

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MILDRED L. BUCHANAN and U.S. POSTAL SERVICE,  
BULK MAIL CENTER, St. Louis, MO

*Docket No. 00-1745; Submitted on the Record;  
Issued May 15, 2001*

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DECISION and ORDER

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

The issue is whether appellant sustained an emotional condition causally related to factors of her employment.

On September 28, 1999 appellant, then a 62-year-old registered nurse, filed a notice of occupational disease and claim for compensation, alleging that she suffered from excessive stress with physical manifestations of shortness of breath, heart palpitation and smothering feeling caused by ongoing conflicts with the employing establishment. Appellant contended that this was caused by stressful working conditions under nonmedical management, which resulted in a continual challenge to her work ethics and had produced a hostile environment. The employing establishment controverted appellant's claim.

By decision dated December 28, 1999, the Office of Workers' Compensation Programs denied appellant's claim for compensation, as it found that there were no incidents cited by appellant that afforded coverage under the Federal Employees' Compensation Act. Appellant requested reconsideration and in a decision dated March 1, 2000, the Office conducted a merit review and determined that the evidence submitted was insufficient to warrant modification of the Office's previous decision.

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.<sup>1</sup> To establish her claim 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 his condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder;

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<sup>1</sup> *Edward C. Heinz*, 51 ECAB \_\_\_\_ (Docket No. 99-992, issued September 12, 2000); *Martha L. Street*, 48 ECAB 641, 644 (1997).

and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.<sup>2</sup>

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 coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. On the other hand, where disability results from an employee's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes under the coverage of the Act.<sup>3</sup>

Appellant attributed her emotional condition to several alleged incidents. Initially, appellant alleged that a letter she wrote about handling suicide threats, which was based on the research she did in her master's program, was "plagiarized" by an official at the employing establishment, who did not give her sufficient credit for writing the letter. In support thereof, appellant submitted copies of internal correspondence. The employing establishment disputed this claim. After reviewing appellant's statements, the statement of her manager and the inter-office mail, this Board concludes that appellant's has not established that her work was "plagiarized." Appellant was given the assignment of writing a letter regarding the handling of suicide threats, her manager edited this letter and it was distributed under the signature of the plant manager. Therefore, the evidence of record does not support appellant's allegation. Appellant's frustration at not being given credit for her writing is a personal frustration and does not arise to a compensable factor. Her desire for greater recognition for her work does not arise in or out of her employment.

Appellant further alleges that she was "given a job talk" by a nonmedical supervisor who believed that she had "overstepped my authority when [appellant] recognized a potential hazard and made out of report following the chain of command." Appellant stated that this incident occurred when she saw a custodian's open cart with paper towels from the bathroom that were not in a plastic bag, which she judged to be a health hazard and reported it. There is evidence in the record to support that this incident occurred. As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Act.<sup>4</sup> An oral reprimand does not usually constitute a compensable factor of employment because it involves the employing establishment's administration of personnel matters.<sup>5</sup> However, to the extent that the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, such action will be considered a compensable employment

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<sup>2</sup> *Ray E. Shotwell, Jr.*, 51 ECAB \_\_\_\_ (Docket No. 99-2032, issued September 12, 2000); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

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

<sup>4</sup> *Carolyn S. Philpott*, 51 ECAB \_\_\_\_ (Docket No. 98-760, issued November 18, 1999).

<sup>5</sup> *Id.*; *Joseph F. McHale*, 45 ECAB 669, 675 (1994).

factor.<sup>6</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>7</sup> There is no clear indication that appellant's supervisor's actions were unwarranted. Consequently, appellant has failed to establish that this incident resulted in a compensable factor of employment.

However, the Board finds that the remaining incidents listed by appellant constitute compensable factors of employment. First, appellant noted an incident where a homicidal diagnosed employee was allowed back on duty despite the fact that he had threatened to "get his AK47 and blow his supervisors head off." She noted that at the nursing office's insistence, he was given a fitness-for-duty examination and it was determined that the employee was dangerous. Appellant stated that the implications of what management had almost allowed to happen, placed appellant under great stress. The employing establishment confirmed that there was administrative action taken regarding this incident. Another incident allegedly occurred when, despite the fact that an employee's paperwork did not meet the requirements of the employing establishment for a return to work, the employee's maintenance supervisor released him to return to duty over appellant's objections. Appellant stated that when she questioned his ability to release him, her supervisor did not support her and she was put in the position of justifying her actions. In support of her allegations, appellant submitted copies of interoffice email and copies of the rules she was following when taking her action. The final incident allegedly occurred on September 23, 1999, when an employee came to the health unit to be cleared after a two-month absence, the medical reports were in conflict and appellant indicated that she needed a clarification. She stated that the employee became angry and went to his supervisor who informed appellant that she could just disregard the doctors' orders and cleared him. Appellant's position was supported by her supervisor, but the employee's supervisor went to a higher authority who called a doctor for the employing establishment who instructed her to release the employee to return to duty.

If an employee develops an emotional condition while trying to meet the requirements of a position, such emotional condition is generally compensable.<sup>8</sup> In the case at hand, the record contains a description of appellant's job duties. Part of appellant's job with the employing establishment is to assist with fitness-for-duty physical examinations and make recommendations regarding suitability for employment. In the case at hand, the situations involving appellant's recommendations and meetings regarding the above incidents clearly occurred in the performance of duty. This was not an administrative function of the agency concerning appellant; rather it was an element of her regular and specially assigned duties for the employing establishment. As such, appellant established the existence of compensable factors of employment. However, it still must be demonstrated by rationalized medical evidence that these factors caused or contributed to appellant's mental condition.

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<sup>6</sup> *Id.*

<sup>7</sup> See *Ernest St. Pierre*, 51 ECAB \_\_\_\_ (Docket No. 99-467, issued August 14, 2000); *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>8</sup> *Elizabeth W. Esnil*, 46 ECAB 606 (1995).

In the instant case, Dr. David L. Shaw, a Board-certified internist, advised that “the incidents that occurred at work were the cause of her [a]nxiety.” Although this report is general in nature and not sufficient to meet appellant’s burden of proof, it provides some support for her claim. This opinion raised an uncontroverted inference of causal relationship between appellant’s condition and the compensable employment factors and is sufficient to require further development of the case by the Office.<sup>9</sup>

On remand, the Office should further develop the medical evidence by referring appellant and a statement of accepted facts to an appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether appellant’s emotional condition is causally related to the accepted employment factors and, if so, if there is any causally related disability.<sup>10</sup>

The March 1, 2000 and December 28, 1999 decisions of the Office of Workers’ Compensation Programs are hereby set aside and the case returned to the Office for further action in conformance with this decision.

Dated, Washington, DC  
May 15, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

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<sup>9</sup> See *John J. Carlone*, 41 ECAB 354 (1989).

<sup>10</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.895.3(d)(6) (June 1995) (a claim for an emotional condition must be supported by an opinion from a psychiatrist or clinical psychologist before the condition can be accepted).