U. S. DEPARTMENT OF LABOR

# Employees' Compensation Appeals Board

In the Matter of JUDY C. ROGERS and U.S. POSTAL SERVICE,
AIRPORT MAIL CENTER, Cleveland, OH

*Docket No. 03-565; Submitted on the Record;*
*Issued July 9, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof in establishing that she sustained an emotional condition on November 3, 2001 due to factors of her federal employment.

Appellant, a 52-year-old expeditor, filed a notice of traumatic injury on November 6, 2001 alleging that she developed an emotional condition on November 3, 2001 when she was exposed to a white powdery substance leaking from a package sent from Israel.[1] The employing establishment noted that a postal inspector contacted the intended recipient on November 3, 2001 and learned that the substance was powdered yogurt.

By decision dated January 29, 2002, the Office of Workers' Compensation Programs denied appellant's claim finding that the medical evidence was insufficient to establish that appellant's exposure to powdered yogurt on November 3, 2001 resulted in an emotional condition. Appellant requested an oral hearing and by decision dated December 5, 2002, the hearing representative affirmed the Office's January 29, 2002 decision finding that at the time appellant filed her claim she was aware that the substance was powdered yogurt and that her reaction was therefore self-generated.

The Board finds that appellant failed to meet her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

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 concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or to a requirement imposed by the employment, the disability is

[1] The Board notes that on October 15, 2001 anthrax was found in a Florida post office. On October 18, 2001 a New Jersey postal worker tested positive for anthrax.

compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.[2]

Appellant attributed her emotional condition to the incident occurring on November 3, 2001. At 10:35 a.m. on November 3, 2001 she paged her supervisor, Lillie Nelson, and informed her that a white powdery substance had escaped from a package on a truck. Appellant had a mask and gloves. Ms. Nelson contacted Postal Inspector Jim Bogden, who instructed her to seal the package in three plastic bags and determine the recipient's telephone number and address. Inspector Bogden contacted the recipient and then informed Ms. Nelson that the substance was powdered yogurt. He further informed Ms. Nelson that, as the substance had been identified, testing would not be reimbursed by the employing establishment but that appellant could go on her own time and pay for the testing. Appellant left the employing establishment at 11:45 a.m. The employing establishment noted that the recipient collected the package without gloves or a mask. The employing establishment further noted that appellant was informed that, if she wanted medical testing, she would have to go on her own time and at her own expense. The employing establishment stated that, if the testing was positive, the employing establishment would assume the cost of testing.

Inspector Bogden noted in his statement that Ms. Nelson had called regarding a suspicious package on November 3, 2001. He stated that he contacted the recipient and was informed that she was expecting a package from Israel containing ethnic food including some dried yogurt. He instructed the recipient to collect the package from the employing establishment.

Appellant has alleged three employment factors as a result of her November 3, 2001 exposure to an unknown powdery substance. She alleged that her supervisor, Ms. Nelson and Inspector Bogden failed to follow the appropriate procedures in investigating the situation. Investigations are considered to be administrative duties of the employing establishment that do not involve an employee's regular or specially assigned duties and are therefore not considered to be an employment factor.[3] As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[4] In this case, appellant has not submitted any evidence that the employing establishment erred in the methods used to carry out the investigation of the powdery substance. She and her coworker utilized gloves and masks once they discovered the substance. The package was contained within three plastic bags as instructed by the postal inspector. The postal inspector contacted the intended recipient who explained that the substance was dried yogurt.

[2] *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

[3] *Garry M. Carlo*, 47 ECAB 299, 304 (1996).

[4] *Martha L. Watson*, 46 ECAB 407 (1995).

The employing establishment further noted that the intended recipient of the package came and picked up the package without taking any safety precautions. Appellant did not submit any evidence that the employing establishment was required to take further steps to investigate the substance or to insure appellant's safety. As there is no evidence that the employing establishment committed error or abuse in the investigation of the suspicious package, appellant has not substantiated that the method of investigation is a compensable factor of employment.

Appellant alleged that she believed that she was exposed to a dangerous substance after the employing establishment informed her that the substance was food, powdered yogurt, and that she continued to experience fear and anxiety as a result of this belief. The Board finds that appellant's continued doubts regarding the identity of the substance were self-generated.[5] As noted previously, appellant's supervisor and the postal inspector were satisfied that the substance had been properly identified and appellant did not offer any factual basis for her belief that she was exposed to a dangerous substance after the substance was identified. Furthermore, appellant did not undergo testing to establish whether or not she had exposure to anthrax. Therefore, she has not established that her continued fear of exposure to a toxic substance is a compensable employment factor.

Appellant has established that she was exposed to a suspicious white powder while performing her day-to-day duties on November 3, 2001. For a brief period of time, from the discovery of the powder at approximately 10:35 a.m. until the final call from the postal inspector confirming that the substance was powdered yogurt, which occurred before 11:45 a.m., when appellant left the employing establishment building, appellant was exposed to a substance which she believed was a toxic substance. The Board finds that this period of uncertainty regarding the nature and extent of her employment-related exposure to a white powdery substance constitutes a compensable factor of employment.

As appellant has established a compensable factor of employment, that for a brief period of time she was exposed to a substance which had not been identified and which she believed was dangerous, the Board must address the medical evidence.

To establish appellant's claim that she has sustained an emotional condition in the performance of duty appellant must submit rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.[6] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[7]

[5] *John Polito*, 50 ECAB 347, 350 (1999).

[6] *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

[7] *Id.*

In a report dated November 16, 2001, appellant's attending physician, Dr. Debra Goran, a clinical psychologist, diagnosed adjustment disorder with mixed anxiety and depressed mood. On January 2, 2002 Dr. Goran noted that appellant reported on November 3, 2002 that she and a coworker noted a white powdery substance on a box that they had recently moved. Appellant feared an anthrax infestation and contacted her supervisor. Her supervisor called an inspector who did not follow procedure. Dr. Goran stated:

> "Instead the inspector called the recipient of the package and was told by the intended recipient that the package contained powdered yogurt. This was accepted by the inspector and supervisor as fact, although no samples were taken and no analysis of the substance was done. A janitor was called to clean up the powder and was given no special equipment or special instructions. [Appellant] was overcome by fear for her own life and the lives of her coworker, the janitor, and all those who might be exposed to the package as it continued on its way. She truly believed that there was a good chance that she and the others had been exposed to anthrax and would die. She also felt rage that the supervisor and postal inspector had brushed off her concerns and not followed procedure yet had in fact never exposed themselves to any contact with the powder."

Dr. Goran stated that appellant's condition acute stress disorder was a direct result of the incidents occurring at work on November 3, 2001. She stated that, given the other deaths by anthrax sent through the mail, appellant experienced the events of November 3, 2001 as life-threatening and responded emotionally as such.

This report is not sufficient to meet appellant's burden of proof as Dr. Goran did not specifically attribute appellant's emotional condition to the accepted employment factor of a limited period of exposure to an unknown and potentially dangerous substance. Instead she addressed appellant's fear after being informed that the substance was benign as well as her anger with the nonsubstantiated factor of the failure of the employing establishment to properly carry out the investigation. Without detailed medical reasoning attributing appellant's current condition to the accepted factor, Dr. Goran's January 2, 2002 report is not sufficient to meet appellant's burden of proof.

The Office requested a supplemental report from Dr. Goran on January 16, 2002 noting that appellant had not established that the employing establishment failed to follow its investigative procedures on November 3, 2001. Dr. Goran responded on January 19, 2002 and stated that all psychological effects of trauma are based on the victim's perception of danger. She stated:

> "[I]f a gun is held to a person's head, the person is no less traumatized by the event if they discover a few days later that the gun was not loaded. It is the perception of a life threatening situation and not the situation itself which leads to trauma. [Appellant] believed that she may well have been exposed to anthrax. She was so convinced of, and so convincing about this, that I was reluctant to see her myself until she had been medically examined."

This report is not sufficient to meet appellant's burden of proof as Dr. Goran did not address the specific period of time, accepted by the Board as compensable, the time prior to the employing establishment's conclusion that the powdery substance was not dangerous. Although Dr. Goran noted that it was the perception of a life threatening situation that led to trauma, she further indicated that appellant continued to believe that she may well have been exposed to anthrax after leaving the employing establishment. As the Board noted above this continued belief in anthrax exposure is not compensable. As appellant has failed to submit the necessary medical evidence to establish a causal relationship between her diagnosed condition and her accepted employment factor, she has failed to meet her burden of proof and the Office properly denied her claim.

The December 5, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 9, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom, Alternate Member, concurring:

Appellant was working as an expeditor in the mail dock area on November 3, 2001 and observed powder coming from a box while in transit through the general mail facility from Israel. After contacting the intended recipient of the package, postal authorities determined that the package contained powdered yogurt. I concur in the finding that appellant has not submitted evidence sufficient to establish error by postal authorities in the investigation of the package. The case record does not document exposure to any toxic substance.

Appellant complained of headache on November 6, 2001 and pursued her claim, alleging unsafe working conditions. I join in the finding that appellant's anxiety is self-generated. Rather than relying on *Cutler* to find a compensable factor of employment; however, I do not see this as an instance in which the employee has alleged experiencing difficulty in meeting her work requirements. Rather this is an instance of fear of possible future injury. It is well established

that the possibility of a future injury does not constitute an injury as contemplated under the Federal Employees' Compensation Act.[8]

Michael E. Groom
Alternate Member

[8] *See, e.g., Marvin T. Schwartz*, 48 ECAB 521 (1997) (Groom, Alternate Member, dissenting); *Joseph G. Cutrufello*, 46 ECAB 285 (1994); *Mary A. Geary*, 43 ECAB 300 (1991); *Nicholas R. Kothe*, 29 ECAB 4 (1977).