

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN S. PHILPOTT and U.S. POSTAL SERVICE,
POST OFFICE, Groves, TX

*Docket No. 98-760; Submitted on the Record;
Issued November 18, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has established that she sustained an emotional condition while in the performance of duty.

On July 2, 1996 appellant, then a 45-year-old letter carrier, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that she sustained an emotional condition in the performance of duty. She explained that on June 19, 1996 she had a confrontation with her supervisor and as a result, she experienced stress and anxiety. Appellant further indicated that the incident left her unable to concentrate or perform her duties. She ceased working on June 19, 1996. Appellant's supervisor, James M. Tyler, reported on the Form CA-1 that he had a discussion with appellant on June 19, 1996 about her behavior. Mr. Tyler explained that he called appellant over to his desk after she was loud about a parcel that a clerk had left at her case. He further indicated that appellant had used profanity and had exhibited hostile behavior. Appellant's Form CA-1 also includes four brief witness statements attesting to the June 19, 1996 conversation between appellant and Mr. Tyler.¹

The employing establishment submitted a July 18, 1996 witness statement from another employee, John Czaja, who indicated that appellant, after noticing a parcel in her work area, hollered "Mr. Supervisor" what in "the hell" is this doing at my case? "Did the custodian put it here or a clerk?" He further noted that appellant stated, "Where in the hell is the address?" Mr. Czaja indicated that he turned the parcel over and showed appellant the address and she

¹ One coworker indicated that she "overheard a loud conversation" between appellant and her supervisor. Another coworker quoted Mr. Tyler as saying, "If you have anything derogatory to say about the clerks direct it to me." Similarly, a third coworker indicated that Mr. Tyler said, "If you have anything to say about the clerks, say it to me." Finally, a fourth witness, Lori Koch, provided the following quote: "If you have anything negative to say -- don't say it on the work room floor -- say it to me!" Ms. Koch, however, did not specifically attribute this statement to Mr. Tyler.

placed the parcel in her hamper. According to Mr. Czaja, Mr. Tyler then called appellant over to his desk.

In response to a request for additional information from the Office of Workers' Compensation Programs, appellant provided a detailed statement in which she indicated that upon arriving at work on June 19, 1996, she noticed a large box in her work area, which she thought perhaps the janitor had placed there. Appellant explained that the mailing label was not visible so she asked her supervisor about the package. She said "Mr. Supervisor sir do you know what the hell this box is by my case?" Appellant further explained that two coworkers passed by and surmised that the box was a parcel and they proceeded to turn it over, revealing the mailing address on the other side. She indicated that her supervisor "loudly" called her name and stated that if she had anything negative or derogatory to say, she should direct her comments to him and leave her coworkers alone. Appellant stated that she was embarrassed by the remark. Upon approaching her supervisor, appellant explained to Mr. Tyler that she had nothing negative or derogatory to say and that her previous statement was directed to him. She also indicated that she told her supervisor that if he found it necessary to correct her for something, the discussion should take place in private and not in front of her coworkers. According to appellant, Mr. Tyler "flared up" again and advised her that he was the supervisor and, as such, he would correct her as he deemed necessary. Appellant explained that as a result of the exchange, her knees began to wobble and she felt as if she were going to collapse. She then advised Mr. Tyler that she would file a grievance over the matter. Appellant stated that Mr. Tyler encouraged her to "go ahead" and file her grievance and that in turn, he would cite her for "hostile [and] abusive language on the work room floor." Appellant further indicated that when she attempted to return to her assigned duties, she could not control her emotions and began to cry and shake. After reporting the incident to the Postmaster, appellant stated that she went home.

In support of her claim, appellant submitted treatment notes from Dr. Rama Veluswamy whose June 20, 1996 notations indicate that appellant complained of stress and anxiety on the job. Additionally, he noted a history of prior nervous breakdowns during childhood and later while in the military. Dr. Veluswamy diagnosed appellant as suffering from depression, anxiety and stress. Additionally, appellant submitted treatment records from Dr. Kashi S. Bagri, a Board-certified psychiatrist and neurologist. In a report dated September 6, 1996, Dr. Bagri noted that appellant had been under her care since August 7, 1996 for bipolar affective disorder; depressed phase with psychotic features. He explained that appellant's illness was aggravated due to interpersonal problems at work, which caused her to become increasingly anxious, depressed and suspicious. The record also includes a July 26, 1996 duty status report (Form CA-17) from Dr. Georges S. Glass noting a diagnosis of anxiety and depression.

By decision dated September 24, 1996, the Office denied appellant's claim on the basis that she failed to establish that her injury occurred in the performance of duty. In an accompanying memorandum, the Office explained that appellant failed to implicate any compensable employment factors. The Office specifically noted that disciplinary actions taken by an employer are not compensable factors of employment.

On October 17, 1996 appellant requested an oral hearing. At the September 24, 1997 hearing, appellant provided testimony regarding the events of June 19, 1996, consistent with her

earlier statements.² Subsequent to the hearing, appellant's representative submitted a brief statement asserting that appellant sustained an emotional injury as a result of a confrontation with her supervisor on June 19, 1996. The statement was accompanied by additional documentary evidence, including a recent statement by appellant indicating that she had never been hostile in the work area and that she got along very well with her coworkers. Appellant characterized her behavior on June 19, 1996 as neither disruptive nor offensive, and explained that her language on that date was no different than it had always been. Finally, appellant indicated that her initial inquiry about the parcel left at her work area was made out of concern for her safety.

Appellant also submitted a September 17, 1997 report from Dr. Bagri in which the doctor reiterated her prior diagnosis of bipolar affective disorder and further stated that, in her professional opinion, appellant's illness was caused by work-related issues.

In a decision dated December 2, 1997, the Office hearing representative denied appellant's claim on the basis that she failed to demonstrate that she sustained an emotional condition in the performance of duty. The hearing representative explained that the disciplinary action taken by Mr. Tyler on June 19, 1996 was not a compensable employment factor, and although Mr. Tyler raised his voice when reprimanding appellant, this fact alone did not establish that his actions were either abusive or erroneous. Accordingly, the hearing representative affirmed the Office's September 24, 1996 decision.

The Board finds that appellant has failed to establish that she sustained an emotional condition while in the performance of duty.

To establish that she has sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.³

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or

² Appellant's sister, Terri Weller, also testified at the hearing regarding a trip she and appellant took to Houston, Texas for a medical appointment. Additionally, Paul Arceneaux, a union official, testified at the hearing regarding a March 30, 1995 incident when Mr. Tyler allegedly questioned appellant's use of sick leave and removed some personal mail from her workstation. When questioned as to the relevance of this information, appellant's representative indicated that the testimony was merely being provided to establish a "background" of things that had occurred between appellant and her supervisor. The representative explained that it was appellant's belief that Mr. Tyler's actions on June 19, 1996 were motivated by his desire to get even with her for their past differences. Neither appellant nor her representative alleged that the March 30, 1995 incident directly caused or contributed to appellant's current emotional condition.

³ See *Kathleen D. Walker*, 42 ECAB 603 (1991).

specially assigned work duties or a requirement imposed by the employment, the disability is deemed 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.⁴ Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.⁵

In the instant case, appellant alleged that, on June 19, 1996, her supervisor yelled at her and belittled her in front of her coworkers and, as a result of this incident, she sustained an emotional condition. The record indicates that appellant's supervisor verbally reprimanded her for using profanity and for exhibiting behavior he interpreted to be hostile. The record further indicates that the incident occurred on the work room floor in the presence of other coworkers, and that both appellant and her supervisor spoke in a tone that enabled those present to overhear certain portions of their conversation.

As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Federal Employees' Compensation Act.⁶ An oral reprimand does not usually constitute a compensable factor of employment because it involves the employing establishment's administration of personnel matters.⁷ However, to the extent that the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, such action will be considered a compensable employment factor.⁸ The Board has also recognized the compensability of verbal altercations or abuse in certain circumstances.⁹ However, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.¹⁰ When sufficiently detailed and supported by the record, verbal altercations may constitute a factor of employment.¹¹

Appellant argued that her supervisor should have spoken to her in private; however, she has not demonstrated that her supervisor acted either erroneously or abusively in issuing her a verbal reprimand for her conduct on June 19, 1996. While appellant indicated that she would file a grievance regarding the incident, no such grievance was ever filed. As such, there is no clear evidence that Mr. Tyler's actions were unwarranted.¹² Moreover, the mere fact that Mr.

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁶ *Janet I. Jones*, 47 ECAB 345, 347 (1996).

⁷ *Joseph F. McHale*, 45 ECAB 669, 675 (1994).

⁸ *Id.*

⁹ *Harriet J. Landry*, 47 ECAB 543, 546 (1996).

¹⁰ *Id.* at 547.

¹¹ *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

¹² *See Janet I. Jones*, *supra* note 6.

Tyler raised his voice during the course of his conversation with appellant does not warrant a finding that his actions amounted to verbal abuse. Contrary to appellant's assertion, the record does not establish that Mr. Tyler belittled her. Consequently, appellant has failed to establish that the verbal reprimand she received on June 19, 1996 is a compensable factor of employment.

Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record.¹³ Inasmuch as appellant failed to implicate any compensable factors of employment, the Office hearing representative properly denied her claim without reviewing the medical evidence of record.

The December 2, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

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

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

¹³ *Garry M. Carlo, supra* note 11.