

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FAYE A. TOLLIVER and U.S. POSTAL SERVICE,  
POST OFFICE, Long Beach, Calif.

*Docket No. 97-305; Submitted on the Record;  
Issued September 14, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
DAVID S. GERSON

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty.

On July 6, 1995 appellant, then a 32-year-old city carrier, filed notice of occupational disease and claim for compensation (Form CA-2) alleging that her stress was due to her depression which she first realized was due to her employment on May 24, 1995. Appellant stopped work on May 24, 1995.<sup>1</sup>

In a letter dated August 2, 1994, Mr. Lee granted appellant a total of nine weeks of weekends off to resolve her child care problems. Mr. Lee also noted that her request for route A827 was denied as it is an auxiliary route which does not meet "full-time" duty assignment criteria. Mr. Lee also relieved appellant of "any auxiliary duties that may interfere with your carrier duties."

In an unsigned treatment note dated October 18, 1994, it was recorded that appellant had "ongoing work problems particularly with supervisor. Identifies feelings of anger and multiple abrasions with supervisor."

In a leave request slip dated May 24, 1995, appellant requested annual leave for the period May 29 through June 4, 1995 which was denied by her supervisor. Appellant was notified on May 26, 1995 when she called in that her leave request had been denied.

In an unsigned treatment note dated May 26 through June 14, 1995, a long history of stress was recorded and appellant was diagnosed as having anxiety and depression.

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<sup>1</sup> Appellant submitted certificate for return to work/school slips from Dr. Harvey Parviz Parsa, a Board-certified psychiatrist and neurologist. In a return to work/school slip dated May 30, 1995, Dr. Parsa indicated appellant could return on May 19, 1995 and in a slip dated June 30, 1995 indicated she would return on June 30, 1995.

In a note dated July 29, 1995, Irene D. Sabelino, supervisor customer service, indicated that appellant was marked absence without leave (AWOL) from May 24 through June 18, 1995, put on her annual for one week as scheduled and then she was again marked AWOL. Ms. Sabelino noted that on May 23, 1995 appellant was successful in her bid on a route, which appellant tried to get out of working the route she had bid on.

In a statement received by the Office of Workers' Compensation Programs on July 7, 1995, appellant alleged that she experienced abuse from the time she started working at the employing establishment. Appellant alleged that approximately eight years prior she requested to borrow some rain gear and her then supervisor, Mr. Nuao, shouted at her "get off the work room floor" and screamed at her again when she responded that she just wanted to get some rain gear before she went out on her route. Next, appellant alleged that the station manager, Shirley Curtis, stated she tried to call appellant at home on her approved day off and that she said that appellant "must not like your job very well because that should be your *Priority*." Appellant alleged that Mr. Lee, the station manager asked her, while she was on her route and he was observing her, what took her so long yesterday and that he told another employee not to talk to her. Appellant also alleged that Mr. Lee screamed at her when she tried to use the rest room at the office while she was on her route. Appellant alleged that the "route which Mr. Lee personally assigned was taken away from me (silently)" and that the Union seems to agree with what management does to her. Next appellant alleged that she successfully bid on an assignment which caused management to not talk to her and "rolling their eyes." Appellant alleged that when she informed Ms. Sabelino about her grandmother's death, Ms. Sabelino commented "again." Appellant requested two days off for her grandmother's death to which Ms. Reed stated she did not need that much time off." Next, appellant alleged that the rash on her feet and hands was due to the stress from her work. Appellant also alleged that Ms. Reed, two to three years ago, allowed appellant to have Saturdays off due to her child care problems when two weeks later Ms. Sabelino informed her on Friday that she was going to work the next day, Saturday, and that appellant was marked AWOL for not working.

In a note dated July 31, 1995, Lori Reed stated that appellant was successful on her bid for route 835 and when appellant was informed she stated that they did not want the bid. Ms. Reed stated that appellant "did not work one day on this assignment and she tried to blame management for her decision." Ms. Reed also stated that on January 20, 1995 appellant "called in and told me she was not delivering mail for no one in the rain."

In a letter dated August 21, 1995, Mr. Phoebus Lee, manager, customer service, responded to the Office's request for additional information. He indicated that there were no aspects of appellant's position which could be considered stressful. There was some conflict with her supervisor as appellant wanted to refuse certain overtime assignments and decide when and if she wanted to work overtime when an employee signing up for overtime cannot refuse once they have signed up on the list. Mr. Lee stated that appellant was issued a letter of warning on June 30, 1994 for failure to report to work and having excessive unscheduled absences and detailed other problems with appellant's work habits.

In a letter dated July 31, 1995, the employing establishment responded to the Office's request for information. The employing establishment noted that appellant was successful on her bid for route #835 and that she became upset once she was notified that she won the bid as she wanted to relinquish it. Appellant was successful in bidding back on her old position, came to

work on May 24, 1995 for approximately an hour and then went home sick. Appellant submitted a leave request for 40 hours from May 29 through June 4, 1995 on her supervisor's desk which was denied because it was submitted after the cut off for leave requests.

By letter dated August 3, 1995, the Office requested additional factual and medical information from appellant.

In a note dated September 1, 1995, Dr. Mahmoud Ajang, an attending Board-certified psychiatrist, wrote that he saw appellant for "irritability, tension, trouble with sleeping, depressive mood, lack of motivation, crying spells and suicidal ideation without plan."

In a letter dated September 22, 1995, Mr. Lee responded to appellant's allegations. Mr. Lee stated that he never screamed at appellant and explained why appellant was taken off route 827 as it was not an 8-hour assignment. Appellant was initially assigned to the 6-hour route 827 to give her training in consumer affairs when appellant indicated that she wanted to carry mail or work in the office, but not both. Mr. Lee stated that a supervisor, when walking with a carrier, is not required to start at the beginning of the route. Mr. Lee noted that "it is part of the supervisor's responsibilities to supervise carriers while on the street." Regarding appellant's request to have weekends off, Mr. Lee noted that carriers are supposed to work a rotating day off schedule and that he "gave her what I felt was a reasonable amount of time to resolve any child care problems." Appellant was given a letter indicating his actions and not silently as she claimed. Mr. Lee indicated that appellant did not request leave plans until the day before she needed the time off when she approached her supervisor. Mr. Lee then stated that appellant "is disenchanted, has poor attendance, poor work performance and a less than favorable attitude."

By decision dated December 1, 1995, the Office denied appellant's claim on the basis that appellant's alleged stress was not work related. The Office found that appellant's leave requests, award of a route she had bid on and work performance, were not in the performance of duty as they involved administrative actions. The Office found that appellant's remaining allegations were not accepted as factual as appellant did not provide any witness statements or other supporting evidence. Lastly, the Office found that appellant had not submitted any medical evidence which established that her stress was causally related to a compensable factor of employment.

In a letter dated July 15, 1996, appellant requested reconsideration and enclosed a January 15, 1996 report from Mr. David M. Simmons, MFCC and appellant's family therapist. In the January 15, 1996 report, Mr. Simmons stated that appellant "has exhibited a range of symptoms which fit the criteria for a diagnosis of post-traumatic stress disorder" and it is due to "the initial stressor(s)" of her work.

In a nonmerit decision dated August 20, 1996, the Office denied appellant's request for reconsideration on the basis that her application for review had not provided any medical evidence in support of her request. The Office advised appellant that Mr. Simmons' report is not probative or material evidence as he is not a physician under the Federal Employees' Compensation Act.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

Under the Act,<sup>2</sup> appellant has the burden of establishing by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by factors of his or her federal employment. To establish that he or she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.<sup>3</sup>

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.<sup>4</sup> There are distinctions regarding the type of work situation giving rise to an emotional condition which will be covered under the Act.

For example, disability resulting from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employing establishment is covered.<sup>5</sup> However, an employee's emotional reaction to an administrative or personnel matter is generally not covered,<sup>6</sup> and disabling conditions caused by an employee's fear of termination or frustration from lack of promotion are not compensable. In such cases, the employee's feelings are self-generated in that they are not related to assigned duties.<sup>7</sup>

Nonetheless, if the evidence demonstrates that the employing establishment erred or 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.<sup>8</sup> However, a claimant must support his allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>9</sup>

The initial question is whether appellant has alleged compensable employment factors as contributing to his condition.<sup>10</sup> Thus, part of appellant's burden of proof includes the submission of a detailed description of the specific employment factors or incidents which he believes caused or adversely affected the condition for which he claims compensation.<sup>11</sup> If appellant's

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Vaile F. Walders*, 46 ECAB 822 (1995).

<sup>4</sup> *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>5</sup> *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995).

<sup>6</sup> *Sharon J. McIntosh*, 47 ECAB \_\_\_\_ (Docket No. 94-1777, issued August 28, 1996).

<sup>7</sup> *Barbara E. Hamm*, 45 ECAB 843, 850 (1994).

<sup>8</sup> *Margreate Lublin*, 45 ECAB 945, 956 (1993).

<sup>9</sup> *Ruthie M. Evans*, 41 ECAB 416, 425 (1990).

<sup>10</sup> *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

<sup>11</sup> *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.<sup>12</sup>

In the present case, appellant has alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered factors under the terms of the Act.

Many of appellant's allegations of employment factors that caused or contributed to her condition fall into the category of administrative or personnel actions. In *Thomas D. McEuen*, the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. The incidents and allegations made by appellant which fall into this category of administrative or personnel actions include: the denial of her request for leave,<sup>13</sup> a reassignment of work,<sup>14</sup> and monitoring of work activities by a supervisor.<sup>15</sup> Appellant has presented no evidence of administrative error or abuse in the performance of these actions and therefore they are not compensable under the Act.

Appellant alleged verbal abuse by Mr. Nuao, Mr. Lee, Ms. Curtis and Ms. Sabelino, her supervisors. The Board notes that verbal altercations, when sufficiently detailed by the claimant and supported by the record, may constitute a factor of employment.<sup>14</sup> Appellant has asserted that approximately 8 years ago, Mr. Nuao, her then supervisor, yelled at her to "to get off the work room floor" when she asked to borrow some rain gear and screamed at her when she responded. Appellant also alleged that Ms. Curtis, the station manager, made the comment that she must not like her job as Ms. Curtis was unable to get a hold of appellant on her day off. Appellant also alleged that Mr. Lee, her current supervisor, screamed at her when she tried to use the rest room at the Office while she was on her route. Lastly, she stated that Ms. Sabelino made the comment "again" when appellant requested time off for her grandmother's death. Mr. Lee in his response denied that he never screamed or hollered at appellant. Appellant has not submitted any evidence to support these allegations, which management denies.<sup>16</sup>

Moreover, the medical evidence of record is insufficient to establish appellant's claim. Dr. Ajang treated appellant for "irritability, tension, trouble with sleeping, depressive mood, lack of motivation, crying spells and suicidal ideation without plan." Dr. Ajang, however, did not describe specific factors of appellant's employment factors that caused her condition. Appellant

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<sup>12</sup> *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

<sup>13</sup> *Donald E. Ewals*, 45 ECAB 111 (1993).

<sup>14</sup> *James W. Griffin*, 45 ECAB 774 (1994).

<sup>15</sup> *Raul Campbell*, 45 ECAB 869 (1994).

<sup>16</sup> *Curtis Hall*, 45 ECAB 316 (1994)

has also submitted treatment notes which diagnose stress. These treatment notes are insufficient as they do not implicate a factor of her employment nor are they signed by a physician. Appellant has submitted a report from Mr. Simmons, her therapist in which he opines that appellant's stress is due to her employment. Mr. Simmons' opinion is not sufficient to establish appellant's claim as a therapist is not a physician<sup>17</sup> for the purposes of the Act and cannot supply the medical opinion evidence necessary to establish appellant's claim. Therefore, the Board finds that the Office properly denied her claim.

The August 20, 1996 and December 1, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.  
September 14, 1998

Michael J. Walsh  
Chairman

George E. Rivers  
Member

David S. Gerson  
Member

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<sup>17</sup> A family therapist is not a "physician" as defined in the Act. *See* 5 U.S.C. § 8101(2). Lay individuals such as physician assistants, nurse practitioners, and social workers are not competent to render a medical opinion.