

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LISA L. SHESKO and U.S. POSTAL SERVICE,  
WARREN POST OFFICE, Warren, OH

*Docket No. 99-307; Submitted on the Record;  
Issued June 15, 2000*

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DECISION and ORDER

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

The issue is whether appellant sustained an emotional condition in the performance of duty on June 30, 1997.

On July 5, 1997 appellant, then a 37-year-old letter carrier, filed a claim for depression and anxiety which she related to a change in her job. In a subsequent statement, she indicated that on May 13, 1997 she was informed that her full-time clerk position was being abolished. On June 3, 1997 appellant was informed that she would be reassigned as a letter carrier. She stated that she was trained to perform the job on June 30, 1997. Appellant reported to work on July 2, 1997 but had to leave due to illness.

In a September 5, 1997 decision, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that fact of injury had not been established. In a September 22, 1997 letter, appellant requested a hearing before an Office hearing representative which was conducted on July 28, 1998. In a September 25, 1998 decision, the Office hearing representative found that appellant had not established a compensable factor of employment. She therefore affirmed the Office's September 5, 1997 decision.

The Board finds that the case is not in posture for decision.

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 a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job

do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.<sup>1</sup> When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.<sup>2</sup> In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to her assigned duties. 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.<sup>3</sup>

Appellant cited her reassignment from her clerk position to a letter carrier position as a cause of her emotional condition. Her reaction to the reassignment was a desire for a different position and a frustration that she was not allowed to retain her clerk position. The reassignment was an administrative action of the employing establishment. There was no showing that the reassignment was an error or abusive. This factor therefore is not within appellant's performance of duty. Appellant's expression that she had fear and anxiety about the neighborhood in which she would deliver mail was an expression of fear of future injury. The possibility of a future injury, however, does not constitute an injury under the Act. Similarly, a physician's statement that exposure to employment factors would cause a recurrence of symptoms in the future is not a sufficient basis on which to establish a claim as the fear of a recurrence of a condition if a claimant returns to work does not constitute a basis for compensation.<sup>4</sup>

However, at the hearing, appellant identified incidents that would constitute a compensable factor of employment. She indicated that when she was taken on training on June 30, 1997, the letter carrier who was conducting the training had her deliver the mail on one side of a street. Appellant indicated that, while she was delivering the mail, a dog came running out of a screen door at her. She stated that she ran for the postal truck and began crying. The trainer let appellant calm down and asked her if she wanted to try again. Appellant began delivering mail a second time when a large dog ran out of a garage at her. She stated that she did not know the dog was chained. Appellant began crying again and took a long time to calm down. She and the trainer returned to the employing establishment early. Appellant noted that when she had first worked as a letter carrier nine years previously, she had encountered two rottweilers who chased her and were apparently not affected by chemical spray. She stated that she became afraid, she threw the mail into the postal vehicle and drove away, curtailing mail delivery. Appellant stated that every day dogs would approach her, frightening her. She indicated that the anxiety over dogs caused her to transfer to a clerk position. The incidents in

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

<sup>2</sup> *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

<sup>3</sup> *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>4</sup> *Dominic M. DeScala*, 37 ECAB 369 (1986).

which dogs ran at appellant occurred while she was performing her assigned duties and produced an immediate emotional reaction. These incidents therefore constitute a compensable factor of employment.

In an August 13, 1998 report, Dr. A. James Giannini, a psychiatrist, stated that he saw appellant on July 3, 1997. He related that appellant was very upset after being reassigned to be a letter carrier because of her fear of dogs. Appellant stated that the fear began when a dog bit her ankle and had developed over time. She indicated that she had developed anxiety states which at times developed into panic attacks. Dr. Giannini diagnosed major depressive disorder and phobic anxiety disorder. He indicated appellant had some improvement in her condition and the signs of depression were in remission. Dr. Giannini stated, however, that in response to the phobic anxiety disorder appellant still manifested phobic avoidant behavior though the anxiety symptoms were still present. He concluded that the primary causation for the manifestation was the appearance of strange dogs and dealing with novel social situations. Dr. Giannini reported that appellant could continue to work for the employing establishment but her job description of letter carrier would in all likelihood aggravate her underlying phobic anxiety disorder. He therefore indicated that appellant's exposure to dogs in her work caused or aggravated her phobic anxiety disorder. Dr. Giannini's report, while not sufficient to establish appellant's claim, is sufficient to require further development of the record.<sup>5</sup>

On remand, the Office should request clarification from Dr. Giannini. The Office should ask whether appellant's exposure to dogs at work caused her phobic anxiety disorder or aggravated a preexisting, underlying phobic anxiety disorder that was unrelated to her employment. If Dr. Giannini should indicate that appellant's condition was an aggravation of an underlying, preexisting condition, he should indicate whether the incidents of appellant's exposure to dogs, particularly on June 30, 1997, caused a temporary or permanent aggravation of her condition. If he should find that the aggravation was temporary aggravation, he should indicate the duration of appellant's disability due to the temporary aggravation of the underlying phobic anxiety disorder. Dr. Giannini should also indicate whether his conclusion that appellant could not perform the duties of a letter carrier constituted a fear of future injury or was a result of an employment-related causation or permanent aggravation of her phobic anxiety disorder. After further development as it may find necessary, the Office should issue a *de novo* decision.

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<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

The decision of the Office of Workers' Compensation Programs, dated September 25, 1998, is hereby set aside and the case remanded for further development as set forth in this decision.

Dated, Washington, D.C.  
June 15, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member