

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLARA C. ZEIGLER and U.S. POSTAL SERVICE,
POST OFFICE, Birmingham, Ala.

*Docket No. 96-1264; Submitted on the Record;
Issued May 21, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

The Board finds that the evidence of record is insufficient to establish that appellant sustained an emotional condition in the performance of duty.

In its July 19, 1995 decision, the Office of Workers' Compensation Programs affirmed the denial of appellant's claim on the grounds that the evidence of record substantiated none of the implicated factors of employment.

In cases involving emotional conditions,¹ 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 of the working conditions are compensable factors of employment and may be considered by a physician when providing an opinion on causal relationship, and which are not compensable and may not be so considered.² When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a compensable factor of employment, the Office should then determine whether the evidence of record substantiates the matter alleged. When the matter alleged is a compensable factor of employment and the evidence of record establishes the truth of the matter alleged, the Office must base its decision on an analysis of the medical evidence.³

¹ See generally *Lillian Cutler*, 28 ECAB 125 (1976).

² *Margaret S. Krzycki*, 43 ECAB 496 (1992).

³ See *Richard J. Dube*, 42 ECAB 916 (1991).

A review of the record shows that appellant complied with the Office's request for information. She submitted a detailed statement describing the specific factors to which she attributed her stress and identified in most instances the individuals involved. The Office asked the employing establishment to review and comment on appellant's statement and to submit statements from witnesses, if appropriate. The Office received statements from several supervisors, who generally denied appellant's allegations. The factual record, therefore, consists largely of allegations that are either directly contradicted by the employing establishment as well as allegations that are unsubstantiated by sufficient probative evidence. The latter includes allegations relating to whether appellant should have received recognition or an award for her suggestion to remodel workroom break areas; whether she should have been allowed initially to work her letter sorting machine bid and should have been given refresher training; whether she called the postmaster regarding blocked passages and whether this call led to the orchestration of a number of women dressing in red and black; whether her supervisor counseled her for letting her ledges run out after he allowed mail to be taken to the backside so that she had no mail to load her ledges; whether appellant was ever required to request permission to go to the restroom while other employees were not; and whether a coworker raised his voice and told appellant, "Piss on you, lady."

The Board notes, however, that the record contains grievance decisions that are favorable to appellant. In one grievance, appellant alleged a violation of the National Agreement when the employing establishment placed her on restricted sick leave on June 12, 1987 after she had used more than six days of sick leave since the first pay period of that year. Appellant argued that the employing establishment had picked the number six to be the maximum number of days an employee can be off on sick leave, that there was no evidence of abuse of sick leave, and that the employing establishment was not holding quarterly discussions with employees. The employing establishment alleged that no minimum sick leave usage was established and that excessive sick leave had been used before and after off days. A copy of the National Agreement indicated that supervisors who have evidence indicating that an employee is abusing sick leave privileges may place an employee on the restricted leave list. In addition, employees may be placed on the restricted sick leave list after their sick leave use has been reviewed on an individual basis and certain actions have been taken, including a review of the quarterly listings of leave-without-pay and sick leave used by the employee and a review of subsequent quarterly listings. If the review of the subsequent quarterly listing indicates no improvement, the supervisor is to discuss the matter with the employee. In a decision dated July 20, 1987, it was held that the restricted leave would be removed.

In another grievance, appellant alleged that on June 27, 1988 the acting supervisor performed a comical display of how he interpreted appellant's walking position while pulling full trays, which received a few chuckles from coworkers and embarrassed appellant greatly. Appellant asked for union representation and was informed that she could wait until June 30, 1988 since she had 14 days to file a grievance. The employing establishment responded that no Step 1 report was submitted. In a decision dated August 23, 1988, it was held that if the acting supervisor mocked the posture of an employee and repeated the same for the benefit of another, "he is hereby admonished to cease this activity and to act in a professional manner." It was also held that appellant should be provided a union representative before three days time and much sooner under normal conditions.

Generally, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage.⁴

The decisions on appellant's grievances, discussed above, are not settlement agreements, which are typically entered into without prejudice to either party. They are formal decisions clearly resolving the grievances in appellant's favor. As such, these decisions support error or abuse or unreasonable actions by the employing establishment in the implicated administrative or personnel matters. Because the decisions provide a factual basis for appellant's claim,⁵ the Board finds that appellant has implicated and established compensable factors of employment.

Appellant's burden of proof, however, is not discharged by the identification of compensable work factors. To establish her claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional condition and that such condition is causally related to the identified compensable work factors.⁶

Appellant has submitted medical evidence showing that she was receiving psychiatric attention for depression and supporting certain periods of disability for work. An October 21, 1993 report attributed appellant's major depression to such job factors as "performance stress, and the noise factors" but failed to address the two employment factors that are accepted as factual in this case, namely, those factors relating to the favorable grievance decisions. Because appellant has not submitted a well-reasoned medical opinion explaining how the employing establishment's actions in placing her on restricted sick leave or how a supervisor's mocking of her posture and not providing quicker union representation caused or contributed to her diagnosed major depression, the Board finds that she has failed to discharge her burden of proof. On these grounds the Board will affirm the Office's July 19, 1995 decision denying appellant's claim.

⁴ *Norman A. Harris*, 42 ECAB 923 (1991).

⁵ *Ruthie M. Evans*, 41 ECAB 416 (1990) (to discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations with probative and reliable evidence).

⁶ *Arnold A. Alley*, 44 ECAB 912 (1993).

The July 19, 1995 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
May 21, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member