

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

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**D.P., Appellant**

**and**

**DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE,  
Richmond, VA, Employer**

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**Docket No. 08-1237  
Issued: October 24, 2008**

*Appearances:*  
*Appellant, pro se*  
*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 March 21, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated December 21, 2007 finding that she had not established an emotional injury causally related to her federal employment. 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 has met her burden of proof in establishing that she sustained an emotional condition in the performance of duty on May 30, 2006.

**FACTUAL HISTORY**

On June 29, 2006 appellant, then a 47-year-old revenue agent, filed a traumatic injury claim alleging that on May 30, 2006 she felt harassed, chased and forced off the road by other vehicles. She stated that she developed anxiety as a result. The employing establishment noted that appellant was alone in her car on the way to a training class in Georgia.

In a letter dated July 14, 2006, the Office requested additional factual and medical evidence from appellant. It allowed 30 days for a response. Appellant submitted a statement alleging that as she was traveling alone to the training class she was "harassed, chased and forced off the road by other vehicles causing her to become extremely fearful for her life." She stated that she did not have a working cell phone and that she attempted to use her vehicle to get the attention of the highway patrol. Appellant noticed police lights, but as it was not the highway patrol, she did not stop. She stated, "The police then stopped me and I was taken to the Catoosa County Jail until June 1, 2006 and then taken to Rome Regional Hospital until June 3, 2006. The employing establishment controverted appellant's claim on the basis of misconduct as she was allegedly arrested for intoxication and fleeing the police. In a statement dated June 30, 2006, Joseph Johnson, appellant's supervisor, noted that appellant attributed her behavior on sleep deprivation. Appellant made a wrong turn and drove two hours north of Atlanta. Mr. Johnson submitted a summary of events on July 5, 2006 noting that appellant had approval to travel from Tampa, Florida to Atlanta, Georgia starting May 30, 2006 to attend a training class. Appellant was supposed to fly. On May 30, 2006 she telephoned Mr. Johnson and informed him that she was driving to Atlanta. Appellant stated that she would not be able to reach Atlanta for the start of the class on that day. Mr. Johnson was unable to reach her or her husband until May 31, 2006. On that date appellant's husband informed him that appellant had been in an accident. Another member of appellant's training class telephoned Mr. Johnson on June 3, 2006 and reported that appellant had been jailed for driving under the influence and multiple felony counts. Mr. Johnson submitted an internet news story regarding appellant.

In a report dated July 6, 2006, Dr. Michael A. Weitzner, a Board-certified psychiatrist, stated that appellant was undergoing treatment for post-traumatic stress disorder. Appellant informed him that, following an exhausting period of pursuing a *pro se* court case with her husband, she decided to drive to Atlanta for a work meeting. She missed her exit and became exhausted, anxious and scared driving in an unfamiliar area. Appellant stated that large trucks were bearing down on her and she believed that the truckers were trying to injure her. She left the highway and attempted to sleep at a park ranger station, but was startled by another vehicle and raced back to the highway. Appellant attempted to attract a policeman by driving erratically and felt out of control, scared and afraid to trust anyone. She panicked and could not calm down. Dr. Weitzner diagnosed brief psychotic disorder, post-traumatic stress disorder and adjustment disorder with mixed emotional features. He stated, "It appears that [appellant] suffered from a brief psychotic disorder at the time of her arrest ... [with] grossly disorganized behavior and severe paranoid thinking as well as significant panic." Dr. Weitzner opined that appellant's prolonged period of sleep deprivation, hypervigilant state and underlying post-traumatic stress disorder resulted in her brief psychotic episode. He stated that appellant did not knowingly commit any crime and was not responsible for her actions.

Appellant submitted a narrative statement dated August 13, 2006. She contended that the employing establishment allowed its employees to drive or fly to the scheduled training and chose to drive. Appellant became lost while driving and was harassed, chased and forced off the road by several tractor trailers causing her to fear for her life. She attempted to sleep at a park ranger station, but was startled when a vehicle drove into the ranger station "speeding toward [her] car." Appellant panicked and reentered the highway and tried to get the attention of the highway patrol, but was forced to stop by local police and taken to the local police station. She noted that in the week prior to May 30, 2006 she got very little sleep as she was preparing to

participate in a hearing without legal representation. Appellant stated that she had no history of an emotional condition.

By decision dated September 29, 2006, the Office denied appellant's claim finding that she was not in the performance of duty at the time of her alleged injury. It found that she deviated from the direct route to her official duty location as she did not travel by air as authorized.

Appellant requested reconsideration on September 28, 2007 and stated that she was on office travel duty on May 30, 2006. She was not found guilty of the felony charges in Tennessee or Georgia and contended that her deviation was not intentional. Appellant submitted expungement orders regarding her charges. The employing establishment responded on October 22, 2007, noting that it reimbursed appellant for her mileage from her residence to the authorized training site. Appellant submitted an additional statement on December 4, 2007 and evidence that she was allowed to use her personal vehicle for travel.

By decision dated December 21, 2007, the Office modified its September 29, 2006 decision to find that appellant was in the performance of duty at the time of the May 30, 2006 incident. However, appellant had failed to establish fact of injury as she failed to substantiate that she was harassed by other drivers on the highway while in route to her training class.

### **LEGAL PRECEDENT**

The Office's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.<sup>1</sup> In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred. The second component is whether the employment incident caused a personal injury. Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.<sup>2</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related an employee's employment. 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 of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>3</sup> On the other hand, the disability is not covered where it results from such factors as an

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<sup>1</sup> 20 C.F.R. § 10.5(ee).

<sup>2</sup> *Steven S. Saleh*, 55 ECAB 169, 171-72 (2003).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>4</sup>

For harassment to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment are not compensable under the Act.<sup>5</sup> A claimant must substantiate allegations of harassment with probative and reliable evidence. Unsubstantiated allegations of harassment are not determinative of whether such harassment occurred.<sup>6</sup> A claimant must establish a factual basis for his or her allegations of harassment with probative and reliable evidence.<sup>7</sup>

### **ANALYSIS**

Appellant has alleged that she developed an emotional condition after being harassed, chased and forced off the road by several tractor trailers. She alleged that she feared for her life while in travel status driving to a scheduled training on May 30, 2006. The Office has accepted that appellant was in the performance of duty while driving to her training on September 30, 2006; however, it found that she has failed to submit the necessary factual evidence to establish that she was harassed, chased and forced off the road by tractor trailers while driving.

The Board finds that appellant has not submitted any evidence supporting her claim that she developed an emotional condition resulting from the action of various tractor trailer drivers. There are no police reports or witness statements which corroborate that she was the victim of aggressive driving by truckers while in travel status. Appellant's unsupported allegations that she was harassed are not sufficient to establish the factual element of her traumatic injury claim. As she has failed to substantiate that her alleged employment incidents occurred, the Office properly denied her claim for an emotional condition.

### **CONCLUSION**

The Board finds that appellant did not submit the necessary factual evidence to establish that the employment incident of harassment and aggressive driving by truckers occurred as alleged and that the Office therefore properly denied appellant's emotional condition claim.

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<sup>4</sup> See *Thomas D. McEuen*, 41 ECAB 387, 390-91 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>5</sup> *Reco Roncoglione*, 52 ECAB 454, 456 (2001).

<sup>6</sup> *Penelope C. Owens*, 54 ECAB 684, 686 (2003).

<sup>7</sup> *Beverly R. Jones*, 55 ECAB 411, 417 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 21, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 24, 2008  
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