

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBIN VANESSA SHORTS and U.S. POSTAL SERVICE,
POST OFFICE, Newark, Del.

*Docket No. 97-914; Submitted on the Record;
Issued February 1, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she sustained an emotional condition in the performance of duty on or before September 9, 1996.

On September 30, 1996 appellant, then a 39-year-old mail carrier, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she realized on September 9, 1996 that her stress and depression were due to a man exposing himself to her while she was delivering mail on September 4, 1996 and also from harassment from her supervisor while she was delivering mail on September 6, 1996. In a statement, appellant described how a man exposed himself to her while she was delivering mail on September 4, 1996 and that she reported it to the police on September 6, 1996.

In a memorandum dated September 5, 1996, Ms. Sally Boudart noted that appellant's supervisor, John Francart, had indicated that on September 4, 1996 appellant had been joking with other carriers on September 4, 1996 about the incident. Ms. Boudart instructed Mr. Francart to accompany appellant when she delivered mail to the place where the incident occurred.

The record contains a police report filed by appellant on September 6, 1996 regarding the indecent exposure.

In an undated certification of health care provider, Dr. Oluseyi Senu-Oke, appellant's treating physician, diagnosed depression commencing September 7, 1996.

In a letter dated October 8, 1996, the employing establishment controverted the claim on the basis that there is no medical evidence supporting that appellant is suffering from stress and depression due to the alleged incident of September 4, 1996.

In a letter dated November 6, 1996, the Office of Workers' Compensation Programs informed appellant that the evidence submitted was insufficient to adjudicate the claim. The

Office also requested appellant to submit medical evidence from a physician specializing in mental conditions to substantiate her claim.

By decision dated November 21, 1996, the Office denied appellant's claim because the fact of an injury was not established. In the accompanying memorandum, the Office indicated that the evidence was insufficient to establish that the claimed event occurred at the time, place and in the manner alleged due to inconsistencies in appellant's actions following the claim and the lack of medical evidence. The Office indicated that appellant was given the opportunity to cure the deficiency in her claim, but did not respond.

The Board finds that appellant has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty on or before September 9, 1996.

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. 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.¹

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, 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.² 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.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, including an emotional condition claim, a claimant must submit medical evidence establishing the existence of the claimed condition;⁴ a factual statement identifying employment incidents or factors alleged to have caused or contributed to the occurrence of the condition;⁵ and

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

² See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

³ *Id.*

⁴ See *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁵ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979). The Office, as part of its adjudicatory function, must make findings of fact and a determination as to whether the implicated working conditions constitute employment

medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁶ The medical evidence should include a physician's rationalized opinion on the issue of whether there is a causal relationship between the diagnosed condition and the implicated employment factors.

In the present case, appellant alleged that she sustained an emotional condition when a third party exposed himself to her while she was delivering mail on September 4, 1996.⁷ The evidence of record, including a police statement and appellant's statement, support that an incident occurred in the performance of duty. Because the incident occurred in the course of her regular duties as a city carrier, appellant has alleged a compensable factor of employment.⁸

The fact that appellant has alleged a compensable factor of employment does not establish entitlement to compensation. Appellant has the burden of establishing by 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.⁹ To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence establishing 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.¹⁰

In the present case, the medical evidence is not sufficient to establish an emotional condition causally related to compensable factors of her federal employment. Dr. Senu-Oke diagnosed a depressive condition on a form, but provided no opinion as to the cause of her condition. Consequently, the record is devoid of a rationalized medical opinion establishing causal relationship between substantiated compensable factors of employment and a diagnosed

factors prior to submitting the case record to a medical expert; *see John A. Snowberger*, 34 ECAB 1262, 1271 (1983); *Rocco Izzo*, 5 ECAB 161, 164 (1952).

⁶ *See generally, Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

⁷ Appellant also alleges harassment by her supervisor on September 6, 1996. The record contains evidence submitted subsequent to the Office's November 21, 1996 decision to support appellant's allegation.

⁸ *See Lillian Cutler*, *supra* note 1.

⁹ *James W. Griffin*, 45 ECAB 774 (1994).

¹⁰ *Id.*

emotional condition. Accordingly, the Board finds that appellant has failed to sustain her burden of proof.¹¹

The November 21, 1996 Office of Workers' Compensation Programs' decision is set aside in part, with regard to the finding that the evidence of record was insufficient to establish that a specific event, incident or exposure occurred at the time, place and in the manner alleged and affirmed in part, with regard to the finding that appellant failed to establish that she sustained an emotional condition arising out of factors of her employment on or before September 9, 1996.

Dated, Washington, D.C.
February 1, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

¹¹ The Board notes that additional evidence was received by the Office subsequent to the November 21, 1996 decision. The Board further notes that on appeal appellant submitted new evidence. The Board, however, cannot consider this evidence, inasmuch as the Board's review of the case is limited to the evidence of record which was before the Office at the time of its final decision; *see* 20 C.F.R. § 501.2(c). Appellant may resubmit this evidence to the Office with a formal request for reconsideration; *see* 20 C.F.R. § 501.7(a).