

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of ELIZABETH JONES-DAY and U.S. POSTAL SERVICE,  
GENERAL MAIL FACILITY, Philadelphia, PA

*Docket No. 99-1909; Submitted on the Record;  
Issued September 8, 2000*

---

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that she sustained an emotional condition causally related to factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

In the present case, appellant filed a claim on October 25, 1996 alleging that she sustained an emotional condition causally related to her federal employment. In a narrative statement, she discussed her claim. The allegations included: (1) being blamed for a work accident in February 1995; (2) having her requests to move to another work site ignored; (3) mishandling of a compensation claim;<sup>1</sup> (4) being sent to a safety class; and (5) a general pattern of harassment by her supervisors.

By decision dated May 19, 1997, the Office denied the claim on the grounds that appellant had not established a compensable factor of employment as contributing to an emotional condition. In a decision dated May 15, 1998, an Office hearing representative affirmed the denial of the claim. By decision dated May 6, 1999, the Office determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

The Board has reviewed the record and finds that appellant has not established an emotional condition causally related to compensable work factors.

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.<sup>2</sup> To establish her claim that she

---

<sup>1</sup> A statement dated November 21, 1996 from appellant's supervisor indicates that appellant was upset due to problems with being paid for lost time from a foot injury.

<sup>2</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

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.<sup>3</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 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 his 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.<sup>4</sup>

In the present case, appellant discussed several administrative actions by the employing establishment, including a letter of warning, being sent to a safety class and the handling of a compensation claim. It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.<sup>5</sup> The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.<sup>6</sup> In this case, appellant has not submitted probative evidence of error or abuse by the employing establishment. In statements dated April 8, 1997 and March 4, 1998, an employing establishment supervisor indicated that appellant was given a letter of warning for an unsafe act and was paid for any time lost due to injury. Appellant indicated a grievance was filed with regard to the letter of warning, but the record does not contain a finding of error by the employing establishment, witness statements or other probative evidence establishing error or abuse in an administrative matter.

Appellant has also alleged harassment by her supervisors. She stated, for example, that she was paged to return to her work area. With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.<sup>7</sup> An employee's

---

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

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

<sup>5</sup> *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

<sup>6</sup> See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>7</sup> *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.<sup>8</sup> In this case, there are no findings of harassment or discrimination, nor any probative evidence that is sufficient to establish a claim based on harassment. The Board accordingly finds that appellant has not alleged and substantiated a compensable work factor in this case. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.<sup>9</sup>

The Board further finds that the Office properly denied appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>10</sup> the Office's regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>11</sup> Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.<sup>12</sup>

In this case, appellant submitted new evidence that consists of a chronology of events that may have been prepared for a medical report.<sup>13</sup> The chronology itself does not provide any probative evidence with respect to establishing a compensable work factor in this case. The Board finds that appellant has not met any of the requirements of section 10.606(b)(2) and therefore the Office properly denied her request without merit review of the claim.

---

<sup>8</sup> *Helen P. Allen*, 47 ECAB 141 (1995).

<sup>9</sup> *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>10</sup> 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application)."

<sup>11</sup> 20 C.F.R. § 10.606(b)(2).

<sup>12</sup> 20 C.F.R. § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

<sup>13</sup> The letterhead indicates that the report is from the Philadelphia Psychiatric Consultation Service, but no signature is provided.

The decisions of the Office of Workers' Compensation Programs dated May 6, 1999 and May 15, 1998 are affirmed.

Dated, Washington, DC  
September 8, 2000

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member