

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

M.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Norwalk, CT, Employer**

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**Docket No. 08-2192
Issued: June 4, 2009**

Appearances:
Katherine Smith, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 31, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated August 1, 2007. 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 established an emotional condition causally related to compensable work factors.

FACTUAL HISTORY

On January 9, 2006 appellant, then a 53-year-old window clerk, filed an occupational claim (Form CA-2) alleging that she sustained job stress. In an accompanying statement, she alleged that she was harassed at work. Appellant alleged daily that she was not allowed to answer an emergency cell phone call from her physician; not allowed to request leave for physician's appointments; was required to do "multi-job-tasking"; subjected to verbal threats

from management; she was physically restrained by her immediate supervisor; and constantly pushed to do work beyond her physical capabilities.

The Office received additional evidence regarding the claim on February 27, 2006. Appellant alleged that on March 23, 2005 her supervisor, Judy Cuthbert, refused to allow her to leave the room, leaning on the exit door with her hand and preventing appellant from exiting. With respect to a cell phone call, she alleged that she answered a call from her psychiatrist and was ordered by Ms. Cuthbert to end the call. Appellant stated that Ms. Cuthbert questioned whether it was an emergency as appellant's mother was in a nursing home and her father was dead. She received a November 4, 2005 letter of warning for failure to follow instructions regarding cell phone use on October 18, 2005. According to appellant, on March 23, 2005, Ms. Cuthbert stated that she would no longer approve change of schedule requests for appellant's therapy appointments.

In a May 20, 2005 statement, Charles Hunt reported that, on May 12, 2005, Ms. Cuthbert commented to him that "I gave your girl a letter of warning." By letter dated January 24, 2006, an employing establishment Equal Employment Opportunity Commission (EEOC) manager stated that a January 23, 2006 EEOC decision found "the agency breached the settlement agreement when the supervisor disclosed confidential information to a third party and when the supervisor failed to treat complainant in accordance with preexisting standards and procedures expected of any supervisory official."¹ Appellant submitted a witness statement from Carolyn Powell, a coworker, who indicated that on March 30, 2005 Ms. Cuthbert yelled at appellant to get back to the window, when appellant told her she was helping a customer. Another witness stated that the supervisor did not realize appellant was helping a customer when she left the window.

The record contains a settlement agreement dated August 5, 2005 for a grievance filed by appellant regarding a uniform requirement. The agreement stated that all clerks who receive a uniform allowance and work consistently with customers will be required to wear a uniform, and no clerk would be singled out in the requirement to wear a uniform.

A response to appellant's allegations was submitted by the postmaster, Joseph Fagan. In a February 17, 2006 letter, Mr. Fagan noted the employing establishment policy regarding cell phones and indicated that, if there was an emergency, the supervisor should be notified. He stated that there were no verbal or physical threats made against appellant. Mr. Fagan indicated that appellant had called the local police two weeks after an incident alleging that she was held against her will by Ms. Cuthbert. However, the police found no evidence that anyone had been restrained. Mr. Fagan stated that appellant had never been denied an opportunity to see her therapist. He also indicated that appellant only worked the window when needed and that all employees had to multi-task.

In a February 16, 2006 report, Dr. Patrizia Riccardi, a psychiatrist, stated that appellant had been complaining of increasing distress due to problems at work. Appellant reported that she was harassed at work by her supervisor.

¹ The record does not contain a copy of the January 23, 2006 decision.

In a decision dated December 7, 2006, the Office denied her claim for compensation. It found that two incidents had been established as compensable work factors: on March 30, 2005 she was verbally abused by her supervisor for failure to stay at her window, and her supervisor had erroneously disclosed confidential information regarding a disciplinary action against appellant. The Office found the medical evidence was insufficient to establish a diagnosed condition causally related to these compensable work factors.

Appellant requested a hearing before an Office hearing representative, which was held on May 24, 2007. She submitted additional medical evidence, including a May 9, 2007 report from Dr. Riccardi, who diagnosed major depression. Dr. Riccardi stated that appellant had complained her bosses screamed at her and asked her to do a job that was not her responsibility. She opined that appellant's situation at work aggravated her condition. In a report dated January 17, 2007, a Dr. Larry Moy provided a fitness-for-duty report. He diagnosed recurrent major depressive disorder. Dr. Moy stated that stress due to her supervisor was adding to a preexisting depression and she was not fit for duty.

By decision dated August 1, 2007, the hearing representative affirmed the December 7, 2006 Office decision. The hearing representative found the medical evidence insufficient to establish an emotional condition causally related to compensable work factors.

LEGAL PRECEDENT

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.² This burden includes the submission of detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.³ A claimant must also submit rationalized medical opinion evidence establishing a causal relationship between the claimed condition and the established, compensable work factors.⁴

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

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

⁴ *See Bonnie Goodman*, 50 ECAB 139, 141 (1998).

the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁵

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors 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.⁶ 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.⁷

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.⁸ Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.⁹

ANALYSIS

The initial question presented in an emotional condition claim is whether the claimant has established compensable work factors. The Office accepted two compensable work factors: the improper disclosure of confidential information and a March 30, 2005 incident of verbal abuse. With respect to the remainder of appellant's allegations, the evidence of record does not establish a compensable work factor.¹⁰ A claimant must establish a factual basis for her allegations of harassment with probative and reliable evidence.¹¹ Appellant alleged that she was physically

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *See Norma L. Blank*, 43 ECAB 389-90 (1992).

⁷ *Id.*

⁸ *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

⁹ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

¹⁰ A January 24, 2006 employing establishment letter referred to a January 23, 2006 EEOC decision finding that "the supervisor failed to treat complainant in accordance with preexisting standards and procedures." It is not clear whether this finding related to the disclosure of confidential information regarding the letter of warning. Appellant did not submit a copy of the EEOC decision.

¹¹ *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991).

restrained by her supervisor, but there is no evidence of actual physical contact between them. The description of the incident by appellant indicated the supervisor leaned on a door, with no allegation of any physical contact with appellant. A police report apparently was filed two weeks later, with no evidence of any behavior that constituted error or abuse.

With respect to allegations that she was not allowed to answer a telephone call from her physician and was denied leave for therapy sessions, there is no probative evidence of error or abuse. The cell phone policy at the employing establishment was to prohibit cell phone use on the work floor and that a supervisor should be informed of any emergency situation. The postmaster indicated that appellant had never been denied an opportunity for therapy treatment. Moreover, no evidence was presented establishing that verbal threats were made against appellant. Appellant referred to “multi-tasking” in her job and alleged that she was pushed to do more work than her physical capabilities. As noted, a reaction to assigned job duties may be compensable, but appellant did not discuss her job duties. To the extent she alleges the employing establishment erroneously required her to work beyond her established physical restrictions, no probative evidence was presented to establish this as factual. The record indicates that on February 16, 2006 appellant had filed a grievance alleging that she was forced to work outside her modified job. No evidence supporting error by the employing establishment was submitted.

The Board finds the evidence of record does not establish any additional compensable employment factors. There is no probative evidence of error or abuse with respect to any disciplinary actions or other administrative actions of the employing establishment.¹²

The Office accepted two compensable work factors and reviewed the medical evidence. To meet her burden of proof, appellant must submit rationalized probative medical evidence establishing causal relationship between a diagnosed condition and the accepted work factors.¹³ On appeal, appellant argues the medical evidence was sufficient to require further development. The Board finds, however, that the medical evidence of record is of diminished probative value on the issue and not sufficient to require further development. Dr. Riccardi provided a diagnosis of major depression, without providing a complete background or a rationalized medical opinion on causal relationship with the compensable work factors. She referred generally to appellant’s complaint that her bosses “screamed” at her but without providing a description of the March 30, 2005 incident. Dr. Riccardi also noted appellant’s complaint that she was made to perform a job that was not her responsibility, but this was not substantiated as a compensable work factor. Dr. Moy did not provide a rationalized medical opinion based on a complete background. He merely described “stress” from appellant’s supervisor without providing further detail. It is well established that a medical opinion that is not based on a complete factual and medical history and

¹² The Board notes that the record contains evidence regarding disciplinary actions, grievances and other incidents that occurred after the filing of the claim. The Office limited its review of evidence to the documents relating to allegations at the time of the filing of the January 9, 2006 claim. Appellant may take appropriate steps to expand her claim, but the Board has limited its review to the evidence regarding the allegations in the January 9, 2006 claim.

¹³ *Brenda L. Dubuque*, 55 ECAB 212, 216 (2004).

is not supported by medical rationale is of little probative value.¹⁴ Appellant did not meet her burden of proof in this case.

CONCLUSION

The Board finds appellant did not establish an emotional condition causally related to the accepted compensable work factors.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 1, 2007 is affirmed.

Issued: June 4, 2009
Washington, DC

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

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

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

¹⁴ *Id.*