

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RUTH A. TIMLIN and U.S. POSTAL SERVICE,  
PITTSBURGH GENERAL MAIL FACILITY, Pittsburgh, Pa.

*Docket No. 97-2415; Submitted on the Record;  
Issued June 7, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty on or before December 6, 1994 as alleged.

On December 2, 1994 appellant, then a 43-year-old mailhandler, filed a notice of occupational disease (Form CA-2) alleging that she sustained an emotional condition in the performance of duty, requiring her to seek a year of counseling and medical treatment for hypertension. On the claim form and in two, December 2 and one December 6, 1994 factual statements, appellant alleged a pattern of harassment by her supervisor, James McCauley. She alleged that Mr. McCauley changed her layoff days against her doctor's advice,<sup>1</sup> had made numerous negative remarks about her since June 1994, falsified a date of injury on a November 11, 1994 form, which he corrected and initialed when appellant brought it to his attention, did not timely provide copies of another form showing a similar correction and on November 13 and November 14, 1994 made announcements to coworkers about her and ordered coworker Paul Patti not to speak with appellant on employing establishment property.

In a November 17, 1994 statement, Mr. Patti asserted that on November 13, 1994 at approximately 1:45 p.m., he was "ordered and embarrassed when Mr. McCauley told [him] in an angry voice in front of [coworkers] not to talk to" appellant while at work. Mr. Patti stated that a similar incident occurred on November 14, 1994, in which Mr. McCauley ordered him not to speak to appellant, while several coworkers were present.

In a November 23, 1994 grievance form, a union steward and Mr. McCauley agreed that on November 13 and November 14, 1994 at 1:45 p.m., Mr. McCauley "made an announcement directing ... [Mr.] Patti to cease from talking to ... [appellant] who is not only Mr. Patti's coworker but also her friend." The union found that as Mr. McCauley made such remarks

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<sup>1</sup> The record indicates that appellant had bilateral carpal tunnel syndrome requiring bilateral surgical intervention. Any claims related to carpal tunnel syndrome are not before the Board on the present appeal.

publicly on two consecutive days, especially when appellant was off both days, was unacceptable and discriminatory behavior.<sup>2</sup>

Appellant was assigned to light duty from December 2 to December 15, 1994. In two December 5, 1994 notes, Dr. Thomas F. Bonacorsi, an attending internist, recommended continued light duty and that appellant be assigned to another unit “to avoid personality and stress.” A December 6, 1994 employing establishment form noted that appellant would “continue light duty, wants transfer ... [t]alked to Dr. Bonacorsi and he agreed.”

In a December 13, 1995 letter, the Office of Workers’ Compensation Programs requested additional information regarding the outcome of the grievance and corroborating witness statements regarding the alleged incidents.<sup>3</sup>

By decision dated January 24, 1996, the Office denied appellant’s claim on the grounds that she had not established an injury in the performance of duty. The Office found that Mr. McCauley’s orders to Mr. Patti were an administrative matter not in the performance of appellant’s duties and that her overhearing conversations about her was hearsay. Appellant disagreed with this decision and requested an oral hearing. By decision dated April 2, 1996 and finalized April 3, 1996, an Office hearing representative found that the case was not in posture for a hearing as the Office failed to make proper findings of fact in its January 24, 1996 decision. The hearing representative remanded the case for a *de novo* decision.

By decision dated May 1, 1996, the Office denied appellant’s claim on the grounds that she had not established an injury in the performance of duty as she did not allege any compensable factors of employment. The Office found that Mr. McCauley writing an incorrect date on a claim form, but then immediately correcting the error when appellant brought it to his attention, did not constitute error or abuse in an administrative matter and was therefore not compensable. The Office further found that appellant’s allegations concerning the conversations of coworkers were “too vague” to constitute factors of employment. Appellant disagreed with this decision and requested an oral hearing held January 28, 1997.

At the January 28, 1997 hearing, appellant alleged that Mr. Patti had played a tape for her of Mr. McCauley making degrading remarks about appellant on days she was off work, called her an “ox,” discussed a pending disciplinary matter concerning appellant with her coworkers and alerted employees to a “locker room sweep,” instructing them to remove any guns or drugs from their lockers prior to the search. She also described the incidents on November 13 and November 14, 1994 in which Mr. McCauley instructed Mr. Patti not to speak to appellant. At

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<sup>2</sup> In a December 3, 1994 note, Mr. McCauley stated that he could not interview appellant as she had left work early on December 2 and December 3, 1995. Mr. McCauley noted that an employing establishment manager wanted to be present at any interview with appellant and that he would attempt to hold an interview on December 6, 1994. In a December 6, 1994 employing establishment accident report, Mr. McCauley noted that when appellant submitted her claim form on December 2, 1996, she did not assert any particular cause of emotional stress. He commented that appellant’s stress came “from another employee’s false statements that he told her on many different matters. It [is] a problem we have had with [appellant]. [She] has caused disruption and misunderstandings with management and her fellow employees.”

<sup>3</sup> In a January 1, 1996 letter, appellant again asserted that Mr. McCauley put an incorrect date on a claim form.

the conclusion of the hearing, the hearing representative advised appellant as to the additional evidence necessary to establish her claim, including a definitive diagnosis and rationalized statement from Dr. Bonacorsi supporting a causal relationship between the alleged employment factors and the claimed emotional condition.

Appellant submitted additional evidence. Employing establishment dispensary nurses notes dated August 2, 1994 to October 17, 1995 describe appellant's carpal tunnel symptoms and light duty. A December 2, 1994 note reports "emotional stress" and that appellant had filed a Form CA-2 "due to situation which started in Nove[ember]" and was in counseling. A contemporaneous note states that appellant had requested a transfer related to her claim for emotional stress and that Dr. Bonacorsi had been contacted and agreed with the transfer.

In a February 14, 1997 report, Dr. Bonacorsi stated that in 1994, appellant "was having work-related problems causing great stress in her life. [Appellant] was employed as a postal worker. She felt her supervisor at the time was causing her emotional stress and hassle," prompting Dr. Bonacorsi to contact the employing establishment and request that appellant be transferred "to a different section ... to serve her best interest and health. We believe that these problems, poor relations and stress caused by supervisor were causing [appellant's] emotional and health problems."<sup>4</sup>

By decision dated April 3, 1997 and finalized April 4, 1997, the Office hearing representative affirmed the Office's May 1, 1996 decision, finding that appellant had failed to establish causal relationship. The hearing representative found that the November 23, 1994 union grievance decision substantiated appellant's account of the November 13 and November 14, 1994 incidents and constituted harassment, a compensable factor of employment. The hearing representative found, however, that appellant submitted insufficient rationalized medical evidence to establish that the November 13 and November 14, 1994 incidents of harassment caused the claimed emotional condition. The hearing representative noted that although Dr. Bonacorsi provided general support for causal relationship, his reports did not mention the November 13 and November 14, 1994 incidents. The hearing representative further found that Mr. McCauley changing appellant's layoff days and immediately correcting an error on a claim form, were administrative matters not within the performance of duty, which did not evince error or abuse. The hearing representative also found that appellant's reaction to conversations of her coworkers was a personal frustration regarding gossip and not within the performance of duty.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty on or before December 6, 1994 as alleged.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. When an employee experiences an emotional reaction to his or her regular or specially assigned work duties or to a requirement imposed by

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<sup>4</sup> In a January 15, 1997 report, Dr. Bonacorsi stated that appellant's "condition ... prompted [him] to call a supervisor to have her moved to a different section in her best interest and health. These problems were precipitated by emotional distress on the job she related."

the employment, or has fear and anxiety regarding his or her ability to carry out his or her duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment and comes within the scope of coverage of the Federal Employees' Compensation Act. On the other hand, where the disability results from an employee's emotional reaction to employment matters but such matters are not related to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.<sup>5</sup>

To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.<sup>6</sup> When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office can base its decision on an analysis of the medical evidence of record. In this case, appellant asserted and substantiated harassment by Mr. McCauley on November 13 and November 14, 1994.

As appellant thus established a compensable factor of employment, the medical record must then be examined to ascertain whether it supports that she sustained a medical condition as a result of the harassment. To establish such causal relationship, the medical opinion must be one of reasonable medical certainty<sup>7</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.<sup>8</sup> In this case, appellant submitted December 1994 notes supporting a transfer and January 15 and February 14, 1997 reports from Dr. Bonacorsi. While he stated that appellant experienced "emotional distress" due to being "hassled" by her supervisor in 1994 and recommended her transfer to another unit of the employing establishment, he did not provide either a definite diagnosis of condition, or mention the November 13 and November 14, 1994 incidents.<sup>9</sup> Thus, Dr. Bonacorsi's reports are unclear as to the nature of the injury appellant sustained and what employment factors caused such injury. Without supportive medical rationale explaining how and why the compensable factors of employment in this case would cause an emotional condition, Dr. Bonacorsi's reports are of insufficient probative value to establish causal relationship in this case.<sup>10</sup>

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<sup>5</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>6</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>7</sup> See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>8</sup> See *William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>9</sup> The Board notes that the hearing representative, at the conclusion of the January 28, 1997 hearing, advised appellant of the need for additional rationalized medical evidence from Dr. Bonacorsi, containing a definitive diagnosis of condition.

<sup>10</sup> *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

Regarding appellant's reaction to Mr. McCauley's changing her layoff days and committing a momentary error on a claim form, the Office found that these were personnel matters not sustained within the performance of duty. The Board has held that to an extent that an incident relates to an administrative or personnel matter, then an emotional reaction thereto is not compensable in the absence of evidence establishing error or abuse on the part of the employing establishment.<sup>11</sup> Regarding appellant's allegations of coworkers gossiping derisively about her, the Office found that this was a self-generated reaction not within the performance of duty. The Board has held that an employee's reaction to or fear of gossip is a personal frustration not related to job duties or requirements.<sup>12</sup>

Thus, appellant has failed to meet her burden of proof, as she submitted insufficient rationalized medical evidence establishing a causal relationship between the substantiated, compensable factors of employment and any emotional or other medical condition.

The decision of the Office of Workers' Compensation Programs dated April 3, 1997 and finalized April 4, 1997 is hereby affirmed.

Dated, Washington, D.C.  
June 7, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

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<sup>11</sup> *Anthony A. Zarcone*, 44 ECAB 751 (1993).

<sup>12</sup> *Gracie A. Richardson*, 42 ECAB 850 (1991).