

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEAN VERLOTTI and U.S. POSTAL SERVICE,
POST OFFICE, Amherst, OH

*Docket No. 97-1182; Submitted on the Record;
Issued September 28, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof to establish that she has an emotional condition causally related to factors of her federal employment.

On August 8, 1996 appellant, then a 39-year-old customer service supervisor, filed a claim for mental stress and other complaints which she related to various aspects of her federal employment. Appellant stopped work on July 23, 1996.¹ In support of her claim, she submitted a narrative statement, in which she outlined the factors of her employment she felt were responsible for her condition and medical report dated October 28, 1996 from her treating physician, Dr. F. Gregory Noveske, a Board-certified psychiatrist. In addition, appellant submitted numerous witness statements and other documents pertaining to the behavior of a Mr. Robert Schultz, whom appellant supervised.

In letters dated August 12 and 19, 1996, respectively, Marjorie S. Czech, Amherst Postmaster and Patricia E. Davis, Manager Post Office Operations, refuted appellant's allegations.

In a decision dated November 4, 1996, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence submitted was insufficient to establish that appellant's claimed emotional condition arose out of conditions of her federal employment.

The Board finds that this case is not in posture for a decision as it requires further factual and medical development.

¹ On July 30, 1996 the employing establishment issued a notice of proposed removal following an incident in June 1996 where appellant was observed consuming and permitting others to consume, beer in the employing establishment parking lot.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of being investigated or fear of losing her job, as disabling conditions resulting from these factors do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.² In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. In addition, an employee's dissatisfaction with the way in which a supervisor exercises her supervisory discretion falls outside the scope of coverage provided by the Act, absent evidence that the supervisor acted unreasonably in the administration of a personnel matter.³ However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.⁴

In her narrative statement, appellant alleged that on July 29, 1995, she was verbally accosted by an angry and hostile coworker named Robert Schultz, whom she supervised and that she feared for her safety.⁵ She stated that she immediately contacted Postal Inspector Michael Rae with respect to this incident and explained to him that she felt that Mr. Schultz's outburst toward her resulted from the fact that, despite many prior incidents of misconduct, including the fact that Mr. Schultz was responsible for several financial "shortages," Mr. Schultz had never been properly disciplined by the Postmaster, Marjorie Czech. Appellant further stated as a result of her cooperation with the postal inspectors, the Postmaster, Ms. Czech, began to engage in a series of punitive actions against her, such as detailing her to a location inconvenient to her home, referring her to employee counseling in an effort to cast doubt on her mental competence, keeping her own office locked so that appellant could no longer have access to records kept there and ultimately, overdisciplining her by seeking her removal for drinking beer in the parking lot.

In support of her claim, appellant submitted a copy of the postal investigative memorandum and material generated by the July 29, 1995 incident, which states that the investigation was initiated on July 29, 1995 following a telephone call to the postal inspection service offices by appellant, who stated that Mr. Schultz had subjected her to verbal abuse to the point where she felt he was out of control and that she was in fear for her safety. Appellant also submitted several corroborative statements from coworkers who witnessed the July 29, 1995 altercation. In addition, appellant submitted a letter from Postal Inspector Michael Rae. In his

² *Larry J. Thomas*, 44 ECAB 291 (1992); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Abe E. Scott*, 45 ECAB 164 (1993).

⁴ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁵ The altercation between Mr. Schultz and appellant, his supervisor, arose out of appellant's request that Mr. Schultz take annual leave for a specific period during which he was away from work.

letter dated September 26, 1996, Mr. Rae stated that appellant had provided valuable and accurate information to him which disclosed numerous financial irregularities, including the nonreporting of postal financial shortages at the employing establishment and that as a result of appellant's cooperation, an investigative memorandum concerning the conduct of Postmaster Czech was prepared as well as a limited audit report which described the fiscal irregularities at the employing establishment. In addition to this letter, the record contains the report of a September 9, 1996 telephone call from Mr. Rae to the Office, in which he expressed his concern that the overly severe proposed removal of appellant from her position of employment might have been partially motivated by revenge on the part of the postmaster.

The Board finds that appellant has established, through factual evidence, that on July 29, 1995 she was verbally accosted by Mr. Schultz, whom she supervised and that his anger and hostility towards her caused her to fear for her safety. The Board held that altercations between supervisors and their employees involving matters of employment may be compensable.⁶

The Board also finds that there may be some merit to appellant's assertion that she suffered retaliatory treatment at the hands of Ms. Czech. While the actions of a supervisor which an employee characterizes as harassment or retaliation may constitute factors of employment giving rise to coverage under the Act, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perception of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.⁷ In this case, the September 26, 1996 letter from Mr. Rae confirms that appellant had a direct role in causing an investigative memorandum to be prepared with respect to Ms. Czech's conduct. As Mr. Rae specifically expressed, in his telephone call of September 9, 1996, his concern that Ms. Czech's conduct toward appellant may have been retaliatory and as the investigative memorandum detailing the results of the investigation into Ms. Czech's conduct is not contained in the record, the Office should obtain a copy of this memorandum in an effort to determine whether it supports appellant's contentions of error or abuse on the part of the employing establishment.

Even though appellant has established that there was at least one compensable factor of employment in her case, she must still establish by medical evidence that this factor caused her emotional condition. To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁸ (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁹ and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence

⁶ *Dorothy J. Williams*, 32 ECAB 665 (1981).

⁷ *Joan Juanita Greene*, 41 ECAB 760 (1990).

⁸ *See Ronald K. White*, 37 ECAB 176, 178 (1985).

⁹ *See Walter D. Morehead*, 31 ECAB 188, 194 (1979).

establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.¹⁰ The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,¹¹ must be one of reasonable medical certainty,¹² and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹³

In an October 28, 1996 report, Dr. F. Gregory Noveske indicated that he first saw appellant on July 16, 1996, for complaints of anxiety and depression. He stated that appellant had related to him that she had been a supervisor at the employing establishment until she was suspended because she and her coworkers were having a few beers in the employing establishment parking lot. Dr. Noveske noted the history of appellant's condition as follows:

“[Appellant] stated that she realized that she had made a mistake, but the handling of her particular suspension had been affected by events that had transpired over the months preceding this particular incident. She reported that her overall job situation had been extremely difficult for her. As examples, she gave that there was a coworker at the post office who, in her opinion was a substandard employee. According to [appellant], he failed to fulfill many of the responsibilities that were his within the post office and at times, he was quite verbally abusive to her. Indeed, [appellant] reported that on occasion, she had felt threatened by this man. She felt that she did not receive support from her postmaster in her duties as a supervisor in this matter. Indeed, she felt that her relationship with the postmaster began steadily deteriorating and that the postmaster was supporting the employee over her attempts to perform her tasks as a supervisor. She reported that she had had a good work record in the past, but she had increasingly found her tasks dealing with this particular employee and her postmaster very frustrating. The patient reported that she began developing problems with anxiety and depression over these months.”

However, with respect to the cause of appellant's anxiety and depression, more specifically diagnosed by Dr. Noveske as severe adjustment disorder with mixed emotional features, Dr. Noveske stated only that “there is a direct relationship between the patient's overall symptomology and her employment,” but did not identify the specific factors of appellant's employment that he felt caused or contributed to her diagnosed condition. Although Dr. Noveske's report does not contain sufficient rationale, with reference to specific factors or

¹⁰ See generally *Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

¹¹ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹² See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹³ See *William E. Enright*, 31 ECAB 426, 430 (1980).

appellant's employment, to discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that her emotional condition is causally related to her employment, Dr. Noveske does specifically mention in his report that she was subjected to verbal abuse by one of her employees which caused her to fear for her life. As the Board has found the confrontation between Mr. Schultz and appellant to be a compensable factor of employment, Dr. Noveske's opinion raises an uncontroverted inference of causal relationship sufficient to require further medical development of the case record by the Office.

Therefore, upon remand the Office should refer appellant, together with a statement of accepted facts, questions to be answered and the complete case record, to an appropriate medical specialist for an evaluation and a rationalized medical opinion on whether appellant's emotional condition was causally related, by way of aggravation, acceleration or precipitation, to either the verbal abuse directed at her by Mr. Schultz, or to any additional compensable factors the Office finds established as a result of the review of the investigative memorandum concerning the actions of Postmaster Czech. After such further development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

Consequently, the decision of the Office of Workers' Compensation Programs dated November 4, 1996 is hereby set aside and the case is remanded for further development in accordance with this decision.

Dated, Washington, D.C.
September 28, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member