

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**LINDA RANDALL, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Oakland, CA, Employer**

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**Docket No. 03-852  
Issued: March 1, 2004**

*Appearances:*  
*Linda Randall, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On February 19, 2003 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated January 24, 2003. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

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

**FACTUAL HISTORY**

On August 29, 2001 appellant, a 51-year-old clerk, filed a traumatic injury claim alleging that work stress caused chest pain and severe headache. In a statement dated September 3, 2001, she attributed her stress to being overloaded with work duties and expectations on August 29, 2001 and to harassment for the past three weeks. Specifically, appellant attributed her stress, on August 29, 2001, to Bernie Gilliam, officer-in-charge constantly interrupting her and asking her questions.

In a disability note dated August 30, 2001, Dr. Joseph W. Clift, an attending Board-certified internist, diagnosed chest pains and hypertension, which he opined were aggravated by job stress.

In a letter dated January 22, 2002, the Office informed appellant that the evidence of record was insufficient to support her claim and advised her as to the type of factual and medical evidence required to support her claim.

In a February 4, 2002 statement, appellant stated that Mr. Gilliam started to harass her on August 29, 2001 around 10:00 a.m. when he insisted that she break down the mail by his method and not the method she had been using. Appellant informed Mr. Gilliam that there was too much mail for one person to finish the job and he instructed appellant to finish the mail, take a 30-minute lunch, then use 1 hour to prepare grievances and then go to the Annex to break down the mail. Appellant stated she began to get a headache due to her inability to finish all the work Mr. Gilliam had instructed her to complete. Later she received a call from Dianne Caminada, a supervisor, asking why she was not in the Annex. It was at this point that appellant felt a sharp pain in her head and in her chest and she informed Ms. Caminada, by telephone, that she needed hospital treatment. Appellant stated she that “had no previous incidents of stress-induced anxiety before Mr. Gilliam launched his malicious and harassing attempts to remove me from the productive job” that she had been performing in getting the post office box mail done.

In a February 5, 2002 statement, Kathy Dyer, a coworker, noted that there was a lot of post office box mail and insufficient people to work it on August 29, 2001. She indicated that appellant was the only person assigned to work the post office box mail and that, while she tried to help appellant, she had other duties which precluded her from providing appellant “much time to assist.”

G.S. Raumundo, a coworker, in a January 26, 2002 letter, stated that he was currently working the post office box as part of his bid and that it did not get completed “on a daily basis at any scheduled time.” He noted that sometimes the post office boxes are sometimes ignored due to other jobs that need to be performed.

In a January 29, 2002 statement, V. Sidhu, a coworker, stated that the post office boxes are not completed at a scheduled time and that it varied from day to day.

Mark Foster, in a February 4, 2002 statement, noted that appellant worked the post office box section alone on August 29, 2001 and that Mr. Gilliam had instructed him to help appellant finish the mail distribution for the post office box. He stated that “[t]here is no way to finish this section in the time limit” set by Mr. Gilliam. In addition, he noted that appellant appeared to be “very upset over the continued harassment from [Mr.] Gilliam and [Ms.] Caminada.”

In a February 25, 2002 statement, Ms. Caminada denied harassment of appellant. She stated that she asked appellant if the post office box mail had been completed and when she would be at the annex to breakdown mail. Ms. Caminada noted that she believed appellant “just did n[o]t want to come to the Annex to breakdown mail as she later submitted medical documentation that states she ca[n]n[o]t break mail.” In addition, she later learned that appellant

“was angry that morning because she had requested a lot of time to process grievances and [that] could n[ot] get all [of] the time [that] she wanted.”

By decision dated March 1, 2002, the Office denied appellant’s claim on the basis that she had failed to establish a compensable factor of employment.

In a letter dated March 19, 2002, appellant requested an oral hearing which was held on October 30, 2002. She requested the hearing representative to issue a subpoena of a witness in a May 31, 2002 letter.

By decision dated January 24, 2003, the hearing representative affirmed the March 1, 2002 decision denying appellant’s claim.

### **LEGAL PRECEDENT**

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; 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 apply to each and every injury or illness that is somehow related to an employee’s employment. In the case of *Lillian Cutler*,<sup>2</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees’ Compensation Act.<sup>3</sup> There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.<sup>4</sup> When an employee experiences emotional stress in carrying out her employment duties and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee’s disability results from her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of her work.<sup>5</sup>

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<sup>1</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>2</sup> 28 ECAB 125 (1976).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *See Anthony A. Zarcone*, 44 ECAB 751 (1993).

<sup>5</sup> *Lillian Cutler*, *supra* note 2.

## ANALYSIS

Appellant alleges that she sustained an emotional condition due to harassment by Mr. Gilliam, her supervisor. She contends that Mr. Gilliam overloaded her with work duties on August 29, 2001 and had subjected her to harassment for past three weeks. Appellant alleged that Mr. Gilliam harassed her by insisting that she break mail down his way and not the way she had been doing it. As a general rule, appellant's reaction to administrative decisions undertaken by her supervisor would fall outside the scope of coverage under the Act;<sup>6</sup> however, an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment.<sup>7</sup> In determining whether the employing establishment erred or acted abusively, the Board determines whether the employing establishment acted reasonably.

Appellant's allegations regarding breaking down the mail and being instructed to report to the Annex relate to her disagreement with the work offered her. The assignment of work is an administrative or personnel matter of the employing establishment and not the duty of the employee. As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. An employee's complaints concerning the manner in which a supervisor performs his duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor or manager in general must be allowed to perform their duties, which employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.<sup>8</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>9</sup> In this case, appellant has not submitted any evidence that the employing establishment acted unreasonably in assigning her job duties. Furthermore, in giving instructions to appellant, Mr. Gilliam is performing an administrative function and the record contains no evidence of error or abuse.<sup>10</sup> The only evidence submitted by appellant consists of statements by Ms. Dyer, Mr. Raumundo, Mr. Sidhu and Mr. Foster that the post office box mail does not always get completed at a scheduled time. Ms. Dyer and Mr. Foster noted Mr. Gilliam had instructed them to assist appellant with the mail distribution for the post office box. The statements do not show that Mr. Gilliam erred or acted abusively in instructing appellant to perform specific job duties. Therefore, she has not established a compensable factor in regard to these allegations.

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<sup>6</sup> *Michael L. Malone*, 46 ECAB 957 (1995).

<sup>7</sup> *See Mary A. Sisneros*, 46 ECAB 155 (1994).

<sup>8</sup> *Marlon Vera*, 54 ECAB \_\_\_\_ (Docket No. 03-907, issued September 29, 2003).

<sup>9</sup> *Paul L. Stewart*, 54 ECAB \_\_\_\_ (Docket No. 03-1107, issued September 23, 2003).

<sup>10</sup> *Id.*

Appellant alleged that she sustained an emotional condition as a result harassment by Mr. Gilliam. For harassment or discrimination to give rise to a compensable disability, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable.<sup>11</sup> A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.<sup>12</sup> Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.<sup>13</sup> Appellant alleges that Mr. Gilliam harassed her by insisting that she break mail down his way and not by the method that she was using.

Additionally, appellant has alleged that her stress was due to trying to finish the post office mail distribution for the post office box and then go to the Annex. The Board finds that these allegations constitute compensable employment factors which arose in the performance of appellant's employment duties. While a heavy workload may constitute a compensable factor of employment, there must be sufficient evidence to substantiate an allegation of overwork.<sup>14</sup> Appellant has not submitted evidence to support her allegations. The statements of Mr. Dyer, Mr. Sidhu, Mr. Raumundo and Mr. Foster all support her contention that she was attempting to perform the task that she was assigned in the time frame set by her supervisor. The Board finds that appellant has established a compensable factor of employment with respect to her attempting to keeping up with her workload.

Appellant has established as a compensable factor of employment her attempting to meet her work deadlines and keeping up with her workload. However, her burden of proof is not discharged by the fact that she has established an employment factor which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.<sup>15</sup> In an August 20, 2001 disability note, Dr. Clift opined that appellant's hypertension and chest pains were aggravated by job stress. However, he failed to identify specific factors that caused appellant's condition. To be of probative value, a physician's opinion regarding the cause of a stress-related condition must relate that condition to the specific incidents accepted as compensable employment factors, must be based on a complete and accurate factual history and must contain adequate medical rationale in support of the conclusions.<sup>16</sup>

As appellant has not submitted the necessary medical evidence relating an aggravation of her preexisting hypertension and chest pains to a compensable employment factor, she has not met her burden of proof.

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<sup>11</sup> *Penelope C. Owens*, 54 ECAB \_\_\_\_ (Docket No. 03-1078, issued July 7, 2003).

<sup>12</sup> *Hong D. Nguyen*, 54 ECAB \_\_\_\_ (Docket No. 01-552, issued February 28, 2003).

<sup>13</sup> *Kathleen A. Donati*, 54 ECAB \_\_\_\_ (Docket No. 03-1333, issued August 13, 2003).

<sup>14</sup> *Frank A. McDowell*, 44 ECAB 522 (1993).

<sup>15</sup> *See William P. George*, 43 ECAB 1159 (1992).

<sup>16</sup> *Mary J. Ruddy*, 49 ECAB 545 (1998).

**CONCLUSION**

The Board finds that appellant failed to meet her burden of proof establish the she sustained an emotional condition in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 24, 2003 decision of the Office of Workers' Compensation Programs is modified to find a compensable factor and affirmed as modified.

Issued: March 1, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member