United States Department of Labor
Employees' Compensation Appeals Board

GISELE A. HARRIS, Appellant	)	
and	)	**Docket No. 04-1884**
	)	**Issued: January 6, 2005**
U.S. POSTAL SERVICE, POST OFFICE, New York, NY, Employer	)	

Appearances:
Paul Kalker, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On July 23, 2004 appellant, through her attorney, filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated December 30, 2003 denying her claim for an emotional condition in the performance of duty and a merit decision of the Office dated May 20, 2004 denying modification of its finding that she failed to establish an emotional condition in the performance of duty. Pursuant to 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 has established that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On April 23, 2003 appellant, then a 42-year-old mail distribution clerk, filed an occupational disease claim alleging that she sustained post-traumatic stress disorder (PTSD) due to factors of her federal employment.

In a statement accompanying her claim, appellant related that she stopped work on October 9, 2002 because she was emotionally overwhelmed. She stated that she worked in the Church Street station until 8:30 a.m. on September 11, 2001. Appellant related:

> "I was actually in the vicinity of the Twin Towers and experienced some of the commotion that something was happening, but I went into the subway and took the train home. My neighbor met me at the door and took me to her window to see what was happening."

She noted that she was concerned for her coworkers and her father. Appellant further stated, "Church Street [s]tation employees were then transferred and had to report to Morgan [s]tation, because when 7 World Trade Center collapsed the debris destroyed most of 90 Church Street." She related that on October 25, 2001 she learned that Morgan [s]tation was "contaminated with Anthrax." Appellant maintained that the employing establishment placed the employees from the Church Street station "on the third floor next to the contaminated machine that was tested positive with anthrax. At this time, I still did not realize I was depressed."[1] Appellant also attributed her stress to "noise from the machines on the job, the piercing loud speakers, and the fire alarms consistently going off and on."

By letter dated July 31, 2003, an official with the employing establishment challenged appellant's claim on the grounds that she was not at work at the time of the September 11, 2001 terrorist attacks. He further noted that, while anthrax spores were found at the Morgan Street station, "all employees were given the opportunity to relocate to another floor during the cleanup process or to another facility altogether, if they felt uneasy working in Morgan during the cleanup process." The official also indicated that appellant worked another year prior to filing her claim. Regarding the bomb threats and evacuation, he noted that these were done with "employees safety in mind, and employees were not let back into any facility until the situation was deemed safe and clear."

In a statement dated July 29, 2003, appellant's supervisor noted that appellant was irregular in attendance after she changed her schedule in 2002 to attend school. She also noted that appellant had personal problems during this time.

By letter dated November 25, 2003, the Office requested additional information from appellant regarding her claim. Appellant did not respond within the time allotted.

In a decision dated December 30, 2003, the Office denied appellant's claim on the grounds that she did not establish an emotional condition in the performance of duty. The Office determined that appellant had not established any compensable employment factors.

Appellant, through her attorney, requested reconsideration of her claim on January 23, 2004. The attorney asserted that appellant attributed her condition to witnessing the attack on the World Trade Center, anxiety from working in a site contaminated with anthrax and fear from working "within a facility which constantly ran drills for both precautionary and alerting measures in the event of further attacks." He argued that appellant experienced stress in

[1] Appellant also submitted a medical report in support of her claim.

the performance of her job duties due to her anxiety about anthrax at the employing establishment.

In a letter dated March 2, 2004, the Office requested that appellant submit medical evidence regarding her psychiatric treatment from October 2001 to March 2002. Appellant did not respond to the request in the time allotted.

In a decision dated May 20, 2004, the Office denied reconsideration of its December 30, 2003 decision. The Office noted that appellant was not in the performance of duty at the time she witnessed the September 11, 2001 terrorist attacks.

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 duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[2] 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.[3]

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.[4] However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.[5] In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.[6]

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

[2] 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

[3] *Gregorio E. Conde*, 52 ECAB 410 (2001).

[4] *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 556 (1991).

[5] *See William H. Fortner*, 49 ECAB 324 (1998).

[6] *Ruth S. Johnson*, 46 ECAB 237 (1994).

factors of employment and may not be considered.[7] 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.[8]

The Board has interpreted the phrase "while in the performance of duty" to be the equivalent of the commonly found requisite in workers' compensation law of "arising out of and in the course of employment."[9] "In the course of employment" deals with the work setting, the locale and time of injury whereas "arising out of the employment," encompasses not only the work setting but also a causal concept, the requirement being that an employment factor caused the injury.[10] In addressing this issue, the Board has stated that, in the compensation field, to occur in the course of employment, an injury must occur: (1) at a time when the employee may reasonably be said to be engaged in his or her master's business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.[11]

ANALYSIS

Appellant attributed her condition, in part, to witnessing the collapse of the World Trade Center on September 11, 2001. She related that she left work on that date at 8:30 a.m. and experienced "some of the commotion" associated with the terrorist attack before arriving home. Appellant stated that she witnessed the collapse of the towers from a neighbor's window and was fearful for her father and coworkers. As a general rule, off-premises injuries sustained by employees having fixed hours and places of work, while going to or coming home from work or during a lunch period, are not compensable as they do not arise out of and in the course of employment, but are merely the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers.[12] Thus, appellant's journey home from work on September 11, 2001 after she finished work for the day was part of the nonemployment hazard of the journey itself which was shared by all travelers and any injury or anxiety appellant sustained would not have arisen out of or in the course of her federal employment.[13] Likewise, appellant's stress due to witnessing the collapse of the World Trade Center buildings from her neighbor's window did not occur during working hours, at her work location or from the performance of her employment

[7] *Dennis J. Balogh*, 52 ECAB 232 (2001).

[8] *Id.*

[9] *Mary A. Minter*, 52 ECAB 127 (2000).

[10] *Angel R. Garcia*, 52 ECAB 137 (2000).

[11] *Leslie C. Moore*, 52 ECAB 132 (2000); *Karen Cepec*, 52 ECAB 156 (2000).

[12] *Randi H. Goldin*, 47 ECAB 708 (1996).

[13] *See Michael K. Gallagher*, 48 ECAB 610 (1997).

duties. Thus, any emotional condition arising therefrom did not occur in the performance of duty and is not compensable under the Act.[14]

Appellant further alleged that she experienced stress due to working at a location contaminated by anthrax. Initially, the Board notes that the record is devoid of any evidence that she ingested, inhaled or in any manner came into physical contact with any suspicious powdery substance while in the performance of duty. This case can, therefore, be distinguished from those in which the claimant is exposed to an unknown and potentially dangerous substance.[15] Appellant maintained that the employing establishment moved employees from the Church Street station to a floor adjacent to the machines contaminated by anthrax. The assignment of a work location is an administrative function of the employing establishment and, absent any error or abuse, does not constitute a compensable factor of employment.[16] In this case, an official with the employing establishment related that during the clean up of the anthrax the employees were permitted to relocate to another floor or worksite. Appellant has submitted no evidence to support that the employing establishment erred or acted abusively with regard to actions taken in response to finding anthrax at the worksite. Thus, she has not established a compensable employment factor.

Regarding appellant's allegation that she experienced stress due to repeated fire alarms and drills, the Board finds that responding to a fire alarm or drill is generally not considered a compensable employment factor because it is an administrative duty of the employer rather than a duty of the employee and is not compensable absent evidence of error or abuse by the employing establishment.[17] An official with the employing establishment noted that the fire drills were conducted for the safety of the employees. Appellant has not submitted any evidence to establish error or abuse by the employing establishment in conducting its fire alarms and drills.[18]

As appellant has failed to establish any compensable factors of employment, the Board finds that the Office properly denied her claim.[19]

CONCLUSION

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

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[14] *See generally Edye Ann Smith*, 49 ECAB 463 (1998).

[15] *See Judy C. Rogers*, 54 ECAB ___ (Docket No. 03-565, issued July 9, 2003).

[16] *See Paul L. Stewart*, 54 ECAB ___ (Docket No. 03-1107, issued September 23, 2003).

[17] *See Linda Jutras*, Docket No. 96-792 (issued November 18, 1997).

[18] In her initial statement appellant attributed her stress, in part, to noise from machines at work and piercing loud speakers; however, she has not submitted factual evidence to substantiate that she was exposed to noise during the course of her employment.

[19] The Board notes that, as appellant has not established a compensable work factor, it is not necessary to address the medical evidence. *Barbara J. Latham*, 53 ECAB ___ (Docket No. 99-517, issued January 31, 2002).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 20, 2004 and December 30, 2003 are affirmed.

Issued: January 6, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member