

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EULA ELLINGTON and U.S. POSTAL SERVICE,
POST OFFICE, San Francisco, CA

*Docket No. 99-608; Submitted on the Record;
Issued May 1, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has established that she sustained an abdominal injury in the performance of duty on September 10, 1998; and (2) whether appellant sustained an emotional condition in the performance of duty.

Appellant, a 50-year-old mail carrier, filed a claim for benefits on September 10, 1998, alleging that she injured her abdominal area on the date of the claim when her supervisor threw a stack of address management cards at her, causing her to fall to the floor. Appellant also claimed that this incident caused her severe mental stress, which aggravated a preexisting emotional condition. In support of her claim, appellant submitted a September 10, 1998 first report of injury, which indicated that she was injured when she was struck in the left abdomen by a pack of address management cards thrown by a coworker. Under the heading "Objective Findings," here is a typewritten notation, which states, "... no marks or tenderness, (this did not appear to be an assault on p[atiens])." The attending physician diagnosed mild abdominal contusion and situational anxiety. Appellant also submitted a workers' compensation claim with Kaiser Permanente, dated September 10, 1998 in which she claimed that her supervisor threw a pack of cards on the table, which then struck her, causing her to jump and fall to the floor.

Appellant's supervisor, Mr. Michael Harris, submitted a one-page statement, which rebutted appellant's allegation. Mr. Harris asserted that on the date of the alleged incident, he simply placed the cards next to appellant where she was casing mail and asked her to begin casing the cards, at which time appellant refused the request, became verbally abusive and began behaving in a belligerent manner.

By letters dated October 7, 1998, the Office of Workers' Compensation Programs advised appellant that she needed to submit additional information in support of her claim. The Office requested that she submit additional medical evidence in support of her claim and provide factual evidence, including statements from witnesses, which would corroborate her account of the events, which occurred on September 10, 1998.

In response to the Office's letter, appellant submitted an undated, unsigned statement from her union representative, which supported her account of the events, which occurred on September 10, 1998. The union representative indicated that he did not witness the September 10, 1998 incident, but alleged that he had spoken with two of appellant's coworkers who did and that these employees supported appellant's version of events. He also asserted that appellant told him that someone, whom she did not initially recognize as Mr. Harris, had thrown a bundle of mail at her. Appellant also submitted another statement in which she claimed that Mr. Harris had struck her in the abdomen with the pack of cards and had also thrown a chair at her.

By decision dated November 12, 1998, the Office denied appellant's claim on the grounds that it had received insufficient and conflicting evidence regarding whether or not the claimed event, incident or exposure occurred at the time, place and in the manner alleged. The Office further found that appellant failed to submit evidence to establish a causal relationship between her preexisting psychiatric condition and factors of her employment.

The Board finds that appellant has failed to establish that she sustained an abdominal injury in the performance of duty on September 10, 1998.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁴ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵

In this case, appellant has not established fact of injury because of inconsistencies in the evidence that cast serious doubt as to whether the specific event or incident occurred at the time, place and in the manner alleged. Although appellant alleged in her CA-1 form that she injured

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *John J. Caralone*, 41 ECAB 354 (1989).

⁵ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

her abdomen while falling back from the cards thrown by Mr. Harris, she subsequently contradicted this statement by asserting that she had been struck in the abdomen by a pack of cards by her supervisor in her statement to her attending physician, in her statement to Kaiser Permanente and in her subsequent, undated statement to the Office. Further, appellant's union representative related that appellant told him that "someone," whom she could not immediately identify, had thrown a bundle of mail at her. Therefore, appellant's contradictory statements create an uncertainty as to the time, place and in the manner in which appellant sustained her alleged abdominal injury.⁶

In addition, appellant failed to submit to the Office a corroborating witness statement in response to the Office's request. The undated, unsigned statement from appellant's union representative has no probative value, as he indicated that he did not witness the September 10, 1998 incident. Finally, the only medical evidence submitted by appellant, the September 10, 1998 first report of injury, contained a statement from the attending physician that "this did not appear to be an assault on [appellant]." This casts additional doubt on appellant's assertion that she was struck by a stack of cards thrown by her supervisor on September 10, 1998. The Office requested that appellant submit additional factual and medical evidence explaining how she injured her abdomen on the date in question and requested additional medical evidence in support of her claim that her abdominal pain was related to the alleged work incident of September 10, 1998. Appellant failed to submit such evidence. Therefore, given the inconsistencies in the evidence regarding how appellant sustained his injury, the Board finds that there is insufficient evidence to establish that appellant sustained an injury in the performance of duty as alleged.⁷

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.⁸ There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.⁹

⁶ On her Form CA-1, appellant alleged that the September 10, 1998 incident caused her severe mental stress and aggravated an existing mental stress condition. Appellant, however, has not filed a claim based on an emotional condition, and the Board therefore will not address a claim based on an emotional condition issue in the instant case.

⁷ See *Mary Joan Coppolino*, 43 ECAB 988 (1992) (where the Board found that discrepancies and inconsistencies in appellant's statements describing the injury created serious doubts that the injury was sustained in the performance of duty).

⁸ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

⁹ See *Ruth C. Borden*, 43 ECAB 146 (1991).

It is well established that mere perceptions of harassment or discrimination do not constitute a compensable factor of employment. A claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.¹⁰ The Board has underscored that, when 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 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.¹¹ The Office has the obligation to make specific findings with regard to the allegations raised by a claimant. 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 compensable factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings, alone, are not compensable. Only when the matter asserted is a compensable factor of employment and the evidence establishes the truth of the matter asserted may the Office then base its decision to accept or reject the claim on an analysis of the medical evidence.¹²

In the present case, the Office found that the allegations made by appellant concerning the work-related incident on September 10, 1998 was not established as factual by the weight of evidence of record. The Office reviewed appellant's specific allegations that she was harassed and verbally and physically abused on the date in question and found that it did not accept as factual that the incident occurred as she described. The Office found that the statements from appellant describing the incident were contradictory and that appellant failed to submit witness statements from coworkers to substantiate her allegation that she had been harassed and abused on September 10, 1998.

The Board finds that the Office's finding that appellant failed to substantiate her claim was proper. Appellant has not submitted any factual evidence to support her allegation that she was harassed, mistreated, or abused by her supervisor on September 10, 1998. The Board, therefore, finds that the Office properly found that the episode of harassment and abuse cited by appellant did not factually occur as alleged, as she failed to provide any corroborating evidence for her allegations. As such, appellant's allegations constituted a mere perception or generally stated assertion of dissatisfaction with a certain superior at work, which does not support her claim for any emotional disability.

The decision of the Office of Workers' Compensation Programs dated November 12, 1998 is affirmed.

Dated, Washington, D.C.
May 1, 2000

¹⁰ *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

¹¹ *Norma L. Blank*, 43 ECAB 384 (1992).

¹² *Id.*

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member