United States Department of Labor
Employees' Compensation Appeals Board

B.O., Appellant	)	
and	)	**Docket No. 09-424**
	)	**Issued: November 6, 2009**
U.S. POSTAL SERVICE, BIG RAPIDS POST OFFICE, Big Rapids, MI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 28, 2008 appellant filed a timely appeal of the August 28, 2008 merit decision of the Office of Workers' Compensation Programs, finding that she did not sustain an emotional condition in the performance of duty. 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 has established that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On June 14, 2005 appellant, then a 51-year-old general clerk, filed an occupational disease claim. On March 17, 2005 she first became aware of an increase in her symptoms related to her accepted June 11, 1990 employment-related postconcussion syndrome.[1] On

[1] Appellant's claim for the June 11, 1990 employment injury was assigned file number xxxxxx308.

March 25, 2005 appellant first realized that her symptoms were caused by her federal employment. She was unable to interpret conversations, made errors in her work and took more time to perform simple tasks. Appellant stated that her employment-related condition was exacerbated by an anticipation of a change in her work conditions and harassment and intimidation by the new officer-in-charge (OIC) and post office operations manager (POOM). She stopped work on March 25, 2005.

Undated statements from Blair McNamara, Kelly Stoll, Steven Roberts, Patricia VanWagner, Henry E. Karnes and Daryl Pyles, appellant's coworkers, Dennis Drotar, a manager, and Postmaster Brian Haremski related that several incidents occurred between appellant and a new OIC from February 18 to April 14, 2005. Mr. Karnes stated that the new OIC always wanted to change appellant's work duties.

In an April 25, 2005 medical report, Glen Johnson, Ph.D., a clinical neuropsychologist, stated that appellant had a cognitive disorder not otherwise specified, postconcussional and major depressive disorders, traumatic brain injury, headaches and vertigo.

By letter dated June 28, 2005, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It addressed the additional factual and medical evidence she needed to submit to support her claim.

In an undated narrative statement, appellant related that the OIC's plan to change her work location and assignments ignored her work restrictions. She stated that, from February to March 2005, the OIC harassed her and created a hostile work environment, which caused her emotional condition and high blood pressure.

Medical records dated July 28, 2000 to June 3, 2005 from Dr. D. Eugene Wiley, a Board-certified neurologist, Dr. Peter S. VanDeMark, a Board-certified internist, and Dr. Johnson advised that appellant was treated for postconcussion syndrome, anxiety/stress, depression and hypertension. Appellant was disabled for work from June 7 to July 5, 2005.

In a July 25, 2005 letter, appellant stated that beginning in 1991 she was assigned limited-duty work in the marketing department of the Grand Rapids district. She worked in a quiet, out-of-the way office at the employing establishment. Appellant was not considered to be an employee of the employing establishment. She contended that new managers at the employing establishment wanted her to perform work that was complex and outside her job description and limitations. They also wanted appellant to have fewer restrictions. The managers allegedly questioned her job offer and restrictions and intimidated, harassed and verbally assaulted her. On February 24, 2005 appellant was informed by the OIC that her office would be moved the next day and that her job restrictions were to be reviewed. During the prior three years, she was required to generate many reports. Appellant experienced difficulty with answering telephone calls because she could not interpret them or verbally communicate with the caller. She suffered from severely diminished short-term memory. Appellant could not keep up with documents and was easily distracted and unable to get back on track. She lost the ability to perform simple routine math. Appellant experienced severely diminished capacity to comprehend her work and difficulty with computer data entry work. She was directed by the OIC to see an attending physician to update her restrictions.

The employing establishment's August 19, 1991 job offer for a part-time limited-duty general clerk position was accepted by appellant on August 20, 1991. The position required her to initially work three hours per day, 3 days per week and after 30 days she was required to work 5 days per week. It also required assembling express mail kits, fulfillment of retail mail orders and packaging, labeling and mailing of retail items shipped to the employing establishment for disbursement. The position required sorting and bundling direct mail pieces to specified carrier routes or post office boxes. It involved the telemarketing of the employing establishment's service and products and computer data input of direct mail leads, retail orders, mailing list updates and inventory control. The physical requirements included intermittent standing, walking, lifting and carrying up to 10 pounds, climbing, kneeling, squatting, crawling and twisting, continuous sitting for three hours and driving for only seven miles. There were no restrictions for reaching and use of foot controls. Restrictions for pushing, pulling and bending were not applicable.

In a June 27, 2004 work capacity evaluation (Form OWCP-5), Dr. Robert R. Yoder, a Board-certified psychiatrist, stated that appellant could work three hours per day as of July 15, 1991 with restrictions which included, continuous sitting for three hours and intermittent walking, lifting up to 10 pounds, bending, squatting, climbing, kneeling, twisting and standing. Appellant was not restricted from pushing, pulling or reaching above the shoulder.

Appellant submitted narrative statements dated May 18 to July 18, 2005 from Donald J. Rennick, Linda Randall, Ronald Ketchum, Avery Happy, Linda Lough, Ila M. Sieffert, her coworkers, Ms. VanWagner and Mr. Karnes stated that appellant was verbally abused and harassed by Lori Layne, a POOM, Lori Boes, a former postmaster, Mike Halbrooks, a supervisor, Anita Billingsley, a POOM, Postmaster Charlie Johnson and Lori Holmes, a supervisor. Ms. Layne was crude and rude to appellant and obtained her files without her consent. She tore a small poster off a cabinet in appellant's office because she was offended by it. Management kept misplacing appellant's personnel file. Ms. Layne performed management's job and received the credit and promotions for appellant's work. Appellant locked her office door as a result of being harassed by Postmaster Johnson. Her coworkers performed work that she could not perform due to a 1992 work injury. Postmaster Johnson and Ms. Holmes required appellant to perform her marketing duties, as well as other duties with extended hours.

In letters dated September 2, 15 and 20, 2005, Mr. Drotar, Ms. Boes and Teresa M. Miller, an injury compensation specialist, stated that appellant performed her job well. The employing establishment accommodated her limitations since 1990 and provided her with a rehabilitation position. Appellant primarily worked in the limited-duty position of vending operations coordinator for the Greater Michigan District. The position did not require her to work outside her limitations. There were no staffing shortages. The relocation of appellant's office from the second floor to the first floor did not constitute harassment. There were no reasons to keep her isolated on the second floor. Appellant did not provide a reasonable explanation for refusing to move to the main floor. Ms. Boes' receipt of a $2,000.00 electric bill prompted the relocation of all the second floor offices, including appellant's office, to the first floor to conserve energy. She stated that appellant's office was also being relocated in response to her concern about her safety as she related that customers would wander onto the second floor on occasion. Ms. Boes stated that appellant would not have to navigate any stairs to get to the

new office, which was also much larger, brighter and safer. It was in a quiet out-of-the way location and had a private restroom. The move was neither immediate nor being arranged without appellant's input. Ms. Boes had three conversations with her about the impending move. She also contacted the injury compensation office to make sure that she was working within appellant's limitations. Ms. Boes stated that Ms. VanWagner witnessed appellant threaten to get Ms. Boes if she tried to move her office.

By decision dated December 6, 2005, the Office denied appellant's claim, finding that she did not sustain an emotional condition in the performance of duty. Appellant failed to establish a compensable factor of her employment.

On December 23, 2005 appellant requested an oral hearing before an Office hearing representative.

In a January 13, 2006 report, Dr. Johnson stated that the employing establishment's lack of accommodations for appellant caused significant stress which exacerbated her June 11, 1990 employment injury.

In a July 28, 2000 Form OWCP-5, Dr. Joseph M. Wolschleger, a Board-certified internist, advised that appellant was disabled for work. He restricted her from walking on ramps, rapid twisting, pushing, pulling, lifting, squatting, bending and climbing ramps and stairs. In an April 6, 2006 report, Dr. VanDeMark stated that appellant's anxiety, insomnia, depression, tachycardia and exacerbation of hypertension were a manifestation of changes in her work environment. He stated that she was harassed by her new supervisors who insisted on reviewing, questioning and disregarding her long-standing work restrictions and assigned her new work duties. Dr. VanDeMark opined that appellant suffered from ongoing neurological manifestations of her June 11, 1990 employment injury, which were aggravated by her work conditions.

Narrative statements dated January 24, 2006 to March 15, 2007 from Mary Jo Waldron, Lyle Carlson and Barbara Lodholtz, appellant's coworkers, Ms. Randall, Mr. Rennick, Mr. Karnes, Ms. VanWagner, Ms. Randall, Mr. Ketchum and Mr. Pyles related that appellant was required to work beyond her job description and restrictions by management. The employing establishment had staff shortages which prompted management to ask her to perform additional work duties. Appellant's coworkers helped her perform work that should have been performed by other employees. She performed vending data entry which was not part of her original work duties. Appellant carried boxes of documents from the second floor to the main floor on a weekly basis and more frequently at the end of each quarter. She moved mail directories weighing between 50 and 70 pounds. Appellant emptied hampers filled with bulk mailings, second class materials and magazines which involved lifting, sorting turning, bending, stacking, carrying, reaching and handling. It was not unusual for her to take work home and to receive help from her husband and son to keep up with her duties and meet deadlines. Initially, appellant believed that her computer duties were complex but later she believed that they became impossible to perform. Her son came to work several times to help her figure out computer program changes. Postmaster Fred Farage and Ms. Holmes required appellant to run down three flights of stairs to answer telephones and deliver messages. Mr. Rogers and Ms. Boes required her to work eight hours per day and two extra hours for the employing establishment while she was only scheduled to work six hours per day. Mr. Rogers became angry and stated that maybe

he did not want appellant to work for him anymore when she expressed concern about the change in her work hours. During the Christmas holiday season appellant helped Ms. VanWagner with the mail volume although Ms. VanWagner knew this task was not within her job description. Postmaster Johnson planned to give appellant a window drawer to serve customers. Ms. Holmes required appellant to pull "hold-outs" which involved constant standing, bending, reaching and lifting of bulky mail bundles for approximately 40 minutes.

Regarding the relocation of appellant's office, Postmaster Farage, Ms. Billingsley, Ms. Layne, Postmaster Johnson, Sylvia Taylor, a POOM, Darrel Kordie, an OIC, Roger Schlehuber, an OIC, Postmaster Don Patterson and Ms. Boes either moved or made an attempt to move her office during the period February 1993 to March 2005 without consulting her or the Office's rehabilitation counselor. Postmaster Johnson threatened to physically move her if she did not move voluntarily. As a result, appellant put chain and bolt locks on her office door until her retirement in 2000. She found the new office was not better for her as it was very noisy due to traffic in the lobby and outside the building. Three service windows were located in the front door of the office. The office provided public access to a bathroom. The room had three windows and three doors which did not provide enough space for all of appellant's work and equipment. The lighting was inadequate which made reading difficult. The room was never remodeled as planned by Ms. Boes. All of the offices on the second floor were not relocated to the first floor as employees including, Postmaster Johnson used an office on the second floor from October 2000 to May 2005. The relocation of appellant's office was not based on the employing establishment's receipt of a high electric bill as the employing establishment was heated with natural gas which was still in use upstairs. Appellant received only one day's notice about the move. Ms. VanWagner did not hear appellant threaten Ms. Boes and she was not present during their conversation to calm her.

In a March 12, 2007 narrative statement, Mr. Ketchum related that on April 12, 1999 he was forced to leave a meeting between appellant, a postal inspector and management regarding an investigation of Postmaster Johnson's actions. He stated that, from January 1995 to October 2000, over 63 grievances alleging harassment had been filed against Postmaster Johnson and Ms. Holmes.

On March 30, 2007 appellant stated that all of her work would not fit into the new office. She also stated that the office was near three service windows and it did not have a door.

By decision dated July 24, 2007, an Office hearing representative affirmed the December 6, 2005 decision, finding that the evidence failed to establish a compensable factor of appellant's employment. In a July 1, 2007 letter, she requested reconsideration.

In reports dated October 22, 2007 and May 16, 2008, Dr. Johnson and Dr. Richard Feldstein, a Board-certified psychiatrist, stated that appellant's depression and anxiety disorder were caused by the filing of a claim for benefits, lack of accommodation by the employing establishment and a hostile workplace.

In a July 24, 2007 narrative statement, appellant related that she had not refused to move. She denied threatening Ms. Boes. Appellant contended that her computer-related work was outside her physical limitations. She stated that she did not receive any training for such work.

Appellant further stated that, from August 1991 to March 2005, 39 managers at the employing establishment wanted her to work for them.

By decision dated August 28, 2008, the Office denied modification of the July 24, 2007 decision. It found that appellant failed to establish a compensable factor of her federal employment.

LEGAL PRECEDENT

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 factors of her federal employment.[2] To establish that she sustained an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.[3]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,[4] the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.[5] 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 under the Act.[6] When an employee experiences emotional stress in carrying out her employment duties and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of her work.[7] 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 under the Act.

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

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

[4] 28 ECAB 125 (1976).

[5] 5 U.S.C. §§ 8101-8193.

[6] *See Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

[7] *Lillian Cutler, supra* note 4.

factors of employment and may not be considered.[8] 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.[9]

Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the 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.[10] Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act.[11] However, 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.[12]

ANALYSIS

Appellant attributed her emotional condition, with a consequential aggravation of her accepted June 11, 1990 employment-related postconcussion syndrome, to being harassed and verbally abused at the employing establishment. She alleged a one-day notice that her office was being relocated from the second floor to the main floor. Appellant stated that she did not refuse to move but rather questioned the wisdom of it. She stated that, unlike her second floor office, the new office was not quiet or private as it was located near three service windows and it did not have a door. Appellant further stated that all of her work would not fit into the new office. She contended that she was overworked and required to perform duties that were outside her physical restrictions. Appellant stated that new managers at the employing establishment, of which she was not an employee, continually ignored her work restrictions and job description. They required her to perform complex computer data entry work without providing any training, to generate many reports and to answer telephones. Appellant stated that her managers requested that she provide updated medical information to reduce her restrictions. The Board notes that verbal abuse or harassment may give rise to coverage under the Act. However, there must be evidence that the implicated acts of harassment did, in fact, occur. A claimant must substantiate a factual basis for her allegation with probative and reliable evidence.[13]

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

[9] *Id.*

[10] *Lillian Cutler*, *supra* note 4.

[11] *Michael L. Malone*, 46 ECAB 957 (1995).

[12] *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *see Faye Cardwell*, *supra* note 3 (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 2 (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred). *Charles D. Edwards*, 55 ECAB 258 (2004).

[13] *See Ronald K. Jablanski*, 56 ECAB 616 (2005).

The Board finds that appellant's allegations regarding the office relocation[14] her frustration from not being able to work in a particular environment,[15] provision of training[16] and the request for medical documentation[17] relate to noncompensable administrative or personnel matters. However, error or abuse by the employing establishment in an administrative or personnel matter may afford coverage.[18] The statements from appellant's coworkers generally related disagreement with management's actions concerning the office move. The Board finds that appellant has not submitted sufficient evidence to establish that the employing establishment erred or acted abusively in relocating her office. Ms. Boes stated that the relocation of appellant's office was also based on her own concern for her safety. Appellant related to Ms. Boes that customers would wander up to her second floor office on occasion. Ms. Boes stated that, unlike getting to her second floor office, appellant would not have to navigate any stairs. The Board finds that the statements of Ms. Boes provide reasonable explanations for relocating appellant's office. Therefore, appellant has failed to establish that the employing establishment committed error or abuse in relocating her office. Further, her unsupported allegation that she did not receive any computer training alone is insufficient to establish a factual basis for this incident as Mr. Drotar, Ms. Boes and Ms. Miller stated that she performed her work well with limited supervision. Moreover, appellant has not established that the employing establishment erred or acted abusively in requesting medical documentation. She did not submit any statements from witnesses to substantiate her allegation.

Regarding appellant's allegation that she was overworked, the Board has held that while overwork may be a compensable factor of employment it must be established on a factual basis to be a compensable employment factor.[19] Statements from Mr. Happy, Ms. Lough, Ms. Sieffert, Ms. VanWagner, Ms. Lodholtz and Mr. Karnes generally related that appellant performed management's work while it received the credit and promotions and that she was assigned to additional duties and worked more hours due to staff shortages, answered the telephones and delivered messages, and regularly took work home to meet deadlines. These statements did not identify the nature of any additional work duties. Further, contrary to Mr. Karnes' statement that appellant was not originally required to perform vending data entry, the employing establishment's August 19, 1991 job offer stated that appellant's limited-duty clerk position included computer data entry related to vending matters. Moreover, Mr. Drotar, Ms. Boes and Ms. Miller denied any staffing shortages that affected appellant's workload. They related that she performed her work well with limited supervision. Based on the statements of Mr. Drotar, Ms. Boes and Ms. Miller and the employing establishment's job offer, the Board

[14] *Barbara J. Nicholson*, 45 ECAB 803 (1994).

[15] *See Lillian Cutler*, *supra* note 4.

[16] *Brian H. Derrick*, 51 ECAB 417 (2000).

[17] *James P. Guinan*, 51 ECAB 604, 607 (2000); *John Polito*, 50 ECAB 347, 349 (1999).

[18] *Margreate Lublin*, 44 ECAB 945 (1993). *See generally Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[19] *Sherry L. McFall*, 51 ECAB 436 (2000).

finds that appellant has failed to establish that she was overworked and, thus, she has not established a compensable employment factor.[20]

Regarding appellant's allegations that she was made to work outside her restrictions, the Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if the record substantiated such activity.[21] Her limited-duty general clerk position did restrict her from lifting more than 10 pounds. Although appellant's coworkers stated generally that she moved boxes of mail directories weighing between 50 and 70 pounds, they did not state with specificity any examples. Further, the statements that she lifted and carried heavy items including, bulk mailings, second class materials and magazines are vague as they do not specifically state that she lifted and carried more than her 10-pound restriction. Also, the statements that appellant worked outside her restrictions by going up and down stairs to deliver telephone messages has not been established. Dr. Yoder's Form OWCP-5 permitted intermittent climbing. Further, Mr. Drotar and Ms. Miller stated that appellant's limitations had been accommodated since 1990 along with a rehabilitation position that was not outside her restrictions. The Board finds that appellant has failed to establish that she worked outside her restrictions and, thus, she has not established a compensable employment factor of her employment.

The Board further finds that the coworkers statements which generally alleged that appellant was harassed by her managers including, Postmaster Johnson are not sufficient to establish harassment. They do not provide a detailed description of the specific actions taken by the managers towards appellant which would support a finding of harassment. The Board finds that appellant has not established that she was verbally abused and harassed by her managers.[22] The Board finds that management's handling of appellant's personnel files and Ms. Layne's removal of her poster relate to administrative matters. The evidence of record does not establish that Ms. Layne or any other manager erred or acted abusively towards appellant in handling these administrative and personnel matters. None of the statements submitted by appellant indicated that her coworkers witnessed these incidents. Therefore, the Board finds that appellant has failed to establish that the employing establishment committed error or abuse in the handling of her personnel file and removal of her poster. Accordingly, appellant has not established a compensable factor of employment.[23]

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an emotional condition in the performance of duty.

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

[21] *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

[22] *See David S. Lee*, 56 ECAB 602 (2005).

[23] As appellant has not substantiated a compensable factor of employment as the cause of her emotional condition, the medical evidence regarding her emotional condition need not be addressed. *Karen K. Levene*, 54 ECAB 671 (2003).

ORDER

IT IS HEREBY ORDERED THAT the August 28, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 6, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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