

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIRGINIA K. DETVAY and U.S. POSTAL SERVICE,
POST OFFICE, Lincoln Park, MI

*Docket No. 99-433; Submitted on the Record;
Issued June 6, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
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 federal employment.

On June 13, 1997 appellant, then a 47-year-old letter carrier, filed a claim alleging that she sustained an emotional condition which was caused by the stressful conditions at her place of employment.

In support of her claim, appellant submitted a May 28, 1997 letter from Dr. Ronald F. Martus, a psychologist, which noted that he evaluated appellant and, that, although she was capable of handling her regular work schedule, he "did not feel that she can handle the extra stress of working overtime." In a June 4, 1997 letter, he stated that it was his "opinion that [appellant's] condition was a direct result of her employment and that she is not able to work at this time." Dr. Martus recommended medical leave for six weeks.

A statement of a witness was also submitted with the claim. Ms. Gepco wrote that appellant approached her in tears and claimed that a man was harassing her and trying to get into her vehicle, so the witness called the police. However, she added that she did not know that the man was appellant's supervisor and stated that she did not believe that he did anything "outside of his managerial duties."

The employing establishment controverted appellant's claim. In support of the controversion, the employing establishment submitted statements from two supervisors. Ron Jones stated that, on May 30, 1997, in response to a call that appellant would be unable to timely finish her route, he went to see appellant on her route and found her sitting in her vehicle eating her lunch. He approached the vehicle to see how much mail was left and appellant locked the door, rolled up the window and turned her back to him. Mr. Jones repeated his instruction for appellant to roll down the window and talk to him. After she relented, he discussed the mail with her, told appellant that she should be able to finish her route with her lunch break and rest

room breaks and still be back on time. In a statement later that day, Mr. Jones stated that he received a telephone call that appellant had requested that the police be called because a man was trying to get into her vehicle and harass her. At this point, he testified that he went with Christine Hacker, another supervisor, to see appellant and that appellant claimed that Mr. Jones was harassing her and that she could not deliver any more mail because she was too upset. Ms. Hacker also submitted a statement that corroborated Mr. Jones' statement. She added that, when she went with Mr. Jones to check on appellant, she was in her vehicle crying and unresponsive. Ms. Hacker told the police what had happened and then told appellant she would drive her to contact a physician for an evaluation due to her lack of control and statements of stress. Upon arriving back at the employing establishment, Ms. Hacker noted that appellant called the union hall and spoke for several minutes and then refused to go to the clinic.

In response to a July 7, 1997 request by the Office of Workers' Compensation Programs for further information, appellant submitted statements in which she noted that she had worked for the employing establishment for 28 ½ years, that with the recent elimination of her "router" position, she was forced to deliver mail and was assigned a T-6 position, which required her to fill in for five different carriers on their days off, rotating daily and required her to be knowledgeable of five different routes, that soon after management began harassing her and she became convinced that they would find a way to "get rid of" her. Appellant alleged that she had been assigned a route with which she was unfamiliar, that there was pressure on her to go faster, that there were unspecified threats of being fired, that she was not allowed to set up her own route, that she was forced to work almost daily overtime, that she was watched constantly and that she was harassed in the form of verbal abuse, disparate treatment, a "fitness[-]for[-]duty exam[ination]" and denial of union representation.

Appellant further noted a specific incident that occurred on May 30, 1997. She noticed Mr. Jones monitoring her route in the morning. Appellant stated that she delivered the first part of her mail but that the remainder of the mail was not delivered promptly to her at her relay station and that, when she received it, it was not in proper order, which caused a delay. She stated that, later that day, while she was having her lunch in her vehicle, she was startled by Mr. Jones approaching her vehicle on the passenger's side. Mr. Jones told her to open the door and she told him to come back after her lunch. Appellant further stated that Mr. Jones pulled on the handle to open the locked door. She stated that he then yelled, was ordering her to open the door, that "his face was contorted and his eyes were squinting" and that he was out of control. Appellant said she "felt her life was threatened as he had become louder and louder with rage." He then asked her how much mail she had left and told her, "[d]o n[o]t call the office, do n[o]t bring the mail back and be back at 4:30 p.m.." After he left, appellant stated that she started to sob and asked a pedestrian to call the police. When she was approached later by Mr. Jones and Ms. Hacker, she refused to get in the car with Mr. Jones, that Ms. Hacker drove her back to the office, that she continued to cry and talked to others at the office, that she called the union hall and then told Ms. Hacker that she would not go to the clinic and that she wanted to go home.

Appellant also submitted an August 4, 1997 medical report by Dr. Edwin L. Bruer, a family practitioner, wherein he noted that appellant, who had been a patient of his since birth and he knew her to be a stable minded person, came to his office on May 14, 1997 and related that she had been under stress at work. He recommended that appellant see Dr. Martus. Appellant

also submitted a report by Dr. Martus dated June 12, 1997, wherein he stated that he first saw appellant on May 28, 1997 and was continuing to see her for weekly psychotherapy. He noted that appellant had been diagnosed with major depressive disorder, single episode and generalized anxiety disorder and that her symptoms were “depressed mood, uncontrollable crying, agitation, disturbed sleep, worthlessness, inability to concentrate, anger, fatigue, feeling overwhelmed, lack of interest in normal activities and somatic complaints.” Dr. Martus stated that his original recommendation that appellant limit her work to a normal work schedule seemed to be working until she felt threatened by the behavior of her supervisor on May 30, 1997. He recommended that she go on sick leave for six weeks. Dr. Martus then stated:

“In closing, I trust this report adequately documents that it was [appellant’s] employment that is the primary and dominant causative factor in her inability to work. At this time I am not aware of any other causative factors that contributed to her psychological problems. There needs to be considerable work done before [appellant] will feel safe enough and confident enough to handle the ordinary stresses of the job.”

By letter dated July 14, 1997, Dr. Martus opined that appellant was able to return to work on July 16, 1997, but it was advisable that she not be assigned any overtime work.

Appellant also filed evidence of her numerous grievances against the employing establishment. These concerns included that she was being disparately treated with regard to documenting sick leave, that she was yelled at by Mr. Jones, that she was forced to work overtime, that she “was denied the right to set up her own assignment and was instead provided inadequate assistance,” that Ms. Hacker yelled at her in public while she was delivering mail and that she was belittled in front of other workers by Ms. Hacker. Appellant also submitted additional witness statements to corroborate her version of the events of May 30, 1997.

In a decision dated September 3, 1997, the Office issued a formal denial of the claim on the basis that the evidence failed to establish any allegation that is a compensable factor of employment.

Appellant timely requested an oral hearing, which was held on May 14, 1998. At the hearing, she repeated her description of several events at work that she contended contributed to her emotional condition.

Other documents were also submitted at this time, including more statements from appellant, and a statement from a steward at appellant’s union in which she claimed that appellant received disparate treatment. Appellant also submitted additional grievances alleging that she had been treated “in a nasty and unprofessional manner” by a doctor in the medical unit” and copies of the outcome from grievances. She also submitted an October 8, 1997 letter from Dr. Martus wherein he discusses a later incident which occurred on August 7, 1997 which resulted in a discharge notice and caused her to become more depressed, a letter dated June 8, 1998, in which Dr. Martus stated that “the first couple of months back on the job were difficult for her because of the continued harassment of certain supervisors.” Appellant also submitted doctor’s notes from Dr. Patricia Odette, a chiropractor, who treated her for lower back pain with a sciatic neuropathy down her leg, to support her use of a mail cart at work. Finally, appellant

submitted a medical report from Dr. Bruer in which he stated that he felt that “her condition was the direct result of her employment.... I have followed [appellant] on a regular basis both during the [May 1997 incidents] as well as since she returned to work and still feel her emotional problems resulted from the stress of her job as a postal worker.”

On June 1, 1998 the employing establishment also submitted comments in response to the hearing.

In a decision dated August 7, 1998, the hearing representative found that the evidence failed to establish that appellant’s emotional condition arose out of and in the course of her federal employment. The hearing representative found that most of the incidents involved are noncompensable work factors. The hearing representative also found that there was no rational medical evidence to link appellant’s compensable factors, *i.e.*, being reprimanded in front of her coworkers or being forced to work overtime, to her emotional condition.

The Board finds that appellant has failed to establish that her emotional condition was causally related to compensable factors of her federal employment.

Worker’s compensation laws are not applicable 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 coverage of workers’ compensation. Distinctions exist as to the type of situations giving rise to an emotional condition that will be covered under the Federal Employees’ Compensation Act. When 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, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers’ compensation because it is not considered to have arisen in the course of the employment.¹

Where working conditions are alleged as factors in causing 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. When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.

In the instant case, appellant alleged that she was exposed to multiple stressors. Initially, appellant alleges that there were unspecified threats of her losing her job. 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 with the meaning of the

¹ *Beverly Diffin*, 48 ECAB 125, 128 (1996).

Act.² Where 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.³ 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, 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

Appellant further alleges that she was not given adequate time to learn her route and that the supervisor's treated her disparately about sick leave requests. Although administrative and personnel matters are generally related to employment, they are functions of the employer and not the employee.⁵ Thus, the Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.⁶ Accordingly, allegations pertaining to training and leave time are related to administrative are personnel matters unrelated to an employee's regular or specially assigned duties and do not fall within the coverage of the Act, unless error or abuse is demonstrated.⁷ No such abuse has been demonstrated in the case at hand. Furthermore, ordering appellant to take a fitness-for-duty examination and taking appellant to the clinic were personnel matters and absent abuse, which is not shown here, are not compensable. Finally, appellant's allegations that she was not provided adequate time to learn her route are also administrative matters and, therefore, noncompensable.

Appellant also alleged that her stress was caused by supervisory harassment. The Board has held that actions of an employee's supervisor, which the employee characterizes as harassment, may constitute factors of employment giving rise to coverage under the Act. However, in order for harassment to give rise to a compensable disability under the Act based on statements or behavior of a supervisor, appellant must establish that the comment was actually made and that the comment or any other action by the employing establishment was a form of harassment.

The evidence of record concerning the incident on May 30, 1997 does not establish supervisory harassment. Initially, the Board finds that appellant's supervisor monitoring her route did not constitute harassment, as the monitoring of appellant's mail route is an administrative function of the employer and is not a compensable factor unless there is affirmative evidence that the employing establishment erred or acted abusively in the

² *Lillian Cutler*, 28 ECAB 1255 (1976).

³ *Artice Dotson*, 41 ECAB 754 (1990); *Buck Green*, 37 ECAB 374 (1985).

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

⁵ *Gregory N. Waite*, 46 ECAB 662 (1995).

⁶ *Ernest J. Malagrida*, 51 ECAB ____ (Docket No. 98-238, issued January 19, 2000).

⁷ *Michaal Thomas Plante*, 44 ECAB 510 (1993).

administration of the matter.⁸ There is no evidence of such error or abuse in the present case. Appellant's allegations that when Mr. Jones was speaking with her while she was in her vehicle that his face was contorted and his eyes were squinting and he was out of control is not supported by any other evidence other than appellant's testimony and is in large part a matter of perception, as is appellant's statement that she believed her life was in danger. Mere feelings of harassment are not compensable; there must be factual evidence to support the incident.⁹

Appellant's burden of proof is not discharged by her allegation of compensable employment factors. To establish her claim for an emotional condition, she must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the identified compensable employment factor.¹⁰ None of the medical reports in the case record constitute rationalized medical reports specifically linking appellant's emotional condition to her overtime work or her being reprimanded in front of other people. Dr. Bruer, whose specialty is family practice and is not a psychiatrist, does not submit any complete, rationalized, reports, but infers that appellant's emotional condition resulted from the stress of her job as a postal worker. Without any rationale and without specifically attributing appellant's emotional condition to the compensable factors of overtime or being reprimanded in front of others, his opinion is not entitled to any significant weight. Dr. Martus, appellant's psychologist, did limit appellant's overtime and related appellant's emotional condition to the stress at work. However, he also failed to specifically link appellant's emotional condition to the compensable factors. Accordingly, his report also fails to establish a causal relationship. Appellant therefore has not met her burden of proof.

⁸ *Michael Ewanichak*, 48 ECAB 364, 365 (1997).

⁹ *Anthony A. Zarcone*, 44 ECAB 751, 758 (1993).

¹⁰ *Arnold A. Alley*, 44 ECAB 912, 922 (1993).

The decision of the Office of Workers' Compensation Programs dated August 7, 1998 is affirmed.

Dated, Washington, D.C.
June 6, 2000

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member