

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WAI MUI WONG and U.S. POSTAL SERVICE,
POST OFFICE, Mountain View, CA

*Docket No. 00-1691; Submitted on the Record;
Issued June 20, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she developed an aggravation of her accepted condition of post-traumatic stress disorder due to factors of her federal employment.

Appellant, a 38-year-old part-time flexible letter carrier, filed a notice of traumatic injury on April 18, 1996 alleging that she was bitten by two dogs in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for dog bites on the right hand and left lower leg.

Appellant filed a second claim on December 5, 1996, alleging that she developed post-traumatic stress disorder due to the dog attack and "stress placed on me by my employer." By decision dated July 30, 1997, the Office denied appellant's claim. She requested an oral hearing and by decision dated May 1, 1998 and finalized May 5, 1998, the hearing representative remanded appellant's claim for further development of the medical evidence. By decision dated August 26, 1998, the Office accepted appellant's claim for post-traumatic stress disorder on August 26, 1998 causally related to the April 18, 1996 dog bites. In a separate decision on that date, the Office denied appellant's claim for aggravation of her post-traumatic stress disorder due to additional employment factors. Appellant requested an oral hearing and by decision dated February 10, 2000, the hearing representative affirmed the August 26, 1998 decision denying appellant's claim for aggravation of her accepted condition by additional factors of employment.

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

Workers' compensation law does not apply 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 concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an

employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.¹

Appellant attributed her accepted condition of post-traumatic stress disorder to the dog bites she sustained on April 18, 1996. She noted further incidents occurring during her employment, which she felt contributed to or further aggravated this condition. Appellant noted several specific incidents during which she was exposed to barking or loose dogs on her routes between April 24 and September 24, 1996. These additional exposures are a result of appellant's regular work duties and if implicated by the medical evidence are compensable.

She attributed her condition to requirements of her position that she substitute on routes which required more time to case and to find the mail boxes as she was not familiar with the routes. Appellant stated that she skipped her breaks, took short lunches, walked as fast as she could and sometimes ran to complete her routes in the assigned time. The employing establishment did not comment on this aspect of appellant's statement and there is no evidence contradicting appellant's allegations of overwork. Therefore, this is an established factor of employment.

Appellant also alleged that she was required to work beyond her medical restrictions by working more than nine hours on August 12, 1996. As there is no medical evidence in the record addressing the amount of time that appellant could work on August 12, 1996, the Board finds that appellant has failed to establish this aspect of her claim for overwork.

Appellant noted several instances in which supervisors instructed her to complete her routes in less time than she requested, appellant was unable to do so and she was either provided with aid or instructed to return to the employing establishment with the mail. In her statements, appellant alleged that her supervisor, Richard Wakefield, failed to inquire about her well being following the dog attack, denied auxiliary assistance on occasion when requested, that appellant provide medical support for sick leave usage, that he shouted at her on July 12, 1996 and that he issued a letter of warning on July 16, 1996. On October 4, 1998 appellant stated that Mr. Wakefield ordered her to report to Nover Roberts' office. He told appellant to "go to the corner." Mr. Wakefield provided appellant with documentation that she left mail "sitting in the hot case." He instructed her to deliver her route in eight hours and not to have an accident.

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions, requested documentation for sick leave, improperly assigned work duties and denied assistance in the amount and when requested, the Board finds that these allegations related to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Federal Employees' Compensation Act.² Error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining

¹ *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

² See *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.³ Appellant has submitted no evidence that the employing establishment acted unreasonably in allocating assistance or overtime, in requesting documentation in support of sick leave or in issuing disciplinary actions. The Board notes that the mere fact that disciplinary actions were later modified or rescinded, does not in and of itself establish error or abuse.⁴

As appellant has established additional work factors not previously accepted by the Office, the Board must review the medical evidence. Appellant has submitted medical evidence from Dr. Hinda G. Sack, a clinical psychologist, dated September 30, 1996. She noted the 1996 dog bites and diagnosed post-traumatic stress disorder. Dr. Sack stated that appellant had been retraumatized by dogs running loose on her routes. She stated: "Because [appellant] is assigned different routes as needed, she cannot familiarize herself with the animals on her route, prepare herself and so minimize the anticipatory anxiety she is experiencing." Dr. Sack recommended that appellant be assigned a fixed route.

On November 4, 1996 Dr. Stephen P. Wyss, a Board-certified psychiatrist, diagnosed post-traumatic stress disorder and stated: "This condition has been worsened by being retraumatized by going on mail routes where dogs are running loose." He also noted that appellant was experiencing conflicts over doing work in less time.

While these reports are not sufficient to meet appellant's burden of proof in establishing an aggravation of her post-traumatic stress disorder due to additional exposure to barking or loose dogs, the reports require additional development on the part of the Office. On remand, the Office should prepare a statement of accepted facts, including the additional factors of employment accepted by the Board, exposure to loose and barking dogs, appellant's reaction to the varying nature of her job assignment as a flexible carrier and the necessity that appellant skip breaks, shorten lunch and run in order to complete her routes in the assigned times. The Office should refer appellant with the amended statement of accepted facts to an appropriate Board-certified physician to determine the causal relationship between these factors and any contribution to or aggravation of appellant's accepted condition of post-traumatic stress disorder. After this and such other development as the Office deems necessary, the Office should issue an appropriate decision.

³ *Martha L. Watson*, 46 ECAB 407 (1995).

⁴ *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

The February 10, 2000 decision of the Office of Workers' Compensation Programs is hereby set aside and remanded for further development consistent with this opinion of the Board.

Dated, Washington, DC
June 20, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member