

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

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**I.J., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Pittsburgh, PA, Employer**

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**Docket No. 08-1452  
Issued: November 7, 2008**

*Appearances:*

*Alan J. Shapiro, Esq., 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 April 21, 2008 appellant filed a timely appeal from the merit decisions of the Office of Workers' Compensation Programs dated September 24, 2007 and March 27, 2008 denying her claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review 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 July 25, 2007 appellant, then a 42-year-old clerk, filed a traumatic injury claim alleging that on October 12, 2006 she was verbally attacked by Pat Harris, a clerk, who charged at her twice in an effort to physically assault her. As a result of this incident, she suffered from an increase in her existing depression, anxiety and insomnia. Appellant submitted witness

statements in support of her claim. By letter dated August 9, 2007, the employing establishment controverted appellant's claim.

By letter dated August 17, 2007, the Office advised appellant to submit further factual and medical information in support of her claim within 30 days. No new evidence was timely submitted.

By decision dated September 24, 2007, the Office denied appellant's claim finding that there was insufficient factual evidence to substantiate that she sustained an injury as alleged. It noted that appellant did not sufficiently identify the work events she contended caused her emotional condition and no medical evidence was submitted to establish a diagnosed condition or an opinion on the cause of any condition.

By letter dated October 17, 2007, appellant, through her attorney, requested an oral hearing before an Office hearing representative. A hearing was held on February 6, 2008. At the hearing, appellant testified as to the circumstances of the October 12, 2006 incident. She also discussed her medical care and the counseling that she received. Appellant noted that, prior to the employment incident she was treated by a Dr. Romadale, who left the practice and she saw Dr. Diana Dale, a psychologist, on one occasion before the incident and briefly, but not in consultation, after the incident. She subsequently saw Dr. Erica Delong a psychologist, about three times but did not want to keep her as her doctor. Appellant next saw Dr. Ibrahim Emral, a licensed professional counselor, but he would not write a report until appellant had been a patient for six months. Thereafter, she saw a Dr. Brar for several months and then switched to Dr. Thysseril, who is her current psychiatrist. Appellant noted that she also saw Dr. Michael Mally, a licensed practicing clinical counselor. The hearing representative marked Dr. Mally's August 1, 2007 report as Exhibit 1, but as appellant's attorney did not have an extra copy, it was returned to her attorney who agreed to mail a copy to the hearing representative. The hearing representative provided appellant with 30 days to submit additional written evidence.

By decision dated March 27, 2008, the hearing representative affirmed the Office's decision of September 24, 2007. He found that the evidence of record established that on October 12, 2006, Ms. Harris attempted to assault her. However, the hearing representative denied appellant's claim as the medical evidence was insufficient to establish an injury-related diagnosis.

### **LEGAL PRECEDENT**

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>1</sup> Second, the employee must submit

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<sup>1</sup> *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

sufficient evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>2</sup>

Workers' compensation 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 his 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>3</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 his frustration from not being permitted to work in a particular environment or to hold a particular position.<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 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

The Office hearing representative accepted that on October 12, 2006 Ms. Harris attempted to assault appellant and that this was a compensable work factor. However, appellant's burden of proof is not discharged by the fact that she has established an employment factor which may give rise to a compensable disability under the Act. To establish her claim for an emotional condition, she must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factors.<sup>7</sup> Appellant has not submitted any rationalized medical evidence in support of her claim for an emotional condition. Although she testified at the hearing that she saw numerous medical providers, none of the physicians submitted a report in

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<sup>2</sup> *T.H.*, 59 ECAB \_\_\_\_ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

<sup>3</sup> 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>5</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

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

<sup>7</sup> See *William P. George*, 43 ECAB 1159, 1168 (1992).

support of her claim. The hearing representative noted an August 1, 2007 report by Dr. Mally, a licensed practicing clinical counselor. However, the Board notes that this report is not part of the record on appeal. As appellant has not submitted any medical evidence in support of her claim, she has failed to submit a *prima facie* claim for compensation.<sup>8</sup> The Office properly denied her claim.

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated March 27, 2008 and September 24, 2007 are affirmed.

Issued: November 7, 2008  
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

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<sup>8</sup> See *Donald W. Wenzel*, 56 ECAB 390 (2005).