

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

L.S., Appellant

and

**U.S. POSTAL SERVICE, SUNRISE BRANCH,
Fort Lauderdale, Florida, Employer**

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**Docket No. 06-1442
Issued: October 31, 2006**

Appearances:
Joanne Wright, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 2, 2006 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated April 13, 2006, which denied her claim. Pursuant to 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 met her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

FACTUAL HISTORY

On August 25, 2004 appellant, then a 47-year-old letter carrier, filed a Form CA-1, traumatic injury claim, alleging that on January 31, 2003 she sustained an employment-related specific phobia and depressive disorder. She alleged that she was instructed by management to

deliver mail in violation of medical restrictions for an accepted April 20, 1993 injury.¹ Appellant stopped work that day and returned to her previous work route on May 25, 2003. On the back of the claim form, Vanessa Bush, an employing establishment supervisor, stated that appellant stopped work because she was asked to do curbside residential delivery.

Appellant submitted evidence regarding an Equal Employment Opportunity (EEO) Commission claim alleging that she was discriminated against on January 27, 2003. She also submitted a February 5, 2003 report in which Dr. Arnold S. Zager, a Board-certified psychiatrist, advised that appellant was profoundly depressed and could not work. Dr. Zager stated that appellant's condition was caused by her fear of doing residential deliveries and she could never work at residential deliveries where she had to park and lock her vehicle.

In a September 1, 2004 statement, Phil Geraci, an employing establishment manager, advised that a route inspection was conducted for all routes at the Sunrise Branch and that appellant's route was adjusted in accordance with postal regulations. He stated that a meeting was held with appellant, the union president, area manager and the inspection team leader regarding the change in her route. Appellant's restrictions were discussed and she was told that she would not have to deliver parcels or accountable mail or have to get out of her vehicle for the residential part of the route due to her dog phobia. On January 31, 2003 she refused to deliver the curbside section of her route. A postal inspection service investigative memorandum dated September 10, 2004 noted that Ms. Bush and Sandra Baker, supervisors of customer services at the Sunrise Branch, were interviewed. Ms. Bush stated that for the previous three years appellant had delivered mail only to a shopping mall and not to the residential part of her route, which was done by other carriers. On January 31, 2003 appellant was asked to deliver the curbside part of the route which entailed driving a postal vehicle to the curbside mailbox and placing the mail in the box while remaining inside the vehicle. Ms. Bush noted that appellant would not have to get out of the vehicle. Appellant refused the assignment, went home and did not return until May 30, 2003 when she again only delivered mail to the mall section of her route. Ms. Baker stated that appellant currently delivered street side mail at the mall and express mail to the mall or an office building.

By letter dated September 14, 2004, the Office informed appellant that the evidence submitted was insufficient to establish her claim as the incidents alleged were administrative in nature. It gave her 30 days to submit a final EEO Commission ruling. In a September 27, 2004 response, appellant's representative noted that the Office did not clarify what information was insufficient. She submitted a January 28, 2003 duty status report in which Dr. Zager diagnosed specific phobia and chronic depressive disorder. Dr. Zager advised that appellant had an indefinite restriction of residential delivery in single-family areas. In reports dated May 15 and

¹ In a December 20, 2004 decision, Docket No. 04-1699, the Board affirmed Office decisions dated September 3, 2003 and June 9, 2004 which denied appellant's claim for wage-loss compensation for the period February 22 to April 4, 2003. In that claim and a previous claim, the Office had accepted that appellant sustained an employment-related adjustment disorder, depressive mood and phobia to dogs due to a dog bite. The Board takes judicial notice of its decision dated December 20, 2004. The law and the facts of that decision are incorporated herein by reference.

September 27, 2003, he reiterated that appellant could not do residential delivery in single-family areas but could work as a mail carrier only in commercial areas.²

By decision dated November 4, 2004, the Office denied the claim on the grounds that appellant did not establish a compensable factor of employment, finding that the claimed factors were administrative in nature and there was no evidence of error on the part of management. On November 17, 2004 appellant, through her representative, requested a hearing and submitted reports from Dr. Zager dated October 18, 2004 and January 13, 2005. At the January 11, 2006 hearing, appellant's representative acknowledged that there had been a station-wide review of mail routes. Appellant testified that she was told that she would have to do some residential deliveries at curbside but that the change was not made in writing. She noted that her doctor kept her off work for six months. In an April 13, 2006 decision, an Office hearing representative affirmed the November 4, 2004 decision.

LEGAL PRECEDENT

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has such a condition; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her stress-related condition.³ If a claimant does implicate a factor of employment, the Office 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, the Office must base its decision on an analysis of the medical evidence.⁴

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁵ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁶ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁷ When an employee experiences emotional stress in carrying out his or her employment duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special

² Appellant's representative also stated that she submitted a March 26, 2003 report. This, however, is not contained in the record before the Board.

³ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁴ *See Dennis J. Balogh*, 52 ECAB 232 (2001).

⁵ 28 ECAB 125 (1976).

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *See Robert W. Johns*, 51 ECAB 137 (1999).

assignment or other requirement imposed by the employing establishment or by the nature of the work.⁸

As a general rule, an employee's emotional reaction to administrative or personnel actions taken by the employing establishment is not covered because such matters pertain to procedures and requirements of the employer and are not directly related to the work required of the employee.⁹ An administrative or personnel matter will be considered to be an employment factor, however, where the evidence discloses error or abuse on the part of the employing establishment.¹⁰

ANALYSIS

The Board finds that appellant failed to establish a compensable factor of employment. She claimed that her disability was due to a proposed change in her mail route in violation of her medical restrictions. If proven as factual, this could constitute a compensable factor of employment.¹¹ Appellant, however, did not establish that she was actually assigned to work that violated her medical restrictions. The employing establishment explained that appellant would not have to leave her vehicle to make residential deliveries. Furthermore, appellant objected to the proposed route change but did not actually work on the changed route. The possibility of a future injury does not constitute an injury under the Act.¹² Appellant's reaction was a fear of future injury and, as such, is not considered an injury within the performance of duty. She therefore did not establish a compensable factor of employment in this regard.¹³

Appellant also made general allegations of discrimination and submitted a copy of a claim filed with the EEO Commission. For discrimination to give rise to a compensable disability under the Act, there must be evidence that it did in fact occur. Mere perceptions of discrimination are not compensable.¹⁴ In assessing the evidence submitted, the Board has noted that grievances filed or EEO complaints, by themselves, do not establish workplace discrimination.¹⁵ Appellant did not submit evidence in support of her allegation of discrimination on or about January 22, 2003 with regard to being asked to perform curbside mail deliveries. The EEO claim is insufficient to establish discrimination, as alleged.

⁸ *Lillian Cutler*, *supra* note 5.

⁹ *Felix Flecha*, 52 ECAB 268 (2001).

¹⁰ *James E. Norris*, 52 ECAB 93 (2000).

¹¹ *Brenda L. DuBuque*, 55 ECAB ____ (Docket No. 03-2246, issued January 6, 2004).

¹² *Virginia Dorsett*, 50 ECAB 478 (1999).

¹³ Inasmuch as appellant failed to establish a compensable factor of employment, the medical evidence will not be addressed. *See Garry M. Carlo*, 47 ECAB 299 (1996).

¹⁴ *See Michael A. Deas*, 53 ECAB 208 (2001).

¹⁵ *Id.*

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 13, 2006 be affirmed.

Issued: October 31, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board