

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

R.H., Appellant	)	
	)	
and	)	Docket No. 10-2028
	)	Issued: August 24, 2011
U.S. POSTAL SERVICE, POST OFFICE, Rosiclare, IL, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On August 3, 2010 appellant filed a timely appeal of the July 23, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her emotional condition claim. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> and 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 sustained an emotional condition in the performance of duty.

On appeal, appellant contends that she was harassed by her manager which created a hostile work environment.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On February 10, 2010 appellant, then a 53-year-old postmaster, filed an occupational disease claim alleging that on February 3, 2010 she first became aware of her stress and increased blood pressure. She alleged that her conditions were caused by constant and increasing scrutiny by an employing establishment manager of operations for failing to meet his demands to comply with a work-hour budget.

In an e-mail dated February 3, 2010 and a letter dated February 10, 2010, appellant contended that she was verbally harassed by Thomas H. Schomaker, an employing establishment manager of operations, during a telephone conversation on February 3, 2010. As a result, she became visibly shaken and tearful. Appellant involuntarily cried throughout her work shift. She developed a headache, a tingling sensation in her head, high blood pressure and stomach sickness. Appellant was treated at a hospital emergency room for her conditions. She contended that window service customers and Debra Littrell, a clerk, witnessed the stated incident. Appellant advised Mr. Schomaker that she did not want to have any further verbal communication without a proper representative to protect herself from his intimidating yelling and threats.

In a February 12, 2010 e-mail, Allan W. Thomas, an employing establishment assistant manager of operations, stated that he was in Mr. Schomaker's office on February 3, 2010. He discussed his findings related to a review of productivity and utilization of clerks at appellant's station. Mr. Schomaker telephoned her to question the number of hours she worked beyond and above the budgeted hours to complete her work duties during the previous week. Appellant responded that there was too much work in her office to complete within the budgeted hours. Mr. Schomaker suggested that she may be better suited at a smaller facility with a lighter workload. He also suggested that appellant submit her office to a process that would reduce its workload. Mr. Thomas stated that she asked Mr. Schomaker whether he was threatening her with such actions. Mr. Schomaker responded no. Mr. Thomas stated that at no time did he threaten or raise his voice at appellant. Ms. Schomaker simply instructed her to work within the budgeted hours to the best of her ability.

In a February 12, 2010 e-mail, Mr. Schomaker stated that, after Mr. Thomas advised him that there was no justification for appellant to work beyond the budgeted hours based on his report findings, he called her on February 3, 2010. He instructed her to finish her work within the budgeted hours like every other postmaster. Mr. Schomaker suggested that appellant consider a lower level position that she could handle the workload. He also suggested reducing her current workload. Appellant asked Mr. Schomaker if he was making a threat. Mr. Schomaker responded no and stated that he could not have her facility going over budget when another facility was getting the job done without help and without going over budget. He concluded that he never raised his voice at appellant.

By letter dated February 24, 2010, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It addressed the factual and medical evidence needed to establish her claim. Also, on February 24, 2010 OWCP requested that the employing establishment respond to appellant's allegations.

In a February 3, 2010 e-mail, appellant advised Mr. Schomaker that she was emotionally distraught, intimidated and undeserving of the tone of voice he used and his work-related threat. She contended that he acted unprofessionally when he hung up the telephone and refused to validate her concerns. Appellant further contended that Mr. Schomaker threatened to remove her and a clerk from the office if she could not stay within the work-hour budget. He was going to reassign her to a location 75 miles away or send the work in her office to another location. Appellant contended that the review of her office was not accurate as it did not reflect that she and her employees were overworked due to a staff shortage. She usually worked through her lunch break to catch up on Webbats, changing locks, preparing reports and checking and responding to e-mails. Since talking to Mr. Schomaker in the morning on February 3, 2010, appellant had written 27 money orders/postage, made change, accepted 29 packages over the counter, weighed them and applied meter strips, faced and cancelled approximately three inches of letters, delivered 10 packages over the counter, wrote receipts for six box rent payments and performed all "OFS, LOOP and RTS." She worked her clerks over 45 minutes to clear three flats that had been in the office for two days. Appellant still had a full office set of box holder/post card marriage mailing that had not been touched.

In a March 22, 2010 narrative statement, appellant contended that her February 3, 2010 conversation with Mr. Schomaker was one of many conversations either by e-mail or telephone where he acted unprofessionally, rude and emotionally out of control. She stated that Ms. Littrell was visibly shaken from overhearing her conversation. Mr. Schomaker intimidated everyone into working off the clock to avoid the wrath of his temper. Appellant stated that Ms. Littrell worked off the clock everyday during her absence due to carpal tunnel surgery because she could not deal with the demands of the job with limited help or Mr. Schomaker's telephone calls. Ms. Littrell telephoned appellant almost everyday for help with her work. Appellant questioned Mr. Allen's<sup>2</sup> review findings because he left the office before Pam Hicks, a postmaster, filling in for an exhausted clerk, completed her required work duties.

Medical records dated June 13, 2008 through March 22, 2010 addressed appellant's physical and emotional conditions. In a February 3, 2010 hospital record, a physician whose signature is illegible, obtained a history that appellant had a dispute with her new boss on that morning. Appellant had been upset, shaking and crying all day. Her face was flushed red. Appellant believed that her blood pressure was elevated. She was diagnosed with having an acute anxiety reaction and hypertension. In a February 7, 2010 report, Dr. Kenneth G. Cook, a Board-certified family practitioner, obtained a history that appellant had an altercation with her boss at work last week that caused anxiety and chest pain for which she sought medical treatment. He listed his findings on physical examination and advised that she was status post recent job stress with secondary anxiety reaction and chest pain that had resolved. Appellant had hypertension and hypercholesterolemia.

In a March 4, 2010 e-mail, Mr. Schomaker stated that in response to a January 21, 2010 audit conducted by Tom Allen, he asked appellant to explain why she worked 51 postmaster hours when her budget was 44. He advised her that her officer-in-charge did not work this many hours. Mr. Schomaker further advised appellant that Mr. Allen told him that a postmaster from Cave In Rock worked the job and had no problem completing the work on that day even though

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<sup>2</sup> It appears that appellant inadvertently identified Mr. Thomas as Mr. Allen since Mr. Thomas' first name is Allan and he conducted the review of her facility.

she had not worked the job in years. Appellant responded “this is what it takes.” Mr. Schomaker stated that his other 117 postmasters completed the work within their time frame. Appellant rejected his offer to reassign her to a smaller office as it was too far away. Mr. Schomaker stated that he did not suggest that she would receive lower pay if she worked in a smaller facility. He noted that, during the week following the February 3, 2010 incident, appellant authorized overtime for the same number of work hours. Mr. Schomaker reminded her that she had no authority to allow overtime work. He related that the issue for appellant was not about a stress claim, but rather she was trying to take a stand because she felt the district was attempting to reduce her office by excising a clerk. Appellant agreed with Mr. Schomaker and stated that someone had to do it. Mr. Schomaker instructed her to follow her supervisor’s instructions and not to work overtime unless he authorized it.

A March 29, 2010 statement by an unidentified author stated, in response to OWCP’s February 24, 2010 developmental letter to the employing establishment, that appellant was not telling the whole truth. Appellant did not mention that she screamed like a maniac over the telephone.

In a July 23, 2010 decision, OWCP denied appellant’s claim, finding that she did not sustain an emotional condition in the performance of duty. Appellant failed to submit sufficient evidence to establish any compensable employment factors.<sup>3</sup>

### **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.<sup>4</sup> 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.<sup>5</sup>

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 his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>6</sup> On the other hand, the disability is not covered where it results from such factors as an employee’s fear of a reduction-

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<sup>3</sup> On appeal, appellant has submitted new evidence. However, the Board cannot consider evidence that was not before OWCP at the time of the final decision. See 20 C.F.R. § 501(c)(1); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

<sup>4</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>5</sup> See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>6</sup> 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>7</sup>

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.<sup>8</sup> However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.<sup>9</sup> In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.<sup>10</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, 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>11</sup> If a claimant does implicate a factor of employment, OWCP 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, OWCP must base its decision on an analysis of the medical evidence.<sup>12</sup>

### ANALYSIS

Appellant attributed her emotional condition to being harassed and verbally abused and threatened by her supervisor, Mr. Schomaker. The Board notes that harassment or verbal abuse may give rise to coverage under FECA; however, there must be evidence that harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under FECA. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.<sup>13</sup> Appellant contended that on February 3, 2010 Mr. Schomaker acted unprofessionally by yelling at her, threatening to reassign her to another facility and hanging up the telephone on her for failing to complete her work duties within the

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<sup>7</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>8</sup> See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>9</sup> See *William H. Fortner*, 49 ECAB 324 (1998).

<sup>10</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>11</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

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

<sup>13</sup> *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, *supra* note 5 (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, *supra* note 3 (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

work-hour budget. She further contended that Mr. Schomaker exhibited the same behavior on several occasions either by e-mail or telephone. Although appellant stated that customers and Ms. Littrell witnessed the February 3, 2010 incident, she did not submit any statements from them to corroborate her allegation of harassment by Mr. Schomaker, who denied yelling at appellant or threatening to reassign her or her work duties to another facility. Mr. Schomaker stated that he offered to reassign her or her work requirements to another facility in response to her complaint that she could not complete her work duties without going over the budgeted hours. He noted that, during the week following the February 3, 2010 incident, appellant authorized overtime without permission to complete work beyond the budgeted hours. Mr. Schomaker denied suggesting that she would receive lower pay if she worked in a smaller facility. Mr. Thomas stated that he witnessed the February 3, 2010 incident. He related that Mr. Schomaker did not threaten to reassign appellant or her workload or raise his voice at her during their telephone conversation. Mr. Thomas stated that he made suggestions to lessen her workload and simply instructed her to work within the budgeted hours to the best of her ability. The unidentified author from the employing establishment stated that appellant screamed like a maniac over the telephone.

Based on the evidence of record the Board finds that appellant has not established a factual basis for her allegations that she was harassed, verbally abused and threatened by the employing establishment. Therefore, she has failed to establish a compensable employment factor.

The Board notes that appellant's allegations regarding matters related to a transfer,<sup>14</sup> the reassignment of particular job duties and monitoring of work<sup>15</sup> by the employing establishment are administrative functions of the employer, and are not compensable unless the employee establishes error or abuse. Appellant did not submit any evidence to establish her assertion that Mr. Thomas' findings regarding productivity and utilization of clerks in her employing establishment were inaccurate. Further, she submitted no evidence to support her allegation that Mr. Schomaker acted unreasonably in offering to reassign her or her work duties to a different post office. As stated, he suggested reassignment in response to appellant's complaint that she could not complete her duties within the work hours budgeted.

Based on Mr. Schomaker's statement, the Board finds that appellant has failed to establish that the employing establishment committed error or abuse in handling the above-noted administrative functions. Therefore, appellant has failed to establish a compensable factor of employment.

Appellant contended that she was overworked due to a staff shortage. She performed several tasks prior to her lunch break and usually worked through her break to catch up on other required duties. The Board has held that overwork, when substantiated by sufficient factual information to corroborate the claimant's account of events, may be a compensable factor of employment.<sup>16</sup> Appellant did not submit any evidence providing the number of staff on duty and

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<sup>14</sup> *Ernest J. Malagrida*, 51 ECAB 287, 289 (2000).

<sup>15</sup> *See Brian H. Derrick*, 51 ECAB 417 (2000).

<sup>16</sup> *Bobbie D. Daly*, 53 ECAB 691 (2002).

describing the amount of work to be completed during her work shift. She did not provide any specific documentation on the work duties she actually performed during her lunch break to corroborate her being overworked. Appellant merely advised Mr. Schomaker that “this is what it takes” in response to his question about why she worked over her budgeted hours. Mr. Schomaker stated that her claim was not about her employment causing her emotional condition. Appellant agreed with Mr. Schomaker’s statement that instead, she was taking a stand because she believed that the district was attempting to reduce her office by excising a clerk. In response, Mr. Schomaker instructed her to follow her supervisor’s instructions and not to work overtime unless it was authorized by him. The Board finds that appellant did submit sufficient information to establish her allegation of overwork as factual.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 23, 2010 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: August 24, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees’ Compensation Appeals Board

Alec J. Koromilas, Judge  
Employees’ Compensation Appeals Board

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