United States Department of Labor
Employees' Compensation Appeals Board

B.S., Appellant	)	
and	)	**Docket No. 07-36**
	)	**Issued: March 19, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Atlanta, GA, Employer	)	

Appearances:
Edward L. Daniel, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 2, 2006 appellant, through her representative, filed a timely appeal from an October 31, 2005 merit decision of the Office of Workers' Compensation Programs denying her emotional condition claim, a December 19, 2005 nonmerit decision denying reconsideration and an August 29, 2006 merit decision denying her emotional condition claim after modifying the October 31, 2005 decision to show that she had not shown an injury 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 September 6, 2005 appellant, then a 51-year-old monitor/bulk mail technician, filed a traumatic injury claim for injury to her brain occurring on May 18, 2005. She stopped work on

June 6, 2005. In an accompanying statement, appellant related that her duties included monitoring the entrance to the front lobby, checking identification, observing a closed caption television (CCTV) monitor and operating a computer to open and close an entrance gate. She stated:

> "On May 18, 2005 at approximately 12:00 a.m.[,] I received a telephone call from a clerk in the [manager of distribution operations] (MDO's) office. The clerk stated that there was an attorney in the office who needed assistance to her vehicle. She also stated that the attorney noticed the gate was opened when she came to the facility and was[,] therefore[,] '[a]fraid' to walk to her car alone. I relayed the information to the police [officer] on duty who instructed me to have the attorney come to the police unit and someone would assist her to her car.
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> "After relaying the information back to the clerk on the [tele]phone I continued my duties. As I attempted to open an entrance for someone I was unable to do so because I suddenly became fearful. I was trembling and forgetful[,] therefore[,] I could not perform the computer operations to open the entrance. My attention was focused on the statement that the [a]ttorney was '[a]fraid.'"

Appellant needed assistance from the police officer on duty to perform her work. She missed intermittent days from work until June 20, 2006, when she stopped work with a diagnosis of delusional disorder.[1]

In a statement dated September 13, 2004, Janice T. Perry, a supervisory police officer for the employing establishment, related that she was at work on May 18, 2005. She remembered a conversation with appellant "in reference to the attorney needing an escort to her vehicle." Ms. Perry indicated that she did not remember whether appellant had difficulty performing her job following the telephone call.

Appellant submitted a statement dated October 2, 2005 in which she related that she experienced a hostile and harassing work environment.[2] She described her job duties as a monitor and noted that sometimes the entrance gate to the employing establishment was left open. Appellant requested that management provide additional lighting for the parking lot. She stated:

> "The aspect of my employment that I consider detrimental to my health is to work in an unprotected, unsafe, hostile environment with mean, hateful people and having fears of being harmed at any time by any one. I cannot explain why after receiving that call on May 18, 2005 for assistance for an attorney, who was afraid to walk to her car alone caused my emotional condition as it did."

[1] The record contains medical reports documenting appellant's treatment for a delusional disorder.

[2] Appellant indicated that she feared retaliation from coworkers, supervisors and managers because she filed complaints against them with the Equal Employment Opportunity Commission.

Appellant noted that Ms. Perry was the police officer on duty at the time, but that she was unwilling to provide a statement confirming that she told her to calm down and helped her perform her duties.

In a statement dated October 5, 2005, Gwendolyn Hall, a coworker, related that on May 18, 2005 appellant was "upset and shaky as she told me about the call she received when another [employing establishment] employee, an attorney, Ms. Snyder, requested a police escort to the employees' parking lot, the lot we also parked on." Ms. Hall described problems with the gate being left open and security issues in the parking lot. She listed the job duties of a monitor and noted that both she and appellant were working in rehabilitation positions. Ms. Hall stated, "[Appellant] told me that, when Ms. Snyder requested a police escort (which the [employing establishment] police gave her), this triggered her to experience fearfulness and a panicky feeling and could not remember what to do on the computer."

In a statement dated October 21, 2005, the employing establishment noted that appellant's rehabilitation position was not stressful and attached the duties of a CCTV monitor.

By decision dated October 31, 2005, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish an injury due to the accepted work events. On November 22, 2005 she requested reconsideration. In a decision dated December 19, 2005, the Office denied appellant's request for reconsideration under section 8128.

On June 13, 2006 appellant again requested reconsideration. She submitted a statement dated May 1, 2005 in which she asserted that the employees' parking lot had dim lighting and often the gate was unlocked.[3] Appellant spoke with management about the need for additional lighting in the parking lot because in her job as monitor she was unable to see people entering the building until the door was open. She related:

> "The aspect of my employment I consider to be detrimental to my health is that I could be injured or perhaps killed by that supervisor, other supervisors, managers and coworkers because of mechanical problems with the gate, poor lighting, poor security and the fact that I have made complaints about the supervisor and other employees I feel want to harm me."
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> Appellant further stated:
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> "I have had to speak directly with [employing establishment] police/security to assist someone (locked out of car, needing a handicapped parking space to park, [etcetera]) on a few occasions. Stress calls, threats, burglary [etcetera] are handled directly by the postal police/security [tele]phone lines only. However, '*THAT CALL*' came directly to the [tele]phone line answered by the monitors. I

[3] Appellant also alleged that her former supervisor threatened to bomb the employing establishment if an employee did not leave the building. When the employee left the building and got into a vehicle, the supervisor pulled a gun out and beat the employee. Appellant became fearful of the supervisors. She complained and the supervisor increased the harassment. In January 2003, the supervisor physically injured appellant's finger.

had never had to call or talk with security to assist anyone when referencing anyone being 'AFRAID' to walk to their car alone."[4] (Emphasis in the original.)

By decision dated August 29, 2006, the Office noted that the October 31, 2005 decision denied appellant's claim because the medical evidence did not establish that her condition was due to the May 18, 2005 employment incident. The Office found that it had previously adjudicated the incidents appellant described as occurring on dates other than May 18, 2005 under other claim numbers. The Office determined that appellant did not establish a compensable employment factor on May 18, 2005 and modified the October 31, 2005 decision to show no compensable employment factors and, thus, no injury in the performance of duty.

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.[5] 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.[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 argued that she experienced fear on May 18, 2005 in part because she felt unsafe at work as the lighting in the parking lot was dim and the gate often left open. The Board

[4] Appellant also submitted additional medical evidence with her request for reconsideration.

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

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

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

[8] *Id.*

has recognized that unsafe work conditions may constitute a factor of employment.[9] Appellant, however, has not submitted any evidence establishing that she was endangered while performing the duties of her employment. Her emotional reaction is, thus, considered self-generated as it resulted from her perception regarding her work environment,[10] nor did she submit evidence to substantiate her allegations of harassment by her coworkers.

Appellant attributed her delusional disorder to receiving a telephone call on May 18, 2005 from an attorney requesting an escort to her vehicle.[11] The attorney related that she was afraid to walk to the parking lot alone. Appellant notified the police officer on duty, who told her to have the attorney report to the police unit for an escort. Following the telephone call, she became nervous and unable to concentrate on her employment duties. Appellant stated, "After relaying the information back to the clerk on the telephone I continued my duties. As I attempted to open an entrance for someone I was unable to do so because I suddenly became fearful. I was trembling and forgetful, therefore, I could not perform the computer operations to open the entrance. My attention was focused on the statement that the [a]ttorney was 'afraid.'" In a statement dated September 13, 2004, Ms. Perry, a police officer, confirmed that she spoke with appellant about an attorney who wanted an escort to her vehicle. She did not remember whether appellant had difficulties with her employment duties after receiving the telephone call. In a statement dated October 5, 2005, Ms. Hall, a coworker, described appellant as "upset and shaky" on May 18, 2005 when she told her about a telephone call from an attorney who wanted a police escort to the parking lot. Appellant told her that receiving the telephone call "triggered her to experience fearfulness and a panicky feeling and [she] could not remember what to do on the computer."

Appellant submitted witness statements supporting that she received a telephone call from an attorney requesting an escort to the parking lot. At the time she received the telephone call she was performing her duties as a CCTV monitor. As a result of receiving the telephone call, appellant alleged that she became frightened and experienced difficulty performing her job duties. The Office found that her emotional reaction was self-generated because she was not in any actual danger. Whether appellant was in actual danger, however, is not determinative of whether her emotional reaction falls within coverage of the Act. The Board has long held that where a claimed disability results from an employee's emotional reaction to her regular or specially assigned duties or to an imposed employment requirement, the disability comes within coverage of the Act.[12] As appellant attributed her emotional condition to the performance of her regular or specially assigned work duties on May 18, 2005 the case presents a medical question regarding whether her emotional condition resulted from the compensable employment factor. The Office found that there were no compensable employment factors in its last merit decision and thus, did not analyze or develop the medical evidence. The case will be remanded to the

[9] *David S. Lee*, 56 ECAB ___ (Docket No. 04-2133, issued June 20, 2005).

[10] *Id*.

[11] The Board will not address work incidents occurring on dates other than May 18, 2005 as the Office indicated that it had adjudicated these allegations in other claims.

[12] *Penelope C. Owens*, 54 ECAB 684 (2003).

Office for this purpose.[13] After such further development as deemed necessary, the Office should issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 29, 2006, December 19 and October 31, 2005 are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 19, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[13] *Robert Bartlett*, 51 ECAB 664 (2000).