

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA RUSSELL and U.S. POSTAL SERVICE,
POST OFFICE, Allendale, NJ

*Docket No. 01-2091; Submitted on the Record;
Issued April 16, 2002*

DECISION and ORDER

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

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

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to establish that she sustained an emotional condition while in the performance of duty.

On September 1, 2000 appellant, then a 36-year-old modified letter carrier, filed a traumatic injury claim alleging that on August 30, 2000 she suffered an emotional breakdown due to harassment by the postmaster.¹ She stopped work on August 31, 2000. By decision dated October 17, 2000, the Office denied appellant's claim finding that she failed to establish a compensable factor of employment. Appellant requested reconsideration and by decision dated May 10, 2001, the Office modified the prior decision in part, but ultimately affirmed the prior denial of benefits on the grounds that appellant failed to establish a compensable factor of employment.

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

¹ The Office of Workers' Compensation Programs' regulations define traumatic injury as a wound or other condition of the body caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. The injury must be caused by a specific event or incident or series of events or incidents within a single workday or workshift. The Office's regulations define occupational disease or illness as a condition produced in the work environment over a period longer than a single workday or shift by such factors as systemic infection; continued or repeated stress or strain; or exposure to hazardous elements such as, but not limited to, toxins, poisons, fumes, noise, particulates or radiation or other continued or repeated conditions or factors of the work environment. *Richard D. Wray*, 45 ECAB 758 (1994). While it appears that appellant's claim is more properly characterized as one for occupational disease, the Board notes that an employee's burden to establish the essential elements of his or her compensation claim is the same regardless of whether the claim is predicated upon a traumatic injury or an occupational disease. *Charles E. Evans*, 48 ECAB 692 (1997).

has some connection with the employment, but nevertheless does not come within the coverage of the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.²

Perceptions and feelings alone are not compensable. 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.³ 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 her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.⁴

In the present case, appellant has primarily attributed her emotional condition to the actions of her new postmaster. She stated that, on or around October 29, 1996, she sustained employment-related neurological and psychiatric injuries when she was bitten by a snake in the performance of duty. Appellant stated that, since that time, she has been nervous all the time, especially when outdoors near grassy or wooded areas. She alleged that, upon her return to work, several employees made fun of her and brought snake posters and rubber snakes to the office. She stated that she still suffers from snake-related anxiety and is still performing modified duty due to her bite injury. With respect to her current claim, appellant stated that, under the prior postmaster, she was allowed to work from 7:30 am to 3:30 pm, in order to allow her more time to care for her family, but when the Postmaster Krysiak started, he immediately, unilaterally and unjustifiably changed her schedule to 8:00 am to 4:30 pm and refused to consider her family care needs. Appellant also asserted that Postmaster Krysiak denied her request for advanced sick leave for snakebite related foot surgery, without any explanation or justification, when customarily, whenever anyone requested advance leave, it was granted without question. She stated that Postmaster Krysiak further questioned her carrier status, indicating that he might need to change it. Postmaster Krysiak also allegedly indicated that he wanted appellant to start "case forwarding cards," which would require that she work outside of her medical restrictions. Appellant finally asserted that, from the first day Postmaster Krysiak started working at the Allendale Post Office, she has felt as if she were under microscope, which distresses her because she already has a nervous disposition because of her snakebite injury. She stated that Postmaster Krysiak constantly follows her around, scrutinizes her work habits and

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838 (1987).

⁴ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

looks over her shoulder and that on August 30, 2000 he accused her of not working for 40 minutes, causing her to suffer post-traumatic stress, dizziness, vomiting and nervousness.

With respect to appellant's 1996 snakebite injury and her reaction to it, the Board has held that an emotional condition related to chronic pain and other limitations resulting from an employment injury is covered under the Act.⁵ However, while appellant discussed her 1996 snakebite injury and mentioned that she still feels nervous, she did not attribute her current emotional condition to the pain and fear generated by the injury, but rather focused exclusively on what she considers to be harassment and discrimination by her supervisor, Postmaster Krysiak. Therefore, the Board finds that appellant has failed to establish that the 1996 snakebite injury constitutes a compensable employment factor with respect to her September 2000 emotional condition claim.

Regarding appellant's allegations that the employing establishment wrongly denied leave, improperly assigned work duties and unreasonably monitored her activities at work, the Board finds that these allegations relate 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 Act.⁶ Although the handling of leave requests, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.⁷ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁸ In this case, there is no evidence of error or abuse on the part of the employing establishment. While appellant asserts that Postmaster Krysiak "questioned her carrier status" and stated that he may have to change it, there is no indication in the record that he actually did anything beyond making an inquiry. Similarly, while appellant asserted that Postmaster Krysiak indicated that he wanted her to start "case forwarding cards," a task which would require that she work outside of her physical restrictions, there is no indication in the record that Postmaster Krysiak ever required appellant to perform this task after he learned of her limitations. Thus, appellant has not established a compensable employment factor under the Act with respect to these administrative matters.

Regarding the change in appellant's work hours from 7:00 a.m. to 3:30 p.m., to 8:00 a.m. to 4:30 p.m., a change in an employee's duty shift may constitute a compensable factor of employment arising in the performance of duty. However, a change in duty shift does not arise as a compensable factor *per se*. The factual circumstances surrounding the employee's claim must be carefully examined to discern whether the alleged injury is being attributed to the

⁵ *Clara T. Norga*, 46 ECAB 473 (1995); *Arnold A. Alley*, 44 ECAB 912 (1993); *Charles J. Jenkins*, 40 ECAB 362, 367 (1988).

⁶ *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).

⁷ *Id.*

⁸ *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

inability to work his or her regular or specially assigned job duties due to a change in the duty shift, *i.e.*, a compensable factor arising out of and in the course of employment, or whether it is based on a claim which is premised on the employee's frustration over not being permitted to work a particular shift or to hold a particular position. In this regard, the assignment of a work schedule or tour of duty is recognized as an administrative function of the employing establishment and, absent any error or abuse, does not constitute a compensable factor of employment.⁹ Appellant asserted that she had been permitted to work the slightly earlier hours in order to allow her more time to care for her family and that when she tried to explain to the new postmaster why she wanted to keep these earlier hours, he did not care about her needs and did not want to hear her reasons for wanting to leave work earlier. As appellant herself admits that her hours had been adjusted in order to accommodate her personal needs outside of work and as there is no evidence that appellant was unable to perform her modified carrier work due to the change in her hours, there is no evidence of error or abuse on the part of the employing establishment in making this schedule change. Appellant's claim has focused on the administrative process by which the employing establishment assigned her to light-duty work and not the inability to perform her light-duty job assignments due to any change in shift. Her emotional reaction arises from a frustration at not being permitted to work in a particular environment.¹⁰ For these reasons, the Board finds that the change in appellant's work hours are not a compensable factor sufficiently related to the employee's regular or specially assigned employment duties so as to arise in the course of employment.¹¹ Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's assertion that she was singled out for harassment by the postmaster, this is also an unfounded perception, which does not constitute an employment factor.¹² For harassment to give rise to a compensable disability under the Act there must be some evidence that the harassment did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹³ Appellant has failed to establish a factual basis for her allegations that her claimed emotional condition was caused by harassment from the employing establishment. Similarly, appellant did not submit evidence sufficient to establish her allegations that coworkers made fun of her and brought rubber snakes to the office to harass her.

The facts of this case, therefore, do not describe a condition causally related to factors of federal employment. The condition did not arise out of the duties which appellant was employed to perform.

⁹ *Helen P. Allen*, 47 ECAB 141 (1995); *Peggy R. Lee*, 46 ECAB 527 (1995).

¹⁰ *Alice M. Washington*, 46 ECAB 382 (1994); *Tanya A. Gaines*, 44 ECAB 923 (1993).

¹¹ *Id.* *Mary A. Sisneros*, 46 ECAB 155 (1994).

¹² *See Kathleen D. Walker*, 42 ECAB 603 (1991); *Ruthie Evans*, 41 ECAB 416 (1990).

¹³ *Jack Hopkins, Jr.*, 42 ECAB 818 (1991).

The May 10, 2001 and October 17, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
April 16, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member