

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBIN M. CHOICE and U.S. POSTAL SERVICE, SOUTHERN  
MARYLAND, WBMC, Capitol Heights, MD

*Docket No. 98-1219; Submitted on the Record;  
Issued December 16, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
MICHAEL E. GROOM

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

On January 16, 1996 appellant, then a 30-year-old mail clerk, filed a claim for an occupational disease (Form CA-2) alleging that on December 2, 1996 she first realized that her stress and depression were caused by her employment. Appellant stated that she experienced constant headaches, depressed moods and anger. She alleged that she was always being called upon by management, but not by her immediate supervisor, for tedious reasons and that she was always questioned about things when the employing establishment already had the answers. Appellant stopped work on December 12, 1996.

Appellant's claim was accompanied by medical evidence. An October 21, 1996 disability certificate of a physician whose signature is illegible revealed that appellant was unable to work during the period October 18 through October 21, 1996 and that appellant was seen for fibromyalgia. An undated disability certificate from Dr. Holloway indicated that appellant was not working during the period October 21 through October 23, 1996 due to tendinitis. An October 23, 1996 treatment note provided that appellant received treatment from the Humana Group Health Plan, Incorporated. In a November 25, 1996 disability certificate, Dr. John N. Trowbridge, a Board-certified internist, recommended that appellant stay off from work for five days during the period November 25 through November 29, 1996. A December 2, 1996 disability certificate of a licensed social worker whose signature is illegible provided that appellant was unable to work during the period December 2 through December 12, 1996. This social worker's December 30, 1996 disability certificate indicated that appellant was unable to work between December 28 through December 30, 1996. A December 12, 1996 disability certificate from a physician whose signature is illegible revealed that appellant was unable to work during the period December 13 through December 20, 1996. The physician's December 26, 1996 disability certificate provided that appellant was unable to work between December 20 through December 27, 1996 and that appellant could return to her regular work on

December 27, 1996. The employing establishment's January 2, 1997 medical note provided appellant's physical restrictions and indicated that she was disabled from December 2, 1996 through the present. A January 13, 1997 return-to-duty slip indicated that appellant should be capable of working with the noted physical restrictions.

Appellant's claim was also accompanied by factual evidence. In a January 28, 1997 statement, Brenda Darring, an employing establishment supervisor, indicated that, on numerous occasions, appellant had been absent from work due to a previous work injury and had submitted doctors' certificates which were forwarded to the injury compensation office. Ms. Darring stated that at times, appellant's documentation had been confusing in that, while appellant requested protection under the Federal Medical Leave Act (FMLA), the documentation she submitted in support of her request addressed conditions or did not address any conditions or symptoms at all that were related to her request. Ms. Darring then stated that the employing establishment's request for supportive documentation was similar to requests it made to all employees who were unable to fully perform their tasks, or who provided conflicting or confusing documentation. She further stated that appellant did not provide notification of her occupational disease prior to January 13, 1997. In a May 15, 1997 letter, Kyme Hollman, an employing establishment injury compensation specialist, controverted appellant's claim on the grounds that appellant had failed to submit medical evidence supportive of harassment, to establish fact of injury and that the employing establishment's request for documentation to support appellant's absences did not constitute a compensable employment factor because it involved an administrative function.

By letter dated June 5, 1997, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish her claim. The Office then advised appellant to submit additional factual and medical evidence supportive of her claim.

By decision dated October 30, 1997, the Office found the evidence of record sufficient to establish that appellant actually experienced the claimed event, but insufficient to establish that she sustained a medical condition causally related to factors of her employment.

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained an emotional condition while in the performance of duty.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment. To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>1</sup>

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 illness

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<sup>1</sup> *Wanda G. Bailey*, 45 ECAB 835 (1994); *Kathleen D. Walker*, 42 ECAB 603, 608-09 (1991).

has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.<sup>2</sup>

In cases involving emotional conditions, 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 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.<sup>3</sup> Therefore, the initial question presented in the instant case is whether appellant has alleged compensable factors of employment that are substantiated by the record.

In this case, the Office accepted that appellant's allegation that she was always being called upon by management for tedious reasons and questioned by the employing establishment when the answers were already known. However, the Board finds that appellant's allegation of harassment does not constitute a compensable factor of employment under the Act. For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act.<sup>4</sup> Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>5</sup> Appellant failed to provide any such probative and reliable evidence of harassment by the employing establishment in this case. Therefore she has not established a compensable employment factor.

The Board further finds that appellant's allegation of being questioned does not constitute a compensable employment factor under the Act. Based on Ms. Darring's January 28, 1997 statement, appellant was questioned about the lack of medical documentation to support her request for protection under FMLA and her absences from work due to an alleged work-related

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<sup>2</sup> *Marie Boylan*, 45 ECAB 338 (1994); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Margaret S. Kryzcki*, 43 ECAB 496, 502 (1992); *Lillian Cutler*, *supra* note 2.

<sup>4</sup> *Wanda G. Bailey*, *supra* note 1; *William P. George*, 43 ECAB 1159 (1992); *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>5</sup> *Alice M. Washington*, 46 ECAB 382 (1994); *Ruthie M. Evans*, *supra* note 4.

injury. As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. However, 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. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>6</sup>

The Board has held that issues regarding leave<sup>7</sup> constitutes an administrative matter and that absent evidence of error or abuse will not be considered a factor of employment. Ms. Darring explained in her January 28, 1997 letter that management's requests of appellant were similar to requests that were made of all employees who were unable to fully perform their tasks, or who provided conflicting or confusing documentation. Inasmuch as appellant has not submitted any evidence of error or abuse on the part of the employing establishment regarding the use of leave, she has not established a compensable factor of employment under the Act.

Because appellant has not submitted the necessary evidence to establish a factor of employment, she has failed to meet her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment. Since appellant failed to establish any compensable employment factors, it is not necessary to address the medical evidence in this case.<sup>8</sup>

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<sup>6</sup> *Martha L. Watson*, 46 ECAB 407 (1995).

<sup>7</sup> *Joe L. Wilkerson*, 47 ECAB 604, 606 (1996).

<sup>8</sup> *Diane C. Bernard*, 45 ECAB 223, 228 (1993); *Margaret S. Kryzcki*, *supra* note 3.

The October 30, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.  
December 16, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Michael E. Groom  
Alternate Member