

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ANGIE GALIFI and U.S. POSTAL SERVICE,  
POST OFFICE, Butler, NJ

*Docket No. 01-1059; Submitted on the Record;  
Issued February 1, 2002*

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DECISION and ORDER

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

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty; and (2) whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board finds that the case is not in posture for decision.

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 her 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 she claims compensation was caused or adversely affected by employment factors.<sup>3</sup> This burden includes the submission of a detailed

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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).

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 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>

On March 4, 2000 appellant, then a 51-year-old letter carrier, filed a traumatic injury claim, alleging that on February 28, 2000 she suffered a stress-related condition as a result of her employment. Appellant stopped work on that date and has not returned. In a statement accompanying her claim, she discussed the alleged incidents and conditions, which she believed, caused her condition. Appellant alleged that on February 28, 2000 she called her supervisor, John Aiello and asked for permission to begin work an hour earlier in order to visit her elderly mother at the hospital. She stated that Mr. Aiello allowed her to alter her work schedule on February 28, 2000 but when she asked him if he would grant her the same schedule for the following day, he jokingly stated, “No, I don’t think so” and then soon added, “We’ll see.” Appellant alleged that at around 11:40 am on February 28, 2000, she informed Mr. Aiello that she needed help with her work duties before her early departure and he rudely yelled, “There is no help! I have no help!” She then alleged that she informed him twice more that she had too much work; that there was no way she could finish in time; and that she had not taken either of her two breaks nor lunch. Appellant alleged that Mr. Aiello responded by screaming, “I have no help! There is no help! It’s always the same shit! Everybody needs help and I’m sick and tired of this bullshit! I don’t have any help and you can forget about tomorrow!” Appellant claimed that Mr. Aiello’s body language was threatening, belittling, disrespectful and demeaning and that he was absolutely uncaring that the mail would not be circulated or completed. She indicated that she became very upset and that Mr. Aiello did not attempt to calm her down.

In letters dated in March and April 2000, the employing establishment indicated that on February 28, 2000 two postal trucks had broken down and that Mr. Aiello had a difficult time trying to find enough employee support to carry out the mail delivery by the required deadline. The employing establishment noted that February 28, 2000 was a Monday and that Monday typically was the day of the week with the greatest volume of mail. The employing establishment stated that on February 28, 2000 all employees had to work at least two hours of overtime. It noted that appellant was able to take her breaks on February 28, 2000; that

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

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

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

Mr. Aiello properly denied her request for a schedule change on February 29, 2000; and that he did not subject her to abusive language or actions on February 28, 2000.

By decision dated May 2, 2000, the Office denied the emotional condition claim on the grounds that appellant had not establish any compensable factors of employment. By decision dated November 27, 2000, the Office denied appellant's request for merit review.<sup>7</sup>

Appellant alleged that Mr. Aiello harassed her on February 28, 2000 by using abusive language and making threatening and demeaning body gestures. To the extent that disputes and incidents alleged as constituting harassment are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.<sup>8</sup> However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.<sup>9</sup> In the present case, the employing establishment denied that appellant was subjected to harassment and appellant has not submitted sufficient evidence to establish that she was harassed by Mr. Aiello.<sup>10</sup> Appellant alleged that Mr. Aiello made statements and engaged in actions, which he believed constituted harassment, but she provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.<sup>11</sup> Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

Appellant alleged that Mr. Aiello mishandled the assignment of her work duties on February 28, 2000 and suggested that he improperly failed to allow a schedule change for February 29, 2000. Regarding her allegations that the employing establishment mishandled work assignments and improperly denied schedule changes, 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.<sup>12</sup> Although such matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>13</sup> 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

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<sup>7</sup> Some of the language of the Office's November 27, 2000 decision suggests that the Office was conducting a merit review of appellant's claim. However, when read in whole, it is apparent that the Office denied appellant's request for a merit review.

<sup>8</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>9</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>10</sup> *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

<sup>11</sup> *See William P. George*, 43 ECAB 1159, 1167 (1992).

<sup>12</sup> *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).

<sup>13</sup> *Id.*

whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>14</sup> Appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to work assignments or schedule changes. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable.<sup>15</sup> In *Antal*, a tax examiner filed a claim alleging that his emotional condition was caused by the pressures of trying to meet the production standards of his job and the Board, citing the principles of *Cutler*, found that the claimant was entitled to compensation. In the present case, the record establishes that the volume of work was high on February 28, 2000 and that various factors, including disabled postal vehicles, made it difficult to deliver the mail by the required deadlines. The record further establishes that appellant had to work at least two hours of overtime as part of the effort to meet her production standards on February 28, 2000. The Board finds, therefore, that appellant has established an employment factor with respect to her working overtime and attempting to meet production standards on February 28, 2000.

In the present case, appellant has established a compensable employment factor with respect to her work on February 28, 2000. As appellant has established a compensable employment factor, the Office must base its decision on an analysis of the medical evidence.<sup>16</sup> As the Office found there were no compensable employment factors, it did not analyze or develop the medical evidence. The case will be remanded to the Office for this purpose.<sup>17</sup> After such further development as deemed necessary, the Office should issue an appropriate decision on this matter.

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<sup>14</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>15</sup> See *Lillian Cutler*, *supra* note 2.

<sup>16</sup> Appellant submitted a May 15, 2000 report in which Dr. Jose Luis Benitez, an attending Board-certified psychiatrist, suggested that her attempt to complete her work on February 28, 2000 aggravated her emotional condition.

<sup>17</sup> See *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992). Given the Board's handling of the merit issue of the present case, it is not necessary to address the nonmerit issue.

The May 2, 2000 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, DC  
February 1, 2002

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member