

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KAREN L. JOBSON and U.S. POSTAL SERVICE,  
POST OFFICE, Vassar, Mich.

*Docket No. 96-2095; Oral Argument Held March 9, 1999;  
Issued May 26, 1999*

Appearances: *Rita M. Lauer, Esq.*, for appellant; *Cornelius S. Donoghue, Jr., Esq.*,  
for the Director, Office of Workers' Compensation Programs.

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

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

On June 2, 1994 appellant, then a 42-year-old postal clerk, filed an occupational disease claim alleging that she sustained major depression which she attributed to her federal employment. By decision dated January 5, 1995, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence did not establish an injury in the performance of duty. The Office found that appellant had not alleged any compensable factors of employment.

Appellant requested a hearing before an Office hearing representative, which was held on August 3, 1995. In a decision dated March 28, 1996 and finalized March 29, 1996, the Office hearing representative affirmed the Office's January 5, 1995 decision. The hearing representative found that appellant had alleged as compensable factors of employment the fact that she responded to alarms at the employing establishment after business hours and that she acted as postmaster for a period of time, but further found that the medical evidence was insufficient to establish that the identified compensable employment factors caused appellant to sustain an emotional condition.

The Board has duly reviewed the case record and finds that the case is not in posture for a decision.

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 or her 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.<sup>1</sup> 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 his or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>2</sup>

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.<sup>3</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matters 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.<sup>4</sup>

Many of appellant's allegations of employment factors that caused or contributed to her condition fall into the category of administrative or personnel actions. In *Thomas D. McEuen*,<sup>5</sup> the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.<sup>6</sup> Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. The incidents and allegations made by appellant which fall into the category of administrative or personnel actions include: reactions to assessments of her performance,<sup>7</sup> the disposition of leave requests,<sup>8</sup> and dissatisfaction with her

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>4</sup> *Id.*

<sup>5</sup> See *supra* note 2.

<sup>6</sup> See *Richard J. Dube*, 42 ECAB 916 (1991).

<sup>7</sup> See *Effie O. Morris*, 44 ECAB 470 (1993).

<sup>8</sup> See *William P. George*, 43 ECAB 1159 (1991).

work uniform.<sup>9</sup> Appellant has presented no evidence of administrative error or abuse in the performance of these actions and, therefore, they are not compensable under the Act.

Appellant further contends that she experienced harassment and disparate treatment from the postmaster, Mr. Burger. Specifically, appellant alleged that the postmaster became upset if she asked for change and generally treated her harshly. Appellant also noted that she was not invited to a meeting on May 10, 1994. For harassment to give rise to a compensable factor of employment, there must be probative evidence that harassment did, in fact, occur. Mere perceptions are not compensable.<sup>10</sup> Appellant has not submitted any evidence corroborating her allegations of harassment and thus has not established a compensable factor of employment.

Appellant additionally attributed her emotional condition to the performance of her work duties, including waiting on customers, answering the phone, taking complaints and delivering accountables. In *Lillian Cutler*,<sup>11</sup> the Board explained that, where an employee experiences emotional stress in carrying out the employment duties, or has fear and anxiety regarding his or her ability to carry out such duties, and the medical evidence establishes that the disability resulted from his or her reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of the employment, and would, therefore, come within the coverage of the Act. The Board stated in *Pauline Phillips*,<sup>12</sup> that this is true where the employee's disability resulted from his or her emotional reaction to the regular day-to-day or specially assigned work duties or to a requirement imposed by the employment.<sup>13</sup> In the instant case, waiting on customers, answering the phones, taking complaints and delivering accountables are required duties of appellant's position with the employing establishment. Consequently, any emotional condition arising from appellant's performance of these duties would be compensable under the Act.<sup>14</sup>

Appellant further alleged that she experienced stress responding to alarms that went off at the employing establishment and acting as the postmaster for a period of time during the summer.<sup>15</sup> The Board finds that the requirement that appellant respond to alarms at the employing establishment and her temporarily acting as the postmaster constitute regular or specially assigned duties and thus are compensable factors of employment under the Act.

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<sup>9</sup> See *Tany A. Gaines*, 44 ECAB 923 (1993) (The Board found that frustration at not being permitted to work in a particular environment is not a covered factor of employment under the Act).

<sup>10</sup> *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>11</sup> See *supra* note 2.

<sup>12</sup> 36 ECAB 377 (1984).

<sup>13</sup> *Larry J. Thomas*, 44 ECAB 291 (1992).

<sup>14</sup> Additionally, the Board notes that the hearing representative did not discuss appellant's allegation that her emotional condition arose from the performance of her day-to-day employment duties.

<sup>15</sup> It is not clear from the record the dates that appellant performed the duties of postmaster. As this case is being remanded, see *infra*, on remand the Office should determine the dates upon which appellant temporarily worked as postmaster.

As appellant has alleged compensable factors of employment, the issue becomes whether she has submitted sufficient medical evidence to establish that these factors resulted in her emotional condition. In support of her claim, appellant submitted a deposition dated August 30, 1995, from Dr. Walter Turke, a Board-certified psychiatrist. Dr. Turke attributed appellant's depression, in part, to work stress which occurred when appellant waited on customers, answered the phone and took complaints. He further found that the employing establishment's requirement that appellant respond to alarms at the worksite after hours and perform the duties of a postmaster for a period of time contributed to her stress. The Board finds that, although Dr. Turke did not provide sufficient medical rationale explaining how these accepted factors caused or contributed to appellant's emotional condition, his report is supportive of appellant's claim and is sufficient to require further development by the Office.<sup>16</sup> The case, therefore, will be remanded to the Office for preparation of a statement of accepted facts and further development of the medical evidence.

The decision of the Office of Workers' Compensation Programs dated March 28, 1996 and finalized March 29, 1996 is hereby set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, D.C.  
May 26, 1999

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>16</sup> *John J. Carlone*, 41 ECAB 354 (1989).