

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DEBRA M. LUSK and U.S. POSTAL SERVICE,  
POST OFFICE, Mt. Clemens, Mich.

*Docket No. 96-2182; Submitted on the Record;  
Issued November 19, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
DAVID S. GERSON

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

On July 7, 1994 appellant, a letter carrier, filed a claim asserting that she developed a stress condition while in the performance of duty. She implicated the following factors:

“I have been waiting [eight] months for OWCP [the Office of Workers' Compensation Programs] to settle my claim. I have been harassed by management. I was assigned to a job that I was not given adequate tools to do properly and efficiently. I have been having a great deal of difficulty obtaining necessary forms and forced to work in sauna-like temperatures. On [June 7, 1994] my doctor advised me not to return to work.”

In a narrative statement explaining the working conditions to which she attributed her stress condition, appellant repeated that she had been unduly harassed. She stated that she was frustrated by the physical limitations and financial hardship resulting from her November 3, 1993 employment injury. She stated that she had to wait two weeks to receive a claim form. She also stated that she was assigned to answer the telephone but that she had to share this telephone with a coworker, such that when her coworker received a call on this phone appellant would be forced to search for another in order to answer incoming calls. Appellant stated that the temperature in her office was unbearably hot one day. All of these things, she stated, combined to cause her a great deal of stress.

As the Board observed in the case of *Lillian Cutler*,<sup>1</sup> workers' compensation law does not cover each and every illness that is somehow related to one's employment. When an employee experiences emotional stress in carrying out her employment duties, or has fear and anxiety

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<sup>1</sup> 28 ECAB 125, 129-31 (1976).

regarding her ability to carry out her duties, and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability resulted from her emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of her work. On the other hand, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from 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.

The Board has stated that stress attributed to the processing of a workers' compensation claim is not compensable as it bears no relation to the claimant's day-to-day or specially assigned duties.<sup>2</sup> That appellant may have waited eight months for the Office to settle her claim provides no basis for the payment of compensation. Likewise, to the extent that the Office's consideration of her claim may have caused financial hardship, appellant has failed to implicate a compensable factor of employment.

The remaining factors implicated by appellant on her claim form and in her narrative statement may provide a basis for the payment of compensation. Appellant asserts that she was harassed by management, that the employing establishment failed to provide her a separate telephone, that she was frustrated by the physical limitations of her November 3, 1993 employment injury, that she had to wait two weeks for a claim form, and that the temperature in her office was unbearably hot. Appellant must establish a factual basis for her claim, however, by supporting these allegations with probative and reliable evidence.<sup>3</sup> Mere perceptions of harassment, for example, are not compensable. For harassment to give rise to a compensable disability, there must be evidence that the implicated acts of harassment did, in fact, occur.<sup>4</sup> Further, although administrative actions by the employing establishment are generally not compensable factors of employment, error or abuse in such matters may afford coverage if substantiated by the evidence.<sup>5</sup> Appellant must establish, therefore, that the employing establishment erred in failing to provide her a separate telephone or in waiting two weeks to give her a claim form. Finally, if the factual record establishes that appellant's office was hot<sup>6</sup> or that

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<sup>2</sup> *George A. Ross*, 43 ECAB 346 (1991); cf. *Ralph O. Webster*, 38 ECAB 521 (1987) (specifying action or inaction of the Office in consideration of a claim); *Virgil M. Hilton*, 37 ECAB 806 (1986) (characterizing the factors alleged to be actions of the Office). *But see Thomas J. Costello*, 43 ECAB 951, 960 at note 7 (1992) (stating that matters involving the processing of a claim by the employing establishment or the Office are not compensable factors of employment).

<sup>3</sup> *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990). The Board has generally held that allegations alone are insufficient without corroborating evidence. *Joe E. Hendricks*, 43 ECAB 850, 857-58 (1992).

<sup>4</sup> *Ruth C. Borden*, 43 ECAB 146 (1991).

<sup>5</sup> *Abe E. Scott*, 45 ECAB 164 (1993); *Donald E. Ewals*, 45 ECAB 111 (1993).

<sup>6</sup> The Board has held that an employee's reaction to his actual physical work environment is falls within the scope of the Act. *E.g., Kathleen D. Walker*, 42 ECAB 603 (1991) (involving exposure to odors and dry ink and problems

she suffered physical limitations residual to her November 3, 1993 employment injury, appellant may be entitled to benefits for any resulting emotional condition.

With one exception, the factual evidence developed in this case fails to substantiate the compensable factors implicated by appellant. Appellant has pursued the issue of harassment in appropriate administrative forums, however, she has failed to submit to this record, any decision or finding that she was, in fact, harassed. Appellant has not established by any convincing evidence that harassment occurred. The employing establishment explained that desks with telephones were available for appellant's use and that temperature checks showed a range of 68 to 72 degrees. Appellant's coworker advised that appellant was always complaining about the heat: "She preferred the temperature to be below 60 degrees." Another explained that the main air conditioning unit that controlled conditions on the workroom floor was malfunctioning at the time, but that the administrative offices where appellant spent most of her time working were cooled by a separate air conditioning unit that was operational at the time. It was also explained that appellant was not required by any supervisor to walk out onto the workroom floor to discharge her duties.

The record does substantiate, however, that appellant suffered disability resulting from her November 3, 1993 employment injury. A December 14, 1993 decision accepted appellant's claim of an employment injury on November 3, 1993. This is sufficient to support a finding that appellant has, in this instance, both implicated and established a compensable factor of employment.

When the claimant has implicated a compensable factor of employment and the evidence of record substantiates the matter asserted, a decision must be made on an analysis of the medical evidence.<sup>7</sup>

In a September 25, 1994 report, appellant's treating psychologist, Dr. James F. Zender, related the details of appellant's November 3, 1993 employment injury. He related appellant's subsequent complaints and medical course. Dr. Zender reported his findings on mental status examination and psychodiagnostic testing and made a principal diagnosis of depressive disorder not otherwise specified. He stated that the primary employment stressors included: (1) dealing with ongoing physical pain resulting from a car accident while performing duties as a letter carrier; (2) difficulty adjusting and accepting the resulting physical pain and limitations; and (3) depression that had developed from the long duration of appellant's physical limitations and pain, and resulting fears anxiety and apprehension about her future adjustment related to her physical disability.<sup>8</sup> Dr. Zender addressed the issue of causal relationship as follows:

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with the employing establishment's air conditioner); *Brenda Getz*, 39 ECAB 245 (1987) (holding that the working conditions involved in a detail assignment would be within the coverage of the Act).

<sup>7</sup> *Gregory J. Meisenburg*, 44 ECAB 527 (1993); *Norma L. Blank*, 43 ECAB 384 (1992).

<sup>8</sup> Other stressors involved matters that were not compensable or not substantiated by the factual evidence. The Board notes that fear of future injury is not compensable under the Federal Employees' Compensation Act. *Mary A. Geary*, 43 ECAB 300 (1991).

“My opinion is that the claimant’s stress and concerns related to her physical disability resulting from the car accident at work in November 1993 have caused a cumulative traumatic impact on the claimant’s emotional adjustment and psychological health and has progressed to the point of a serious depressive disorder requiring a prescribed program of ongoing psychotherapy and psychodiagnostic evaluation in order to return her to a state of emotional health. The emotional reactions and anguish to the events at her employment following the car accident and in reaction to her physical disability are well documented in this case. Claimant’s reactions to her physical disability in combination with the documented conflicts with specific supervisors and postal officials around the accident and her physical limitations further caused her current depressive disorder.”

In a supplemental report dated July 26, 1995, Dr. Zender reaffirmed his opinion that, with a reasonable degree of medical certainty, appellant’s depressive disorder was the direct result of stress problems following the employment injury of November 3, 1993. He stated that appellant’s accounts of events since that time, and symptom development, progression and treatment response had been consistent over time and credible. Dr. Zender further reported:

“The type of depressive disorder the claimant currently suffers is consistent with a prolonged period of disability from work and associated coping problems from severe limitations and losses in her normal life style and functioning not evident prior to the injury and loss of work structure. Fears about being able to resume a normal work life with the post office have further compounded her depression and anxiety.

“When examining the total evidence available in this case we see a clear domino effect from the date of injury, with a natural progression of illness and psychological symptom distress and treatment response.”

The Board finds that the medical opinion evidence of record is sufficiently supportive of appellant’s claim that further development of the evidence is warranted.<sup>9</sup> Although Dr. Zender provided a firm opinion attributing appellant’s diagnosed depressive disorder at least in part to the physical disability resulting from the car accident of November 3, 1993, the issue is clouded by the many reported stressors that are not compensable and established factors of employment. Although he reported that appellant’s diagnosed condition was consistent with prolonged period of disability from work, associated coping problems from severe limitations, etc., Dr. Zender did not explain how, from a psychological perspective, the accident and resulting physical disability contributed to appellant’s depressive disorder.

The Board will set aside the Office’s February 22, 1996 decision and remand the case for further development of the medical opinion evidence. The Office shall prepare an appropriate

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<sup>9</sup> See *John J. Carlone*, 41 ECAB 345, 358 (1989) (finding that the medical evidence was not sufficient to discharge appellant’s burden of proof but remanding the case for further development of the medical evidence given the uncontroverted inference of causal relationship raised).

statement of accepted facts and shall request a well-reasoned supplemental opinion from Dr. Zender focusing on how the accepted employment injury of November 3, 1993 and the physical residuals thereof<sup>10</sup> contributed to appellant's diagnosed depressive disorder. After such further development of the evidence as may be necessary, the Office shall issue an appropriate final decision on appellant's claim.

The February 22, 1996 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.  
November 19, 1998

Michael J. Walsh  
Chairman

George E. Rivers  
Member

David S. Gerson  
Member

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<sup>10</sup> Because Dr. Zender must base his opinion on a complete and accurate background, the Office shall provide him with copies of medical records pertaining to the November 3, 1993 employment injury so that he may properly understand the nature and extent of any injury-related residuals.