

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MYRNA PARAYNO and U.S. POSTAL SERVICE,
BURIEN POST OFFICE, Burien, WA

*Docket No. 00-868; Submitted on the Record;
Issued March 26, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

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

The procedural history of the case is as follows. On July 20, 1998 appellant, then a 39-year-old window clerk, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that she sustained an emotional condition due to a series of encounters with her supervisor, Lou Kush, on July 17, 1998.¹ The Office denied appellant's claim by December 28, 1998 decision, finding that appellant failed to establish a compensable factor of employment, as she attributed the claimed condition either to administrative matters not within the performance of duty, or to incidents not established as factual due to a lack of corroboration. Appellant disagreed with this decision and requested an oral hearing before a representative of the Office's Branch of Hearings and Review, held on June 8, 1999. By decision dated and finalized July 14, 1999, the Office hearing representative affirmed the Office's December 28, 1998 decision, finding that appellant attributed the claimed emotional condition either to administrative matters or incidents not established as factual.

The Office accepted as factual that, on July 17, 1998, while appellant was on the telephone, Mr. Kush informed her twice in a five-minute period that there were three customers waiting on line. The record indicates that appellant, a union steward, was on the telephone with

¹ At the hearing, appellant's attorney representative asserted that he wished to change the claim from a traumatic injury to an occupational disease. He elicited testimony from appellant and a union official that, on unspecified dates beginning in 1995, various unidentified postal customers would get "upset" over not receiving checks or other mail as expected. The Board notes that appellant's July 20, 1998 claim form, her detailed account of events, and the totality of the record all demonstrate that appellant asserted that only the events of July 17, 1998, caused the claimed emotional condition. The Board also notes that it is not possible for the Office of Workers' Compensation Programs to develop a compensation claim regarding a given employment factor without specific dates, detailed descriptions and corroborating evidence. The general allegation that postal patrons would get "upset," without anything further, is far too vague to constitute an employment factor.

David Picard, a management official, regarding appellant's prospective attendance in lieu of another union official at a July 22, 1998 meeting. Following Mr. Kush's request that appellant return to the window, the record indicates that appellant ended the telephone call and returned to her assigned duties. Appellant alleged at the hearing that she experienced stress due to uncertainty as to whether she should continue her telephone call or resume her duties at the window. The hearing representative found, however, that as appellant was clearly able to prioritize her duties at the time of the July 17, 1998 telephone call and return to the window, that she was not confused as to whether or not to continue the call. The hearing representative thus concluded that as the record demonstrated no uncertainty, that she could not have experienced emotional stress due to such confusion.²

The hearing representative further found that Mr. Kush's instruction to appellant to return to attending customers at the window was an administrative matter not within the performance of duty. While the Board has also found that administrative matters will be considered employment factors where the evidence discloses error or abuse on the part of the employing establishment, appellant submitted insufficient evidence to establish that Mr. Kush erred or acted abusively with regard to his instruction. Thus, appellant has not established a compensable employment factor under the Act in this respect.³

The Office also accepted that shortly after instructing appellant to return to her window duties, Mr. Kush placed appellant on administrative leave after she came into his office and placed a paper towel containing her excrement on his desk. Appellant admits that she placed the feces on Mr. Kush's desk.⁴ The hearing representative found that Mr. Kush's imposition of administrative leave was an administrative matter not within the performance of duty. The Board notes that under the facts and circumstances of the incident, it was not error or abuse for Mr. Kush to place appellant on administrative leave after she put her excrement on his desk.

Appellant also attributed her emotional condition to two other administrative matters established as factual, that Mr. Kush called for a security escort when she would not leave the building as requested following the feces incident, and that Mr. Kush instructed appellant to contact her union representative as there would be an investigative interview concerning the day's events. Again, the Board notes that under the facts and circumstances of the case, there is

² The hearing representative also found that the telephone call was related to a union matter and therefore not in the performance of duty. At the hearing, appellant's attorney representative asserted that appellant was engaged in a representational function as a steward that could be considered to be in the performance of duty. However, this is a moot point, as appellant did not allege that the telephone conversation itself was stressful, but that Mr. Kush's instruction to return to the window was stressful.

³ See *Frederick D. Richardson*, 45 ECAB 454 (1994).

⁴ Appellant alleged that, on July 17, 1998, shortly after Mr. Kush instructed her to return to the window, he denied her request for a restroom break. Appellant asserted that she placed the feces on Mr. Kush's desk to prove to him that this delay had caused her to not make it to the bathroom in time. The hearing representative found that appellant did not submit sufficient evidence to establish that Mr. Kush denied appellant's request to go to the bathroom. The hearing representative further found that appellant submitted insufficient corroborating evidence to establish as factual: that, on July 17, 1998, Mr. Kush yelled "You are on administrative leave" in front of her coworkers; and refused to grant her sick leave.

no evidence that Mr. Kush committed error or abuse by calling for the escort or instructing appellant to contact her steward.

The Board has given careful consideration to the issue involved, appellant's contentions on appeal and the entire case record. The Board finds that the decision of the Office hearing representative, dated and finalized July 14, 1999, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.

The decision of the Office of Workers' Compensation Programs dated and finalized July 14, 1999 is hereby affirmed.

Dated, Washington, DC
March 26, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member