

On February 19, 2009 appellant, then a 48-year-old rural carrier, filed claims for compensation alleging that her stress and anxiety were a result of her federal employment: “Harassment -- EEO claim filed. Several issues. Working overburden 48 hr. -- 5 days.” She also alleged that her fibromyalgia, musculoskeletal pain, myofascial pain, degenerative disc disease and migraine headaches were a result of her federal employment. Appellant stated that

working had always caused pain, but when her workload was increased for several months, the pain became severe.

An October 2, 2008 medical note from Dr. Patrick O'Daniel, an internist, stated that appellant had been working longer and harder recently and that she had presented in September complaining of worsening neck pain. X-rays showed a disc injury with a suggestion of nerve root impingement. Dr. O'Daniel advised appellant that the discomfort she experienced was related to disc disease in her neck as a consequence of a motor vehicle accident in 1997. He added: "It has worsened as a result of your heavier workload."

The employer controverted appellant's claims. Appellant's supervisor stated that to the best of his knowledge appellant was not harassed at work. At no time did appellant approach him or any other supervisor about being harassed by the postmaster. She did not approach the postmaster about being harassed by the supervisors. The supervisor attached tables to support that in the nine weeks after she claimed to become overburdened, she worked an average additional time of only three minutes a day, a very nominal figure.

The postmaster stated that she did not know that appellant was under stress until she received a telephone call from an EEO officer. At no time did she and appellant have any cross words. The postmaster also stated that appellant's claim of working 48 hours a week was incorrect. She attached timesheets to show the number of hours appellant worked during the period in question.¹

Appellant stated that in 1999 to 2000 she was sexually harassed, stalked and assaulted by Jerry Owens, a postmaster at the time. In 2008 Kim Owens, his wife, was placed as postmaster. "Mr. Owens was not ever to be around me or where I worked but in December 2008 -- present time Mr. Owens was coming to where I work and this alone was upsetting I was afraid of him and the inspectors who work the claim told me I had every right to be scared of him that he seemed to be a sick person." When appellant told the union that Mr. Owens was not allowed to be at work, Ms. Owens retaliated against her. She filed an EEO complaint. Appellant complained that she was overburdened longer than other employees and had to be off the clock by 6:00 p.m. while others were off by 7:00 p.m. She alleged that Ms. Owen would greet everyone in the morning except her. Appellant worried about Mr. Owens coming to her place of work.

Appellant's supervisor explained that appellant had an increase in the number of active deliveries to her route, but this was minimized by decrease in mail volume during all the months in question. He stated that mail volumes had significantly declined over the prior two years. The supervisor stated that appellant was overstating the general requirements of her job and the hours she worked. Appellant spent 75 percent of her day not in contact with managers or craft employees and, to the best of her supervisor's knowledge, she had no conflict with him or the other managers at the employing establishment. The supervisor attached forms showing that appellant claimed deliveries she did not have.

¹ The figures showed that appellant worked as many as 47.71 hours one week and as few as 33.76 hours three weeks later. The average for this time was 41.84 hours a week.

The postmaster advised that an investigation showed that appellant's route was not as overburdened as she claimed. One of the hardship dismount boxes that appellant was claiming had not been on her route for more than a year. Also, some of the regular mailboxes she had on her edit book were nonexistent addresses. The postmaster attached supporting documents, including pages from appellant's edit book showing three boxes that were not active deliveries. She explained that the only contact appellant had with managers would be based on a customer complaint, which the manager had to investigate, or if there were something concerning the carrier's route that had to be conveyed to the carrier. The postmaster stated: "Almost every morning I would walk around and speak to all the employees. [Appellant] would almost always stop me to chitchat. We never had any cross words." The postmaster explained that carriers had a deadline to be finished by 6:00 p.m. daily. She added: "When the paperwork showed that [appellant's] route was overburdened we took off 78 boxes and 6.62 miles per day. Since we made the adjustments, [appellant] has not returned to work."

A health and resource manager at the employing establishment stated in part: "[Appellant's] claim of on the job stress became an issue after a routine route inspection after it was discovered that her route was overburdened. During the adjustment of the route, her managers took a great deal of trouble to tailor the route to her wishes."

The supervisor stated that he knew of only one incident in which Mr. Owen was in the lobby of the employing establishment. He knew of no contact between Mr. Owens and appellant.

On August 27, 2009 the Office denied appellant's claim. It found that the factual evidence did not establish any compensable factors of employment was unnecessary.

The health and resource manager stated that she was unable to discover any order to prevent Mr. Owens from being on the public postal premises or any evidence that he contacted appellant while on the public postal premises. She added that appellant's EEO case was dismissed and no basis was found to open an investigation into allegations that Mr. Owens was on public postal premises.

In a March 30, 2010 decision, an Office hearing representative affirmed the denial of compensation benefits. She found that the evidence failed to establish an increased workload: "While there was an indication that [appellant's] delivery area was growing, the evidence of record fails to support that [she] was working more than her usual hours with regard to this change." The Office hearing representative noted that the employer readjusted the area and immediately addressed appellant's concerns about her assigned route. The employer discovered that she was misrepresenting her hours and the deliveries assigned. The hearing representative found that appellant submitted no evidence to support her assertion that she was harassed by Mr. Owen in her earlier postal employment or that she was promised he would not visit her later postal assignment. Moreover, there was no evidence to corroborate that Ms. Owens harassed her at any time or that she was assigned additional work as claimed.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² An employee seeking benefits under the Act has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.³

Causal relationship is a medical issue⁴ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁵ must be one of reasonable medical certainty⁶ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁷

When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her duties and the medical evidence establishes that the disability resulted from her 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 resulted from her emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of her work. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.⁸

Workers' compensation does not cover an emotional reaction to an administrative or personnel action unless the evidence shows error or abuse on the part of the employing establishment.⁹ The Board has held that actions of an employer which the employee

² 5 U.S.C. § 8102(a).

³ *John J. Carlone*, 41 ECAB 354 (1989).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁷ *See William E. Enright*, 31 ECAB 426, 430 (1980).

⁸ *Lillian Cutler*, 28 ECAB 125 (1976).

⁹ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566, 572-73 (1991).

characterizes as harassment or discrimination may constitute a factor of employment giving rise to coverage under the Act, but there must be some evidence that harassment or discrimination did in fact occur. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.¹⁰ Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.¹¹ The primary reason for requiring factual evidence from the claimant in support of her allegation of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.¹²

ANALYSIS

Appellant filed a claim for compensation alleging that her stress and anxiety were a result of her federal employment. She implicated harassment and an overburdened route. Appellant submitted no medical evidence to support this aspect of her claim. The record contains no report from a psychologist or psychiatrist attributing a diagnosed emotional condition to her federal duties. Because appellant submitted no evidence to support the essential element of causal relationship, the Board finds that she has not made a *prima facie* claim for an emotional injury.¹³

Appellant did not submit evidence to substantiate her claim of harassment and retaliation. She filed an EEO complaint but did not submit a favorable final decision or finding from that proceeding to support that her claim had any merit. The supervisor and postmaster denied any conflict with appellant. The record contains insufficient evidence to establish her allegations against Mr. Owens or her claim that he was not supposed to come to the workplace. There is no evidence to support any contact between appellant and Mr. Owens beginning in December 2008. There is also no evidence to support that the postmaster greeted everyone but appellant in the morning. As a result, appellant has not established a factual basis for her emotional injury claim. The Board finds that she has not discharged her burden of proof to establish an emotional injury in the performance of duty. The Board will affirm the Office's March 30, 2010 decision on the issue of emotional injury.

Appellant also filed a claim alleging that her fibromyalgia, musculoskeletal pain, myofascial pain, degenerative disc disease and migraine headaches were a result of an increased workload for several months. Dr. O'Daniel lent some support to this claim when he found in the

¹⁰ See *Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

¹¹ *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

¹² *Paul Trotman-Hall*, 45 ECAB 229 (1993) (Groom, M., concurring).

¹³ See *Herman E. Harris*, Docket No. 91-1754 (issued April 29, 1992) (finding that the claimant failed to establish a *prima facie* claim for compensation where he submitted no medical opinion relating his occupational disease or condition to factors of his federal employment).

fall 2008 that her heavier workload had worsened the discomfort she was experiencing from cervical disc disease as a consequence of a motor vehicle accident in 1997. The question becomes whether appellant has established a factual basis for her allegation of an increased workload for several months in 2008.

The record does not support appellant's allegation that she had to work 48 hours a week during this time. It appears that any increase in work hours was quite nominal. The Office hearing representative found that the evidence failed to support that appellant was working more than her usual hours. Appellant's supervisor acknowledged an increase in the number of active deliveries to appellant's route but noted that this was minimized by a decrease in mail volume during the months in question. The postmaster stated that paperwork showed her route to be overburdened and to address this fact, 78 boxes and 6.62 miles were removed per day. The health and resource manager also explained that a routine route inspection discovered that her route was overburdened. This evidence tends to substantiate her allegation of an overburdened route and provide a factual basis for her physical injury claim.

The Board finds that this aspect of the case is not in posture for decision. Further development of the factual evidence is warranted on the issue of appellant's route. The Office should ask the employer to clarify the work performed during the period in question and how this affected the physical demands of her job, notwithstanding the hours she worked. If it should find an established compensable factor of employment, it should prepare a statement of accepted facts and ask Dr. O'Daniel to provide a medical opinion on whether the accepted factor of employment caused or contributed to appellant's degenerative disc disease. After such further development as may be necessary, the Office shall issue an appropriate final decision on whether she sustained a physical injury in the performance of duty, as alleged.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional injury in the performance of duty. The Board also finds that this case is not in posture for decision on the issue of physical injury; further development of the evidence is warranted.

ORDER

IT IS HEREBY ORDERED THAT the March 30, 2010 decision of the Office of Workers' Compensation Programs is affirmed on the issue of emotional injury and is set aside on the issue of physical injury. The case is remanded for further action consistent with this opinion.

Issued: February 17, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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