

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

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**R.C., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Tempe, AZ, Employer**

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**Docket No. 08-2286  
Issued: June 9, 2009**

*Appearances:*

*Alan J. Shapiro, 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

JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 19, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated February 27 and July 28, 2008. Under 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 the Office properly found that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

**FACTUAL HISTORY**

Appellant, a 35-year-old letter carrier, filed a Form CA-2 claim for benefits based on an emotional condition on January 7, 2008. She asserted that she had developed post-traumatic stress disorder (PTSD), which was triggered by chronic pain when performing her job duties. Appellant stated that she first realized she had PTSD in October 1995 and first noticed that her claim was work related on March 1, 2006. She related that she experienced anxiety attacks which occurred only while "on the clock" or when she was speaking or thinking about postal-related issues; she also stated that she began to limp when under stress at the office. Appellant also stated

that she had fears about delivering mail in the dark. In addition, she alleged that she witnessed domestic violence and was stalked and approached by homeless people while delivering mail.

The employing establishment submitted a January 10, 2008 statement controverting appellant's claim that she sustained an emotional condition caused by her working conditions. It denied her assertion that she has PTSD triggered by chronic pain when performing job duties at work; it noted that she first realized she had PTSD in October 1995 and that it was work related on March 1, 2006. The employing establishment also noted that appellant had previously filed a claim for an emotional condition, File No. xxxxxx338, which was denied. It stated that she failed to provide any specific, corroborating evidence or provide specific dates in support of her allegations that she witnessed domestic violence, was stalked and approached by homeless people, or that management ignored her requests for assistance when her legs collapsed when she experienced stress at the worksite.

By letter dated January 24, 2008, the Office advised appellant that she needed to submit additional information in support of her claim. It requested that she submit additional medical evidence in support of her claim, including a comprehensive medical report, and provide factual evidence, which would establish that she had developed an emotional condition caused by factors of her employment. Appellant did not submit any additional evidence.

By decision dated February 27, 2008, the Office denied appellant compensation for an emotional condition, finding that the medical evidence was not sufficient to establish that her stress-related condition was causally related to her employment.

By letter dated March 5, 2008, appellant's attorney requested an oral hearing, which was held on June 3, 2008. At the hearing, appellant indicated that she had filed a claim for an emotional condition on October 1, 1995, File No. xxxxxx338, which the Office denied. She stated that the instant claim was based on a new condition, PTSD, which she developed due to "past traumas that resurfaced" and were "retriggered by similar incidences." Appellant stated that she unsuccessfully attempted to obtain family leave from the employing establishment to deal with personal issues. She reiterated that she witnessed domestic violence and was stalked and assaulted by homeless people while carrying mail on her route in 2005 and 2006.<sup>1</sup> Appellant testified that the primary factor which caused her to file the instant claim was that the employing establishment repeatedly ignored her pleas for assistance with her health issues and denied her requests for leave. In addition, she testified that she experienced additional stress when management erroneously calculated her retirement date. Appellant testified that management repeatedly harassed her and insulted and humiliated her regarding her assertions of witnessing domestic violence and being stalked by homeless people; she also claimed that management failed to credit her with overtime pay. She related that as of January 2008, stress at work caused compression on her spinal cord, which, a physician told her, caused her legs to repeatedly give out. The claimant testified that she is currently under the care of two psychiatrists for her condition; however, she did not submit reports from these physicians.

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<sup>1</sup> Appellant testified that she had statements from witnesses who would corroborate these assertions. However, there are no witness statements contained in the case file.

By decision dated July 28, 2008, an Office hearing representative affirmed the February 27, 2008 Office decision.

### **LEGAL PRECEDENT**

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition, and rationalized medical opinion evidence establishing that compensable employment factors are causally related to the claimed emotional condition.<sup>2</sup> There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.<sup>3</sup>

The first issue to be addressed is whether appellant has cited factors of employment that contributed to her alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act.<sup>4</sup> On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.<sup>5</sup>

### **ANALYSIS**

The Board finds that the administrative and personnel actions taken by management in this case contained no evidence of agency error, and are therefore not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.<sup>6</sup> However, error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage.<sup>7</sup> In this case, appellant has failed to demonstrate any error or abuse on the part of management with respect to her allegations that management failed to respond to her assertions that she witnessed domestic violence or was

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<sup>2</sup> See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

<sup>3</sup> See *Ruth C. Borden*, 43 ECAB 146 (1991).

<sup>4</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> *Id.*

<sup>6</sup> See *Alfred Arts*, 45 ECAB 530, 543-44 (1994).

<sup>7</sup> *Margreate Lublin*, 44 ECAB 945 (1993).

stalked and harassed by homeless people. Appellant has submitted no corroborating evidence, such as witness statements, to establish the truth of these allegations.<sup>8</sup>

The Board has held that an emotional condition, related to chronic pain and limitations resulting from an employment injury, is covered under the Act.<sup>9</sup> However, the record contains no documentation that appellant had a work-related injury for which a physician prescribed work restrictions; nor has she established that management was aware of such an injury or knew of such restrictions. Appellant also alleged that the employing establishment ignored her requests for assistance with her health issues. However, she has failed to substantiate or provide corroboration for these allegations.

The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.<sup>10</sup> Regarding appellant's allegations that the employing establishment mishandled her request for retirement by miscalculating the proper date of retirement, the Board notes that the development of any condition related to such matters would not arise in the performance of duty as the processing of such claims bears no relation to appellant's day-to-day or specially assigned duties.<sup>11</sup> In addition, appellant has failed to substantiate or provide corroboration for these allegations. She has failed to show that these alleged actions demonstrated error or abuse on the part of the employing establishment; thus, they are not compensable.

The Board notes that matters pertaining to use of leave are generally not covered under the Act as they pertain to administrative actions of the employing establishment and not to the regular or specially assigned duties the employee was hired to perform.<sup>12</sup> In the present case, there is no evidence of record to substantiate appellant's allegations that the employing establishment arbitrarily and unfairly denied her sick leave or overtime pay. Accordingly, appellant has presented no evidence that the employing establishment acted unreasonably or committed error with regard to these incidents of administrative managerial functions.

The Board has held that emotional reactions to situations in which an employee is trying to meet her position requirements are compensable.<sup>13</sup> However, appellant has not submitted evidence indicating that she had difficulty completing her position requirements because she was afraid of the dark, she witnessed domestic violence or because she received threats from homeless people. While she has made general allegations, she has not submitted any specific evidence of "domestic violence" or "homeless people making threats," or her fear of the dark interfering with the performance of her employment duties. For this reason, the Board finds that

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<sup>8</sup> See *Larry J. Thomas*, 44 ECAB 291, 300 (1992).

<sup>9</sup> See *Arnold A. Alley*, 44 ECAB 912, 921-22 (1993); *Charles J. Jenkins*, 40 ECAB 362, 367 (1988).

<sup>10</sup> See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

<sup>11</sup> See *George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

<sup>12</sup> *Elizabeth Pinero*, 46 ECAB 123 (1994).

<sup>13</sup> See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

appellant has not established that her emotional condition arose from the performance of her regular or specially assigned duties.<sup>14</sup> The Board notes that appellant's reaction to such conditions and incidents at work must be considered self-generated in that it resulted from her frustration in not being permitted to work in a particular environment or to hold a particular position.<sup>15</sup>

The Board further finds that appellant has failed to establish that management engaged in a pattern of harassment. Appellant has not submitted any factual evidence to support her allegations that she was harassed, mistreated or treated in a discriminatory manner by her supervisors. She has alleged, in general terms, that the employing establishment harassed her, insulted her and humiliated her for stating that she witnessed domestic violence and was stalked by homeless people while on her route; she also alleged that management retaliated against her for filing compensation claims, but has not provided a description of specific incidents or sufficient supporting evidence to substantiate the incidents which she believed constituted harassment and discrimination. Appellant has provided no corroborating evidence or witness statements to establish that the statements actually were made or that the actions actually occurred.<sup>16</sup> As such, her allegations constitute mere perceptions or generally stated assertions of dissatisfaction with certain superiors at work which do not support her claim for an emotional disability.<sup>17</sup> For this reason, the Office properly determined that these incidents constituted mere perceptions of appellant and were not factually established. Appellant has not submitted evidence sufficient to establish that the employing establishment engaged in a pattern of harassment and intimidation toward her or created a hostile workplace environment.

The Board finds that appellant has not established a compensable work factor. For this reason, the medical evidence will not be considered.<sup>18</sup> The Board will affirm the February 27 and July 28, 2008 decisions denying compensation for an alleged emotional condition.

### **CONCLUSION**

The Board finds that the Office properly found that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

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<sup>14</sup> See *Lillian Cutler*, *supra* note 4.

<sup>15</sup> *Tanya A. Gaines*, 44 ECAB 923, 934-35 (1993).

<sup>16</sup> Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act. *Harriet J. Landry*, 47 ECAB 543, 547 (1996). Appellant has not shown how such isolated comments would rise to the level of verbal abuse or otherwise fall within the coverage of the Act. See *Alfred Arts*, *supra* note 6.

<sup>17</sup> See *Curtis Hall*, 45 ECAB 316 (1994); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>18</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 28 and February 27, 2008 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: June 9, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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