United States Department of Labor
Employees' Compensation Appeals Board

DONNA MOSLEY, Appellant	)	
and	)	**Docket No. 05-287**
	)	**Issued: April 6, 2005**
U.S. POSTAL SERVICE, DEMOSS STATION, Houston, TX, Employer	)	

Appearances:
Dianna Watson, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On November 12, 2004 appellant filed a timely appeal of a September 8, 2004 merit decision of the Office of Workers' Compensation Programs that denied her claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

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

FACTUAL HISTORY

On April 19, 2002 appellant, then a 40-year-old letter carrier, filed an occupational disease claim for stress. Appellant stopped work on April 10, 2002.

By letters dated May 22, 2002, the Office requested that the employing establishment and appellant provide further information regarding the claim. The employing establishment did not respond. In a June 18, 2002 statement, appellant stated that, when her position of collector of

mail was abolished, she was placed back in carrier delivery. She noted that the routes and working conditions were the worst she had seen in the city, with routes that required her to work after daylight hours, street hours increased to the point where she was unable to return in time to meet the dispatch truck or end her tour on time, and lack of equipment, including gloves during the anthrax scare and route maps. Appellant submitted a September 4, 2002 report from Dr. Joseph B. Guerrini, a Board-certified family practitioner, who diagnosed depression and anxiety, which he indicated was related to her job that was very stressful and too demanding.

By decision dated November 1, 2002, the Office found that appellant had not established an injury in the performance of duty.

At a hearing held upon her request on June 24, 2003, appellant testified that she worked for 14 years as a letter carrier. In 1998 she successfully bid on a position as a collector of mails and she performed this job for almost three years. When the collector position was abolished, appellant was reassigned as a carrier but still was assigned collections. She stated that it was very strenuous to do both tasks and finish in a timely manner but that she was only required to work a little overtime. On many occasions, the vehicle she needed to perform her assignment was not available when she reported to work, which kept her in the building looking for a vehicle and took away from her street time. Appellant was not provided with a dolly that she needed to collect sacks of mail from certain buildings, and she had verbal confrontations with her supervisors about her duties, the length of her assignments and the vehicles.

In a report of his evaluation of appellant on March 19 and 26 and April 5, 2003, Dr. Dave Cole, Ph.D., a clinical psychologist, set forth a history that she had foot problems from her work as a letter carrier, that she was concerned about her safety in that position, and that she had to deliver mail late in the evening. He noted that it was a struggle at times to get appropriate equipment, including a dolly to move heavy mail baskets, that she was placed in untenable time and compliance situations and demands, and that she had verbal confrontations with her supervisor on job duties and tasks on a nearly daily basis. Dr. Cole diagnosed dysthymic disorder and mixed disorder as reaction to stress, and stated, "It appears that these job-related circumstances have precipitated her disability." The Office hearing representative provided a copy of the transcript of the hearing to the employing establishment and requested it to submit comments on it, but the employing establishment did not respond.

By decision dated August 25, 2003, an Office hearing representative found:

> "[Appellant] testified that she was given too many activities to accomplish as part of her daily schedule. I note, however, that she has failed to submit any evidence that she was not able to accomplish these duties but rather indicates that they caused her to work harder. Having to work hard is not a factor of employment but is rather a fact of life. Additionally, I note that although [appellant] testified that she was forced to work overtime three out of five days a week she also testified that she would only work a few extra minutes. This does not convince me that she was given too much work to do. Additionally, I note that, although [appellant] testified that she often did not have what she considered to be the equipment necessary to do her job, she has not submitted any corroboration of this allegation. Additionally, I note that although the lack of proper equipment may

have made her job somewhat more difficult it did not prevent her from performing her duties and I cannot find the alleged lack of proper equipment to be a factor of employment. In short, I am unable to find that [appellant] has identified a factor of employment which led to her emotional condition and must find that she did not sustain an injury in the performance of her duty."

On January 21, 2004 appellant requested reconsideration, and submitted a medical report and a statement from a coworker. The November 26, 2003 report from Dr. Melissa Riggs, Ph.D., a clinical psychologist, set forth a history of an unfair workload, bad equipment, bad treatment, reporting to five supervisors who counteracted each other, and an incident where she reported a letter with Arabic writing that she believed had anthrax on it, to which the employing establishment took three days to respond and which resulted in retaliation with longer assignments. Dr. Riggs stated that appellant's "severe and incapacitating major depression … was a direct and causal result of on-the-job stress," and that she "likely would not have this severe anxiety and depression if she had a more supportive work environment." Her coworker's September 18, 2003 statement reported that management ignored requests to get proper equipment, that dollies were promised but never delivered to collectors, that the vehicles assigned to collectors were given to carriers by the time the collectors arrived, that she witnessed management making appellant wait in the swing room until a vehicle came back to the station, that this greatly upset appellant because she knew it would delay the completion of her assignment in the time allotted, that appellant was sometimes assigned a truck that could not negotiate low clearances in her collection route, that at times appellant was not given a vehicle at all which resulted in the two of them sharing a vehicle to do collections, and that after the collection assignment was abolished appellant was assigned to continue collection of mail and also delivery routes.

The Office requested the employing establishment's comments on appellant's request for reconsideration, but received no reply. By decision dated September 8, 2004, the Office denied modification of its prior decision, finding that the witness described no specific incidents, and that appellant had not identified compensable factors of employment.

LEGAL PRECEDENT

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the 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. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.[1]

[1] *Lillian Cutler*, 28 ECAB 125 (1976).

The Board has held that actions of an employee's supervisor which the employee characterizes as harassment or discrimination may constitute factors of employment giving rise to coverage under the Act. However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions alone of harassment or discrimination are not compensable under the Act.[2]

ANALYSIS

Appellant did not submit evidence to substantiate her allegations of harassment or discrimination by the employing establishment. The verbal confrontations alleged with her supervisor about work duties are not compensable because her allegations lack sufficient description of the comments made or the times and dates they occurred. Verbal altercations, when sufficiently detailed by the claimant and supported by the record, may constitute a factor of employment.[3] This does not imply, however, that every statement uttered in the workplace will give rise to compensability.[4] Disagreement with how a supervisor exercises his or her discretion fall outside the coverage of the Act.[5] Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.[6]

The crux of appellant's claim is that her depression and anxiety resulted from her emotional reaction to her regular and specially assigned duties. The employing establishment was given several opportunities to address the claim, but it did not respond to the Office.[7] There is no reason not to believe appellant's statements that her workload increased when she was performing both collections and deliveries,[8] or that she experienced difficulty in trying to complete her tasks by the end of the workday.[9] The Board finds that the Office hearing representative was incorrect in finding appellant's reaction to her regular and specially assigned duties not a compensable factor. Appellant's reaction to her regular and specially assigned duties is a compensable factor under *Cutler*.

Appellant's other primary allegation is that she was given improper equipment with which to perform her duties. Assignment of work equipment is an administrative function of the

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[2] *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[3] *See Marguerite J. Toland*, 52 ECAB 294 (2001).

[4] *See Frank B. Gwozdz*, 50 ECAB 434 (1999).

[5] *Id.*

[6] *Bonnie Goodman*, 50 ECAB 139 (1998).

[7] 20 C.F.R. § 10.117 states that an employer who has reason to disagree with any aspect of the claimant's report shall submit a statement to the Office describing the factual allegation or argument with which it disagrees, and that if the employer does not submit a written explanation to support a disagreement, the Office may accept the claimant's report of injury as established.

[8] Appellant's coworker corroborated that she performed both these duties.

[9] *See Ezra D. Long*, 46 ECAB 791 (1995) (increased workload found compensable).

employer, and error or abuse must be established for this to be a compensable factor.[10] The Board finds that appellant has shown error in the assignment of equipment. Appellant submitted the statement of a coworker who corroborated that she had to wait for a vehicle, which cut into her street time, that needed dollies were not provided, and that she was assigned an inappropriate vehicle. Appellant's allegations in this case are credible and specific in detail such as to go beyond mere frustration or general dissatisfaction with her work environment. Again, despite multiple opportunities, the employing establishment did not respond to appellant's allegations as requested.

CONCLUSION

The Board finds that appellant's reaction to her regular or specially assigned duties is a compensable factor, as are the employing establishment's errors in assigning equipment. The case will be remanded to the Office for development of the medical evidence as to determine whether these compensable factors of employment contributed to her emotional condition.[11]

ORDER

IT IS HEREBY ORDERED THAT the September 8, 2004 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for action consistent with this decision of the Board.

Issued: April 6, 2005
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[10] *Harriet J. Landry*, 47 ECAB 543 (1996).

[11] The fact that appellant has established compensable factors of employment does not establish entitlement to compensation. Appellant must also submit rationalized medical opinion evidence establishing that he or she has an emotional condition that is causally related to the identified compensable employment factors. *James W. Griffin*, 45 ECAB 774 (1994).