

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANE KLAPPER and U.S. POSTAL SERVICE,
POST OFFICE, Van Nuys, Calif.

*Docket No. 97-1459; Submitted on the Record;
Issued March 17, 1999*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained an emotional condition causally related to factors of her federal employment.

In the present case, appellant, a postal distribution clerk, alleged that she sustained an emotional condition due to a number of incidents in the performance of her federal employment. The Office of Workers' Compensation Programs has accepted that certain events did occur in the performance of duty, however, that the medical evidence of record did not support that appellant's emotional condition was causally related to these accepted factors of employment. The Office denied appellant's claim by decision dated March 20, 1996.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her duties, and the medical evidence establishes that the disability resulted from her emotional reaction to such a situation, the disability is generally regarded as due to an injury arising out of and in the course of the employment. The same result is reached when the emotional disability resulted from the employee's emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of the work. In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Federal Employees' Compensation Act. Nor is disability covered when it results from such factors as an employee's position.¹

An emotional condition arising from appellant's performance of day-to-day or specially assigned duties is compensable pursuant to the Act.² Thus, if an employee develops an

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

² *Clara T. Norga*, 46 ECAB 473 (1995).

emotional condition while trying to meet the requirements of a position, such emotional condition is generally compensable.³

In the present case, the Office properly determined that certain events did occur and were within the performance of appellant's federal employment. The Office has accepted as compensable the following factors of employment: that on several occasions appellant was not given lunch relief; that appellant was frequently requested to answer telephone inquiries from irritated customers; that appellant was unable to get supplies when she requested them; that a driver for United Delivery yelled at her and called her a "bitch"; that in 1989 appellant was given a plaque from coworkers naming her "Bitch of the Year"; that on several occasions appellant was left alone in the "forms section" and had to process hundreds of express mail items while also waiting on customers; that on April 18, 1993 appellant and Ms. Lee were discussing counter space and Ms. Lee talked over appellant in front of several customers. The Board concurs with the Office's finding that these allegations were substantiated by the factual evidence of record and did relate to the performance of appellant's assigned duties.

Appellant has also alleged administrative actions as factors causing her emotional condition. Appellant has not, however, established the compensability of these allegations. Although administrative and personnel matters are generally related to the employment, they are functions of the employer and not duties of the employee.⁴ Thus the Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity. Appellant's allegations that leave and overtime were denied, that she was told she had received an overpayment of compensation funds, and that the Postal Service Center was moved to Santa Clarita in May 1995, all pertain to administrative or personnel actions taken by the employer. As appellant did not submit any independent corroborating evidence that these actions were in error or were abusive, the Office properly determined that these incidents did not occur in the performance of duty.

Appellant has also alleged that harassment by her supervisor contributed to her emotional condition. To the extent that disputes and incidents alleged as constituting harassment are established as occurring and arising from the performance of regular or specially assigned duties, these could constitute compensable employment factors.⁵ For harassment to give rise to compensable disability under the Act, however, there must be some independent evidence that the acts alleged or implicated by the employee did, in fact, occur.⁶ Appellant has alleged that she was harassed because increasing amounts of work were expected from her; that Mr. Kim yelled at her on August 24, 1988; and that she was asked to not remove a U-cart with mail on March 9, 1990. Again, as appellant did not submit the independent evidence necessary to

³ *Elizabeth W. Ensil*, 46 ECAB 606 (1995).

⁴ *Gregory N. Waite*, 46 ECAB 662 (1995).

⁵ *Elizabeth Pinero*, 46 ECAB 123 (1994).

⁶ *Mary A. Sisneros*, 46 ECAB 155 (1994).

establish that these incidents occurred, the Office properly found that appellant had not factually established these incidents of harassment.

As the Office did accept that appellant had established the compensability of certain factors of employment, the Office was required to evaluate whether the medical evidence substantiated that appellant's emotional condition was causally related to these accepted compensable factors of employment.

The Office referred a statement of accepted facts to Dr. Howard M. Greils, a Board-certified psychiatrist, for an opinion as to whether the accepted factors of employment caused appellant's emotional condition. In a report dated February 21, 1996, Dr. Greils stated that appellant had not experienced psychiatric disorder or functional impairment as a result of the employment events. He explained that while appellant had developed an anxiety disorder, this was not employment related but rather was associated with a menopause reaction. Dr. Greils noted that appellant had experienced menopausal symptomatology since 1989, which had been gradually diminishing, and which now had essentially resolved. He concluded that appellant could return to her usual occupation without restrictions from a psychiatric standpoint. Dr. Greils therefore ruled out the accepted employment factors as the cause of appellant's emotional anxiety condition and instead opined that appellant's condition was caused by menopause.

In support of her claim, appellant had submitted a number of reports from her treating neuropsychologist Dr. Robert C. Gallway. In a report dated November 21, 1995, Dr. Gallway stated that appellant's usual job assignment reportedly was so demanding as to be hopelessly beyond all reasonable limits. He explained that this meant that no matter how hard appellant tried, she was unable to keep up with paperwork and the needs of postal customers. Dr. Gallway stated that a second facet of appellant's job assignment which contributed to her injury was the chronic and recurrent exposure to angry and demeaning verbal insults of frustrated postal customers she served at her counter. Also, he stated that a third facet of appellant's routine assignment which contributed to her injury was her chronic confrontations with supervisors. While Dr. Gallway noted that three factors of appellant's employment caused her emotional condition, his description of the factors causing her condition were much broader than the factors of employment accepted by the Office. As he did not address whether the accepted factors of appellant's employment caused her emotional condition, his opinion is of limited probative medical value.

Therefore, while Dr. Greils opined that the accepted employment factors did not cause appellant's emotional condition, there is essentially no medical opinion of record that the accepted employment factors did cause appellant's emotional condition.

Appellant has therefore not met her burden of proof to establish that she sustained an emotional condition in the performance of her federal employment.

The decision of the Office of Workers' Compensation Programs dated January 4, 1996 is hereby affirmed.

Dated, Washington, D.C.

March 17, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member