acted abusively in the administration of the investigation.<sup>12</sup> As the employer received information that appellant possibly had a gun in her purse at work, they were entitled to search appellant's purse since having a gun at work is illegal. Appellant also stated that she asked to have a steward present during the search, yet the officer went ahead and performed the search before the steward arrived. The Board notes that, in such a case where safety is an immediate issue, the officer did not act abusively in the administration of this matter.

Appellant also alleged that, since the March 23, 1999 incident, she has been harassed by her supervisor at work in retaliation to her filing a claim. She, however, has submitted no evidence to substantiate these allegations and thus has not established a factual basis for this claim by supporting her allegations with probative and reliable evidence.<sup>13</sup>

The Board finds that appellant has identified no compensable work factors that are substantiated by the record and that the employing establishment has neither erred nor acted abusively or unreasonably in the administration of personnel matters. As no compensable work factors have been identified, it is unnecessary to address the medical evidence.<sup>14</sup>

The decisions dated February 10, 2000 and June 1, 1999 of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
April 24, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>12</sup> *Merriett J. Kauffman*, 45 ECAB 696 (1994).

<sup>13</sup> *Norma L. Blank*, 43 ECAB 384 (1992).

<sup>14</sup> *See Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).