

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUDITH M. MILLER and U.S. POSTAL SERVICE,
DOWNTOWN STATION, Colorado Springs, CO

*Docket No. 01-316; Submitted on the Record;
Issued August 2, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

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

On February 7, 1996 appellant, then a 46-year-old supervisor, filed an occupational disease claim alleging that her stress was related to her employment duties. She stopped work on January 12, 1996 and has not returned. In an undated statement, appellant attributed her migraine headaches, chest pains, shortness of breath and high blood pressure to stress which she first noticed in September 1992. She attributed her stress to acting as both, an acting station manager and performing her position as supervisor for the period of December 25 to December 30, 1995 when she averaged 50 hours per week and due to a January 6, 1996 event "was called into the Station Manger's office and was the subject of two investigative interviews in one day." Appellant indicated that she continued to have symptoms of high blood pressure, chest pains, migraine headaches, sleeplessness at night and shortness of breath when she has to "report to work or prepare to return to my present position."

In reports dated February 6 and April 4, 1996, Dr. Pat Higgins diagnosed "severe work-related stress, anxiety" and attributed her condition to her employment. He noted that this condition started in September 1992.

In undated letter, appellant responded to the Office of Workers' Compensation Programs' request for additional information. She stated that her stress was due to various events. Appellant alleged that she had to complete computer reports consisting of "DSIS, Vehicle Usage, CSDRS and Effectiveness reports" daily. The CSDRS report had to be submitted by 10:00 a.m. each day while the Effectiveness report was due by 12:00 p.m. Appellant noted that she arrived at 9:00 a.m. and that it took approximately two to three hours to prepare the reports. She also stated that the reports for the week were required to be submitted over the telephone to Denver on Saturday. The only people who knew how to prepare these reports were appellant and the acting station manager. This required appellant to work on nonschedule workdays. Second, appellant attributed her stress to her being in charge of \$400,000.00 to \$800,000.00 in stamp

stock. She noted that she was required to pay for stock if it was out of balance and that her “safe was extremely crowded and I was over my allotted volume. Due to these conditions, I was unable to monitor the stock for any discrepancies.” Third, appellant alleged that her stress was also due to performing audits on 10 window clerks and issuing letters of demand and discipline for shortages. Her duties also included stock audits which were required to be performed within 120 days. Appellant indicated that the Colorado Springs office changed the time frame for audits to 106 days and that if you missed the deadline one was disciplined regardless of the reason for the delay. Fourth, appellant noted that she was assigned additional temporary duties when Benita Sheldon took over as postmaster. She noted that both she and Ms. Sheldon were disciplined for missing an audit on a clerk when there was no loss to the employing establishment. Subsequently appellant was assigned to computer reports in addition to her usual clerical duties when a supervisor left the office and a new acting station manager was assigned. She noted that her days off were changed and she was required to work more of her nonscheduled days. Appellant also alleged that her stress was due to having to work with an employee she had tried to remove, until he was reinstated. She noted, in an agreement, that her prior supervisor, Mr. Wuckowitsch, agreed that appellant would not be left alone with this person at any time. Appellant indicated that she “felt a constant threat from this person while he was in my employ.” Next, she noted that she was responsible for locking up and setting the alarm on a daily basis for the office and that she was the only supervisor with keys to the building. Lastly, she noted that she was assigned to extra work during the period December 23, 1994 to January 5, 1995 which entailed her performing three positions to cover for people who were on leave.

In a March 4, 1996 letter, the employing establishment responded by denying appellant’s allegations and providing supporting documentation. Specifically, it denied appellant’s allegations regarding the time it took to prepare CSDRS, Effectiveness, DSIS, AVUS and DECTALK reports and that mistakes were pointed out without any discipline given or proposed. Regarding appellant’s allegation that “she was only able to send in outdate stock during a one-week period at Christmas” was false. Appellant “had three weeks during the year prior to December” to return the outdated 29 cent stamp stock. The employing establishment stated that appellant “would not have been crowded and over allotment” if she had “not waited almost a year to return this outdated stock.” Next, regarding discipline for missing a stock audit, the employing establishment stated that there was “no excuse for missing an audit. An audit can be performed at anytime during a 106-day period not just the 106 day.” The employing establishment noted that appellant “routinely allowed over 106 days to expire before conducting audits” and that the discipline she received in August by Acting Station Manager Sheldon “was a private discipline between her and the Station Manager and did not become part of her OPF, although the Station Manager did receive a letter of warning.” In addition, appellant failed to perform a key check for any of the 10 audits she performed and appellant “showed that the audit was due February 6, 1996 on the audit schedule when in reality it was due January 8, 1996.” The employing establishment noted that appellant was required to “assume the duties of the carrier supervisor.” Due to her failures as clerk supervisor and sick leave absences, appellant was informed that she would be replaced as clerk supervisor, assigned administrative duties and her days off would be changed. The employing establishment denied that any break-ins occurred that required appellant to be called back to the office. Appellant was called on two occasions. The first occurred because a door was not locked and Bill Schaffner, Acting Manager Customer Services, did not get a key. The second occasion was in December because of a false fire alarm

and that she was not the only supervisor with keys to the building. The employing establishment stated that appellant exaggerated the amount of time she spent performing “the minimum basic daily administrative requirements of the station manager and customer service support jobs during the week between Christmas and New Year” and provided supporting documentation. Lastly, the employing establishment stated that appellant had responded incorrectly when dealing with an employee who she stated “smelled of alcohol and was staggering.” In addition appellant failed to report a missing ‘bait’ money order which was found in the mall restroom during appellant’s supervisor’s absence.

In a decision dated June 17, 1996, the Office denied appellant’s claim on the basis that she failed to establish any compensable factor and the medical opinion evidence failed to identify any specific employment factor.

Appellant requested a review of the written record by letter dated July 9, 1996.

In a decision dated November 5, 1996 and finalized on November 6, 1996, the hearing representative determined that appellant had failed to establish any compensable factor and affirmed the November 16, 1996 decision.

On May 8, 1997 appellant requested reconsideration and submitted evidence in support of her request. She detailed her duties as a window and clerk supervisor, the duties assigned by Mr. Schaffner, her duties during December 1995 and her duties as customer service support manager which she contended required about 24 hours per day. Appellant contended that she “was assigned too many duties for the hours there were to do them” and that she “was not trained or prepared to do them efficiently or even properly.” Her job as a clerk and window supervisor included supervision of 30 window clerks, preparing station computer reports, assisting the carrier side when necessary which she estimated took about 8.4 hours per day. Appellant also noted that she “was the only full supervisor on duty when the station manager was not present.” She was responsible for the weekly issuing of stock, auditing the clerks to whom she issued the stock and “resolving customer issues.” Regarding auditing clerks, appellant indicated that this took two to three hours per clerk and that she “audited 11 clerks every 120 days.” Next, she noted that she could not return the 29 cent stamp stock due to overcrowding at the Denver district office and that her safe was “crammed full of boxes of outgoing stock” for which she was personally responsible. Appellant also noted that she was required to maintain financial and personnel files for all the clerks which “meant logging in annual leave and sick leave, entering complaints into a register and logging in misdeliveries or other personnel issues” on a daily basis. Regarding her duties subsequent to September 1995 appellant noted that she had to run various reports which including DSIS, ETC time reports, verify express air receipts, count and record all incoming afternoon mail and what was left over for the following morning. She noted that she felt stress due to the threat of discipline if these reports were inaccurate or not timely filed. Appellant stated that because she was the only supervisor who knew how to submit the weekly reports on Saturday, she was required to work and that “[w]orking nonscheduled days gave me less time to recover from this hectic schedule and lowered my resistance to losing control of what I did and when.” Appellant also noted that she was required to make sure all the mail had been delivered, carriers were off the streets at 5:00 p.m., express mail had been delivered and that no undelivered mail was in the building since she was the sole supervisor from 4:00 p.m. to 6:00 p.m. She indicated that she also had to check parcels on outgoing trucks for

bombs, correct zip code and postage and proper placement and she had to verify grievances and overtime for the carrier union on a daily basis. Appellant stated that these extra duties took 7.25 hours per day but only resulted in overtime of 8 to 12 hours. In December 1995, appellant stated that it took her about 24 extra work hours to return all 29 cent stamps as “the Denver District Office decided to accept stamp stock from stations. This required all 29-cent stamps be counted, verified by two people and shipped to Denver.” Regarding Christmas 1995 appellant stated that she was required to do two other jobs besides her own and the additional duties included daily faxing of Christmas information, “the number of hours that we were committed to for that day” and worksheet, calling in worksheet information, logging all entries, reviewing carrier and clerk sick leave for year end awards, ensuring mail was delivered timely as well as ensuring that temporary supervisors effectively performed their jobs. These extra duties took about four hours per day. Appellant indicated that “[d]uring this period I had duties totaling about 20 hours per day” which she indicated she did not perform well and that she was not able to do all the required duties. Next, she noted that the duties assigned to her as a customer service support manager which she estimated took about four hours per day. These duties included verifying pay advances, providing authorization numbers for the pay advances, sorting and distributing department incoming mail, logging in pay advances, making time badges for new employees, overseeing the elimination of causal employees who were let go in the beginning of the year and overseeing timekeeping staff. In summary appellant indicated that all her duties totaled 24 hours per day and that she “was going crazy” because there “were so many jobs to do that I could [not] do any of them properly.” Furthermore, appellant stated that she was also stressed because of two investigative interviews and because she sent an intoxicated carrier out and because of a missing “bait” money order.

In a report dated June 19, 1997, Dr. P. Michael Moffett, an attending Board-certified psychiatrist, diagnosed depression and post-traumatic stress disorder. He attributed her condition to hours appellant was forced to work, her level of responsibility, threat of disciplinary action and “events wherein she was accused of having failed to perform her duties adequately.”

In a letter dated September 18, 1997, appellant’s counsel requested reconsideration.

In a November 19, 1997 letter, the employing establishment responded to appellant’s allegations and denied that her stress was employment related. In an attached investigative interview, it detailed interviews with appellant regarding a missing “bait” money order and her response to an intoxicated carrier. In response to appellant’s May 8, 1997 affidavit, the employing establishment reviewed the duties appellant alleged she was required to perform and disagreed with the amount of time appellant took to perform them. The employing establishment then indicated that the duties performed by appellant should have taken approximately 10.50 hours per day.

Appellant submitted an affidavit dated December 8, 1997 replying to the employing establishment’s response and summarizing the employment duties she believed caused her stress.

In a merit decision dated January 27, 1998, the Office denied appellant’s request for modification.

On January 6, 2000 the Board issued a decision remanding the case for reconstruction and proper assemblage of the record due to the delay in transmitting the case record to the Board.¹

By merit decision dated October 23, 2000, the Office again denied appellant's request for modification on the basis that she failed to establish any compensable factor.

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 her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.² 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.³

To establish that he or she sustained an emotional condition in the performance of duty, the claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.⁴

The Board noted, in the case of *Lillian Cutler*,⁵ that workers' compensation law does not cover each and every illness that is somehow related to the employment. When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her duties and the medical evidence establishes that the disability resulted from her emotional reaction to such a situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability resulted from her emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of her work. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from 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 Docket No. 98-1336 (issued January 6, 2000).

² 5 U.S.C. §§ 8101-8193.

³ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Judy L. Kahn*, 53 ECAB ____ (Docket No. 00-457, issued February 1, 2002).

⁵ *Supra* note 3.

The Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regular or specially assigned employment duties are not considered to be employment factors.⁶ 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.⁷ Appellant indicated that she became stressed by the two investigations, but does not allege that the employing establishment acted abusively in performing the investigations. A review of the evidence indicates that appellant has not shown that the employing establishment's actions in connection with its investigation of her were unreasonable. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions, wrongly changed her days off, 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.⁸ Although the handling of disciplinary actions, the assignment of work duties and assigning days off at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.⁹ 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.¹⁰ In the instant case, appellant has not provided any evidence to show that the employing establishment acted abusively in any disciplinary action, reassignment of her days off or assignment of work duties. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

In *Lillian Cutler*,¹¹ the Board explained that, where an employee experiences emotional stress in carrying out the employment duties or has fear and anxiety regarding his or her ability to carry out such duties and the medical evidence establishes that the disability resulted from his or her reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of the employment and would, therefore, come within the coverage of the Act. The Board stated, in *Pauline Phillips*,¹² that this is true where the employee's disability

⁶ *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

⁷ *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

⁸ *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).

⁹ *Id.*

¹⁰ *See Richard J. Dube*, *supra* note 7.

¹¹ *See supra* note 3.

¹² 36 ECAB 377 (1984).

resulted from his or her emotional reaction to the regular day-to-day or specially assigned work duties or to a requirement imposed by the employment.¹³ The record establishes that appellant's duties included preparing various computer reports, being in charge of postal stock and performing audits and supervising employees. Consequently, any emotional condition arising from appellant's performance of her regular or specially assigned duties could be compensable under the Act.

Appellant further alleged that she experienced stress when performing her duties as both an acting station manager and her position of supervisor during the period between Christmas and New Years. The Board finds that appellant's temporarily acting as station manager constitutes a specially assigned duty and constitutes a compensable factor under the Act.

As appellant has established compensable factors of employment, the issue becomes whether she has submitted sufficient medical evidence to establish that these factors caused or contributed to her emotional condition. In support of her claim, appellant submitted reports dated February 6 and April 4, 1995 by Dr. Higgins who attributed her stress to her employment and a June 19, 1997 report by Dr. Moffet who diagnosed depression and post-traumatic stress syndrome due to her employment. Although Drs. Higgins and Moffet did not provide sufficient medical rationale explaining how the accepted factors caused or contributed to appellant's emotional condition, their reports are generally supportive of appellant's claim and sufficient to require further development by the Office.¹⁴ The case will be remanded to the Office for preparation of a statement of accepted facts and further development of the medical evidence.

¹³ *Larry J. Thomas*, 44 ECAB 291 (1992).

¹⁴ *John J. Carlone*, 41 ECAB 354 (1989).

The October 23, 2000 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
August 2, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member