

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of LILLIAN E. LESNIAK and U.S. POSTAL SERVICE,  
POST OFFICE, Bergen, NJ

*Docket No. 00-1021; Submitted on the Record;  
Issued February 22, 2001*

---

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant sustained an injury in the performance of duty.

On May 3, 1999 appellant, then a 47-year-old distribution clerk, filed a claim for “nerves” and pain in her chest and neck that she attributed to “another employee ... slandering me and calling me an asshole every time he passes my desk.” Appellant stopped work on May 5, 1999 and returned to work on June 7, 1999.

By letter dated May 26, 1999, the Office of Workers' Compensation Programs advised appellant that it needed a more detailed description of the events that led to the filing of her claim, witness statements and a comprehensive medical report including the doctor's opinion, with medical reasons, on the cause of her condition. This letter requested that appellant submit her statement through the employing establishment, which was asked to provide the supervisor's response to appellant's statements. In a letter dated June 15, 1999, appellant described incidents at work on April 30 and May 3, 1999; she also submitted a copy of the information for precomplaint Equal Employment Opportunity (EEO) counseling she filed on June 3, 1999 describing these same incidents. Appellant also submitted several brief notes and a narrative report from her attending physician, Dr. Rick J. Pumill, and a June 11, 1999 report from Dr. Charles Carluccio, a Board-certified psychiatrist, stating that appellant was under his care “for the treatment of ADULT SITUATION REACTION, related to a situation that occurred at work on April 30, 1999.” Also submitted by appellant was a statement from a supervisor at the employing establishment to the effect that a coworker was talking about appellant on April 30, 1999.

By decision dated September 30, 1999, the Office found that it was unable to make findings of fact on whether a coworker cursed at appellant because she had not provided requested information, that appellant was afforded an opportunity to provide supportive evidence and that additional evidence was not received. The Office denied appellant's claim on the basis that she had “not met the requirements for establishing that [she] sustained an injury as alleged.”

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

Contrary to the statement in the Office's September 30, 1999 decision, in response to the Office's May 26, 1999 letter requesting further information appellant submitted both factual evidence on the incidents to which she attributed her condition and medical evidence supportive of her claim. The Office's September 30, 1999 decision does not address this evidence, and does not adequately advise appellant of the basis of the denial of her claim. As such, the Office's decision does not contain the "findings of fact and statement of reasons" required by the Office's regulations.<sup>1</sup>

In addition, the Office did not directly request a statement from appellant's supervisor addressing appellant's contentions. The Office's May 26, 1999 letter to appellant requested that she submit her statement describing specific incidents through the employing establishment for its comments, but when appellant did not do so, the Office should have requested comments from the supervisor. The Office's procedure manual states that where the claimant's statement is essential to understanding the basis of the claim, as in an emotional stress case, the Office should wait until the claimant's statement has been received before requesting information from the employing establishment.<sup>2</sup> In her June 15, 1999 statement, appellant contends that on May 3, 1999 her supervisor filed an incident report concerning one of the incidents to which appellant attributes her condition. Under the Office's regulations, the employing establishment is responsible for submitting all relevant and probative evidence in its possession.<sup>3</sup> The Office should request that the employing establishment submit any relevant evidence in its possession plus a statement from appellant's supervisor addressing her allegations. After such further development as it deems necessary, the Office should issue an appropriate decision on the merits of appellant's claim.

---

<sup>1</sup> 20 C.F.R. § 10.126 states: "The decision shall contain findings of fact and a statement of reasons."

<sup>2</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Occupational Illness*, Chapter 2.806.4c(1)(c) (October 1995).

<sup>3</sup> 20 C.F.R. § 10.118(a) states: "The employer is responsible for submitting to [the Office] all relevant and probative factual and medical evidence in its possession, or which it may acquire through investigation or other means. Such evidence may be submitted at any time."

The decision of the Office of Workers' Compensation Programs dated September 30, 1999 is set aside and the case remanded to the Office for action consistent with this decision of the Board.

Dated, Washington, DC  
February 22, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member