

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

K.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Stanley, KS, Employer**

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**Docket No. 06-1566
Issued: March 20, 2007**

Appearances:

*Kevin A. Graham, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 29, 2006 appellant filed a timely appeal of the March 23, 2006 merit decision of the Office of Workers' Compensation Programs which denied her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

This is the second appeal in the present case. In an August 25, 2004 decision, the Board set aside a December 29, 2003 decision of the Office which denied merit review and remanded the matter for further development. The Board determined that appellant submitted relevant and pertinent evidence not previously considered sufficient to require reopening her case for further

merit review. The facts and the circumstances of the case are set forth in the Board's prior decision and incorporated herein by reference.¹

Appellant alleged that the branch in which she was the customer service manager experienced staffing deficiencies commencing in 1993 which caused stress. She noted that due to the growth of the community management contemplated moving the branch to a larger facility and she was responsible for planning and effectuating the move without any guidance from her supervisors. Appellant alleged that she received mixed messages from management with regard to her job responsibilities. Her interpersonal skills were criticized and she unfairly received unacceptable performance reviews. Appellant submitted an email from Vic Kane, manager of customer service, dated April 17, 1997. Mr. Kane referenced several letters of complaint sent by coworkers indicating that appellant did not treat her employees with dignity and respect. Mr. Kane indicated that he discussed the employee climate at her branch and the perception that she was difficult to work for. He indicated that there were continuing problems staffing clerks at the Stanley branch and indicated that appellant had problems at her branch that were unique to the Shawnee Mission district, in that she only had four full-time clerks and one person for clerk staffing. Mr. Kane noted that there were problems finding clerks willing to work at this branch. He advised that a new Stanley annex was going to be built and the branch was going to be remodeled for the retail services. In an email to appellant dated July 3, 1997, Mr. Kane expressed dissatisfaction with her performance as it related to implementing mail route adjustments from a September 1996 mail count and questioned her delay in seeking assistance when she experienced difficulty in implementing route changes. He offered appellant additional training and assistance so that she could successfully perform her position.

Mr. Kane submitted a statement dated September 10, 2000, noting that appellant was manager of the Stanley branch from 1993 to 1998. During this time, appellant's performance was unacceptable. She had conflicts with several managers because of her abrasive management style. Mr. Kane spent a considerable amount of time counseling appellant on her performance and she was provided with additional training. He acknowledged that the county of Shawnee Mission Kansas experienced growth in deliveries of 2,000 to 3,000 deliveries per year since the late 1970's. Mr. Kane indicated that branch managers within Shawnee Mission received continuing complaints that the Stanley branch was understaffed. He noted that appellant supervised 8 to 15 employees and a new facility was built and her branch was relocated to the new facility.

Following the Board's August 25, 2004 decision, the Office, in an October 25, 2004 letter, advised appellant of the factual and medical evidence needed to establish her claim. It requested that she submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

In a statement dated November 18, 2004, appellant advised that she had not been employed since leaving the employing establishment in May 1999. She noted that nonwork stressors included her son's divorce and her husband's diagnosis of colon cancer in 2001.

¹ Docket No. 04-888 (issued August 25, 2004).

In a decision dated December 21, 2004, the Office denied modification of its prior decision.

By letter dated December 19, 2005, appellant requested reconsideration and submitted additional medical evidence. Dr. Michael M. Burgess, a clinical psychologist, treated her for depression from December 1991 to December 1992. He diagnosed agitated depression and obsessive compulsive disorder. Dr. William V. McKnelly, Jr., a Board-certified psychiatrist, treated appellant for depression and work-related stress in 1995. In a report dated October 22, 1993, he noted that appellant had a conflict at work which caused stress and depression. Other reports from June 17 to September 28, 1994, noted episodes with her supervisor which caused a depressive cycle. On July 24, 1996 Dr. McKnelly noted that appellant had an annual evaluation at work which was unacceptable and her supervisor was supported in this decision by the regional manager at work. Dr. McKnelly opined in reports dated October 18, 1996 and October 23, 2000, that appellant's stress was caused by receiving an unsatisfactory performance evaluation in 1996, by having a highly critical supervisor, by receiving a formal letter of warning in 1998 and being placed on administrative leave for poor performance. On October 16, 2002 he noted that in the mid 1990's appellant experienced an increase in work pressures and conflicts with supervisory personnel causing her emotional stress. In a report dated November 19, 2003, Dr. McKnelly concurred with Dr. Hill's determination that appellant's work-related pressures aggravated her preexisting depressive illness.

In reports from Dr. David O. Hill, Ph.D., a licensed psychologist, dated December 21, 1997 to December 8, 1998, appellant was treated for anxiety attacks. Appellant attributed her stress to poor treatment from her supervisor for whom she had worked since 1995. She reported that her current supervisor gave her unsatisfactory evaluations on two occasions and numerous critical emails and failed to provide guidance or suggestions for improvement. In an August 18, 2000 report, Dr. Hill identified several incidents that caused her stress, which included being criticized by her supervisor, Mr. Kane, on January 9, 1998 receiving numerous critical emails from him from December 1997 to 1999, being questioned about three customer complaints on April 4, 1998 and receiving two letters of warning in September 1998. On October 1, 2002 Dr. Hill diagnosed major depressive disorder, recurrent, severe and opined that appellant's depression was directly caused by the general stress of her work environment due to understaffing, the excessive demands of trying to provide services to a rapidly growing area and the stress created by her supervisor. In a report dated September 30, 2003, he opined that appellant had recurrent severe major depressive disorder and that the worsening of her major depression in 1997 was directly caused by a variety of stressors in her work environment. Dr. Hill further opined that the factors which precipitated the worsening of appellant's major depression included both the critical and demeaning manner in which she was treated by her supervisor, Mr. Kane, and other work stressors including rapid population growth, understaffing and the need to relocate the branch. He indicated that appellant's depression worsened and her job performance was affected between 1995 to 1997 as documented by the unsatisfactory merit review in 1995. Dr. Hill noted that stressful events that occurred in appellant's work environment just before her disability retirement included rapid population growth, understaffing, the pressure of relocating her branch office, employee discontent and the "rigid" rule-bound policies of her employer along with the excessively critical and demeaning manner of appellant's direct supervisor. He opined that this precipitated the occurrence of her major depression in 1997 and was its direct cause. Appellant also submitted reports from Dr. Bernard

Sullivan, a psychologist, dated January 10, 2000 to May 29, 2001, who noted treating her for anxiety, depression and anger.

In a decision dated March 23, 2006, the Office denied modification of the prior decision.

LEGAL PRECEDENT

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.² 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*,³ the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁴ There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage under the Act.⁵ When an employee experiences emotional stress in carrying out his employment duties, and the medical evidence establishes that the disability resulted from his 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 emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.⁶ There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage under the Act.

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are 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.⁷ 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

² *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ 28 ECAB 125 (1976).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ See *Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

⁶ See *Lillian Cutler*, *supra* note 3.

⁷ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁸

ANALYSIS

Appellant's allegations regarding her work assignments relate to administrative or personnel actions. In *Thomas D. McEuen*,⁹ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment's superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁰

Appellant alleged that she received mixed messages from management regarding her job responsibilities. However the Board has found that an employee's complaints concerning the manner in which a supervisor performs his duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, is outside the scope of coverage provided by the Act. This principle recognizes that a supervisor or manager in general must be allowed to perform his duties that employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.¹¹ Appellant presented no evidence to support that the employing establishment erred or acted abusively with regard to her allegations. Mr. Kane, manager of customer service, noted that there were letters of complaint sent by several coworkers as well as a union representative which alleged that appellant did not treat her employees with dignity and respect. He indicated that he discussed with her the employee climate at her branch and the perception that she was difficult to work for. On September 10, 2000 Mr. Kane noted that, during appellant's tenure as manager of the Stanley branch from 1993 to 1998, she had conflicts with various managers due to her management style and that her performance was generally unacceptable. He spent a considerable amount of time counseling appellant on her performance and provided her with additional training. The evidence establishes that the employing establishment acted reasonably in counseling appellant. Appellant has not established administrative error or abuse in the performance of these actions and, therefore, they are not compensable under the Act.

⁸ *Id.*

⁹ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, *supra* note 3.

¹⁰ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹¹ See *Marguerite J. Toland*, 52 ECAB 294 (2001).

Regarding appellant's allegation that she was unfairly criticized and given unacceptable performance reviews by her supervisors, this relates to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and does not fall within the coverage of the Act.¹² Although the handling of disciplinary actions, evaluations and leave requests, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹³ As noted, an administrative or personnel matter will not be considered to be an employment factor unless the evidence discloses error or abuse on the part of the employing establishment or that it acted unreasonably. The evidence is insufficient to establish that the employing establishment erred or acted abusively in this matter. Mr. Kane advised that there were complaint letters sent by several coworkers who alleged that appellant did not treat her employees with dignity. He noted dissatisfaction with appellant's performance as it related to implementing mail route adjustments from a September 1996 mail count and questioned her delay in seeking assistance when she experienced difficulty in implementing route changes. Dr. Kane offered her additional training and assistance so that she could successfully perform her position. Although appellant alleged that the employing establishment erred and acted abusively in these administrative matters, appellant has not provided evidence to substantiate such actions were in error, abusive or unreasonable in nature. She has not established a compensable factor pertaining to the issuance of disciplinary actions and evaluation.

The Office accepted that appellant established two compensable factors of employment with respect to staffing deficiencies beginning in 1993 and the growth at the Stanley facility of the employing establishment causing management to move to another location. The record supports these findings. Mr. Kane, manager of customer service, acknowledged in a letter dated September 10, 2000, that the county of Shawnee Mission Kansas branches experienced growth in deliveries of 2,000 to 3,000 deliveries per year since the late 1970's. He also noted that new facilities were built and appellant's branch was relocated to the new facility.

Appellant's burden of proof is not discharged by the fact that she has established employment factors which may give rise to a compensable disability under the Act. To establish her occupational disease claim, appellant must also submit rationalized medical evidence establishing that her claimed conditions are causally related to the accepted compensable employment factor.¹⁴

The Office found that the medical evidence was not sufficient to establish that appellant's depression was causally related to the two accepted compensable employment factors of staffing deficiencies and pressures of relocating her branch office. The Board notes that medical evidence submitted by appellant generally supports that she developed an emotional condition due to work stressors including understaffing and pressure of relocating her branch office. In a report dated October 1, 2002, Dr. Hill opined that appellant's depression was directly caused by

¹² See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹³ *Id.*

¹⁴ See *William P. George*, 43 ECAB 1159, 1167 (1992).

the general stress of her work environment due to understaffing, the excessive demands of trying to provide services to a rapidly growing area and the stress created by her supervisor. In a report dated September 30, 2003, Dr. Hill opined that the worsening of appellant's recurrent, severe major depression in 1997 was directly caused by a variety of stressors in her work environment. He indicated that the factors which precipitated the worsening of appellant's major depression included both the critical and demeaning manner in which she was treated by her supervisor, Mr. Kane and other work stressors including rapid population growth, understaffing and the need to relocate the branch. Dr. Hill noted that stressful events that occurred in appellant's work environment immediately prior to her disability retirement included rapid population growth, understaffing, the pressure of relocating her branch office, employee discontent and the rigid rule-bound policies of her employer along with the excessively critical and demeaning manner of her direct supervisor. He opined that this precipitated appellant's major depression in 1997 and was its direct cause. Although the psychologist's opinion is not sufficiently rationalized to establish her claim, it is uncontroverted in the record and is, therefore, sufficient to require further development of the case by the Office.¹⁵

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. It has the obligation to see that justice is done.¹⁶

The case will be remanded to the Office for referral of the matter to an appropriate medical specialist, consistent with Office procedures, to determine whether appellant's diagnosed medical condition of depression was causally related to the accepted compensable employment factors of understaffing and pressure of relocating her branch office. Following this and any other further development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's claim.

CONCLUSION

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

¹⁵ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

¹⁶ *John W. Butler*, 39 ECAB 852 (1988).

ORDER

IT IS HEREBY ORDERED THAT the March 23, 2006 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development in accordance with this decision of the Board.

Issued: March 20, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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