

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANE B. COPELAND and U.S. POSTAL SERVICE,
POST OFFICE, Washington, D.C.

*Docket No. 97-527; Submitted on the Record;
Issued May 14, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition in the performance of duty.

On October 23, 1995 appellant, then a 39-year-old general clerk, filed a notice of traumatic injury alleging that she suffered emotional stress and memory loss as a result of a robbery within her building on October 20, 1995 during the course of her federal employment.

Appellant's supervisor, Lennie M. Jones, subsequently indicated that appellant was in the front office at the time of the robbery and that this office was "far and away from the area of the robbery." He indicated that appellant's knowledge of the robbery was given to her by employees directly involved in the incident.

An employing establishment report indicated that the robbery occurred on October 20, 1995 at approximately 2:45 p.m. when two armed individuals entered the building through a rear door.

On December 6, 1995 the Office of Workers' Compensation Programs requested additional information from appellant including a rationalized medical opinion addressing the history of the injury and how the reported work incident caused or aggravated the claimed injury. The Office also requested that appellant provide a description of her involvement with the incident since there was evidence that appellant was not in the immediate proximity of the robbery. Appellant was given 30 days to respond.

Dr. Stuart E. Ross, a specialist in internal medicine, diagnosed severe anxiety which made appellant incapable of functioning in a work environment. Dr. Ross also indicated that appellant was disabled by schizophrenia and that the robbery induced severe anxiety. He stated that to avoid a relapse of the schizophrenia appellant must have recovery time. Dr. Ross stated that appellant's condition was due to the station robbery which caused an emotional aftershock.

By decision dated January 11, 1996, the Office rejected appellant's claim because fact of injury was not established. In an accompanying memorandum, the Office indicated that it accepted that the armed robbery occurred at the facility employing appellant. The Office, however, noted that appellant's supervisor stated that she was "far and away" from the incident and that appellant failed to respond to its request to describe her involvement with the incident. It, therefore, found that appellant failed to establish that she sustained an injury.

On August 27, 1996 appellant requested reconsideration. In support, appellant stated that she was in the office when police rushed through the front entrance. She stated that she walked behind the police to see what was happening and to observe the disarray of the window clerks. Appellant stated that her job requires her to assist her fellow employees in every way and that she did not have time to deal with her own feelings. She stated that she assisted an employee who could not stop crying and that, after assisting everyone, she left around 6:20 p.m. Appellant stated that she awoke that night with a slight memory loss and that on the following Monday tension began to build in her neck.

By decision dated October 9, 1996, the Office reviewed the merits of the case and found that the evidence submitted in support of the application was not sufficient to warrant modification of the prior decision. In an accompanying memorandum, the Office stated that there was conflicting information regarding appellant's involvement with the robbery. The Office stated that the employing establishment indicated that appellant was not involved with or in the immediate proximity of the robbery while appellant indicated that she became involved with the robbery after the police entered the front entrance when she rendered assistance to other employees. The Office further stated that there was no evidence that rendering such assistance was a required part of appellant's duties. The Office also stated that the medical evidence was insufficient to establish that appellant sustained an injury because the only physician providing a report, Dr. Ross, was not a specialist with emotional conditions.

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

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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.² To establish his claim that 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 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.³

In the present case, appellant alleges that she suffered emotional stress and memory loss as a result of the aftermath assistance subsequent to an armed robbery in a remote location from her work site. Appellant does not attribute her emotional condition to the performance of her duties as a general clerk. Rather, she attributes it to an incident when the police entered the workplace following report of a robbery. The Board notes that appellant's complaint of inaction on the part of management and lack of security following the incident relates to administrative actions taken in response to this incident. In the present case, the evidence of record is not sufficient to establish administrative error by the employing establishment personnel in response to the October 20, 1995 incident.⁴

Appellant also indicates that the employing establishment somehow put her "life on the line" when it inappropriately handled the aftereffects of the robbery incident, specifically the handling of her claim forms. The record, however, is devoid of any evidence of error or abuse committed by the employing establishment its response to the robbery or related to appellant's claim. Inasmuch as the evidence fails to disclose error or abuse in the handling of these administrative functions, they fail to constitute a compensable factor of employment.⁵ Accordingly, because appellant has failed to allege a compensable factor of employment, she failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *See Carla E. Phillips*, 39 ECAB 1040 (1988).

⁵ *Thomas D. McEuen*, 42 ECAB 566 (1991), *aff'd* 41 ECAB 387 (1990).

The decision of the Office of Workers' Compensation Programs dated October 9, 1996 is affirmed.

Dated, Washington, D.C.
May 14, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member