

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CYNTHIA M. ORTIZ and U.S. POSTAL SERVICE,
POST OFFICE, Akron, Ohio

*Docket No. 96-746; Submitted on the Record;
Issued January 16, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

The Board has duly reviewed the case record in the present appeal and finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

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 an 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 his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ 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.²

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 of Workers' Compensation Programs, 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

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

working conditions are not deemed factors of employment and may not be considered.³ 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 record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁴

In the present case, appellant alleged that she sustained an emotional condition due to comments of a sexual nature which were made by a coworker on August 18, 1995.⁵ By decision dated November 15, 1995, the Office denied appellant's claim that she sustained an employment-related emotional condition. The Office indicated that, although appellant established the existence of an employment factor with respect to the comments made by a coworker,⁶ she did not submit sufficient medical evidence to establish that she sustained an emotional condition due to this factor.

Appellant has only identified a compensable factor of employment with respect to the comments of a sexual nature which were made by a coworker. However, appellant's burden of proof is not discharged by the fact that she has established an employment factor which may give rise to a compensable disability under the Act. To establish her claim for an employment-related 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.⁷ Appellant submitted medical notes, dated August 25, 1995, in which an attending physician diagnosed: "Acute chest pain and generalized weakness secondary to anxiety and stress," but the notes are of no probative value on the relevant issue of the present case in that they contain no opinion on the cause of appellant's condition.⁸ Appellant also submitted an August 25, 1995 letter from an employing establishment social worker. However, as causal relationship is a medical question that can only be resolved by medical opinion evidence, the reports of a nonphysician cannot be considered by the Board in adjudicating that issue.⁹ Therefore, appellant did not submit sufficient medical evidence to establish that she sustained an emotional condition in the performance of duty.

³ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁴ *Id.*

⁵ Appellant also indicated that she felt uneasy due to the coworker's presence at work after August 18, 1995. The evidence reveals that the employing establishment took timely steps to discipline the coworker and that he was terminated from his job.

⁶ To the extent that incidents alleged as constituting harassment by coworkers are established as occurring and arising from an employee's performance of regular duties, these could constitute employment factors. *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁷ See *William P. George*, 43 ECAB 1159, 1168 (1992).

⁸ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁹ *Arnold A. Alley*, 44 ECAB 912, 920-21 (1993).

The decision of the Office of Workers' Compensation Programs dated November 15, 1995 is affirmed.

Dated, Washington, D.C.
January 16, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member