

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LANATTA BROSSEAU and U.S. POSTAL SERVICE,
SPRINGFIELD POST OFFICE, Springfield, Mo.

*Docket No. 97-800; Submitted on the Record;
Issued December 9, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof to establish that she sustained an emotional condition while in the performance of duty.

On August 15, 1996 appellant, then a mail handler, filed a claim for an occupational disease (Form CA-2) alleging that she became aware that her stress was caused or aggravated by her employment in March or April 1996. Appellant stated that she was accused of harassment, intimidation and assault by another employee of the employing establishment. Appellant further stated that management either took her into an office or remained on the workroom floor and told her that such accusations had been made against her. Appellant then stated that she felt like she was not allowed to perform her job duties due to the fear of someone perceiving things in a different light. Appellant did not stop work. Appellant's claim was accompanied by employment records and medical evidence. Appellant's claim was also accompanied by an undated narrative statement. In this statement, appellant explained that in either March or April 1996, she was called into the office by Cal Livgren, an employing establishment supervisor, where she met with Bob Rabino, a "MDO," and Charlie Gilliand, a union steward. Appellant also explained that she was asked whether she understood the zero tolerance policy of the employing establishment and was told that Pat Davis, a coworker, had filed a complaint accusing her of harassment and intimidation. Appellant further explained that she did not understand the complaint because she had not spoken to Ms. Davis since December 1994. Additionally, appellant explained that on the morning of August 9, 1996, Rich Jones, a "MDO," stopped her on the workroom floor and said that Ms. Davis had told him that she was trying to get Ms. Davis to come into the women's bathroom to have a fight. Appellant then explained that she was unable to perform her job duties due to the fear of having them misinterpreted by Ms. Davis as having something to do with her rather than with the job. Appellant stated that she avoided the area where Ms. Davis was present, which required her to use a water fountain and bathrooms in an area that was not close to her work area.

By letter dated October 30, 1996, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish her claim. The Office advised appellant to submit additional factual and medical evidence supportive of her claim. By a letter of the same date, the Office advised the employing establishment to submit factual evidence regarding appellant's claim.

In a November 19, 1996 response, appellant reiterated that she and Ms. Davis had not spoken since December 1994 and that she made attempts to avoid Ms. Davis. Appellant stated that they used to be good friends and usually did things together or with her children. Appellant also stated that she met with Mr. Gilliland, Mr. Livgren and Mr. Rabino, and that she was told that she was not being accused of anything, rather they were just looking into the situation. Appellant also stated that she had heard rumors that Ms. Davis had written a novel regarding harassment by her coworkers and management, and that she was mentioned in the book on several occasions. Appellant further stated that she had requested a copy of anything written about her, but that she did not receive an answer to her request. Appellant then stated that Mr. Rabino told her that Ms. Davis felt that she was giving her harassing and threatening looks and gestures. Appellant explained that Mr. Jones stopped her to say that Ms. Davis had reported to him that she was trying to intimidate or provoke Ms. Davis into a fight. Appellant stated that she had motioned her boyfriend was coming to lunch, but that Ms. Davis felt that she was motioning her to come into the breakroom to have a fight.

By decision dated December 5, 1996, the Office found the evidence of record insufficient to establish that appellant sustained an injury as alleged. In an accompanying memorandum, the Office found that appellant had failed to submit sufficient factual evidence regarding her relationship with Ms. Davis and to allege specific employment factors that caused her emotional condition. The Office also found that appellant had failed to submit any medical evidence supportive of her claim.

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

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. To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.¹

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

¹ *Wanda G. Bailey*, 45 ECAB 835 (1994); *Kathleen D. Walker*, 42 ECAB 603, 608-09 (1991).

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 to secure a promotion. On the other hand, where disability results from an employee's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.²

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.³

The initial question is whether appellant has alleged compensable employment factors as contributing to his condition.⁴ Thus, part of appellant's burden of proof includes the submission of a detailed description of the specific employment factors or incidents which he believes caused or adversely affected the condition for which he claims compensation.⁵ If appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.⁶

In this case, appellant has alleged that an accusation of harassment, intimidation and assault by Ms. Davis, a coworker, caused her emotional condition. Appellant merely stated that she and Ms. Davis used to be friends, that they had not spoken to one another since December 1994 and that she avoided Ms. Davis at work. Appellant did not provide any other details or evidence explaining why her relationship with Ms. Davis had changed since December 1994 to establish that Ms. Davis' complaint arose out of her day-to-day regular duties, any specially assigned duties or from a requirement imposed by the employment. Since appellant has failed to provide any specific details, she has not substantiated a compensable factor of employment.

The investigation by the employing establishment into the allegations made by Ms. Davis does not constitute a compensable employment factor. The Board has recognized that while an investigation is an administrative function of the employer, an investigation may be a compensable factor of employment if there is affirmative evidence that the employer erred or acted abusively in the administration of the matter.⁷ In this case, there is no evidence of error or

² *Marie Boylan*, 45 ECAB 338 (1994); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Margaret Kryzcki*, 43 ECAB 496, 502 (1992); *Lillian Cutler*, *supra* note 2.

⁴ *Wanda G. Bailey*, *supra* note 1; *Donald E. Ewals*, 45 ECAB 111 (1993).

⁵ *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

⁶ *Margaret S. Krzycki*, *supra* note 3.

⁷ *Hubert C. Burton*, 43 ECAB 612 (1992); *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

abuse on the part of the employing establishment in the administration of its investigation of Ms. Davis' complaint against appellant.

The Board, therefore, finds that appellant has not alleged and substantiated a compensable factor of employment. Since appellant has not established a compensable employment factor, the Board will not address the medical evidence.⁸

The December 5, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
December 9, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁸ *Margaret S. Krzycki, supra* note 3. The Board notes that subsequent to the Office's December 5, 1996 decision, it received the employing establishment's November 26, 1996 response to its October 30, 1996 letter. Further, on appeal, appellant has submitted additional medical evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision; *see* 20 C.F.R. § 501.2(c)(1).