

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CAROLE GONSALVES and U.S. POSTAL SERVICE,  
POST OFFICE, Philadelphia, Pa.

*Docket No. 96-417; Oral Argument Held June 23, 1998;  
Issued August 3, 1998*

Appearances: *Karen M. Robinson-Thacker, Esq.*, for appellant; *Miriam D. Ozur, Esq.*,  
for the Director, Office of Workers' Compensation Programs.

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant has established that she developed an emotional condition on or after July 10, 1992 in the performance of duty, causally related to factors of her federal employment.

On August 14, 1992 appellant, then a 48-year-old supervisor of mails, filed a notice of occupational disease claiming that in July 1992 she developed an emotional condition in the performance of duty, causally related to factors of her federal employment. Appellant alleged that the postmaster did not want her in his office from day one, that the postmaster and other supervisors "disrespected" her and embarrassed her out on the floor in front of subordinates, that she was subjected to defamation of character, that she was treated differently from other supervisors, that she was being lied about to other managers, and that she was threatened with firing, which caused her to develop a job-related stress condition. The postmaster stated that appellant's allegations were false, and he noted that she stopped work July 17, 1992 and did not return.

On July 23, 1992 the employing establishment scheduled appellant for a fitness-for-duty examination in conjunction with her claim, with a physician selected by the employing establishment. The examining psychiatrist was instructed to consult with the postmaster after he examined appellant.

In a report dated July 31, 1992, Dr. Perry A. Berman, a Board-certified psychiatrist, noted that appellant would not discuss the nature of her injury or the stress *per se* with him. He noted that she alleged that management was "stressing her," that they continuously harassed her, constantly upset her, and did everything against the rules, and that ordering this fitness-for-duty examination was an example of their malevolence towards her. He indicated that, although

management claimed she was not doing her work properly, she stated that nothing they said was true. Dr. Berman noted that appellant's assignment to Upper Darby was the beginning of the problem, that appellant had sought assignment elsewhere, and that the Upper Darby Postmaster, whom appellant alleged did not want her, was forced to accept her against his wishes. He indicated that appellant believed her assignment to Tour I, 1:00 a.m. to 9:30 a.m., was punishment for having to accept her. Dr. Berman noted that appellant was assigned to supervise mail casing and mail carriers, but had no training as a carrier nor training to supervise them. He noted that appellant alleged that nothing she did could please the postmaster, that others would do things to make her look bad or incompetent, that her reports disappeared and the postmaster claimed she never did them, that she was demeaned and humiliated in front of other employees, and that she heard them talking about getting rid of her. No further relevant factual information was elicited from appellant or ascertained by Dr. Berman from his examination.

However, a week prior to examining appellant, Dr. Berman had contacted the postmaster, Patrick Curry, and had discussed appellant's case. Dr. Berman noted that Mr. Curry stated that he had agreed to take two supervisors, had interviewed appellant, but had not selected her for one of the two positions. Mr. Curry told Dr. Berman that after one of his choices left, he had been instructed by the Director of Human Resources to take appellant, and that he objected to that direction. Mr. Curry claimed that during appellant's six months of work at his facility, her work had been very bad. He claimed that he tried to train her but that she did not catch on. Mr. Curry claimed that there had been numerous problems with appellant's actual work performance and that she had been given a letter of warning about her work. Mr. Curry claimed that as a result of appellant's poor work, a meeting had been scheduled, but that it never took place because appellant called in sick due to a stress-related work situation. Mr. Curry claimed that appellant's job stress originated the night before she was to be confronted about her not performing adequately. Mr. Curry identified appellant's difficulties as including missing or lost reports, and reports not correctly filed. As a result of reports not being correctly filed, Mr. Curry told Dr. Berman that he was disciplined due to her lack of performance. Mr. Curry told Dr. Berman that when he tried to talk to appellant about deficiencies, she would deny that the problem existed or that there was anything wrong, that she would become argumentative and counterattack, that she was rigid and unwilling to compromise, and that she could not accept criticism and felt all of her supervisors were against her.

Dr. Berman commented that appellant was generally antagonistic and unhelpful, and that she did not discuss what actually stressed her at work. He opined that appellant continued to present facts in a distorted manner but felt they were true, and opined that to that extent she appeared delusional and unchanging in paranoid perceptions. Dr. Berman diagnosed a delusional paranoid disorder and a paranoid personality, and opined that delusional disorders do not come from work stress *per se*, but instead opined that her work stress came from her paranoid perceptions. He opined that appellant did have a mental illness not caused by her work.

Appellant submitted a copy of her 1992 performance evaluation, indicating that the statements contained therein were not true, and a September 22, 1992 formal request for a review of her performance evaluation for 1992. She alleged that she had requested that Superintendent of Postal Operations (SPO) James F. McNally modify and reevaluated the written factors of her position based upon how unrealistic they had become due to the existing conditions and rapid

changes from March to July 1992 due to automation. Appellant stated that he flatly refused, and that when she asked him to put that in writing he replied "No," stating that he would never give her any request in writing. She further alleged that both the postmaster and the SPO twisted and lied about the facts to suit themselves, that she never was an incompetent supervisor, and that she was informed by the postmaster and by others that the postmaster was unhappy and did not like or wish to go along with the arrangements that had been made for appellant's employment, but that she still tried to get along to make things work, but was rewarded with deception, dishonesty, deceitfulness and racism by management.

Appellant submitted an October 26, 1992 letter she received in response to her equal employment opportunity complaints alleging discrimination based on race, color, sex and age, which reported that the postmaster denied that she was discriminated against while at Upper Darby, that the postmaster did make it known to his boss that he did not want an unassigned supervisor placed in his office from outside Upper Darby, but that this was made known before he even knew who it would be, and that once she was assigned, he did not treat her any different than any other supervisor. The letter reported that the postmaster and SPO McNally stated they did not discriminate against appellant, and that notes for appellant were left in her box and not out on the desk. The letter reported that SPO McNally gave appellant a letter of warning after numerous discussions and complaints from other offices regarding her running of sort plans without contacting the other offices involved. He also alleged that she failed to follow instructions. The postmaster and SPO McNally denied appellant was denied training, and the postmaster denied ever telling Dr. Berman she was incompetent, and denied having anything to do with appellant seeing Dr. Berman. The letter stated that SPO McNally gave appellant an unsatisfactory rating when she failed to give him her accomplishment letter after he asked for it twice, and that he was willing to discuss it with her.

In a March 1, 1993 letter to the Office of Workers' Compensation Programs, appellant provided further information in support of her allegations, including a statement of all of her job responsibilities. Appellant stated that on or about January 31, 1992 the postmaster informed her in front of the SPO that he did not want her in his office and told her that she would be working Tour I for the rest of her postal career and that neither he nor the SPO would sign off on any paperwork as far as promotion, upward mobility or anything positive were concerned. Appellant alleged that she was treated differently from other supervisors. She claimed that the postmaster's and SPO's direct treatment and expressed feelings toward her were directly responsible for the climate set and for the disrespect which ensued from appellant's peers. Appellant alleged that SPO McNally left insulting notes on her desk and never asked her anything before he came to his own conclusions. She alleged that he and the postmaster and other supervisors would wait until she was involved in checking another operation, and then instruct her employees to do something else other than their correct assignments thus delaying the mail. Appellant alleged that she could produce notes left by SPO McNally and other supervisors. Appellant alleged that the letter of warning by the SPO was just a continuation of an attempt by the postmaster and SPO to destroy her good record she had upon her arrival at Upper Darby. Appellant claimed that issues in the letter of warning were not true. She stated that she, as supervisor in charge, was given direct orders not to be in charge. Appellant alleged that this was a further attempt to degrade and demean her character. Appellant claimed that no other supervisor in the building was given such conflicting orders, and that she was given direct

orders by the postmaster and SPO which would conflict with each other minute by minute. Appellant claimed that hardly a day went by that the two of them were not trying or planning something negative geared in her direction. She claimed that this attitude and the negative things they did and said soon spilled over to affect the actions of the other supervisors. Appellant alleged that reports started disappearing, that they tried to hold her responsible for anything that happened in that office, even on days when she was not scheduled, and that she was never included in the plans that were being made, nor in the day-to-day changes necessitated by office downsizing. She alleged that she was never wanted in that office nor was she ever felt to be part of the team. Appellant stated that in the five months of being assigned to that office, these people systematically tried to destroy everything she had accomplished and worked for prior to her arrival in that office. Appellant alleged that the postmaster and the SPO were seeking to destroy her credibility, to change her good record, and to put as many negative and untrue statements in her folder as possible, to give out discipline and to give her a bad merit evaluation. She alleged the postmaster and SPO lied to their superiors and that nothing they said was true or correct. Appellant alleged that the postmaster, the director of field operations, the SPO and her fellow supervisors never wanted her in that office and began the day she arrived to be underhanded, to lie, to scheme, and to try to do everything within their power to have her considered incompetent. She alleged that these constant negative actions on a daily basis, the everyday lies, the disrespect, the deceit, the holding her back, the trying to destroy her records, the degrading and demeaning ways in which she was treated, was a disgrace to the employing establishment and caused her health to deteriorate. Appellant alleged that the postmaster stood up at a postmasters' meeting and stated that he would like to get rid of appellant in his office and to replace her with someone else he wanted because appellant was incompetent and received an unsatisfactory merit evaluation. She also alleged that he got her out of the way to enable him to get a charge assignment for the person he had been trying to move up for promotion.

Also received by the Office on March 1, 1993 were two December 1992 form reports from Dr. John M. Gentry, a physician of unlisted specialty, who noted as history of injury that appellant was suffering from extreme stress and depression reported to be due to her job, who noted no history of preexisting injury or disease, and who diagnosed an adjustment disorder. Dr. Gentry checked "yes," indicating that he believed the condition found was caused or aggravated by an employment activity, and he stated that appellant said this was brought about because of job stress. He remarked that appellant appeared to be suffering from extreme stress and depression during her treatment from July 22 to September 10, 1992.

Appellant submitted a copy of the letter of warning she received from SPO McNally. The SPO accused appellant of not following instructions by failing to notify Bala Cynwyd of the volume of mail received, which caused operational problems, causing delayed service to Bala Cynwyd, and of not following instructions regarding notification of Ms. Bosch to fill in for her the next day when she was expected to be at a hearing. SPO McNally claimed that appellant had been instructed that if she could not reach Ms. Bosch, she was to report to work at 1:00 a.m. and would be relieved at 7:30 a.m. to report for the hearing at 8:30 a.m. SPO McNally noted that appellant failed to contact Ms. Bosch and instead called at 1:10 a.m. and informed a clerk that Charles McDonald would be in charge of appellant's Tour. SPO McNally stated that Mr. McDonald had no training or supervisory experience at that office. He claimed that she signed in at 5:30 a.m. but left at 6:45 a.m. before her replacement arrived at 7:30 a.m., leaving

her Tour unattended without proper supervision, and that her omissions required that additional work hours be used at Bala Cynwyd on June 16, 1992 due to lack of proper information.

In rebuttal, appellant submitted a June 26, 1992 letter from the union president to the SPO on her behalf, appealing the letter of warning he issued appellant for failure to follow instructions. The union president noted that the SPO alleged that on June 16, 1992 appellant failed to follow his instructions to notify Bala Cynwyd of mail volumes and to receive their input, but the union president noted that appellant talked to a supervisor at Bala Cynwyd, and notified them that Upper Darby had received approximately 14 feet of mail for Bala Cynwyd. Thereafter, appellant found it necessary to call them back and to notify them that there was only 4 to 5 feet of mail for them, the rest being misssent mail. The union president argued that, therefore, appellant did notify the office concerned regarding the mail volume. The union president noted that appellant was subsequently removed from that operation at 7:00 a.m. by the SPO, and sent to the manual operation. The union president then noted that the SPO also held up the truck on that day which may have caused problems at the Bala Cynwyd office. The union president noted that appellant did follow the SPO's instructions on contacting Bala Cynwyd.

The union president also noted that on June 16, 1992 the SPO notified appellant of a request for her to appear as a witness for an arbitration hearing, that the SPO had had this notification since the previous Friday, but that he waited until Tuesday to instruct appellant to schedule Ms. Bosch, that when on Tuesday he instructed appellant to schedule Ms. Bosch. Ms. Bosch had already left for the day, and that he then told appellant to do whatever was necessary. The union president noted that as the SPO knew appellant would be needed for an entire day for the hearing, it would have been unreasonable to schedule her for 1:00 a.m. on the day needed, which would have resulted in FLSA violations and postal violations of a 12-hour time limit, that when appellant attempted to call the employing establishment on the next morning no one answered the telephone between 12:00 midnight and 1:00 a.m., that appellant finally got Mr. McDonald, a previous supervisor at another office who was familiar with the Upper Darby early morning operations, to cover her operation, that she reported to work at 5:30 a.m., briefed her replacement on the status of the operations, checked the dock area prior to leaving for the hearing, made arrangements to correct a problem there that she discovered, and discussed the best travel route with an employee prior to leaving. The union president argued that therefore appellant did not fail to follow either of the SPO's instructions, and argued that the letter of warning should be rescinded and expunged from appellant's records, and an apology be forthcoming.

In support of her claim, appellant submitted a March 11, 1993 report from Dr. David Behar, a Board-certified psychiatrist. Dr. Behar diagnosed major depression, noted that appellant never had any psychiatric hospitalization or been placed on psychiatric medications, that she dated the onset of her depression to July 1992, that she was a post office supervisor whose postmaster degraded her with low ratings, and that the postmaster refused to sign off on paperwork she needed, despite six prior years of good ratings. Dr. Behar noted that appellant was not paranoid, but that she had experienced violent ideas about the post office, and when she returned to the post office even briefly, she got violent ideas about shooting up the supervisors but not the employees. He noted that appellant felt quite uncomfortable in the post office and had to exit quickly. Dr. Behar noted that appellant's family history was negative for

psychiatric problems, that her mood was depressed, and that she denied any psychotic ideas. Dr. Behar diagnosed appellant as having depression but no developmental disabilities or personality disorders were documented. He noted that appellant's stress level was mild to moderate due to job conflict, and opined that work stresses do not cause major depressive episodes, however, they worsen them.

By decision dated May 15, 1993, the Office rejected appellant's claim finding that the evidence of record failed to establish that an injury was sustained as alleged. The Office found that the following allegations were compensable factors of appellant's employment: that appellant was left insulting notes where other employees could see, that without her knowledge, management would make changes in the assignments of employees that she supervised, that she was unable to perform her work due to the way her supervisor intervened in her work, that she was issued warning letters about reports, that she was given direct orders on how her job should be done and was not always allowed to make her own decisions on supervising, that she was given conflicting orders by her supervisor and the SPO, that she was held responsible for errors made or reports that were lost, that she was not notified of changes or included in plans on downsizing, and that she was given more and more areas to supervise after she was there a few months. The rest of appellant's allegations were found not to be considered compensable factors of employment. The Office noted that Dr. Berman stated that appellant "developed a paranoid delusional disorder and it was superimposed and/or in conjunction with a paranoid personality." The Office noted that he stated that it was not caused by her work, The Office further noted that Dr. Behar did not say what caused her condition. Therefore, the Office concluded that the record did not support that a medical condition arose out of factors of appellant's employment, and denied appellant's claim on the basis that she failed to establish fact of injury.

By letter dated June 18, 1993, appellant, through her representative, requested a hearing on the denial of her claim. By letter dated August 3, 1993, the Office noted that appellant's hearing request was not made within 30 days of the date of the Office's final decision, and thus, appellant was not as a matter of right entitled to a hearing. The Office, however, further considered the matter in relation to the issue involved, and denied appellant's request finding that the issue could be equally well addressed through a request for reconsideration by the Office, accompanied by new and relevant evidence not previously considered.

By letter dated January 19, 1994, appellant, through her representative, requested reconsideration. Appellant's representative provided witness statements regarding observation of mistreatment appellant endured, and she alleged that this ill treatment was responsible for causing undue stress resulting in appellant's illness. Appellant's representative also alleged that the evidence submitted established systematic and continuous ill treatment, and the negative repercussions of the situation caused appellant's physical disability.

Accompanying appellant's reconsideration request were several employee statements. A May 15, 1992 statement from Gene Viller noted that he thanked appellant for her kind consideration and patience with his problems, and stated that she changed the atmosphere on Tour I. Mr. Viller noted that, having heard the malicious, vindictive stories about appellant, and having been the brunt of false reporting himself, he could truly relate to the stress and pressure she was experiencing. He noted that despite the stress she was experiencing because she was not

hand picked, she was head and shoulders above him in her actions. Mr. Viller commended appellant for conducting herself admirably despite the petty negativeness surrounding her and despite the constant obvious press of being unwanted.

In a June 23, 1992 statement, Vincent Onorato credited appellant with having a sincere attitude, strong determination, and unquestionable capabilities, with keeping harmony, delegating authority exactly, and showing mutual respect. He credited her with a positive attitude, fairness, encouragement, conscientiousness, responsibility, and a willingness to learn.

A July 27, 1992 letter from William O'Keefe reported the events of June 16, 1992, for which appellant received a letter of warning. Mr. O'Keefe stated that they were processing the Bala Cynwyd mail as usual when they received 21 trays of mail labeled Bala Cynwyd. As they began to process this, they saw that many trays were mislabeled. Mr. O'Keefe stated that he advised appellant that Bala Cynwyd had only about six trays and that the others were mislabeled and she told him that she would check and let him know how to process this Bala Cynwyd mail. Several minutes later appellant returned and instructed Mr. O'Keefe how to process the six trays doing a "two pass"; he did so, and dispatched these trays to the mailhandler, Leo P. Peterson, before 7:30 a.m.

The mailhandler receiving the Bala Cynwyd mail, Leo, provided a statement which picked up where Mr. O'Keefe's left off. Leo noted that appellant normally was required to cover the clerks and casuals on the machines, the clerks on the distribution side, and to watch the mailhandlers load and unload trucks on the platform and inside where the clerks separated the mail. However, on June 16, 1992 Leo stated that he observed appellant on the clerks' side and not over by the machines. He stated that he asked her what was up and she told him that SPO McNally had told her to go over to the distribution side and to stay over there and he, SPO McNally, would cover the machine side. Leo stated that he asked the machine clerks and that they verified appellant's statement. Leo stated that at 3:00 a.m. he pushed out the Bala Cynwyd mail to the platform. At 3:30 a.m. the truck for Bala Cynwyd-Drexel Hill came to take the mail. He stated that he went inside to find out about Drexel Hill and was told by the clerks on the machines that SPO McNally told them to "do a one pass and push it to the side for later on." Leo noted that on his way back out SPO McNally asked him where the driver was going, he told SPO McNally, and SPO McNally told Leo that the driver could take the other mail that was ready on the platform. Leo told SPO McNally that trucks came in at 7:00 a.m. for the other offices and that this driver took Bala Cynwyd-Drexel Hill mail. Leo noted that the driver came in and SPO McNally asked him about taking the other offices and the driver said it did not matter to him but to call his boss to see if it was okay. Leo noted that, therefore, the mail for Bala Cynwyd and Drexel Hill did not leave Upper Darby until 8:30 a.m. or 8:45 a.m.

A July 28, 1992 statement from John A. Graham credited appellant with being very efficient and conscientious, and for creating miracles when machines break down or when the mail arrives late for processing.

Also submitted were several new medical reports. A July 12, 1993 report and an October 22, 1993 report from Dr. Conrad K. King, Jr., an internist, both noted that appellant continued under his care for "treatment of an adjustment disorder with mixed emotional features (job related)."

A July 16, 1993 report from Dr. Laurene Y. Finley, a clinical psychologist, noted that she had three evaluation sessions with appellant, indicated that appellant appeared emotionally labile, quite depressed and manifested a state of controlled anger, but had no disorganized, psychotic thinking. Dr. Finley noted that, upon reassignment in February 1992, appellant reported being directly informed that she was not wanted, that information was held back from her, and that employees received negative information about her. Dr. Finley noted that appellant reported no prior history of psychological problems, and no prior use of psychotropic medications or psychological treatment. Dr. Finley noted that appellant reported the etiology of her problems as the February 1992 lateral transfer, and reported that the occupational environment was administratively intrusive and hostile, and that she felt isolated and unsupported. Dr. Finley diagnosed reactive depression subsequent to experienced, severe occupational stress, and opined that it was important not to dismiss appellant's complaints of work discrimination as simply the result of paranoid, delusional thinking.

A September 28, 1993 report from Dr. Roy G. Fitzgerald, a Board-certified psychiatrist of professorial rank, noted that, prior to February 1992 appellant did quite well in the postal service, advancing to become a supervisor in the Bulk Mail Center, however in February 1992 she was transferred to the Upper Darby office where she stated she was subjected to ongoing multiple, extreme and very upsetting work stresses. Dr. Fitzgerald noted that appellant told him that when she first arrived she was not wanted by the postmaster, that the postmaster would not help her advance, that she was criticized in front of subordinate employees, and that attempts were made to systematically discredit her. He noted that appellant said she was treated unfairly compared to other supervisors and was given conflicting orders. Dr. Fitzgerald noted that appellant stated that subordinate white employees even noticed the disparaging treatment she received, and told her that "they" were all against blacks and particularly black females. He noted that appellant was scrutinized with the postmaster coming to work during Tour I on two consecutive days and standing over her with pad and pen. Dr. Fitzgerald stated that an employee who had been there for 20 years had never seen that before. He noted that when appellant returned from being off for a few days she discovered that her report had been lost. Dr. Fitzgerald also noted that appellant said that Dr. Berman threatened her with being fired from the post office for what she was saying. He noted that the stresses kept building up on appellant and she had to stop work and seek medical treatment for her nerves. Dr. Fitzgerald noted Drs. Minati Pattanayak, Behar and Persons all diagnosed appellant with depression, and that she underwent group therapy sessions about her work stress. Dr. Fitzgerald noted upon examination that appellant spoke with much anger and depressive cognitions, that she talked a great deal about how badly she had been treated, how upsetting it was for her, and how unfair it was, and she continually questioned why it had happened to her. He noted no signs of psychotic or paranoid delusional thinking, and noted that appellant's judgment seemed to be intact, but indicated that she was clearly obsessed and depressed with the traumatic work experience. Dr. Fitzgerald diagnosed major depression with psychotic features with the psychotic features in remission, and he opined that within a reasonable degree of medical psychiatric certainty appellant's illness was precipitated by work stress incurred while working at the Upper Darby employing establishment. He based this opinion on the absence of any previous psychiatric history as confirmed by several reports as well as by appellant, and based upon the detailed history of the difficulties appellant was working against when matched with her high expectations and ambitions to advance which were being continually threatened and in fact



frustrated by her co-workers and supervisors. Dr. Fitzgerald opined that this clearly resulted in a situation where appellant felt helpless and broke down as previously noted. Dr. Fitzgerald disagreed with Dr. Berman, and noted that he was puzzled that Dr. Berman could decide appellant had a paranoid illness prior to the work difficulties when there was no history of that. He also disagreed with Dr. Behar stating that he had had many patients who developed major depressive episodes from extreme stresses at work, but who have been able to return to work after their depressive symptoms resolved. Dr. Fitzgerald opined that appellant became mentally disturbed and ill as a result of work stress factors.

A November 23, 1993 report from Dr. Fitzgerald noted that he continued to treat appellant for her depressive condition. Dr. Fitzgerald noted that at that time appellant was detailing more clearly the problems that led to her work-related injury. He noted that she still remained preoccupied with the unfairness and the "harassments" that occurred against her at the Upper Darby post office the preceding year. Dr. Fitzgerald noted that he found that appellant became increasingly anxious, upset, and depressed upon reviewing her logs of last year's work incidents. He opined that it would clearly benefit appellant for her to be able to resume her work. Dr. Fitzgerald stated that his opinion differed from the opinions of Drs. Behar and Berman. He noted that he agreed with Dr. Behar that appellant had a depressive illness, however, he noted that he had seen many cases who have had their depressions precipitated by stressful life situations including those that occur at work. He noted that these were situations which had to do with continuing in extreme stress such as the work harassment that appellant reported. He also noted that many patients on recovery from depression have been able to resume work-related duties. Dr. Fitzgerald noted that Dr. Berman perceived and diagnosed appellant as having a paranoid psychotic disorder clearly based upon inadequate information and admittedly very limited interviewing as he detailed in his report. He noted that it was also clear that at that time appellant was appropriately suspicious of him as she saw him as being a agent of her harassing supervisor. Dr. Fitzgerald noted that Dr. Berman did indeed have a conversation with the postmaster about her work when she was not present. Dr. Fitzgerald noted that he had seen no evidence of paranoid psychosis as Dr. Berman diagnosed in all of his time as appellant's treating psychiatrist. Dr. Fitzgerald further opined that, with respect to the diagnosis of delusional paranoid disorder, he found nothing appellant told him about what happened as being beyond the realms of probability. Dr. Fitzgerald noted that with regard to Dr. Berman's diagnosis of paranoid personality, which was a long-term disorder of believing and thinking in which the patient feels exploited and reads hidden meanings into benign remarks and events, that he had seen no evidence in his work with appellant. Dr. Fitzgerald concluded that Dr. Berman made a diagnosis of a long-term disorder on the basis of an admittedly brief and inadequate interview during which appellant was appropriately suspicious and was undergoing very trying circumstances, and that therefore he rejected Dr. Berman's diagnosis as being without ongoing substantiating evidence.

By decision dated May 18, 1994, the Office denied modification of the prior decision finding that the evidence submitted was insufficient to warrant modification. The Office found that Dr. Fitzgerald did not cite specific work factors which precipitated appellant's condition, and it concluded that her condition must be considered self-generated.

By letter dated May 10, 1995, appellant, through her representative, again requested reconsideration, and argued that the cumulative ill treatment appellant received was the proximate cause of her undue stress and strain. Appellant's representative argued that the included exhibits established the systematic and continuous treatment to which appellant was exposed caused her illness. The representative noted that appellant never spoke with Dr. Behar but spoke instead with Dr. Schechter, a psychologist with whom Dr. Behar was associated, and that Dr. Behar only prescribed medication for appellant. The representative noted that the Office's statement that Dr. Fitzgerald did not cite specific work stressors which precipitated appellant's condition was blatantly untrue, as he went into detail on pages one and two of his report as to appellant's "difficulties," including being continually threatened and frustrated by her co-workers and supervisors, being told by the postmaster that she was not wanted, being told by the postmaster that he would not help her advance, being criticized in front of subordinate employees, being systematically discredited, being treated unfairly in relation to other supervisors, being given conflicting orders, being unduly scrutinized, and having her reports lost.

In support of the reconsideration request, appellant submitted a May 3, 1995 letter from Robert L. Towns, the National Association of Postal Supervisors mideast area vice-president, which stated that an agreement was announced by the Division Manager to swap transfer appellant to Upper Darby for a bulk mail supervisor wanting to return to Philadelphia, and it was agreed that appellant would be placed in the position vacated by the supervisor returning to Philadelphia. However, upon appellant's arrival at Upper Darby it was apparent by the attitudes and actions of Postmaster Patrick Curry that appellant was not welcome as a supervisor at Upper Darby. Mr. Towns noted that postmaster Curry did not honor the agreement to place appellant in the vacated position and he stated that as postmaster he would place her where he wanted to. Postmaster Curry also told appellant that it was not his idea to bring her there, and Mr. Towns noted that appellant had contacted him on the situation and the disrespectful treatment by the Upper Darby postmaster and SPO McNally. Mr. Towns noted that he contacted Postmaster Curry, who stated that he did not ask for the transfer and if he had to take appellant as instructed by the Division he reserved the right to place her into any position in Upper Darby, and that he was not going to give her the position in question. Postmaster also told Mr. Towns that he had too many people who deserved that position and appellant would not get it. Mr. Curry stated that if he had his way, appellant would not be in Upper Darby at all. Mr. Towns noted that SPO McNally concurred with Mr. Curry and also had a very disrespectful attitude to Mr. Towns on the telephone. The Division Manager stated that he would not override the Upper Darby postmaster on the position placement, however, he stated that appellant would remain in Upper Darby and would be treated fairly and respectfully and not treated differently than other supervisors. Mr. Towns noted that shortly thereafter appellant called complaining about being harassed and given unfair treatment as a supervisor, which eventually led to illness. He further noted that he received statements from employees supervised by appellant reporting the unfair treatment she was receiving from the postmaster and the SPO. Mr. Towns noted that the Division Manager spoke to the Director of Field Operations to speak to Mr. Curry and to monitor the issues surrounding appellant's employment at Upper Darby. Mr. Towns noted that he had had several conversations with the Director of Field Operations regarding Mr. Curry's attitudes, behavior and actions against appellant.

Also submitted was a November 10, 1994 report from Dr. Fitzgerald. Dr. Fitzgerald restated the factors that appellant alleged caused her emotional condition, including being told by the postmaster that she was not wanted, being told that he would not help her advance, being criticized in front of subordinate employees, being systematically discredited, being treated unfairly compared to other supervisors, being given conflicting orders, being scrutinized, and having her reports lost intentionally. Dr. Fitzgerald noted no overt signs of psychotic or paranoid delusional thinking, and indicated that appellant's judgment appeared to be intact. He opined that appellant had major depression, and opined that within a reasonable degree of medical certainty this illness was precipitated by work stress incurred while working for the employing establishment at Upper Darby. Dr. Fitzgerald reviewed specific incidents of mistreatment and opined that all of this clearly resulted in a situation in which appellant felt helpless and broke down, and opined that appellant became mentally ill as a result of work stress factors.

By decision dated August 16, 1995, the Office denied modification of the prior decision finding that the evidence submitted was insufficient to warrant modification. The Office found that the new medical report was substantially similar to Dr. Fitzgerald's previous reports, and found that the factors cited by Dr. Fitzgerald were not considered as arising out of appellant's day-to-day work duties, and hence were not in the performance of duty.

The Board finds that this case is not in posture for decision.

The issue before the Board on appeal is whether, with regard to all of the evidence of record, the prior decisions were in accordance with the weight of that evidence.<sup>1</sup> The Board has held that the regulations governing both the Office and the Board, enabling the Board to weigh the evidence *de novo* and to make a final decision on the merits of the case, constitute a valid exercise of lawful authority derived from the reorganization plans of 1946 and 1950.<sup>2</sup> Hence, the Board can and will review and weigh *de novo* all of the evidence of record, and review all of the findings of fact made by the Office, to ascertain whether such findings are in accordance with the law and facts of the case.

To establish appellant's claim that she has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized 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>3</sup> Appellant has made such a *prima facie* showing in this case.

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are

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<sup>1</sup> See *Clara Anne Andresen*, 5 ECAB 42, 45 (1952).

<sup>2</sup> See *Clinton K. Yingling, Jr.*, 4 ECAB 529, 537 (1952).

<sup>3</sup> See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

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>4</sup> If a claimant does implicate a factor of employment, the Office should then determine whether that factor is compensable, and whether the evidence of record substantiates that factor.<sup>5</sup> When the matter asserted is a compensable factor of employment, and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.<sup>6</sup>

In the instant case, the Office found that several factors of employment implicated by appellant were compensable and were supported by the record. These factors, as stated by the Office, included: that appellant was left insulting notes where other employees could see them; that management would make changes in appellant's employees' assignments that delayed mail; that appellant was unable to perform her job due to the way her supervisors intervened in her work; that appellant was issued warning letters about reports; that appellant was given direct orders on how her job should be done; that appellant was not allowed to make her own decisions on supervising; that appellant was given conflicting orders by her supervisor and by the SPO; that appellant was held responsible for errors made or reports that were lost; that appellant was not notified of changes being made; that appellant was not included in plans on downsizing, etc.; and that appellant was given more and more areas to supervise after she was there a few months.

The Board now further finds that other factors implicated by appellant are also compensable and are supported by significant evidence of record. These factors include: that the postmaster did not want appellant and told her and others; that she was deliberately not assigned to the lateral position to which she agreed to be and was specifically transferred by the Division; that malicious and vindictive stories were being spread about appellant; and that appellant was treated with disparagement. All of these allegations fall into the categories of harassment, verbal abuse, difficult relationships and administrative error or abuse.<sup>7</sup> Further, these allegations are supported by statements of record from Mr. Towns and from Mr. Viller. The Board also notes that some of the factors accepted by the Office were not as fully articulated by the Office as the total evidence of record supports; namely, that appellant was specifically ordered to change her performance duties which set her up for receipt of a letter of warning for a situation she did not create, that appellant was not timely given information necessary for her to successfully perform her duties as ordered, again setting her up for a letter of warning, and that appellant was held responsible for reports lost and errors committed on days when she was not even assigned them.

The Board notes that instances of harassment, verbal abuse, or difficult relationships with supervisors or coemployees, when supported by the evidence of record, and when implicated in

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<sup>4</sup> See *Barbara Bush*, 38 ECAB 710 (1987).

<sup>5</sup> See *Martha L. Watson*, 46 ECAB 407 (1995).

<sup>6</sup> See *Gregory J. Meisenberg*, 44 ECAB 527 (1993).

<sup>7</sup> See *Angie Brumfield*, 46 ECAB 867 (1995); *Ruth S. Johnson*, 46 ECAB 237 (1994); *Elizabeth Pinero*, 46 ECAB 123 (1994).

causing an emotional condition, may constitute a basis for payment of compensation.<sup>8</sup> In evaluating emotional condition claims under the Federal Employees' Compensation Act, the term harassment is generally synonymous with a persistent disturbance, torment or persecution, *i.e.*, mistreatment.<sup>9</sup> In the present case, appellant has submitted significant evidence from her subordinates attesting to the difficult relationship she had with the postmaster and the SPO, and the torment and persecution she endured when they changed her instructions given to her subordinates, changed her assignments, interfered with the job performance of her subordinates, and then blamed her and gave her letters of warning. The Board finds that this harassment, as documented by the evidence of record, created tense, difficult relationships between appellant and her superiors, and is, therefore, a compensable factor of employment.

The Board further notes that the medical evidence of record provided by appellant consistently establishes that appellant developed an emotional condition or psychiatric disorder, and identifies that emotional condition as major depression. This is evident from the reports of Drs. Gentry, Behar, King, Finley, and Fitzgerald. Additionally, the reports of Drs. Gentry, King, Finley and Fitzgerald relate the development of this condition to appellant's employment. However, only Drs. Finley and Fitzgerald included specific mention of individual factors of employment implicated in the development of appellant's condition. Dr. Finley identified four compensable factors; appellant being informed that she was not wanted, information being withheld from appellant, employees receiving negative information about appellant, and administrative intrusion, as being implicated in causing the occupational stress to which appellant reacted depressively, and Dr. Fitzgerald identified five compensable factors; appellant being told by the postmaster that she was not wanted, being given conflicting orders, receiving disparaging treatment, her reports being lost, and appellant being harassed in several ways, as being implicated in causing the occupational stress to which appellant reacted depressively.

Proceedings under the Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>10</sup> This holds true in occupational emotional condition claims as well as in initial traumatic injury claims. In the instant case, although none of appellant's treating physicians' reports contain rationale sufficiently specific to completely discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that she developed an emotional condition, causally related to her federal employment, they constitute sufficient substantial evidence in support of appellant's claim to raise an undeniable inference of causal relationship between her emotional illness and compensable factors of her employment, that is sufficient to require further development of the

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<sup>8</sup> See, *e.g.*, *Paul Trotman-Hall*, 45 ECAB 229 (1993); *Samuel F. Mangin*, 42 ECAB 671 (1991); *Mildred D. Thomas*, 42 ECAB 888 (1991).

<sup>9</sup> See, *Trotman-Hall*, *supra* note 8 at 236.

<sup>10</sup> *William J. Cantrell*, 34 ECAB 1223 (1983).

case record by the Office.<sup>11</sup> Additionally, there was no opposing medical evidence provided by an Office medical adviser or otherwise obtained by the Office in the record.<sup>12</sup>

Therefore, this case must be remanded to the Office for further development including the preparation of a statement of accepted facts detailing all of the accepted compensable factors of employment, and the referral of this statement with the complete case record, to an appropriate psychiatric specialist, with a request for a rationalized second opinion as to whether the identified compensable factors of employment caused or contributed to the development of appellant's disabling emotional condition.

Consequently, the decision of the Office of Workers' Compensation Programs dated August 16, 1995 is hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, D.C.  
August 3, 1998

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>11</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>12</sup> The Board notes that a fitness-for-duty examination arranged by the employing establishment and participated in by the supervisor implicated by appellant in causing the disabling condition, is highly prejudiced, and cannot be relied upon by the Office to deny appellant's claim; *see, generally, Samuel Theriault*, 45 ECAB 586 (1994); *Terrance R. Stath*, 45 ECAB 412 (1994); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.6 (April 1993).