

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA L. MILLER and U.S. POSTAL SERVICE,
POST OFFICE, Columbus, OH

*Docket No. 01-1480; Submitted on the Record;
Issued April 2, 2002*

DECISION and ORDER

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

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

On June 28, 2000 appellant, then 39 years old, filed a claim for an occupational disease for work-related anxiety. She stated:

“Because of all previous work-related physical problems that I have incurred I am experiencing difficulty in coping with work demands May 16, 2000 approximately.

“The conditions of employment which I believe to be responsible for the illness is the change of my work status from production clerk to nonproductive limited-duty status.

“I believe the stressful conditions that are causing my illness are the negative perceptions and statements that are being directed at me by my peers and supervision. I have been exposed to this stress for eight hours a day in the automation unit. I experienced direct negative comments and criticisms and perceived negative judgments as well.”

Appellant submitted medical reports from Dr. J. Nick Marzella, Ph.D., a clinical psychologist. In a report dated June 26, 2000, he set forth a history that appellant sustained employment injuries to her low back, right hand and left hip and, “Due to her physical limitations, she has switched positions five times since April 1999 in efforts to continue working in a full-time capacity. On May 9, 2000 she was moved for the fifth time and reports the humiliation and harassment she received in her new position prompted feelings of worthlessness, depression and anxiety.” Dr. Marzella diagnosed adjustment disorder with mixed anxiety and depressed mood and stated that this diagnosis “represents a direct and proximate result of appellant’s injuries sustained subsequent to necessary position changes due to the injuries, while

working for the [employing establishment].” He also stated: “Her depression and anxiety are a direct result of her injuries and the resulting job displacement sustained while working for the [employing establishment].”

In a statement dated August 24, 2000, appellant stated that her “stress started on May 16, 2000,” that she was placed in a nonproduction limited-duty position and that she was then “subjected to comments that were very insulting and hurtful. Comments like ‘Is that all you do all night?’ and ‘Where can I get a job like yours?’” Appellant stated that she experienced these types of comments, on average, 8 to 12 times per 8-hour work shift and that her supervisor and the manager of distribution operations could verify her allegations. In response to appellant’s August 24, 2000 statement, the employing establishment’s manager of distribution operations stated that numerous job offers had been tried for appellant, the last of which was weigh master, which required her “to push numbers on a key pad intermittently at the scales. ... She performed this job one-day and has not returned to work since.... When I have asked her if other employees are making any remarks to her, her answer has been ‘they are looking at me funny.’”

By decision dated September 9, 2000, the Office of Workers’ Compensation Programs found that appellant had not established any compensable factors of employment, as her unhappiness with her work assignment was not compensable and she had not established that she was subjected to insulting or hurtful comments on her productivity.

By letter dated December 21, 2000, appellant requested reconsideration, stating that the weigh master position was the one on which she experienced the derogatory comments. She submitted a statement from a coworker stating that on approximately May 15, 2000 he saw appellant performing her duties as a weigh master, that he asked her “How do I get a gravy job like yours?” and that appellant became very upset and started to cry uncontrollably. She also submitted a November 22, 2000 statement from a union steward, stating that she was visibly upset when he saw her on May 15, 2000 and that she told him she could not take the taunting remarks coworkers were making about her lack of production and the ease of her duties.

By decision dated March 27, 2001, the Office found that appellant had offered “no further specific details to prove her allegation of multiple, accumulative harassment or abuse by other workers and/or officials.”

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

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers’ compensation. Where the disability results from an employee’s emotional reaction to his or her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees’ Compensation Act. On the other hand, the disability is not covered where it results from such

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

Appellant's emotional reaction to her failure to be assigned to the type of work she desired does not constitute an injury in the performance of duty.² Assignment of work is an administrative matter, for which coverage will be afforded only upon a showing of error or abuse by the employing establishment.³ Appellant has not shown error or abuse in the employing establishment assigning her the position of weigh master or any of her other limited-duty assignments.

Appellant has not substantiated that she was subjected to insulting comments 8 to 12 times per work shift. In her August 24, 2000 statement, she stated that this allegation could be verified by the employing establishment's manager of distribution operations, but this manager's statement was that, when appellant was asked if other employees were making remarks, she responded that they were looking at her funny. In her request for reconsideration, she stated that the weigh master position was the one in which she experienced the derogatory comments. The employing establishment's manager of distribution operations stated that appellant performed this position only one day.

Appellant has not established repeated comments from coworkers about her work assignment or accomplishments. She noted a comment on May 15, 2000 by a coworker, "How do I get a gravy job like yours?" The Board has recognized the compensability of verbal abuse under certain circumstance. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.⁴ The Board finds that the comment made in this case was not an epithet or otherwise derogatory. The comment does not give rise to verbal abuse or harassment to appellant.

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

² *Joseph Robert Wilson*, 30 ECAB 384 (1979); *see Anne L. Livermore*, 46 ECAB 425 (1995). (Reaction to work underload is not compensable); *Ronald S. Dick*, 30 ECAB 714 (1979). (Desire for changes in an assigned work situation is not compensable).

³ *James W. Griffin*, 45 ECAB 774 (1994).

⁴ *See Frank B. Gwozdz*, 50 ECAB 434 (1999); *Christophe Jolicoeur*, 49 ECAB 553 (1998).

The March 27, 2001 and September 9, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
April 2, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member