

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

C.M., Appellant)	
)	
and)	Docket No. 10-1540
)	Issued: April 21, 2011
U.S. POSTAL SERVICE, POST OFFICE,)	
Cleveland, OH, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 19, 2010 appellant filed a timely appeal of an April 29, 2010 Office of Workers' Compensation Programs' decision, which affirmed a March 31, 2010 decision, that denied her emotional condition claim. Pursuant to the Federal Employees' Compensation Act¹ and 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.

FACTUAL HISTORY

On September 14, 2009 appellant, then a 47-year-old postmaster, filed an occupational disease claim for anxiety, panic attacks and depression that resulted from the unwanted attention

¹ 5 U.S.C. § 8101 *et seq.*

of a postal customer. She alleged that the customer lingered in the lobby and attempted to “get personal.” Appellant alleged that he would “remain and just stare at me.” Furthermore, the customer waited for her in the parking lot or waited at a small plaza. Appellant alleged that on August 14, 2009 the customer followed her for “13 miles from work and made threatening calls.” She first realized her disease or illness was caused or aggravated by her employment on August 14, 2009. Appellant stopped work on August 26, 2009.

In an undated statement received on October 13, 2009, appellant noted that the customer on August 14, 2009 followed her 13 miles to the Home Depot, parked two rows away and stared at her. She was afraid to leave her vehicle until he left the parking lot. Appellant noted that she filed a civil protection order in county court. She noted that the customer had a history of stalking and intimidation. The customer continued to contact her replacement, asked questions about her and made threats towards her.

In a September 9, 2009 attending physician’s report, Dr. Pasty Buccino, a Board-certified family practitioner, diagnosed anxiety, panic attacks and depression. She checked the box “yes” to indicate that appellant’s condition was caused or aggravated by an employment activity. Dr. Buccino noted that appellant was “stalked and physically threat[ened] by a customer.” She advised that appellant was totally disabled from August 26, 2009.

In letters dated September 30, 2009, the Office advised appellant and the employing establishment of the additional evidence needed to support her claim.

In an undated statement received November 2, 2009, appellant stated that Joseph Bates, a customer, had a post office box and got his mail every day, opening it on the closed side of the retail counter. In mid-2007, she began working at the retail window and Mr. Bates sought to engage her in “small talk” as he opened his mail. In 2008 Mr. Bates’ conversations became more personal and she began to feel uncomfortable as he lingered trying to speak with her. He waited in the lobby and stared at her while she helped other customers, sometimes hanging around for 30 minutes or more. Appellant stayed in her office or in the back to avoid interacting with him. Mr. Bates became more persistent and, on some days, picked up a portion of his mail and left only to return and repeat the process. Other days, he got his mail, returned before closing and sat in his vehicle and watched her go to the collection box to retrieve mail.

On June 26, 2009 Mr. Bates left a greeting card for “Ms. Postmaster” with inappropriate comments. Appellant contacted her boss on June 29, 2009 for help. Her supervisor contacted the appropriate authorities who determined that Mr. Bates had not done anything to her. Appellant was advised to discourage him from lingering in the lobby. She placed a sign indicating that the retail counter was only for customers who were using a debit card to pay for purchases. A few days later Mr. Bates came in and called her out to the counter and asked her if there was anyone else in the office. Appellant alleged that he advised her that other offices were under investigation. She had no idea what he was talking about and advised him that he could no longer use the retail counter to open his mail. The next day Mr. Bates placed his mail on the retail counter and she reminded him that he could not open his mail there. Appellant experienced anxiety every morning hoping that she would not have any contact with him. She began wearing an engagement ring to discourage him but he asked “when did that take place?” and he pointed at her ring. Mr. Bates sometimes sat in his vehicle in the parking lot when she

was leaving at the end of the day and then pulled out after she passed. On August 14, 2009 Mr. Bates had a package that would not fit in his box and stood at the retail counter opening his package. He became agitated when she told him not to open his mail at the counter. Appellant went to her office and “was afraid that he was going to try to come over the counter and come after me.” Mr. Bates leaned against the counter with his arms crossed on his chest and stared at the retail counter for about 10 minutes and then left. On her way home, appellant stopped at the Home Depot and Mr. Bates sat in his truck two aisles away. She did not get out of her car due to fear of what he might do. Appellant called her boss on August 17, 2009. She was advised to file a report, which she did on August 19, 2009. Appellant’s hearing for a protective order was scheduled for August 26, 2009 and rescheduled. She stated that Mr. Bates called the office a few days later and asked her replacement what she was doing there and then made a threat about appellant not “coming back.” Appellant feared for her safety.

In an October 13, 2009 report, Dr. Buccino noted that appellant first presented with severe anxiety and panic attacks directly related to her employment. Appellant’s condition started immediately after a customer tried to come across the counter after her. She related that the customer exhibited bizarre and inappropriate behavior towards her since September 2008. Dr. Buccino explained that appellant initially tried to avoid the customer but he started lingering or waiting for her when no other customers were present. She noted that he would sit outside in his truck waiting for appellant to leave. Dr. Buccino advised that appellant contacted her superiors but was told no action could be taken. She noted that appellant was given a greeting card by the customer, that he made inappropriate advances, that he followed her, that he sometimes came to the employing establishment twice a day to initiate conversation, and on one occasion followed her home. Appellant filed for a protective order and the customer called the employing establishment with a threat. Dr. Buccino noted that appellant believed that this was “a threat of physical harm of possibly rape or worse.” She diagnosed severe anxiety, depression, panic attacks and emotional distress as a direct result of appellant’s job. Dr. Buccino explained that appellant was working in an unsafe, threatening environment. Appellant’s symptoms would resolve only by moving her to a safe work environment.

In a November 12, 2009 decision, the Office denied appellant’s claim finding that she did not establish a compensable factor of employment.

On December 28, 2009 appellant requested reconsideration. She noted a copy of a birthday card from Mr. Bates, which he signed “Now and Forever.” Appellant stated that it was an example of his obsession and surveillance during and after work hours.² She noted that the Office did not obtain any information from the employer. Appellant provided an August 17, 2009 e-mail to her supervisor, Anthony Arrington, advising him of Mr. Bates’ behavior on August 14, 2009 and her encounter with him at the Home Depot. After filing for a protective order, which was in effect pending a hearing, Mr. Bates showed up and called despite not being permitted within 500 feet of her or the employing establishment. Appellant submitted a December 17, 2009 e-mail from a coworker, Julianne Slusher, who confirmed that Mr. Bates violated the protective order by coming to the employing establishment. Ms. Slusher noted that Mr. Bates told her that appellant “might be out of a job if he had anything to do with it.”

² The card was not received at this time. It was later received on April 28, 2010.

An October 14, 2009 decision from the Court of Common Pleas, Portage County, Ohio, denied her request for a civil protective order. The magistrate denied the request for a protective order finding that, while the incidents were disturbing, they did not rise to a threat of physical harm. The magistrate found that appellant did not establish the offense of menacing by stalking, but noted that Mr. Bates might want to seek counseling. In a November 16, 2009 letter, Mr. Arrington informed Mr. Bates that his post office box was being closed and that he was prohibited from entering the premises. He explained that the action was taken as Mr. Bates had engaged in conduct that was “both harassing and intimidating” while on and off the work premises. Mr. Arrington noted that the conduct included remaining in the lobby for long periods, staring at appellant, parking in the postal parking lot, waiting for appellant to collect mail, leave and enter the building for lunch and at night, sending her unwanted and unsolicited cards and following her to Home Depot. He advised Mr. Bates that his conduct posed a threat to appellant’s physical and emotional well being.

In a November 27, 2009 letter, Mr. Bates objected to the employer’s decision to terminate his mail service. He suggested that it was appellant’s supervisor and another postmaster who were infatuated with appellant. Mr. Bates explained that appellant had a change in her attitude from pleasant to rude, hateful and vindictive. He stated that appellant was paranoid and that stalking was not proven in court. Mr. Bates denied her claims and indicated that she made false accusations. He explained that he was at an ice-cream stand, which was located in the same parking lot as the Home Depot, and they happened to be at the same place on “one occasion” after she left work. Mr. Bates denied following appellant and provided explanations for his presence near appellant. He suggested that appellant would have left the court in “handcuffs” if he had been given a chance to testify. Appellant alleged that his letter was a threat.

In a December 15, 2009 report, Deirdre K. Petrich, a social worker and clinic director, opined that appellant was had post-traumatic stress disorder “directly associated with the stalking from a postal client.” She opined that appellant would not have an anxiety problem if the stalking had not occurred. Dr. Petrich advised that appellant would benefit from a lateral reassignment as she could be in danger noting that “the alleged stalker may worsen his behavior given the proximity.”

In a letter dated January 6, 2010, the Office contacted the employing establishment for additional information. It also requested confirmation regarding whether box service was terminated. The employing establishment did not respond.

On March 17, 2010 the Office claims examiners spoke with Mr. Arrington, who confirmed that the post office box of Mr. Bates was closed. Mr. Arrington reported the box was closed out of concern for appellant’s safety. Appellant called him to report that Mr. Bates was following her on the way to Home Depot; however, when she contacted police, he was gone. Mr. Arrington advised the Office that he had tried to contact Mr. Bates, but his calls were not returned.

In a March 31, 2010 decision, the Office modified its November 12, 2009 decision. It found that Mr. Bates, the postal patron, became so annoying to appellant that the employer closed his mailbox. It found that he lingered and stayed longer than usual at her facility and may

have attempted to converse with appellant at work. The Office accepted the court finding that stalking was not established. It found that the medical evidence was insufficient to establish a causal relationship between the emotional condition and the established work factor.

On April 14, 2010 appellant requested reconsideration and submitted additional evidence. She repeated her assertions and provided a copy of the birthday card she received from Mr. Bates at work. The message inscribed inside the card read: “Dear Carol, You have seemed so unhappy this last year. I suspect it has been the job. You have aged during this time. I miss your beautiful smile. It used to make my day, almost everyday. It hurts to see you this way. Now and Forever! JLB.” She also noted that, while her protective order was denied, a finding was made that incidents were disturbing and Mr. Bates was advised to seek counseling.

In an April 9, 2010 report, Dr. Buccino opined that appellant’s condition was directly caused by her job as a postmaster. Mr. Bates had an obsessive infatuation and stalked appellant. There was no one that she knew of who went to the employing establishment and stayed for up to an hour without conducting business or returned mail to their post office box to be opened later. Dr. Buccino opined that there was irrefutable medical evidence that appellant’s medical condition/injury were directly caused by her employment. She opined that appellant’s ongoing anxiety, depression, stress syndrome resulted from daily interaction with Mr. Bates who has shown unequivocal obsession, infatuation, and stalking behavior with veiled threats of physical harm. Dr. Buccino concurred with Dr. Petrich that appellant’s condition would best be resolved by at least a permanent lateral move and no demotion. In an April 6, 2010 report, she disagreed with the denial of appellant’s claim and asserted that Mr. Bates’ actions caused appellant’s anxiety condition.

In an April 29, 2010 decision, the Office denied modification of its March 31, 2010 decision. It had accepted that Mr. Bates lingered or stayed longer than usual when he picked up his mail but it did not accept that appellant was ever threatened or stalked. The Office found that the medical evidence did not relate her condition to the accepted factor.

LEGAL PRECEDENT

Workers’ compensation law does not apply to each and every 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 concept or coverage of workers’ compensation. Where the disability results from an employee’s emotional reaction to her regular or specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand the disability is not covered where it results from such factors as an 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.³

An employee 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

³ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 126 (1976).

adversely affected by employment factors.⁴ This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions, for which compensation is claimed.⁵

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 the 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 the matter establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁷

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of several incidents involving a customer, Mr. Bates. The Board must thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

The Office accepted as a compensable factor that Mr. Bates lingered or stayed longer than usual when he picked up his mail. It did not find that his actions were persistent, threatening or amounted to harassment or stalking. The Office based its finding on magistrate's finding that stalking was not established under Ohio statute. The Board finds that the Office's acceptance that Mr. Bates lingered or stayed longer than usual when picking up his mail is too limited in view of the evidence which establishes that his conduct was of a more pervasive and persistent nature.

Appellant attributed her emotional condition to the regular or specially assigned duties of her position as a postmaster. It is undisputed that, as postmaster, her duties included encounters with patrons such as Mr. Bates. Appellant alleged that she was persistently engaged, watched and followed, which she termed as stalking or harassment by Mr. Bates. She identified several instances involving Mr. Bates, which support that she was persistently engaged, watched and followed in the performance of her regular duties.

Appellant alleged that Mr. Bates tried to get "personal" with her and engage in small talk and that he would remain in the lobby and "stare" at her, linger for 30 minutes or so, and pick up his mail twice a day so that he could return later. She noted that Mr. Bates would open his mail

⁴ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁵ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁶ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁷ *Id.*

on the counter, despite being told not to do so, and that he would wait for her in the parking lot and watch her. Appellant referred to an August 14, 2009 incident when he was advised not to use the retail counter to open his mail and he became agitated. She further alleged that, after work, he followed her to the Home Depot. Appellant provided an unwanted birthday card that Mr. Bates sent her at work as evidence of stalking. Mr. Bates also called a coworker, Ms. Slusher, who noted that he threatened appellant's job. Ms. Slusher also confirmed appellant's assertion that Mr. Bates violated a protective order by appearing at the employing establishment when he was ordered to stay away. Mr. Arrington's November 16, 2009 letter to Mr. Bates, banning his presence at the employing establishment and closing his post office box due to his behavior and out of concern for appellant's safety, further confirms appellant's allegations. On behalf of the employer, he found that the actions of Mr. Bates were "both harassing and intimidating" while on and off the employing establishment premises. Mr. Arrington termed Mr. Bates' conduct as "stalking" and instances in which Mr. Bates remained in the lobby for long periods, stared at appellant, parked in the postal parking lot and waited for appellant to collect mail, sent appellant unwanted and unsolicited cards, and watched her exit at night. He also noted that he followed her from work to Home Depot. Mr. Arrington informed Mr. Bates that the employer had determined that his conduct posed a threat to the physical and emotional well being of appellant.

In denying stalking and other employment factors, the Office either did not make specific findings on alleged factors⁸ or it relied on the October 14, 2009 magistrate's decision finding that appellant did not establish stalking as made by Ohio statute. The Board notes that establishing stalking under Ohio statute is not a prerequisite to establishing a compensable employment factor. The Board has held that determinations made by other courts or government agencies are not dispositive with regard to questions arising under the Act.⁹ The magistrate found Mr. Bates' actions "disturbing." As noted, where the disability results from an employee's emotional reaction to his regular or specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. The Board finds that the incidents set forth by appellant which occurred at the employing establishment, and which were confirmed by Mr. Arrington and Ms. Slusher, are matters that appellant encountered as part of the performance of her duties as a postmaster. The Board finds that appellant has established compensable employment factors under *Cutler*¹⁰ with respect to Mr. Bates persistent and unwanted actions toward her in 2008 and 2009 that she encountered as part of performing her job and which the employing establishment termed as harassing, intimidating and stalking.

Although the record contains a statement from Mr. Bates generally denying appellant's assertions, the Board finds that his denial is not convincing. In denying appellant's allegations, Mr. Bates sought to portray appellant in a less than favorable light but did not provide any evidence to support his general allegations. Mr. Arrington determined that Mr. Bates' actions

⁸ 20 C.F.R. § 10.126 (the Office's decision shall contain findings of fact and a statement of reasons). For example, the Office did not make a finding on whether the card that Mr. Bates sent to appellant at work was a compensable work factor. As noted, *infra*, Mr. Arrington based, in part, his decision to ban Mr. Bates from the employing establishment and to close his post office box based on his sending unwanted cards to appellant.

⁹ *Ernest J. Malagrida*, 51 ECAB 287, 291 (2000).

¹⁰ *See supra* note 3.

warranted closing his post office box and banning him from the premises. Ms. Slusher confirmed that Mr. Bates violated a protective order by appearing at the employing establishment. She also advised that he called her and threatened appellant's job over the telephone.

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 for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.¹¹ In this case, the Office did not analyze or develop the medical evidence in relation to the expanded scope of employment factors found by the Board on appeal. As the Office had not considered or developed the medical evidence in this regard, the case will be remanded to the Office to properly consider or develop the medical evidence as it deems appropriate.¹² Following this and such other development as it deems necessary, the Office shall issue a *de novo* decision.

On appeal, appellant alleged that the evidence was not understood in its entirety, that Mr. Bates' actions went on for over a year and that she felt threatened by his actions. As noted, the Board has found additional compensable work factors and is remanding the case for further consideration of the medical evidence. Appellant also submitted additional evidence with her appeal to the Board. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision.¹³

CONCLUSION

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

¹¹ See *William P. George*, 43 ECAB 1159, 1168 (1992).

¹² See *A.K.*, 58 ECAB 119 (2006); *Robert Bartlett*, 51 ECAB 664 (2000).

¹³ 20 C.F.R. § 501.2(c); see *Steven S. Saleh*, 55 ECAB 169 (2003).

ORDER

IT IS HEREBY ORDERED THAT the April 29, 2010 Office of Workers' Compensation Programs' decision be set aside and the case remanded for further proceedings consistent with this decision of the Board.

Issued: April 21, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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