

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEWEL J. TUMLIN and U.S. POSTAL SERVICE,
POST OFFICE, Decatur, Ga.

*Docket No. 96-1382; Submitted on the Record;
Issued June 4, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained an emotional condition causally related to her federal employment.

On January 26, 1993 appellant, then a 60-year-old retired distribution clerk, filed a claim alleging that she sustained an emotional condition causally related to her federal employment. Appellant indicated that she first became aware on September 28, 1989 that her anxiety, depression and inability to function under stress was due to prior employment-related injuries and the failure of the employing establishment to recognize her physical limitations.¹ The record reflects that appellant last worked at the employing establishment on October 20, 1989 and she retired on disability effective April 25, 1990.

In a February 22, 1993 statement, appellant attributed her emotional condition to the failure of her supervisor to respond appropriately to her expressed concerns in handling mail equipment and, as a result, she hurt her hip. Appellant stated that coworkers were rude and hostile and cursed in her presence. She stated that the workplace was uncomfortable during the summer and winter and that she was at risk for further injury working heavy loads with her known wrist, neck and back conditions. Appellant indicated that she was assigned to the night shift and noted that she worried about a blood clot due to her vascular condition, which limited her standing and sitting. She also alleged a general lack of consideration by management of her

¹ The record indicates appellant sustained a low back strain on February 24, 1982 and she was returned to regular duty on March 15, 1982. She alleged a back strain on July 7, 1982, however the record does not establish any lost time from work. On October 20, 1982 appellant sustained a right wrist stain. On January 16, 1986 appellant sustained a right hip strain and she returned to light duty on January 27, 1986. A March 8, 1986 claim for depression and anxiety was denied by the Office on April 7, 1987 and she did not seek an appeal from this decision. A November 4, 1992 recurrence of disability claim for disability commencing October 20, 1989 was denied by the Office of Workers' Compensation Programs on January 21, 1993 and appellant did not seek an appeal from this decision. The record also indicates medical treatment for degenerative disc disease and cervical spondylosis at C5-6 and deep venous thrombosis, conditions which have not been accepted by the Office as employment related.

poor physical condition. Appellant also attributed anxiety to her prior physical injuries at the employing establishment.

In support of her claim, appellant submitted an April 21, 1987 medical report from Dr. Michael J. Kinstler, a Board-certified internist. He noted that he had treated appellant since 1985 and discussed a hospitalization in 1987 for deep venous thrombosis. He advised that appellant was returned to work with physical limitations and indicated that her psychiatrist was treating her for an adjustment disorder with anxious mood, a condition Dr. Kinstler attributed to "job stress." He stated that it was difficult to say how job related appellant's deep venous thrombosis condition was, but attributed it to appellant's "inactivity and prolonged amount of time staying in bed which was a direct result of her depression and job stress. In this light, it probably is directly related and as above probably is also connected to her previous right hip injury."

By decision dated April 15, 1993, the Office originally denied appellant's claim on the grounds that it was not timely filed. Following additional development of the claim the April 15, 1993 decision was subsequently vacated on June 23, 1994. Following notice to appellant to submit additional evidence in support of her claim, the Office denied appellant's emotional condition claim in a July 28, 1994 decision.

On August 26, 1994 appellant, through her attorney, requested a hearing before an Office hearing representative. A hearing was held on February 1, 1995 at which appellant appeared and testified. Appellant submitted the February 20, 1995 psychological evaluation of Dr. Stephen E. O'Hagan, a clinical psychologist. Dr. O'Hagan noted that he saw appellant on February 3 and 9, 1995 and administered psychological. On clinical evaluation, he noted that appellant's conversation was quite disjointed and confused such that it was extremely difficult to elicit a coherent history. Dr. O'Hagan indicated that appellant felt mistreated while working at the post office and perceived her employers as uncaring and harassing. He reviewed appellant's employment history and noted that his impression was of an extremely fragile individual prone to considerable disorganization when confronted with minimal stress. Dr. O'Hagan noted she was emphatic in attributing the aggravation of her physical conditions as well as her mental stress to mistreatment by the post office. He discussed the results of psychological testing and diagnosed major depressive episode with significant anxiety component. Dr. O'Hagan stated that her current mental state "is more likely than not stemming from work-related stress, and should therefore be considered a work related disability." He noted that her condition was exacerbated by apprehension related to the upcoming hearing, which made it difficult to determine whether there was any residual functional capacity for work-related activities. Dr. O'Hagan recommended psychiatric follow-up with individual psychotherapy.

By decision dated March 31, 1995 and finalized April 3, 1995, the Office hearing representative affirmed the July 28, 1994 decision rejecting appellant's emotional condition as employment related.

By letter dated May 4, 1995, appellant, through counsel, requested reconsideration of her claim. Appellant submitted an April 6, 1995 statement in which she enclosed copies of a letter of warning given on December 14, 1988 for excessive talking; memoranda pertaining to her job limitations; and addressed her 4:30 a.m. shift, noting that it was dangerous while going from

where she parked to the post office and she was constantly afraid of being accosted. A copy of Dr. O'Hagan's report was resubmitted to the record.

By decision dated January 17, 1996 the Office denied modification of its prior decisions.

The Board finds that appellant has not met her burden of proof in establishing that her emotional condition is causally related to factors of her federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitations period of the Act, 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 are causally related to the employment injury. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's federal 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. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Act. The disability is not covered when it results from such factors as an employee's frustration from not being permitted to work in a particular work environment or to hold a particular position. Disabling conditions resulting from an employee's feelings of job insecurity or the desire for a different position, promotion, or transfer do not constitute personal injury sustained in the performance of duty within the meaning of the Act.³

In the present case, appellant has attributed her emotional condition to rude, hostile and harassing behavior on the part of employing establishment management and former coworkers. The Board has held, however, that mere perceptions of harassment are not compensable under the Act.⁴ To support a claim for compensation, there must be evidence that the alleged harassment did in fact occur as alleged.⁵ In this case, appellant has made general allegations of rude and hostile conduct by coworkers and harassment by management but has not submitted sufficient supporting evidence to substantiate her allegations. While appellant disputed the basis for the letter a letter of warning she received on December 14, 1988, it is well established that actions of the employing establishment in administrative or personnel matters are not considered compensable factors of employment and coverage will not be afforded unless there is evidence

² *Victor J. Woodhams*, 41 ECAB 345 (1989).

³ *Anne L. Livermore*, 46 ECAB 425 (1995); *Michael Thomas Plante*, 44 ECAB 510 (1993); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *See Effie O. Morris*, 44 ECAB 470 (1993).

⁵ *William P. George*, 43 ECAB 1159 (1992).

which discloses error or abuse on the part of the employing establishment in the matter.⁶ The Board finds that the evidence of record is not sufficient to establish error or abuse by the employing establishment with regard to the letter of warning issued to appellant or as it pertains to her allegation that two suggestions she made were lost. Nor has appellant submitted any evidence from witnesses or other coworkers to establish her allegations of harassment or rude and hostile behavior directed towards her in her federal employment.

Appellant has also attributed her emotional condition to the failure of the employing establishment to recognize her physical limitations, noting a lack of consideration for her physical condition by her supervisors. The Board notes that perceived indifference or a perceived lack of sympathy by coworkers or supervisors does not rise to a compensable factor of employment.⁷ In the present case, there is insufficient evidence to establish that the employing establishment did not accommodate appellant's work limitations. The record indicates that appellant was intermittently placed on limited duty in response to medical evidence submitted from her attending physicians. Although appellant claims that her supervisor did not "respond appropriately" to her concerns, there is no evidence establishing error or abuse on his part in the administrative decisions taken pertaining to appellant's limited duty job assignments. Appellant's concern that she was "at risk" for further injury, given her accepted injuries, pertains to a fear of future injury and does not rise to a compensable factor of employment.⁸ Similarly, her allegations pertaining to her 4:30 a.m. work shift have focused on the perceived danger of being accosted after parking her car and walking to the employing establishment premises. This does not constitute a compensable factor of employment as the Board has held that the fear of being mugged or accosted during the commute to or from work is not a compensable factor of employment.⁹ Rather these are ordinary nonemployment-related hazards of the journey which are shared by all commuters and do not arise out of the performance of duty.

Finally, appellant has attributed her emotional condition to the various employment injuries she sustained prior to October 20, 1989, the date she stopped working at the employing establishment. In this regard, the Board finds that the medical evidence of record is insufficient to support appellant's claim. The April 21, 1987 medical report of Dr. Kinstler, an internist, noted only that he attributed appellant's emotional status to "job stress" and noted her depression was "probably ... also connected to her previous right hip injury." The Board finds that these statements by Dr. Kinstler are not well-rationalized in that the physician does not provide any explanation for his statements concerning "job stress" or for attributing her depression to the accepted right hip injury. Further, the report was written in 1987 and is not directly relevant to appellant's claim of disability due to an emotional condition on or after October 20, 1989 her last day at work. The February 20, 1995 psychological evaluation of Dr. O'Hagan, a clinical psychologist, is also insufficient to establish that appellant's emotional condition was caused or aggravated by her former federal employment. Dr. O'Hagan noted it was extremely difficult to

⁶ See *Mary A Sisneros*, 46 ECAB 155 (1994).

⁷ See *O. Paul Gregg*, 46 ECAB 624 (1995).

⁸ See *Joseph G. Cutrufello*, 46 ECAB 285 (1994); *Mary A. Geary*, 43 ECAB 300 (1991).

⁹ See *Sharon K. Watkins*, 45 ECAB 290 (1994); *Adele Garafolo*, 43 ECAB 169 (1991).

elicit a coherent history from appellant and indicated that she felt mistreated while working at the employing establishment; perceiving her employers as uncaring and harassing. He diagnosed a major depressive episode, based on his examination and testing in February 1995, and stated appellant's current mental state was "more likely than not" stemming from work related stress. The Board finds that the report of Dr. O'Hagan is not well-rationalized as he does not provide any explanation for attributing appellant's emotional condition in 1995 to employment factors to which she ceased to be exposed in October, 1989. Nor does he address how appellant's accepted employment injuries caused or contributed to her emotional status after she stopped work. In assessing medical opinion evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value, and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion are factors which enter into this evaluation.¹⁰ The Board finds that the medical evidence of record is of diminished probative value and insufficient to support appellant's contention that her emotional condition was caused or aggravated by her accepted employment injuries.

The January 17, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
June 4, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹⁰ *Connie Johns*, 44 ECAB 560 (1993).