

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

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**M.C., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Huntsville, AL, Employer**

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**Docket No. 09-2163  
Issued: August 2, 2010**

*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 August 22, 2009 appellant filed a timely appeal from the August 5, 2009 merit decision of the Office of Workers' Compensation Programs denying her emotional condition claim. 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 met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

**FACTUAL HISTORY**

On January 16, 2009 appellant, then a 38-year-old mail carrier, filed a claim alleging that she sustained an emotional condition in the performance of duty due to various incidents and conditions at work beginning in May 2007. She stopped work on January 2, 2009 and did not return.

Appellant alleged that she was unhappy following the move from Detroit, MI to Huntsville and that her daughter was also unhappy and returned to live in Detroit. She was dissatisfied with her job in Huntsville and desired to return to Detroit. Appellant claimed that Tonya Horne, a supervisor, unfairly questioned her about the light being out in her mail case and threatened her with insubordination regarding the matter. On December 4, 2008 she requested that a supervisor provide a written statement regarding why certain actions were taken, but that she did not receive a written response. Appellant filed three grievances against the employing establishment management regarding various matters and asserted that she was the subject of an improper investigation by postal inspectors regarding her route maintenance in October 2008. She claimed that her supervisors, including Ms. Horne, were against her, did not allow her to do her job and unfairly criticized her job performance. On April 16, 2008 appellant was degraded on the workroom floor by Shelly Ary, a supervisor, regarding taking time off for a medical appointment. On other occasions Ms. Ary allegedly violated her rights under the union contract and falsely accused her of improperly completing work forms. Appellant claimed that on January 2, 2009 the station manager verbally abused her regarding the manner in which she performed her work. She also claimed that Ms. Horne violated her privacy with respect to medical matters and that management did not respond to her claims of unsafe working conditions. Appellant asserted that she was improperly accused of falsifying time records and that she was bullied by several coworkers.

In a March 9, 2009 statement, Ms. Horne advised that she never raised her voice to appellant or acted in an unprofessional manner. She denied appellant's claims of harassment and abuse. Ms. Horne stated that whenever appellant did not like what was happening at work she would clock out and go home. In a February 5, 2009 letter, the employing establishment controverted appellant's claim.

In a January 9, 2009 report, a psychiatrist with an illegible signature stated that appellant was being treated for anxiety and depression stemming from a job change and relocation. In a March 15, 2009 report, Dr. Debra Williams, an attending osteopath, noted that appellant was being treated for adjustment disorder with depressed mood. Dr. Williams first examined appellant on May 8, 2007 and discussed the factors that she believed caused her condition. Dr. Williams advised that appellant reported that she sustained stress in her home life after moving from Detroit to Huntsville. She also reported being harassed by supervisors at work.

In a May 4, 2009 decision, the Office denied appellant's emotional condition claim on the grounds that she did not establish a compensable employment factor. It found that appellant's allegations related to administrative matters, but she did not show that management committed error or abuse with regard to the actions taken. The Office found that she did not establish harassment.

Appellant requested a review of the written record by an Office hearing representative. She submitted additional documents in support of her claim, including records regarding complaints she had filed. Appellant filed a complaint against her union alleging it had failed to provide her with adequate representation, had not acted in good faith and had retaliated against her for filing prior labor charges. She made a complaint to the Occupational Safety and Health Administration concerning unsafe working conditions. Appellant also submitted statements from three coworkers, dated in May 2009, concerning their experiences with certain managers.

The coworkers indicated that they had bad experiences with supervisors, including Ms. Ary. None of the witnesses described witnessing any of appellant's alleged incidents. Appellant also submitted a statement from her daughter who indicated that she enjoyed living in Huntsville. She submitted medical evidence and additional statements in which she further described her claimed employment factors.

In an August 5, 2009 decision, the Office hearing representative affirmed the May 4, 2009 decision. She found that the evidence submitted by appellant did not establish a compensable employment factor.

### **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.<sup>1</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>2</sup>

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 employment factors.<sup>3</sup> This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>4</sup>

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.<sup>5</sup> 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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>4</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>5</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>6</sup>

### 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. The Board notes that appellant's allegations do not pertain to her regular or specially assigned duties under *Cutler*. Rather, she has alleged error or abuse on the part of her managers.

Appellant alleged that harassment on the part of her supervisors and coworkers contributed to her claimed stress-related condition. She claimed that Mr. Horne, a supervisor, unfairly questioned her about the light being out in her mail case and threatening her with insubordination regarding the matter. Appellant asserted that her supervisors, including Ms. Horne, were against her, did not allow her to do her job and unfairly criticized her job performance. On April 16, 2008 she was degraded on the workroom floor by Ms. Ary, another supervisor, regarding her taking time off for a medical appointment. Ms. Ary violated her rights under the union contract and falsely accused her of improperly completing work forms. Appellant claimed that on January 2, 2009 the station manager verbally attacked her regarding the manner in which she performed her work. She also asserted that coworkers bullied her on a regular basis.

To the extent that disputes and incidents alleged as constituting harassment by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.<sup>7</sup> However, for harassment to 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.<sup>8</sup> In this case, Ms. Horne denied that appellant was subjected to harassment and appellant did not submit sufficient evidence to establish her allegations.<sup>9</sup> The statements from appellant's coworkers pertain to their own interactions with certain managers. They do not provide support for the specific allegations made by appellant.<sup>10</sup> The three coworkers addressed only their personal experiences with management. None of the coworkers described any actions they witnessed concerning appellant. Therefore, she has not established a compensable employment factor under the Act with respect to the claimed harassment.

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<sup>6</sup> *Id.*

<sup>7</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>8</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>9</sup> *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).

<sup>10</sup> *See William P. George*, 43 ECAB 1159, 1167 (1992).

Appellant alleged that she was the subject of an improper investigation by postal inspectors regarding her route maintenance in October 2008. She claimed that on December 4, 2008 she requested that a supervisor provide a written statement regarding why certain actions were taken, but that she did not receive such a written statement. Appellant also claimed that Ms. Horne violated her privacy rights with respect to medical matters and that management did not respond to her claims of unsafe working conditions. She also asserted that she was improperly accused of falsifying time records.

Regarding appellant's allegations that the employing establishment improperly handled investigations, engaged in unfair criticism of work performance, mishandled safety and privacy matters, failed to make clarifications about work subjects and improperly monitored activities at work, 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.<sup>11</sup> Although such matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>12</sup> The Board has held that an administrative or personnel matter will be considered 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.<sup>13</sup> Appellant did not submit sufficient evidence to establish that her managers committed error or abuse with respect to these matters. She filed several grievances and complaints regarding some of these matters, but the record does not contain any final decision issued in connection with these grievances or complaints. Appellant has not established a compensable employment factor under the Act with respect to the alleged administrative matters.

Appellant alleged that she became unhappy following her move from Detroit, MI to Huntsville. She stated that she was dissatisfied with her job in Huntsville and desired to return to Detroit. This is a personal matter unrelated to appellant's regular and specially assigned work duties and does not constitute a compensable employment factor. The Board has held that an employee's dissatisfaction with a given work setting constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.<sup>14</sup>

Appellant has not established a compensable employment factor under the Act. She has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.<sup>15</sup> The Office properly denied her claim.

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<sup>11</sup> 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).

<sup>12</sup> *Id.*

<sup>13</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>14</sup> See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

<sup>15</sup> 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).

**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.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 5, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 2010  
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