

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA AMBROSE and U.S. POSTAL SERVICE,
LOYOLA AVENUE MAIN POST OFFICE, New Orleans, LA

*Docket No.00-324; Submitted on the Record;
Issued June 14, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On June 16, 1998 appellant, then a 41-year-old mail processor, filed a claim for stress, anxiety and depression beginning June 1, 1997. She attributed her emotional condition to the employing establishment's denial of her requests for light duty, whereby she was unemployed for seven months and to harassment due to her light-duty status as a "patch-up" worker.¹ Appellant alleged that in a June 16, 1998 meeting supervisor Larry Irvin stated that patch-up personnel were not "worth sh**" and if he had his way he would put them in the back outside. She alleged that coworkers laughed at appellant because of these remarks. She also alleged that postal inspectors monitored her daily activities, a nurse specialist did not follow up with her as agreed, and that Ms. Sayles, an employing establishment compensation official, gave her inaccurate advice regarding her claim and left vital paperwork unprocessed for approximately seven months. Appellant also explained that the employing establishment's denial of light duty caused her to declare bankruptcy, adding to her stress.

The employing establishment controverted appellant's claim. In an August 12, 1998 letter, Mr. Irvin denied using profanity or making derogatory comments.²

Appellant submitted medical evidence in support of her claim. In a June 22, 1998 report, Dr. Georganna Leavesler, a clinical psychologist, noted appellant's account of stress "secondary

¹ Appellant filed a previous claim for carpal tunnel syndrome, assigned Claim No. 160298625. This claim was accepted and appellant received compensation for temporary total disability on the periodic rolls from April 1997 to April 1998.

² In an August 11, 1998 note, Randolph McCormick, one of appellant's coworkers, stated that he had not heard Mr. Irvin use profanity during service or safety talks. In an August 13, 1998 letter, Larry Pittman, an employing establishment official, generally controverted appellant's emotional condition claim.

to requiring surgery” in August 1997 and January 1998 “for job-related carpal tunnel difficulties,” with “a sense of being devalued in her status of [being] unable to do former tasks and level of work.” Appellant also reported stress due to “comments from supervisors or peers that degrade her status” and loss of her morning shift position. Dr. Leavesler stated that “feeling a lack of value by her employer may add to her depression and interfere with using coping skills to deal better with the chronic pain and depression” Dr. Leavesler diagnosed “[m]ajor [d]epressive [d]isorder: [s]ingle [e]pisode,” “[c]arpal [t]unnel [p]roblems and [s]urgery,” with social stressors of “[w]ork situations, financial problems and chronic pain.”

In a June 24, 1998 report, Dr. Brian Naccari, an attending Board-certified internist, noted appellant’s history of carpal tunnel syndrome beginning in March 1997, with bilateral hand pain limiting her work and home activities.

In a June 30, 1998 report, Dr. Serge Celestin, an attending psychiatrist, related appellant’s account of stress beginning in 1997 due to “carpal tunnel syndrome and subsequent hand surgery, work[-]related stress” and subsequent severe financial difficulties. He diagnosed “major depression, moderately severe.” Dr. Celestin noted that appellant was not able to work due to her emotional condition.

By decision dated August 21, 1998, the Office of Workers’ Compensation Programs denied appellant’s claim on the grounds that the claimed condition did not arise in the performance of duty. The Office accepted the following as factual but not in the performance of duty: difficulties with processing her compensation claims; financial hardship; investigation by postal inspectors, assignment to the night shift when appellant desired the morning shift; bilateral carpal tunnel syndrome with surgeries in August 1997 and January 1998. The Office did not accept that Mr. Irvin and coworkers made derogatory remarks about appellant.

Appellant disagreed with this decision and in a September 17, 1998 letter requested reconsideration through her attorney representative. She submitted additional evidence.

Appellant submitted statements from coworkers regarding Mr. Irvin’s June 16, 1998 remarks. In an August 1998 note, Beatrice Cooper stated that, at an employee meeting, Mr. Irvin “said that the people working in the patch up unit ... belong in the parking lot because they do [not] do any work.” In an August 26, 1998 letter, J. Daniels stated that, at a June 16, 1998 meeting, Mr. Irvin made remarks “about workers that are injured and working in the patch-up unit.” In an August 27, 1998 note, Walter Miles stated that, on June 16, 1998, Mr. Irvin “[d]uring a service talk made a remark that he did not like the production of the patch-up unit and that the patch-up unit should be moved to the back lot.” In an August 29, 1998 statement, Monica Davis recalled that Mr. Irvin stated that the “patch-up unit is a waste to the postal service.”

Appellant submitted April 18 and July 11, 1997 applications for temporary light duty, with restrictions by Dr. Timothy Finney, an attending orthopedist, against repetitive hand motions and lifting more than 10 pounds, due to bilateral carpal tunnel syndrome. These were denied on April 24 and July 18, 1997 respectively.

In a May 8, 1997 letter, the employing establishment stated that light-duty work was not presently available within the restrictions of “no repeated lifting with right hand,” lifting limited to 10 pounds and no standing, for an “indefinite” duration.” The employing establishment instructed appellant not to report for duty, but noted that other area managers were contacted regarding the availability of light-duty work.

In an August 28, 1997 decision, an employing establishment labor relations specialist denied appellant’s Step 3 grievance regarding the denial of light-duty work, finding that there was no evidence that the employing establishment violated the national agreement.

In an April 13, 1998 note, Dr. Finney recommended that appellant be allowed to “ease back into her job by continuing on the morning shift.” In April 14 and 15, 1998 notes, Dr. Naccari requested that appellant be assigned to the day shift from Tour 3 due to stress.³

By decision dated May 6, 1999, the Office denied modification of its prior decision. The Office found that the handling of appellant’s compensation claims and the denial of light duty based on appellant’s carpal tunnel syndrome were administrative matters not within the performance of duty. Further, it found there was insufficient evidence to establish that Mr. Irvin made derogatory remarks concerning appellant.

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

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or 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 and which working conditions are not deemed factors of employment and may not be considered. If a claimant does implicate 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.⁴ In this case, appellant failed to substantiate any compensable factor of employment.

The Board finds that appellant’s allegations regarding the employing establishment’s denial of light-duty work concern administrative matters not within the performance of duty. The Board has held 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

³ A November 23, 1998 functional capacity evaluation indicated no significant strength or motor deficits in either hand, and that appellant was able to work a full eight-hour day in a sedentary occupation. The examiner noted that appellant showed good effort and that the test results were valid.

⁴ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389 (1992).

establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁵

In a May 8, 1997 letter to appellant, the employing establishment stated that light-duty work was not available within her restrictions, noting that other area managers were contacted in an attempt to find her an assignment. An August 28, 1997 decision denying a grievance regarding the denial of light-duty work found that there was no evidence that the employing establishment erred in this regard. Appellant has not submitted evidence corroborating her allegations that she was singled out for denial of light duty. Thus, she submitted insufficient evidence to establish that the employing establishment erred or acted abusively with regard to denial of light duty.

The Board further finds that the handling of appellant's compensation claims is also an administrative matter not within the performance of duty and that no error or abuse was shown.⁶

Appellant also attributed her emotional condition to remarks made by Mr. Irvin, a supervisor. She submitted statements from four coworkers. However, these statements do not establish that Mr. Irvin made any derogatory comments specifically about appellant or that his remarks were directed towards appellant. The submitted statements are general in nature and do not address the specific allegations made by appellant in this case. They do not support appellant's allegation of verbal abuse or harassment directed towards her by her supervisor. The Board finds that appellant has submitted insufficient evidence to establish harassment or verbal abuse by Mr. Irvin as a compensable factor of employment.

Consequently, appellant has failed to establish that she sustained an emotional condition in the performance of duty as she did not establish a compensable factor of employment.

⁵ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

⁶ See *George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

The decision of the Office of Workers' Compensation Programs dated May 16, 1999 is hereby affirmed.⁷

Dated, Washington, DC
June 14, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ Appellant submitted evidence to the Office subsequent to the May 6, 1999 decision. The Board, however, cannot consider this evidence, since the Board's review of the case is limited to the evidence of record which was before the Office at the time of its final decision; *see* 20 C.F.R. § 501.2(c). Appellant may resubmit this evidence to the Office with a request for reconsideration; *see* 20 C.F.R. § 501.7(a).