

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PHYLLIS A. SAMS and U.S. POSTAL SERVICE,  
MAIN POST OFFICE, Cincinnati, OH

*Docket No. 01-1651; Submitted on the Record;  
Issued August 19, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,  
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty; and (2) whether appellant has established that she sustained a recurrence of disability due to occupational stress.

On May 12, 1999 appellant, then a 48-year-old clerk, filed an occupational disease claim alleging that on April 15, 1999 she realized her stress and depression were due to her back injury on November 10, 1998.

By letter dated June 2, 1999, the Office of Workers' Compensation Programs informed appellant that the evidence was insufficient to support her claim for an emotional condition and advised her as to the type of evidence to submit.

In a statement dated June 14, 1999, appellant attributed her depression to the following: being made to take December 1, 1998 as a vacation day due to her medical restrictions by her supervisors, Darrell Morton and Barbara Harris; incorrectly being given her Tuesday and Wednesday off instead of Sunday and Monday. She also alleged that she had not been compensated for her detail to a higher paid position and that on December 24, 1998 Mr. Morton, one of her supervisors, said he would allow the PTF employees to leave early if the mail was done but then refused to allow them to leave. Other incidents alleged by appellant are being yelled at regarding her leave on January 30, 1999 by her supervisor, Ms. Harris; telling other employees they could go home early on February 10, 1999 but not telling appellant; changing appellant's schedule on February 22, 1999 without telling her; making her wait one hour to sign in; being told to bring in a doctor's note because she called in sick on March 9, 1999 but did not answer the telephone after calling in sick because of her pain medication. Appellant also attributed her illness to not being selected as one of the employees asked to work eight hours on March 23, 1999 by Mr. Morton; being yelled at by Mr. Morton on March 24, 1999 when she questioned him about the policy; being told that "there are not enough seats in our unit to accommodate all the 'lame and lazy' injured employee's (sic)" and that these employees "are constantly being moved from seat to seat," and lastly that management was attempting to abolish light-duty work.

Appellant, in a statement dated June 15, 1999, further attributed her depression to the employing establishment separating her from work on October 29, 1998 and then reinstating her the next day provided she not file any type of grievance or complaint and her inability to do things she had been able to do before her accepted back injury. The employing establishment denied all of appellant's allegations by letter dated June 29, 1999.

Appellant submitted treatment notes from Dr. Dyatra B. Mitchell, an attending Board-certified internist, for the period September 28, 1998 through May 10, 1999 which diagnosed lower back pain, right leg numbness and depression. Following receipt of this evidence, the Office again, on July 12, 1999, advised appellant that the evidence was insufficient and again set forth the type of evidence needed, providing appellant an additional 30 days to submit the additional evidence.

In a further report dated August 4, 1999, Dr. Mitchell diagnosed appellant with depression. The report related that appellant stated that she had "been depressed for approximately seven to eight months due to back strain and not being able to do the things she used to do."

By decision dated September 20, 1999, the Office denied appellant's claim on the basis that she failed to establish that she sustained an emotional condition in the performance of duty. In denying appellant's claim, the Office found that appellant had failed to establish any compensable factors and thus she failed to meet her burden of proof that her emotional condition was employment related.

Appellant requested reconsideration by letter dated September 1, 2000. In support of her request, she submitted three brief typed statements, a November 11, 1999 telephone report by Dr. Crystl Willison and progress notes of Dr. Mitchell for the period June 3 through August 16, 2000. Lynn Morton and Tawna M. Whigham signed statements dated October 20, 1999 which read "Sup[er]v[iso]r Morton was out of control yelling at employees on December 24, 1998, to get back to work after he had announced that the unit could go home after tying (sic) out the cases." Ericka L. Prather signed a statement dated October 19, 1999 which read "Sup[er]v[iso]r Harris yelled at [appellant] on January 30, 1999 (sic) because of her question regarding annual leave. Manager Edgars was present and a Union Steward, Phyllis Brooks was there and heard Sup[er]v[iso]r Harris say 'You do n[o]t do nothing, I try to do what I can and you do n[o]t appreciate it so shut-up and go set down.'" Brenda Severanci, Roxanne Snider, Rhonda Carlton and Ms. Prather signed statements dated October 19, 1999 which read "The light- and limited-duty section of the [p]rimary unit has been labeled 'lame and [l]azy' by [m]anagement and [s]upervisors."

The unsigned progress notes detail appellant's complaints of depression and low back pain.

In a note dated November 11, 1999, Dr. Willison noted appellant's complaints of severe pain in her back and right leg. She recommended appellant take leave from work.

By decision dated October 3, 2000, the Office denied appellant's request for modification.

On December 22, 2000 appellant filed a recurrence claim alleging that on December 7, 2000 her back injury caused her depression and stress stating the date of the original injury as

November 10, 1998. She also alleged that her stress and depression were due to her schedule change and shortened hours which caused her to lose money and created a financial burden.

In a report dated January 5, 2001, Dr. Mark I. Byrd, an attending clinical psychologist, stated that he was treating appellant for her depression and she was capable of working an eight-hour day. He also indicated:

“Would like to strongly urge that you do not discriminate or harass [appellant] on the basis of her disability. Cutting her hours based solely on a mental disability (including difficulty sleeping) is certainly considered, in my professional opinion, blatant discrimination and in direct opposition to the Americans with Disabilities Act.”

By letter dated February 1, 2001, the Office advised appellant as to the type of information required to support her claim of a recurrence of disability.

By decision dated May 23, 2001, the Office denied appellant’s recurrence claim. In the attached memorandum, the Office noted that appellant could not have sustained a recurrence of disability as her depression had not been accepted as employment related and thus any recurrence could not be considered employment related.

The Board finds that appellant has not 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 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.<sup>1</sup> 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 frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>2</sup>

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.<sup>3</sup> This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>4</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>4</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

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.<sup>5</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>6</sup>

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. 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 the present case, appellant has primarily attributed her emotional condition to her reaction to matters involving administrative or personnel actions of the employing establishment. She alleged that she was not compensated for a detail to a higher paid position; she was incorrectly given Tuesday and Wednesday as her days off instead of Sunday and Monday; her schedule was changed on February 22, 1999 without informing her that she had to arrive at 4:30 p.m. instead of 3:30 p.m.; she was not one of the PTF employees asked to work eight hours on March 24, 1999 and she was told to bring in a doctor's note for March 9, 1999 when she called in sick.

An employee's emotional reaction to an administrative or personnel matter is not generally covered under the Act. Thus, an emotional reaction to matters pertaining to leave are not generally covered under the Act without error or abuse on the part of the employing establishment.<sup>7</sup> Likewise, an employee's complaint concerning the manner in which a supervisor performs his duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act, absent evidence that the supervisor acted unreasonably in the administration of a personnel matter.<sup>8</sup>

The change in appellant's work schedule,<sup>9</sup> the use of leave,<sup>10</sup> the assignment of work,<sup>11</sup> and requests for medical documentation,<sup>12</sup> involve administrative or personnel matters.

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<sup>5</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

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

<sup>7</sup> *Daryl R. Davis*, 45 ECAB 907 (1994).

<sup>8</sup> *Abe E. Scott*, 45 ECAB 164 (1993).

<sup>9</sup> See *Peggy R. Lee*, 46 ECAB 527 (1995).

<sup>10</sup> *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Michael Thomas Plante*, 44 ECAB 510 (1993).

<sup>11</sup> *James W. Griffin*, 45 ECAB 774 (1994).

<sup>12</sup> *Thomas J. Costello*, 43 ECAB 951 (1992); *Thomas D. McEuen*, *supra* note 2.

However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the handling of administrative matters, coverage may be afforded.<sup>13</sup>

Many of appellant's allegations concern administrative or personnel matters, unrelated to her regular or specially assigned work duties. Such matters are generally related to the employment, but are administrative functions of the employer, not duties of the employee. Coverage will only be afforded regarding such matters if error or abuse is established.<sup>14</sup> Appellant has not established that the employing establishment acted unreasonably in any of the above factors.<sup>15</sup>

Appellant also contends that she was harassed by her supervisor on January 30 and March 24, 1999. In the incident of March 24, 1999, appellant contends that her supervisor stated "there are not enough seats in our unit to accommodate all the 'lame and lazy' injured employee's (sic)." She also alleged management was trying to abolish light-duty work. Although appellant submitted a page with typed statements, signatures and some signatures with comments, the statements and comments do not specifically address the alleged dates or interactions she had with her supervisor on those dates. They do not state the details of any specific conversations between appellant and Mr. Morton. As such, the statements do not corroborate appellant's allegations of harassment. There is insufficient evidence that appellant's supervisor acted abusively or erred in his managerial duties on the January and March dates in question. A supervisor or management in general must be allowed to perform their duties and that in the performance of such duties, employees will at times dislike actions taken. However, mere disagreement or dislike of a supervisory or management action will not be compensable without a showing through supporting evidence that the incidents or actions complained of were unreasonable.<sup>16</sup>

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.<sup>17</sup>

The Board finds that appellant has not sustained a recurrence of disability.

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is

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<sup>13</sup> *James W. Griffin*, *supra* note 11.

<sup>14</sup> *Janet I. Jones*, 47 ECAB 345 (1996).

<sup>15</sup> *Jimmy Gilbreath*, *supra* note 10.

<sup>16</sup> *See Constance I. Galbreath*, 49 ECAB 401 (1998).

<sup>17</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

causally related to the employment injury and who supports that conclusion with sound medical reasoning.<sup>18</sup>

In the instant case, appellant has failed to submit medical evidence which relates her current condition to her November 10, 1998 accepted employment injury. The January 5, 2001 report by Dr. Mark I. Byrd, a psychologist, diagnoses depression and indicates that appellant is capable of working eight hours per day. Because this opinion relates to appellant's depression, which is not an accepted condition, this opinion is not relevant to this claim. Appellant has submitted no other relevant evidence supporting her contention that her condition was related to her November 10, 1998 accepted employment injury. The Office, therefore, properly found that appellant failed to establish a recurrence of disability.

The decisions of the Office of Workers' Compensation Programs dated May 23, 2001 and October 3, 2000 are hereby affirmed.

Dated, Washington, DC  
August 19, 2002

Michael J. Walsh  
Chairman

Alec J. Koromilas  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>18</sup> *Louise G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1993); *Robert H. St. Onge*, 43 ECAB 1169 (1992).