

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

---

**J.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Denver, CO, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 09-650  
Issued: April 20, 2009**

*Appearances:*

*John S. Evangelisti, Esq., for the appellant*

*No appearance, for the Director*

Oral Argument November 13, 2008

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 21, 2008 appellant filed a timely appeal of a March 24, 2008 decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of these emotional condition claims.<sup>1</sup>

**ISSUE**

The issue is whether appellant met her burden of proof in establishing that she sustained a traumatic injury in the performance of duty on July 5, 2006.

Appellant argues that the Equal Employment Opportunity (EEO) decision is dispositive on the issue of whether the supervisor's conduct amounted to unlawful harassment and discrimination, creating abusive and/or hostile work environment. In this regard, she alleges that it is for the Office to determine only whether this unlawful harassment and discrimination equate

---

<sup>1</sup> Appellant also filed an appeal of a March 14, 2008, the Office decision for a traumatic injury claim. That matter is being separately handled by a Board decision under docket number 08-2072.

with error or abuse under the Federal Employees' Compensation Act standard. Appellant further reiterated his request that the case file numbers xxxxxx928 and xxxxxx750 be combined.

### **FACTUAL HISTORY**

On July 6, 2006 appellant filed a traumatic injury claim alleging that, on July 5, 2006, Postmaster Matthew Curry yelled at her, was verbally abusive, threatening her, screaming at her for a small infraction. She claimed that she tried to get away but he "dogged" her, coming toward her yelling and screaming. On the form was a signed statement by a Greg Miller who noted that he had been dropping mail into the mail slot, had heard Mr. Curry screaming at appellant and asked her if she was "ok." Appellant stopped work on July 5, 2006. Mr. Curry indicated on the Form CA-1 that, as they sat down for a meeting, appellant seemed angry and he informed her that they would reschedule the meeting; however, she started screaming. He stated that he had witnesses who could confirm that he did not scream. Mr. Curry noted that appellant claimed stress several previous times and her most recent claim was denied.

On July 13, 2006 the Office requested that appellant submit additional supportive factual and medical evidence. Although it received some medical reports, the Office received no statement from appellant as to the events of July 5, 2006 and on that basis denied her claim by decision dated August 21, 2006.

On October 25, 2006 appellant requested reconsideration. In support of her claim, she submitted several medical documents that diagnosed her with anxiety disorder as a result of her being "verbally abused by her supervisor last p.m.," as well as a statement from herself and coworkers, friends and customers, an employing establishment policy noting zero tolerance for workplace violence and a newspaper clipping. Appellant also provided a copy of an EEO complaint related to the July 5, 2006 incident. She further requested the Office file numbers xxxxxx750 and xxxxxx928 be combined as "they both involve stressful situations at work."

Regarding the matters at issue in this case, appellant stated that on July 5, 2006 Mr. Curry "brought his face within 12 inches of mine" and began yelling for two minutes about her handling of a customer. She noted that a customer overheard Mr. Curry and asked, "What is the matter? Are you ok?" Appellant stated that his "behavior was so physically threatening I was afraid he would hit me. I hurried away, tripped over some buckets and hit my knee bruising it badly." After Mr. Curry continued yelling and following her, appellant alleged that he ordered her to clock out and the next day she was given a letter threatening her with removal.<sup>2</sup> She stated that, after filing her July 7, 2006 claim, Mr. Curry told her that he would trump up allegations against her and would protect himself. Appellant alleged that she then received a notice placing her off duty without pay which directed her to appear for a due process meeting on July 7, 2006 as "Employee may be injurious to self or others."<sup>3</sup>

A statement from a friend, Mary Lawrence, noted that appellant had confided to her about Mr. Curry's harassment.

---

<sup>2</sup> Appellant provided a copy of the letter.

<sup>3</sup> Appellant provided a copy of the notice.

Ron Velasquez, a coworker, noted general frustration with the working environment in the employing establishment, had seen appellant in tears after speaking with Mr. Curry and heard him use the term, "He does n[o] t get mad, [h]e gets even," which was allegedly said in front of customers.

Coworker Danielle Gore noted that people often spoke ill of other employees, that Mr. Curry did not get involved in customer complaints and that made Ms. Gore's window responsibilities more difficult, but because of her position at the window, she did not get involved in employee disputes.

Judy Sandoval, coworker, noted Mr. Curry never being satisfied with the work performed by the employees on Saturdays, despite good effort. She noted that he has yelled at her and that he is very unpredictable. Ms. Sandoval believed the office environment to be hostile. She had witnessed appellant coming out of Mr. Curry's office crying on numerous occasions. Ms. Sandoval generally noted that numerous occasions where she had difficult dealings with Mr. Curry. She also confirmed hearing Mr. Curry state, "I do n[o] t get mad, I get even."

Janet Fuller, coworker, expressed general frustration with how Mr. Curry ran the office. She said he had acted aggressively when complaining about the employees' work by slamming cases around and grabbing papers out of her hand and he blamed the poor work of the employees for him not receiving the promotion he wanted. Ms. Fuller noted that Mr. Curry also played favorites with some employees over others. She reported that Mr. Curry told her that "[appellant's] stress case against him was going nowhere and that I could n[o]t win in a case of that nature either."

Another statement by Pauline Ulimasao, a coworker, and union steward noted generally that there was a hostile work environment in the employing establishment. She said that Mr. Curry shares personal business about employees with other employees, for example, he had told her about appellant's "issues." Ms. Ulimasao noted that, when she asked Mr. Curry about interviews being conducted about a hostile work environment, he said, "if they think this is a hostile work environment, just wait." She generally noted that, when work issues are brought to Mr. Curry's attention, he threatens the employees with a change in their schedule.

Randal Tolbert, a coworker and former union steward, generally related that Mr. Curry demeans employees by talking down to them. He noted that Mr. Curry would belittle appellant about how she did parcels.

Ben Medina, a coworker, noted that the general hostile work environment noting some examples of the employees working very hard to get the mail out on Saturdays, yet being threatened with discipline if any employees wanted overtime. He reported that Mr. Curry has a very threatening personality.

Appellant submitted several customer statements that discussed generally Mr. Curry's behavior. An April 6, 2006 statement from a D.A. Gallen noted witnessing the postmaster engage in rude and verbally abusive behavior towards customers and clerks. He advised that he had witnessed an incident involving a clerk named "[Josie Padilla]."

Katie Gotchell alleged in her April 17, 2006 statement, that she was shocked by Mr. Curry's aggressive behavior and treatment.

In a June 20, 2006 statement, Rohann Million described an incident that occurred on June 6 or 7, 2006 with herself and Ms. Padilla, a clerk, and Mr. Curry. She alleged that she was locked out of her personal mailbox and Ms. Padilla refused to help and that Mr. Curry accused her of disrespecting his worker and swearing at her. Ms. Million indicated that appellant and another clerk came to assist her.

Bev Christiansan, in her September 25, 2006 statement, indicated that, on June 6, 2006, she was standing in line to buy stamps when a customer and a clerk began having a heated argument. Mr. Curry dismissed the clerk. She noted that appellant was trying to assist the customer but Mr. Curry appeared and "rudely" dismissed appellant by shaking his finger and yelling at her to go into his office. Ms. Christiansan alleged that, when appellant refused, he became louder and more demanding. She noted that he demanded that appellant go to his office and when she refused, he yelled louder.

On August 2 and 11, 2006 the employing establishment controverted appellant's allegations. Documents submitted by the employing establishment included a July 5, 2006 e-mail statement signed by Mr. Curry, which described the incident. Mr. Curry advised that appellant locked the store and left with 10 to 15 customers in line and disappeared. He noted that appellant told a customer to wait for Mr. Curry, without advising him, which caused the customer to be upset due to a lengthy wait. Mr. Curry indicated that appellant was found working collection boxes and did not wish to discuss the matter on the workroom floor. He stated that they proceeded to the rear of the building to have an informal discussion and appellant expressed anger and hostility. Mr. Curry suggested that they should finish the meeting with a steward and got up to leave. He stated that appellant then began to "whale and scream;" he told her to calm down, clock out and leave. Mr. Curry noted backing away from appellant because of her screaming. He stated that, after a minute, she got up, with no tears on her face and just a smirk.

Mr. Curry also alleged that the witness statement from Mr. Miller should be given little credibility as it was written by appellant in front of himself and a union steward, Bev Chavez. He further alleged that he conducted an investigative interview with two other clerks, Mr. Velasquez and Ms. Padilla, who were both at the window and indicated that they only heard appellant screaming. Mr. Curry alleged that Ms. Padilla did not see him near appellant.

Regarding leave matters, Mr. Curry explained that it was a requirement to place an employee in an emergency status when they refused to clock in for an investigative interview.

By decision dated May 18, 2007, stating: "It is therefore [o]rdered that the decision dated July 21, 2006 be modified and that the Office acknowledge that [f]act of injury, event is established but that the element of [p]erformance of [d]uty is not as the evidence does not establish that the accepted work event is compensable as defined by the [Act]."

On December 19, 2007 appellant requested that the Office reconsider its prior decisions, “including but not limited to April 6, 2006 and July 16, 2007,”<sup>4</sup> but later, by letter dated January 16, 2008, corrected those decision dates to August 21, 2006 and May 18, 2007. With the request for reconsideration, she submitted a December 4, 2007 Equal Employment Opportunity Commission (EEOC) decision. In that decision, which addressed the following issue: “Whether the [employing establishment] discriminated against [appellant] on the basis of her sex, female and age ... when on July 5, 2006, Postmaster Curry yelled at her and placed her on off duty without pay,” the administrative judge found that appellant had established “a *prima facie* case of hostile work environment sex and age.” The administrative judge determined that Mr. Curry’s actions, which included raising his voice, bringing his face to within 12 inches of appellant’s and yelling at her, were sufficiently severe or pervasive to alter the condition of her employment and/or create an abusive working environment. Appellant again requested that this claim be doubled with file number xxxxxx928.

The employing establishment continued to strongly controvert the claim, noting in its January 14, 2008 letter that “the standard for ‘harassment’ or ‘discrimination’ as defined by EEOC statutory or case law is not the applicable standard for a claim under the [Act].”

By decision dated March 24, 2008, the Office denied modification of its previous decisions dated August 21, 2006 and May 18, 2007.

### **LEGAL PRECEDENT**

Workers’ compensation law does not apply to each and every illness that is somehow related to an employee’s employment. There are situations where an injury or 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 specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.<sup>5</sup> 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.<sup>6</sup>

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition, for which she claims compensation was caused or adversely affected by employment factors.<sup>7</sup> This burden includes the submission of a detailed description of the employment factors or conditions, which that claimant believes caused or adversely affected the condition or conditions, for which compensation is claimed.<sup>8</sup>

---

<sup>4</sup> These were decisions issued in file number xxxxxx928.

<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 126 (1976).

<sup>7</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>8</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

## ANALYSIS

Regarding the July 5, 2006 incident, appellant stated that Mr. Curry “brought his face within 12 inches of mine” and began yelling for two minutes about her handling of a customer. She noted that a customer overheard Mr. Curry and asked, “What is the matter? Are you ok?” Appellant stated that his “behavior was so physically threatening I was afraid he would hit me. I hurried away, tripped over some buckets and hit my knee bruising it badly.” After Mr. Curry continued yelling and following her, she stated that he ordered her to clock out and the next day she was given a letter threatening her with removal. Appellant stated that, after filing her July 7, 2006 workers’ compensation claim, Mr. Curry told her that he would trump up allegations against her and would protect himself. She alleged that she then received a notice placing her off duty without pay and which directed her to appear for a due process meeting on July 7, 2006.

In support of her assertion, appellant noted that Mr. Miller, a customer, indicated that he heard the postmaster screaming at her on that date. She also provided a copy of an EEO decision, dated December 4, 2007. The administrative judge found that Mr. Curry’s actions, which included raising his voice, bringing his face to within 12 inches of hers and yelling at her, were sufficiently severe or pervasive to alter the condition of her employment and or create an abusive working environment. He found that appellant had established a *prima facie* case for a hostile work environment related to her sex and age based on the incidents surrounding the July 5, 2006 event. Although Mr. Curry denied that he screamed at appellant, the evidence refutes his denial.

This evidence is sufficient to support the credibility of the allegations surrounding the June 5, 2006 incident and to support a finding of a compensable factor. It is well established that, while the findings of other federal agencies are not dispositive with regard to questions arising under the Act, such evidence may be given weight by the Office and the Board.<sup>9</sup> It is appellant’s burden to prove that harassment by Mr. Curry did in fact occur. Although heartily denied by the employing establishment, appellant has met her burden that this incident did occur and did arise from her performance of her regular duties.

The Board has held that allegations, alone, by a claimant are insufficient to establish a factual basis for an emotional condition claim but must be substantiated by the evidence.<sup>10</sup> Mere perceptions and feelings of harassment or discrimination will not support an award of

---

<sup>9</sup> See *Pamela Casey*, 57 ECAB 260, 264 (2005); *Michael A. Deas*, 53 ECAB 208 (2001).

<sup>10</sup> *Charles E. McAndrews*, 55 ECAB 711 (2004); see also *Arthur F. Hougens*, 42 ECAB 455 (1991); and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant’s allegations to determine whether or not the evidence established such allegations).

compensation. The claimant must establish such allegations with probative and reliable evidence.<sup>11</sup> The Office, in its March 24, 2008 decision, addressed the EEO decision in this manner:

“Your attorney submitted a second statement, dated February 1, 2008, in which he discusses the response from the employing agency. In this statement he argues that, based on the EEOC determination, the weight of evidence shifts in favor of you, because it provides strong evidence of error or abuse on the part of the [a]gency. Upon review of these transcripts it is found that, while they support the findings of the EEOC, they do not specifically verify your previous allegations previously identified with supporting evidence.”

The Board disagrees with the Office and finds that these findings do support appellant’s factual allegations of harassment surrounding the July 5, 2006 event. Appellant’s allegations of harassment surrounding that incident, substantiated by the witness statement and the finding of a hostile work environment by the EEO decision, constitutes substantial evidence of harassment by Mr. Curry.

Thus, appellant has identified a compensable work factor with respect to the July 5, 2006 incident. As she has implicated a compensable employment factor, the Office must base its decision on an analysis of the medical evidence. As the Office found no compensable employment factors, it did not analyze or develop the medical evidence. The case will be remanded to the Office for this purpose.<sup>12</sup> After such further development as deemed necessary, it should issue an appropriate decision on this matter.

### **CONCLUSION**

The Board finds that appellant has identified a compensable factor of employment and remands for further development.

---

<sup>11</sup> *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); see *Pamela R. Rice*, *supra* note at 838 (it was found that the employee failed to establish the incidents or actions characterized as harassment).

<sup>12</sup> See *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 24, 2008 decision of the Office of Workers' Compensation Programs is set aside and remanded. Upon remand, the Office will combine the case files of case file numbers xxxxxx928 and xxxxxx750 and, following further development consistent with this decision, render an appropriate decision.

Issued: April 20, 2009  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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