

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

_____)
T.H., Appellant)

and)

**U.S. POSTAL SERVICE, PROCESSING &)
DISTRIBUTION CENTER, Dallas, TX,)
Employer**)

**Docket No. 09-811
Issued: November 4, 2009**

Appearances:
Tim Schmitt, for the appellant
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 February 4, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated January 8, 2009. 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 an emotional or physical condition causally related to compensable work factors.

FACTUAL HISTORY

On December 26, 2007 appellant, a supervisor of distribution operations, filed an occupational disease claim (Form CA-2) alleging that she sustained undue stress and accompanying headaches, chest pain and difficulty breathing, as a result of her federal employment. In a narrative statement, she noted that she was a supervisor who was assigned to the Box Section, but was constantly being moved from area to area. Appellant addressed some

of her job responsibilities and stated that tension and pressure working under “unrealistic demands” culminated in an incident on November 10, 2007.

According to appellant, on November 10, 2007 the Box Section was short staffed and her supervisor, Debra Warren, began yelling her name over the radio and asking about an employee working overtime. About 15 minutes later, Ms. Warren asked appellant about two employees who had worked the Box Section earlier, but were assigned to another area. Appellant was instructed to locate the employees and run reports, and as she was attempting to do this Ms. Warren “was yelling at me over and over on the radio.” She stated that Ms. Warren came into the Box Section and was pacing in and out, while shouting at her, allegedly stating, “If you were real supervisor, you wouldn’t be having this problem.”

In a December 27, 2007 statement, Ms. Warren advised that appellant was never told she was responsible for the Box Section, and when she was not there, the supervisor who had that unit was responsible. She stated that appellant was responsible for the unit she was assigned for that day, and her duties included monitoring unit activities, productivity and attendance reports. On November 10, 2007 there was an issue as appellant did not know where two of her employees were and appellant was asked for an end-of-run report to determine how long they were gone. In a statement dated January 30, 2008, Ms. Warren did not concur with appellant’s allegations. Ms. Warren stated that on November 10, 2007 appellant failed to monitor two of her employees and she was questioned on the issue.

By decision dated March 12, 2008, the Office denied the claim for compensation. The Office found that appellant had not established any compensable work factors.

Appellant requested a hearing before an Office hearing representative, which was held on August 8, 2008. She submitted a witness statement from a coworker, who stated that even though he could not hear the conversation, Ms. Warren was speaking loudly and appellant became upset. Another coworker, Ms. Thomas, also stated that appellant was upset on November 10, 2007. At the hearing, two other coworkers testified regarding Ms. Warren’s personality. They did not discuss the November 10, 2007 incident.

In a decision dated January 8, 2009, the hearing representative affirmed the March 12, 2008 decision. The hearing representative found appellant had not established any compensable work factors.

LEGAL PRECEDENT

Appellant 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.¹ This burden includes the submission of detailed descriptions of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.² If a compensable work

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

factor is established, a claimant must submit rationalized medical evidence establishing causal relationship between a diagnosed condition and the compensable work factor.³

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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁴

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.⁵ Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.⁶

ANALYSIS

In her initial statement regarding the claim, appellant referred to "unrealistic demands" of her job, without providing a detailed explanation of what specific job duties, if any, she felt had contributed to a diagnosed condition. Appellant's primary allegation in this case is that on November 10, 2007 she sustained emotional stress after Ms. Warren yelled at her regarding an employee working overtime and two employees who could not be located.

While the Board has recognized that a compensable factor may be established based on verbal abuse,⁷ not every statement that is uttered in the workplace is sufficient to give rise to a compensable work factor.⁸ Appellant alleged that her supervisor yelled at her, but a raised voice does not in itself establish verbal abuse.⁹ Appellant also alleged that Ms. Warren stated that had she been a "real" supervisor, she would have been able to locate the two employees. While appellant may have felt uncomfortable or offended by the manner and tone of Ms. Warren's

³ *Elizabeth W. Esnil*, 46 ECAB 606 (1995).

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

⁶ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

⁷ *David W. Shirey*, 42 ECAB 783 (1991).

⁸ *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

⁹ *Beverly R. Jones*, 55 ECAB 411 (2005); *Karen K. Levene*, 54 ECAB 671 (2003).

statement, it does not rise to the level of verbal abuse.¹⁰ The Board finds that appellant did not establish a compensable work factor on November 10, 2007.

On appeal, appellant's representative describes what he felt were errors made by the hearing representative. He stated that the hearing representative omitted reliable verbal testimony as well as testimony from two witnesses. With respect to the testimony and written statements by the coworkers, neither advised that they heard any specific statements by Ms. Warren. As noted above, even if Ms. Warren raised her voice, this does not in itself establish verbal abuse. Appellant's representative also stated that the hearing representative dismissed the fact that appellant's duties included being subject to an immediate supervisor. But appellant's claim was based on the specific actions of her supervisor, not simply on being subject to supervision. If she is alleging a specific job duty contributed to a diagnosed condition, she must provide a detailed description. While appellant's representative disputes that appellant failed to provide a "detailed description of events," she often referred generally to "yelling" and "shouting" without a description of specific statements by Ms. Warren. As to the medical evidence, it is well established that the medical evidence is not considered until a compensable work factor has been established.¹¹

The Board accordingly finds that the evidence of record is insufficient to substantiate a compensable work factor. The Office properly denied appellant's claim for compensation in this case.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish her claim as she did not establish a compensable work factor.

¹⁰ See *V.W.*, 58 ECAB ____ (Docket No. 07-234, issued March 22, 2007); *Denis M. Dupor*, 51 ECAB 482, 486 (2000).

¹¹ *Sammy N. Cash*, 46 ECAB 419, 424 (1995); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 8, 2009 and March 12, 2008 are affirmed.

Issued: November 4, 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