

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LOIS COONROD and U.S. POSTAL SERVICE,  
POST OFFICE, Grand Rapids, Mich.

*Docket No. 97-2517; Submitted on the Record;  
Issued May 18, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained an emotional condition as alleged; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits.

The Board has duly reviewed the case on appeal and finds that appellant has failed to meet her burden of proof in establishing that she sustained an emotional condition as alleged.

Appellant filed a claim on May 10, 1996 alleging that she developed work-related stress due to a confrontation with a coworker. The Office denied her claim by decision dated January 13, 1997. Appellant requested reconsideration on April 21, 1997 and the Office denied this request by decision dated May 27, 1997.

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 has some connection with the employment but nevertheless does not come within the concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>1</sup>

Appellant stated on May 3, 1996 her temporary supervisor, Jim Kowalski, asked for volunteers to work on Saturdays. Mr. Kowalski's statement indicated that appellant's substitute was unable to work and that appellant stated she had plans on those dates, therefore, he requested volunteers from the other carriers. Appellant suggested that this meeting was inappropriate. As

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<sup>1</sup> *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation Act. But 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>2</sup> In this case, appellant has submitted no evidence that her supervisor acted unreasonably in seeking volunteers through a meeting.

Appellant attributed her emotional condition to a confrontation with a coworker on May 3, 1996. Several witnesses confirm that appellant had a disagreement with a coworker regarding whether the coworker would work for appellant and that this disagreement involved an exchange of insults. Appellant has established that she had an argument regarding work with a coworker at work. Such a disagreement is a factor of employment.

Appellant also mentioned working conditions at the employing establishment including the small size of the facility, the parking, the location of her work station, the size of the ladies room, and the lack of a relief carrier. These matters essentially relate to appellant's frustration in not being permitted to work in a particular environment or to hold a particular position and do not come within the coverage of the Act.<sup>3</sup>

In support of her claim, appellant submitted notes dated May 3, 1996 from Dr. Faith Fritsch, an osteopath. Dr. Fritsch noted that appellant was agitated and had increased stress. On May 6, 1996 Dr. Fritsch stated that on May 2, 1996 appellant experienced stress at work and released appellant from work for three weeks. Dr. Fritsch diagnosed acute situational depression on May 22, 1996. Dr. Fritsch released appellant from work on May 3 and 6, 1996 due to acute situational anxiety and severe job stress.

These reports are not sufficient to meet appellant's burden of proof as Dr. Fritsch did not provide a clear statement of the accepted employment incident and did not provide medical rationale supporting her opinion that appellant's diagnosed condition was due to this incident. Therefore, appellant has failed to meet her burden of proof in establishing an emotional condition due to factors of her federal employment.

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits.

Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>4</sup> Section 10.138(b)(2) provides that when an application for review of the merits of a

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<sup>2</sup> *Martha L. Watson*, 46 ECAB 407 (1995).

<sup>3</sup> *Anne L. Livermore*, 46 ECAB 425, 435 (1995).

<sup>4</sup> 20 C.F.R. § 10.138(b)(1).

claim does not meet at least one of these three requirements, the Office will deny the application for review without review the merits of the claim.<sup>5</sup>

Following the Office's January 13, 1997 decision appellant submitted additional new evidence consisting of a report dated January 17, 1997 from Douglas H. Ruben, a "Ph.D." There is no evidence in the record regarding Mr. Ruben's degree. However, even if Mr. Ruben is a psychologist, the Act defines "physician" to included "clinical psychologists."<sup>6</sup> As there is no evidence in the record that Mr. Ruben is a clinical psychologist therefore his report cannot constitute medical evidence and is insufficient to require the Office to reopen appellant's claim for consideration of the merits.

The decisions of the Office of Workers' Compensation Programs dated January 13, 1998 and May 27, 1997 are hereby affirmed.

Dated, Washington, D.C.  
May 18, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

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<sup>5</sup> 20 C.F.R. § 10.138(b)(2).

<sup>6</sup> 5 U.S.C. §§ 8101-8193, 8101(2).