

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

V.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Liberty, TX, Employer**

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**Docket No. 06-1251
Issued: October 13, 2006**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 1, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' January 3, 2006 merit decision denying her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

This case has previously been on appeal before the Board.¹ In a December 9, 2005 decision, the Board set aside and remanded an April 8, 2005 decision of the Office, which found that the evidence was insufficient to warrant further merit review. The Board found that

¹ Docket No. 05-1499 (issued December 9, 2005).

appellant's request for reconsideration contained relevant and pertinent new evidence not previously considered by the Office and, thus, met a standard for obtaining a merit review. The facts and the history of the case are set forth as follows.

On December 3, 2002 appellant, then a 68-year-old rural letter carrier, filed an occupational disease claim alleging that the behavior of Polly Heeth, a former postmaster, caused stress, depression, nose bleeds, and stomach and heart problems. She also indicated that she feared retaliation. Appellant first became aware of her condition on December 28, 1999 and realized that it was caused or created by her employment on September 26, 2002. She did not stop work.²

Appellant submitted a statement describing her work circumstances. She alleged that the postmaster's behavior was inappropriate, and resulted in heart and stomach problems that led to her termination. Appellant alleged that the postmaster threw a pair of scissors at a supervisor and the postmaster was later removed. She submitted statements from Anne Warren and Sandra Green, coworkers, who advised that the postmaster had tantrums and made everyone uneasy. In an October 19, 2002 statement, Ms. Green noted that the postmaster threatened appellant with retaliation if any grievances were filed. She noted that appellant subsequently filed a grievance and was fired in September 1999, but her union got the job back for her. In a December 19, 2002 statement, Pifer Lucas, a supervisor, indicated that the postmaster was unprofessional in her demeanor towards employees and to him in particular. Appellant also provided medical evidence.

On January 20, 2003 the employing establishment informed the Office that it no longer employed both Mr. Lucas and Ms. Heeth.

In a May 17, 2003 statement, Carole Graham, a coworker, addressed the incident involving scissors which the postmaster threw at Mr. Lucas. In a March 1, 2003 statement, P.A. Sayal, the manger of human resources, advised that there was no written report regarding an investigation into this incident.

Appellant alleged that the postmaster's behavior caused her to have severe stomach pain and heart problems due to stress. She alleged that the postmaster's behavior included temper tantrums, screaming and stomping her feet, threatening and carrying out retaliation and shaking her fist at appellant and her coworkers. Appellant repeated her previous allegations. On September 22, 1998 the postmaster "whited" out a notation made by appellant in the remarks column regarding her time sheet. On August 2, 1999 the postmaster requested appellant's edit sheet on a short time frame as retaliation. The postmaster became very angry when she was corrected by appellant regarding the union contract and when appellant requested a conflict resolution team to resolve a dispute regarding the mail count.

The additional evidence submitted included medical reports, appellant's notes regarding an installation ceremony, articles and newspaper clippings, trip notes and edit sheets. In a

² Appellant has a separate claim in which the Office accepted permanent aggravation of cervical disc disease and spinal stenosis. The Office authorized a cervical laminectomy, which was performed on April 1, 2003.

January 28, 2004 statement, Michelle Stevenson, a supervisor, indicated that she had no knowledge of appellant and that the previous supervisor had retired.

By decision dated February 10, 2004, the Office denied modification of its prior decision. It indicated that appellant's allegations regarding her supervisor were vague. The Office found that appellant's allegations regarding the postmaster's behavior and her supervisor's request for edit sheets in a short time frame were vague. It advised appellant that an employee's reaction to administrative or personnel matters were not generally covered under the Act, absent error or abuse. The Office found that appellant had not identified any compensable factors of employment. It further determined that the evidence was insufficient to warrant modification of its prior decision.

Appellant requested reconsideration on February 6, 2005 and submitted additional evidence. A note from the present postmaster, Ralph Linkenhoffer, indicated that the previous postmaster and Mr. Lucas were no longer employed with the employing establishment. Additionally, appellant included a statement from Ms. Warren regarding the deliveries on September 28, 1999 and casing. She also included a copy of an October 21, 2002 letter written to her physician describing her postmaster's behavior. Appellant alleged that the postmaster was removed from the employing establishment after she threw a pair of scissors.

Appellant submitted numerous handwritten notes dating from April 25, 1998 to October 22, 1999 describing Ms. Heeth's behavior. On September 18, 1998 appellant alleged that her time was whited out for attending a celebration and contended that it was the postmaster. On September 22, 1998 she alleged that the postmaster screamed at her after a route check. Appellant also alleged that the postmaster screamed at her on January 14, 1999. On September 27, 1999 the postmaster called appellant at home regarding her route and counting her mail and on September 17, 1999 the postmaster allegedly spoke to her in a stern and rude voice.

As noted, on April 8, 2005, the Office denied appellant's request for reconsideration. After the Board's December 9, 2005 decision, it conducted a merit review. By decision dated January 3, 2006, the Office denied modification of its prior decisions and found that appellant had not established any 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 duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³ On the other hand, the disability is not covered where it results from such factors as an

³ 5 U.S.C. §§ 8101-8193.

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.⁴

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.⁵ This burden includes the submission of a detailed description of the employment factors or conditions, which the employee believes caused or adversely affected the condition or conditions for which compensation is claimed.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 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

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. The Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that the employing establishment improperly terminated her. She also alleged that the postmaster whited out or edited her time sheets. Regarding appellant's allegations that the employing establishment improperly terminated her, and whited out or edited her time sheets, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.⁹ Although these types of matters are generally related to the

⁴ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁶ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁷ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁸ *Id.*

⁹ See *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

employment, they are administrative functions of the employer and not duties of the employee.¹⁰ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹¹ Appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters. While she alleged that her termination resulted from stress that resulted in stomach and heart problems, she provided no corroborating evidence, such as witness statements, to establish that the statements and actions of Ms. Heeth actually were made or that the actions actually occurred at specific times.¹² Although appellant filed a statement from Ms. Green who indicated that appellant filed a grievance and was fired in September 1999, but that the union got her job back, her statement is not specific with regard to the reason for the termination, or the return to her job, to determine whether the employing establishment committed error or abuse.

Appellant also has not submitted any evidence to corroborate that the supervisor changed her time sheets on specific dates and which also establishes that such changes rise to the level of error or abuse. The Board notes that appellant has not established the factual aspects of her claims regarding her allegation that she was requested to edit her time sheets in a short time. Appellant only generally discussed this manner in a handwritten annotation on August 2, 1999. Her statement lacks specificity and she did not submit sufficient evidence in support of her claim or otherwise show that the employing establishment acted unreasonably with regard to time sheet and leave matters. The employing establishment confirmed that the previous postmaster was no longer at the employing establishment. Appellant has not established a compensable factor with respect to this allegation. Thus, she has not established a compensable employment factor under the Act with respect to the alleged administrative matters.

Appellant has also alleged that harassment on the part of the postmaster contributed to her claimed stress-related condition. She alleged that the postmaster's behavior was inappropriate and included: temper tantrums, which made everyone feel uneasy; screaming, and instances of screaming and stomping her feet; making threats; becoming angry when she was corrected regarding a union contract; and becoming angry when a conflict resolution team was called in. Appellant also alleged that the postmaster shook her fists in hers and her coworkers' faces. Furthermore, she alleged that her supervisor called her at home with questions regarding her route and counting her mail. Appellant alleged that the postmaster spoke to her in a rude tone of voice. Additionally, she alleged that she believed the postmaster would retaliate against her for filing a grievance. To the extent that disputes and incidents alleged as constituting harassment by supervisors are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.¹³ However, for harassment to

¹⁰ *Id.*

¹¹ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹² See *William P. George*, 43 ECAB 1159, 1167 (1992).

¹³ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.¹⁴ In the present case, appellant has not submitted sufficient evidence to establish that she was harassed by the postmaster.¹⁵ Appellant alleged that the postmaster made statements and engaged in actions, which she believed constituted harassment, but she provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.¹⁶ Those provided by Ms. Warren, Ms. Green and Mr. Lucas are general in nature and do not address the specific instances alleged by appellant. Although appellant provided statements that the postmaster was removed from the employing establishment when she threw a pair of scissors, these statements did not document any specific instances of the postmaster's behavior toward appellant. The employing establishment did not have knowledge of a scissor throwing incident; furthermore, the alleged incident was not directed towards appellant. Additionally, while appellant alleged that the postmaster became angry at her after she filed a grievance, this by itself, did not establish that workplace harassment or unfair treatment occurred. She did not support this with specific corroborating evidence to show that this action occurred, how it related to the performance of her duties, or how it constituted harassment or retaliation. Where appellant did not submit evidence corroborating her various allegations of harassment by supervisors, she has not established that harassment or discrimination occurred.¹⁷

For the foregoing reasons, appellant has not established any compensable employment factors under the Act. She has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹⁸

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

¹⁴ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁵ *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁶ *See William P. George*, 43 ECAB 1159, 1167 (1992).

¹⁷ *Bonnie Goodman*, 50 ECAB 139 (1998).

¹⁸ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 3, 2006 is affirmed.

Issued: October 13, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board