

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SYLVIA Y. MURILLO and U.S. POSTAL SERVICE,  
POST OFFICE, San Francisco, Calif.

*Docket No. 96-1109; Submitted on the Record;  
Issued February 25, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issue is whether appellant sustained an emotional condition in the performance of duty.

In August 1995<sup>1</sup> appellant, a 42-year-old mail carrier, filed a CA-2 occupational disease claim for employment-related emotional stress, anxiety and depression, which she stated she first became aware of on August 4, 1995. Appellant subsequently submitted to the Office of Workers' Compensation Programs an August 29, 1995 medical report from Dr. Tony Lee Wong, a specialist in internal medicine. Dr. Wong stated that he had been treating appellant for a stress anxiety problem which she related to her work. He stated that appellant had experienced recurrent epigastric discomfort, heartburn, bloating, acid taste in her mouth with episodes of hyperventilation and that these symptoms had occurred more frequently when she was at work. Dr. Wong further stated that appellant mentioned having a disagreement with a supervisor which had aggravated her symptoms and he noted that appellant had been treated for the same symptoms by another physician, Dr. Steven Wald, Board-certified in internal medicine, since April 1995. Dr. Wong concluded that appellant had undergone a multiple medical work up which failed to yield an explanation for these symptoms.

In a letter to the Office dated September 25, 1995, the employing establishment expressed its "concern" over the fact that appellant had failed to provide a reason for her stress and for her statement that she was taking four different types of medication. The employing establishment requested that the Office take note of the fact that appellant's treating physician stated that she mentioned having a disagreement with a supervisor while at work but did not provide a date for this disagreement, that she was not specific in her allegations and that her treating physician noted

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<sup>1</sup> The exact date is not listed on the form.

an uncertain etiology of her medical condition. The employing establishment also expressed its opinion that appellant had failed to establish a causal relationship between the claimed condition and her employment.

By letter dated October 5, 1995, the Office advised appellant that the evidence she submitted was not sufficient to determine whether she was eligible for compensation benefits and that she needed to submit a detailed description of the specific employment-related conditions or incidents she believed contributed to her illness. The Office also asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition and an opinion as to whether factors or incidents, *i.e.*, specific employment factors, at his employing establishment contributed to her condition.

In response to the Office's October 5, 1995 letter, appellant submitted an undated letter to the Office which indicated that she had attached a medical report from a psychiatrist, Dr. Albert De Ranieri, Board-certified in psychiatry and neurology and would subsequently be submitting an additional medical report from Dr. Wong. In Dr. De Ranieri's October 21, 1995 report, he stated that appellant was examined on October 14, 1995, at which time she described severe anxiety symptoms which caused her to be unable to work. Dr. De Ranieri described these symptoms as sweating excessively, a "racing" heart rate, numbness, a trembling sensation in her legs, an intense "free-floating" anxiety and masked fears that something terrible was going to happen to her. Dr. De Ranieri stated that appellant allegedly began experiencing these symptoms in June 1995, when she allegedly had a confrontation with a supervisor (not her immediate supervisor) who demanded that she perform a task of which she was not capable. Appellant stated to Dr. De Ranieri that following this confrontation she was emotionally devastated and developed both somatic and psychiatric symptoms. Dr. De Ranieri recommended that, for mental health reasons, appellant needed to take six weeks of medical leave based on both her physical and mental incapacities.

Dr. Wong submitted a follow-up report dated October 24, 1995 in which he stated that he had referred appellant to a diagnostic specialist who administered several tests on appellant in order to determine the organic explanation for her symptoms. He stated that the results from all of these tests were negative;<sup>2</sup> however, he stated that appellant had noted a worsening of her symptoms while at work and that the mere sight of a postal delivery van triggered these symptoms. Dr. Wong further stated that appellant attributed these symptoms to an argument she had with a supervisor at work in June 1995.

Appellant also submitted to the Office a xerox copy of a two-page, handwritten statement dated October 16, 1995 which, according to appellant, provides a description of the June 1995

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<sup>2</sup> Appellant submitted results and summaries from Dr. Ward based on diagnostic tests she underwent in May, August and September 1995, in addition to chart notes from Dr. Wong from August through September 1995.

confrontation with an employing establishment supervisor. However, the document appellant submitted was blurred and is very difficult to read.<sup>3</sup>

In addition, appellant submitted an October 16, 1995 letter from a coworker who claimed to have witnessed part of the conversation appellant alleged she had with the supervisor in June 1995. In this letter, the coworker, a mail clerk, stated that she had been having a phone conversation with a supervisor attempting to find a mail carrier who could take some mail located inside the station to the vans parked outside, when the supervisor asked to speak with appellant. The coworker stated that she handed the telephone to appellant, who then became “very, very upset.”

An interoffice memorandum from the Office titled “Report of Telephone or Office Call” stated that the Office had received a telephone call from appellant on January 3, 1996 in which she had requested a status update on her case. The memorandum stated that the Office responded to appellant’s request by telling her that the copy of the October 16, 1995 statement, which it received on November 17, 1995, was illegible. The Office therefore requested that appellant submit a “readable” statement.

By decision dated February 8, 1996, the Office found that fact of injury was not established, as the evidence of record did not establish that an injury was sustained in the performance of duty. The Office stated that appellant was requested, in its letter of October 5, 1995, to provide a statement which would describe in detail the events and incidents she believed were responsible for the development of her emotional condition. The Office stated that, although appellant had provided additional medical evidence in response to its October 5, 1995 letter, she had not provided the statement outlining the requested factual evidence. The Office stated that it received a copy of a document from appellant on November 17, 1995 which purportedly was such a statement, but that this copy was illegible. The Office stated that it had advised appellant in the telephone conversation of January 3, 1996 that the copy of the statement in the file was illegible and that appellant had resolved to submit a better copy. Appellant, however, failed to submit the required, legible copy requested by the Office.

The Office found that appellant was advised of the deficiency in her claim and afforded the opportunity to provide evidence sufficient to establish that specific events, incidents or exposures occurred at the time, place and in the manner alleged, but had failed to submit such evidence. Therefore, the Office concluded, the evidence of file failed to establish fact of injury.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

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<sup>3</sup> Upon close examination, the document appellant submitted could reasonably be characterized as either illegible or, at most, barely legible.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>4</sup> has the burden of establishing the essential elements of his or her claim,<sup>5</sup> including the fact that the individual is an "employee of the United States" within the meaning of the Act,<sup>6</sup> that the claim was timely filed within the applicable time limitation period of the Act,<sup>7</sup> that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.<sup>8</sup>

Section 10.100(b) of the regulations promulgated under the Act provides that an employee who claims compensation for an occupational disease or illness must submit a statement which includes: a detailed history of the illness; complete details of employment conditions believed to be responsible for the illness; a description of specific stressful conditions including locations, frequency and duration; and a description of any similar disabling condition sustained by the employee.<sup>9</sup>

Appellant's CA-2 claim form did not contain a detailed description of the specific employment-related conditions or incidents she believed contributed to her illness. Further, appellant's account of an alleged confrontation with a supervisor, included in Dr. Wong's August 29, 1995 medical report, only referenced allegations of nonspecific employment stresses and thus the Office properly informed appellant that more detailed information was necessary.<sup>10</sup> Although appellant submitted a copy of a statement which, purportedly, contained a description of a June 1995 confrontation with an employing establishment supervisor, in addition to an allegation of subsequent threats and harassment regarding her job security from this supervisor, the document appellant submitted was of poor quality and is extremely difficult to read. The Office informed appellant that it considered the copy to be illegible and requested a better one; however, appellant failed to comply with this request within 30 days.

In the instant case, appellant has failed to present reliable, probative and substantial evidence that her emotional condition was caused or aggravated by the specific employment incidents and factors which she alleged. Mere perceptions and feelings alone are not compensable under the Act.<sup>11</sup> Appellant cannot simply allege that she experienced a stressful incident at work plus a subsequent pattern of harassment and threats of job loss, resulting in negative feelings about returning to work which entitled her to compensation. To establish entitlement to benefits, appellant must establish that she actually experienced these episodes of

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<sup>4</sup> 5 U.S.C. § 8101 *et seq.*

<sup>5</sup> See *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983); 20 C.F.R. § 10.110.

<sup>6</sup> *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

<sup>7</sup> 5 U.S.C. § 8122.

<sup>8</sup> See *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>9</sup> 20 C.F.R. § 10.100(b).

<sup>10</sup> See Federal (FECA) Procedure Manual, Part 2, Chapter 2.803, Fact of Injury.

<sup>11</sup> See *Joel Parker, Sr.*, 43 ECAB 220 (1991).

harassment and or discrimination and provide a factual basis that she suffered an emotional reaction to an employment-related incident or incidents by supporting the allegations with specific, substantive, probative and reliable evidence.<sup>12</sup>

Additionally, when working conditions are alleged as factors in causing 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 by a physician.<sup>13</sup> The resolution of facts concerning working conditions and the physical requirements of the job is an Office adjudicatory function that may not be surrendered to a medical expert.<sup>14</sup>

In the present case, as appellant failed to submit evidence indicating a specific event or incident at work which established a specific factor of employment, her mere allegations of an emotional condition caused by stress at work may not be evaluated by a physician for a determination of causal relationship. Thus, the Office properly did not consider the medical evidence submitted by appellant in finding that appellant failed to establish fact of injury.

In the present case, the Office properly determined that appellant provided no additional factual evidence to support her allegations of harassment and verbal abuse, notwithstanding the requests by the Office in its letter of October 5, 1995.<sup>15</sup> Accordingly, appellant has failed to meet her burden of proof to show that she suffered an emotional condition in the performance of duty.

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<sup>12</sup> See *Ruth C. Borden*, 43 ECAB 146 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>13</sup> See *Barbara Bush*, 38 ECAB 710 (1987).

<sup>14</sup> *John A. Snowberger*, 34 ECAB 1262 (1983); *Larry H. Goodson*, 9 ECAB 404 (1957).

<sup>15</sup> Compare *Georgia F. Kennedy*, 35 ECAB 1151 (1984).

The decision of the Office of Workers' Compensation Programs dated February 8, 1996 is affirmed.

Dated, Washington, D.C.  
February 25, 1998

George E. Rivers  
Member

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member