

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ESTHER Y. YOON and U.S. POSTAL SERVICE,
POST OFFICE, El Toro, CA

*Docket No. 01-1364; Submitted on the Record;
Issued April 10, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on March 8, 2000.

On March 10, 2000 appellant, then a 50-year-old mail clerk, filed a traumatic injury claim alleging that she injured her neck and head and sustained emotional stress on March 8, 2000 when a coworker grabbed her and put her into a headlock. On the reverse of the form, an employing establishment supervisor asserted that the alleged March 8, 2000 incident resulted from appellant's willful misconduct with the intent to injure Milhim Assaf, a coworker. Appellant stopped work on March 8, 2000 and has not returned to work.

An employing establishment investigative memorandum dated March 16, 2000 detailed the statements regarding the incident by Mr. Assaf and appellant as well as statements by Cheryl Prowse, James McElman, Rise Perry, Lestie Contreras, Eric Reilly and two unidentified individuals. All these individuals indicated they overheard an incident between appellant and Mr. Assaf when they heard him tell appellant not to touch or hit him again. Mr. Perry, in a March 8, 2000 statement, indicated he turned to look out the windows of the doors when he heard Mr. Assaf yell at appellant not to touch him. At this point, Mr. Perry saw Mr. Assaf "hands up in a defensive stance and [appellant]'s hands in an offensive stance. Then [appellant] came in, a few minutes later, she had a [tele]phone call and left." Mr. Reilly stated he asked Mr. Assaf what had happened since he appeared upset. Mr. Assaf told Mr. Reilly that appellant "hit him with her earphones and he pushed her away." Mr. Reilly observed a welt on Mr. Assaf's shoulder approximately two to three inches long which was shiny, very red and raised. Mr. Contreras indicated he heard an altercation and heard Mr. Assaf loudly tell appellant "do [not] ever touch me again" and instructed her to go and do her job. He also noted he saw appellant go into the bulk mailroom, take a telephone call and then leave the office.

In a March 10, 2000 report, Dr. Don S. Oh, an attending Board-certified internist, noted appellant relating that she had allegedly been attacked by a fellow employee on March 8, 2000.

He opined that appellant's neck and scalp complaints were consistent with her being attacked and concluded that she sustained a psychological trauma due to this incident.

In a May 9, 2000 report, Dr. B. Rock Choe, an attending Board-certified psychiatrist diagnosed adjustment disorder with mixed anxiety, depressed mood. He noted the injury as occurring when Mr. Assaf attacked her from behind after appellant had questioned being put on the flats again. Dr. Choe stated that there appeared to be "no nonindustrial factors causing or contributing to her current psychiatric injury and disability other than employment." He then concluded that her current psychiatric disability was due to the March 8, 2000 incident.

The record contains subsequent treatment reports by Dr. Choe which note appellant's treatment and her continued disability due to the March 8, 2000 employment incident.

By decision dated June 15, 2000, the Office of Workers' Compensation Programs denied appellant's claim on the basis that the evidence failed to establish fact of injury. Specifically, the Office found that appellant failed to establish that the alleged incident occurred at the time, place and in the manner alleged.

On June 28, 2000 appellant requested an oral hearing which was held on November 15, 2000.

In a decision dated January 31, 2001, the hearing representative affirmed the denial of benefits as the evidence of record failed to establish that appellant sustained an emotional condition in the performance of duty.

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty on March 8, 2000.

Workers' compensation is not applicable to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,¹ the Board discussed at length the principles applicable to alleged employment-related emotional conditions and the distinctions as to the type of employment situation giving rise to an emotional condition which will be covered by the Federal Employees' Compensation Act.² When an employee experiences an emotional reaction to his or her regular or specially assigned employment duties or to a requirement imposed by the employment or has fear and anxiety regarding his or her ability to carry out his or her duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment and comes within coverage of the Act.³ On the other hand, where the disability results from an employee's emotional reaction to employment matters, but such matters are not related to the employee's regular or specially assigned work duties or to requirements of the employment, the disability is generally regarded

¹ 28 ECAB 125 (1976).

² 5 U.S.C. §§ 8101-8193.

³ *Lillian Cutler*, *supra* note 1.

as not arising out of and in the course of employment and does not fall within coverage of the Act.⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment 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.⁵ In the present case, the Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

In this case, appellant has alleged that she had an emotional reaction to an altercation on March 8, 2000 with a coworker. Regarding appellant's emotional reaction to the alleged incident with Mr. Assaf on March 8, 2000, the Board has held that physical contact by a coworker or supervisor may give rise to a compensable work factor under the Act, if the incident occurred as alleged.⁶ In this case, appellant alleged that Mr. Assaf assaulted her by holding her down and grabbing her by the neck on March 8, 2000. The record does not support her allegations that Mr. Assaf assaulted her by holding her down and grabbing her by the neck on March 8, 2000. The statements are consistent in stating that Mr. Assaf yelled at appellant to never touch him again. The witness statements fail to support appellant's allegation that Mr. Assaf assaulted her by holding her down and grabbing her by the neck as factual. Rather, Mr. Perry stated he saw Mr. Assaf standing in a defensive position while appellant was in an offensive position when he looked through the window. In addition, Mr. Reilly observed a welt on Mr. Assaf's shoulder approximately two to three inches long which was shiny, very red and raised. There is insufficient evidence supporting appellant's contention that Mr. Assaf assaulted her and, therefore, the incident did not occur as alleged. The evidence supports that Mr. Assaf did not touch or grab appellant, as alleged. Therefore, the Board finds that this incident is not established as factual to be a compensable factor of employment.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.⁷

⁴ *Id.*

⁵ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Lillian Cutler*, *supra* note 1.

⁶ *Karen E. Humphrey*, 44 ECAB 908 (1993).

⁷ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, *supra* note 5.

The January 31, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
April 10, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member