U. S. DEPARTMENT OF LABOR

# Employees' Compensation Appeals Board

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In the Matter of GWENDOLYN THOMAS and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Independence, MO

*Docket No. 02-1006; Submitted on the Record;*
*Issued September 23, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition while in the performance of duty.

On March 23, 1999 appellant, then a 38-year-old letter carrier, alleged that she suffered from major depression, an anxiety disorder, post-traumatic stress disorder and agoraphobia due to her federal employment. She mentioned specific incidents occurring on September 11 and 12, 1998, January 16 and February 17, 1999. Appellant was working light duty in a clerical position due to another claim.

This case has previously been before the Board. By decision dated January 18, 2002, the Board remanded the case to the Office of Workers' Compensation Programs to conduct a merit review, finding that appellant's April 12, 2001 request for reconsideration was timely.

By decision dated February 8, 2002, the Office denied appellant's claim for an emotional condition since she did not establish a compensable factor of employment.

The Board finds that appellant has not established that she sustained an emotional condition while 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.[1]

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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position or to secure a promotion. On the other hand, where disability results from an employee's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[2]

The initial question presented is whether appellant has substantiated compensable factors of employment as contributing to her emotional condition;[3] if appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.[4]

Appellant alleged that the following factors contributed to her depression, anxiety, post-traumatic stress disorder, agoraphobia and stress: (1) On September 11, 1998 appellant was driving in her car when two coworkers passed by her in a vehicle and "gave her the finger" and were laughing; (2) On September 12, 1998 appellant told her supervisor of the incident and was told "there was nothing they could do about it" since it happened outside of work. On that same day while in the breakroom, one coworker "put a heavy hand" on her shoulder and the other hit her on the right shoulder; (3) On January 16, 1999 appellant's keys were stolen to harass her because she was working light duty; and (4) on February 17, 1999, while appellant was filling in for another employee answering the telephones, she was told by her supervisor that several other supervisors claimed she was miss-routing calls and she suffered an anxiety attack. Appellant also alleged that she was a victim of general sexual discrimination since she was the only black female letter carrier at the station.

Appellant first alleged that the September 11, 1998 driving incident contributed to her emotional condition. The Board has generally found that an off-premises injury sustained by an employee having fixed hours and place of work, while the employee is coming to or going from the employer's premises, is not compensable because the injury does not arise out of and in the course of employment, but out of ordinary nonemployment hazards of the journey itself, which are shared by all travelers. Appellant was not on duty at the time this incident occurred and there is no evidence of record to suggest otherwise. The Board notes that appellant was also working a light-duty clerical job which required her to remain in the office. However, certain exceptions to

[1] *Vaile F. Walders*, 46 ECAB 822 (1995).

[2] *Mary Boylan*, 45 ECAB 338 (1994); 5 U.S.C. §§ 8101-8193.

[3] *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

[4] *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

this rule have, of course, developed, where the hazards of the travel may fairly be considered dependent upon the particular facts and related to situations: "(1) where the employment requires the employee to travel on the highways; (2) where the employer contracts to and does furnish transportation to and from work; (3) where the employee is subject to emergency calls as in the case of firemen; and (4) where the employee uses the highway to do something incidental to his employment, with the knowledge and approval of the employer."[5] As the alleged driving incident occurred off-premises and none of the exceptions apply to appellant, the incident is not a compensable factor of employment.

Appellant next alleged that on September 12, 1998, while she was in the breakroom, one employee from the car "put a heavy hand" on her shoulder and the other hit her on the right shoulder. In the absence of sufficient evidence, such as witness statements, to establish that these events took place, the Board is unable to ascertain whether the events actually occurred.[6] The record indicates that a supervisor conducted an inquiry into the matter and interviewed several parties and found that the accounts differed significantly. In the absence of witness statements or other forms of support for appellant's version of the events, this alleged incident is also not a compensable factor of employment.

Appellant also alleged that someone stole her keys to harass her for working a light-duty position. She has not submitted sufficient evidence to substantiate the allegation of harassment due to the loss of her keys.

Appellant also alleged that when she was answering telephones on February 17, 1999, she was told that she was miss-routing calls and suffered a panic attack. In this instance, appellant was reacting to a supervisor monitoring or correcting her performance. As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Act.[7] However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.[8] There is no evidence in the record that appellant's supervisor erred or acted abusively by informing her that she was miss-routing calls.

Lastly, regarding appellant's general allegations of sexual discrimination, appellant must support her allegations with reliable evidence. For harassment to give rise to a compensable disability under the Act, there must be evidence that the harassment or discrimination did, in fact, occur.[9] Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.[10] An employee's charge that he or she was harassed or discriminated against is not

[5] *Mary Margaret Grant*, 48 ECAB 696 (1997).

[6] *William P. George*, 43 ECAB 1159, 1167 (1992).

[7] *William Karl Hansen*, 49 ECAB 140 (1997).

[8] *Id.*

[9] *Sheila Arbour (Vincent Arbour)*, 43 ECAB 779 (1992).

[10] *Lorraine E. Schoeder*, 44 ECAB 323 (1992).

determinative of whether or not harassment or discrimination occurred.[11] To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[12] In this case, appellant submitted a number of witness statements stating that she had been the victim of sexual discrimination at work. Unfortunately, none of the statements provided knowledge or information of any specific acts or examples of discrimination against appellant. The record reflects that appellant filed Equal Employment Opportunity complaints of sexual discrimination against her employer but the results of the complaints are unknown. Since appellant has failed to support her allegations of sexual discrimination with specific examples supported by witness statements or other corroborating evidence, she has failed to establish a compensable factor of employment.

The Board, therefore, finds that appellant has failed to establish any compensable factors of employment. Since no compensable factors of employment have been established, the Board will not address the medical evidence.[13]

The February 8, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 23, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[11] *Supra* note 6.

[12] *Frank A. McDowell*, 44 ECAB 522 (1993).

[13] *Supra* note 4.