

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HELEN M. STREETMAR and U.S. POSTAL SERVICE,  
POST OFFICE, Oklahoma City, OK

*Docket No. 99-144; Submitted on the Record;  
Issued May 12, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof to establish that she sustained an emotional condition while in the performance of duty.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained an emotional condition while in the performance of duty.

On May 6, 1998 appellant, then a 48-year-old mail clerk, filed a notice of occupational disease alleging that her stress and depression resulted from harassment by abusive management since taking a job on Tour One in April 1997. Appellant advised that she first noticed a causal relation between her medical condition and her employment on October 31, 1997.

By letter dated May 29, 1998, the Office of Workers' Compensation Programs advised appellant to provide additional factual and medical evidence supportive of her claim. No additional evidence was received.

By decision dated July 23, 1998, the Office found the evidence of record insufficient to establish that appellant sustained an injury as alleged due to factors of employment on or prior to October 31, 1997. The Office found that as appellant failed to submit a statement supporting her allegations the medical evidence submitted was of diminished probative value.

In an August 9, 1998 letter, appellant requested reconsideration. She provided her factual response and statements from coworkers surrounding the events on or about September 8, 1997 as well as statements from her immediate family describing appellant's change in behavior. Medical evidence was also submitted.

By decision dated August 19, 1998, the Office modified its decision of July 23, 1998 to find that the work factors alleged by appellant were either not compensable nor factually established. Accordingly, the claim was denied.

Under the Federal Employees' Compensation Act,<sup>1</sup> appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment. To establish that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>2</sup>

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.<sup>3</sup> There are distinctions regarding the type of work situation giving rise to an emotional condition that will be covered under the Act.

For example, disability resulting from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employing establishment is covered.<sup>4</sup> However, an employee's emotional reaction to an administrative or personnel matter is generally not covered,<sup>5</sup> and disabling conditions caused by an employee's fear of termination or frustration from lack of promotion are not compensable. In such cases, the employee's feelings are self-generated in that they are not related to assigned duties.<sup>6</sup>

Nonetheless, if the evidence demonstrates that the employing establishment erred or acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.<sup>7</sup> However, a claimant must support his allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>8</sup>

The initial question is whether appellant has alleged compensable employment factors as contributing to her condition.<sup>9</sup> Thus, part of appellant's burden of proof includes the submission of a detailed description of the specific employment factors or incidents, which appellant believes caused or adversely affected the condition for which she claims compensation.<sup>10</sup> If

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<sup>1</sup> 5 U.S.C. §§ 8101-8193 (1974).

<sup>2</sup> *Vaile F. Walders*, 46 ECAB 822, 825 (1995).

<sup>3</sup> *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>4</sup> *Jose L. Gonzalez-Garced*, 46 ECAB 559, 563 (1995).

<sup>5</sup> *Sharon J. McIntosh*, 47 ECAB 754 (1996).

<sup>6</sup> *Barbara E. Hamm*, 45 ECAB 843, 850 (1994).

<sup>7</sup> *Margreate Lublin*, 44 ECAB 945, 956 (1993).

<sup>8</sup> *Ruthie M. Evans*, 41 ECAB 416, 425 (1990).

<sup>9</sup> *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

<sup>10</sup> *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.<sup>11</sup>

In this case, appellant's primary allegation is that harassment by her supervisors, Cheryl Mitchell and Patricia A. Allen, caused her emotional condition. 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.<sup>12</sup> Mere perceptions alone of harassment and discrimination are not compensable under the Act.<sup>13</sup> To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations of harassment with probative and reliable evidence.<sup>14</sup> Appellant failed to provide any such probative and reliable evidence in this case.

Specifically, appellant has alleged that on or around September 8, 1997 she was escorted out of her work site and off the employing establishment premises at the request of management and supervisors and subsequently issued a letter of warning. Appellant stated that she was near the end of her tour and about to bundle her letters for dispatch when she learned she had a tray of mail in the 181 operation. She asked Ms. Mitchell what to do about the mail as she knew she could not work it up and dispatch on time. Ms. Mitchell told her to work the mail and stay late. Appellant stated that she could not stay late and could she get another coworker, Jesse Reed, to work the mail as she had to take her grandson to school that morning. Ms. Mitchell explained that Mr. Reed was supposed to work Zone 19 that night and told appellant to stay and work the mail. Appellant asserted that she was in the process of pulling and bundling the mail when Ms. Allen approached and Ms. Mitchell started telling Ms. Allen that she was not doing what she was told to do. Appellant asserted that as she started to explain what she was doing, Ms. Allen "got in my face and started yelling, moving so close that I was leaning back against the case. She was yelling and talking so fast she was n[o]t making any sense to me.... She then she got in my face again more vicious and menancing th[a]n before and told me to get off the clock and to report to Richard Toplin that night." A security guard escorted her out to her car when she got out of the locker room. Appellant asserted that Ms. Allen followed behind in a menancing manner. Appellant stated that they were going to discipline her for not working overtime but issued a letter of warning for unsatisfactory service/failure to follow instructions instead.

In response to this incident, the employing establishment submitted several statements describing the incident and commenting that the action was the result of appellant's failure to follow specific instructions given to her by her manager.

Although appellant submitted witness statements pertaining to aspects of her account of what happened, they are not sufficient to establish verbal abuse on the part of appellant's

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<sup>11</sup> *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

<sup>12</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>13</sup> *Wanda G. Bailey*, *supra* note 9; *William P. George*, 43 ECAB 1159 (1992); *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Ruthie M. Evans*, *supra* note 8.

<sup>14</sup> *Ruthie M. Evans*, *supra* note 8.

supervisor. Accordingly, the event of September 8, 1997, which the Office accepted as factual, falls into the category of administrative or personnel actions, which is not covered by the Act as such matters pertain to the procedures and requirements of the employer.<sup>15</sup> Absent evidence of such error or abuse, which is not present in the record, the resulting emotional condition must be considered self-generated and not employment generated.

The Office further found, and the Board agrees, that the other allegations appellant asserted were not accepted as factual as the record is devoid of any probative or reliable evidence to support her allegations of harassment.<sup>16</sup>

The August 19 and July 12, 1998 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.  
May 12, 2000

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>15</sup> *Thomas D. McEuen*, 41 ECAB 389 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>16</sup> The Office further found that appellant alleged that management ignored her medical restrictions and made her work outside her physical limitations; that she was forced to change tours and, once that happened, she was constantly harassed by her managers; she was constantly pulled off her bid job to work in other areas; she was forced to work overtime and, she was constantly watched by her supervisors.