

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBORAH G. NUZZO and U.S. POSTAL SERVICE,
POST OFFICE, East Hartford, CT

*Docket No. 01-1630; Submitted on the Record;
Issued March 15, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

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

The Board has duly reviewed the case record on appeal and finds that the case is not in posture for a decision.

In order to establish that appellant sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition or psychiatric disorder is causally related to the identified compensable employment factors.

Appellant, a 46-year-old window distribution clerk, filed a claim on February 25, 2001 alleging that she sustained job-related stress. She explained that her condition was the result of a hostile work environment, created by her postmaster.

In a February 25, 2001 statement, appellant alleged that the postmaster, Sean M. Ford, deliberately and purposefully created a hostile and volatile workplace environment for her. Appellant stated: he singled her out because she was the union steward; he exhibited demeaning and abusive behavior towards her; discussed union matters with her coworkers in an effort to create a hostile workplace towards her; singled her out for eating on the workroom floor; failed to provide assistance to her when the window became backed up due to a malfunctioning money order machine; created dissention with the other clerks due to missorted mail; favored a particular clerk and made others feel inferior; accelerated his destructive intentions towards her with three grievances; lashed out at her for loading her truck early and picking up prior to the collection time, even calling her "simple"; asked her to work on her not in service day (NIS day)

and threatened disciplinary action if she refused. She also listed numerous examples of behavior, which she stated was inappropriate including: requests to count stock at her window; not allowing personal items at the window; lack of cooperation in filling stamp orders or changing stamp orders; being made to feel annoying or unreasonable when making requests for change to run the window; removing photos that provided amusement to the staff and customers; removing calendars; uneven enforcement of the uniform code, including harassment regarding appellant's inability to wear a necktie and allowing others to wear jeans or sweatpants when they were not allowed per the uniform code; control of the communications system; toys for tots and refusing to let her load the pick up when she was planning to do it and intimidating her and the employees.

The employing establishment submitted numerous documents regarding the allegations and controverted the claim.

In a February 26, 2001 report, Dr. Emily A. Nolfo, Board-certified in internal medicine, stated that appellant was being evaluated for hypertension and chest pain. Dr. Nolfo stated that because her symptoms were being exacerbated at work, she requested that appellant remain out of work until her stress test on March 9, 2001.

In a March 9, 2001 statement, Mr. Ford, addressed appellant's allegations. With respect to those related to appellant, he stated that food on the workroom floor was an issue specific to appellant. Mr. Ford stated that appellant would clock in and immediately head for the toaster to make breakfast. He stated that this was a time wasting practice and unacceptable. With regard to appellant's allegations that Mr. Ford did not supply assistance to her on the window, he submitted a March 9, 2001 statement from a clerk, explaining that indeed assistance was requested but due to a misunderstanding, Mr. Ford did not come to appellant's aid. He addressed the issues and provided explanations regarding missorted mail, grievances, preparing her dispatch truck early and collecting mail prior to scheduled pick up times, requesting medical documentation for fewer than three days, neck ties, the communications system, toys for tots and reporting to work on nonscheduled days.

By correspondence dated March 21, 2001, the Office of Workers' Compensation Programs requested additional information from the employing establishment.

By letter dated March 21, 2001, the Office requested appellant to provide additional factual and medical information, including a narrative medical report. Appellant was allotted 30 days to submit the requested evidence.

In a November 20, 2000 disability certificate, received by the Office on April 2, 2001 Dr. Mark H. Weinstein, Board-certified in plastic surgery and reconstructive surgery, stated that appellant should be excused from wearing restrictive garments around the neck.

In a March 23, 2001 statement, Mr. Ford, addressed questions from the Office. He stated that he had never referred to appellant as "simple" in any conversation. Mr. Ford did state that she referred to herself as "just a simple person" in a conversation on February 1, 2001. He also discussed a February 23, 2001 disciplinary interview and stated that appellant did not request a union representative. Mr. Ford noted further that if she had requested a representative, he would

have ceased the meeting and rescheduled it for a later date. Mr. Ford explained the reason for calling appellant on a Saturday and requesting medical documentation due to a combination of the employing establishment being short staffed due to another clerk already being out and his being out for a conference. He explained that they were down to two clerks to operate the employing establishment from four and Mr. Ford wanted sufficient medical documentation to substantiate her incapacitation for work. He further explained the uniform requirement and his request for medical documentation to explain her restrictions. Mr. Ford noted that once he received the e-mail from the medical unit, this was no longer an issue. He further explained that the uniform policy was in effect for all employees with the exception of appellant. Mr. Ford also explained his efforts to resolve grievances at the local level as a negative outcome could affect the employing establishment if it went to a national level.

By decision dated April 20, 2001, the Office denied appellant's claim as she claimed an emotional reaction to factors that were not compensable, or factors that could be compensable but have not been verified. As a compensable factor of employment was not identified, the Office did not address the medical evidence.

The record contains a package of materials from appellant, in response to the March 26, 2001 request. The package contained a statement from appellant, medical reports, procedural information and a statement from Diane Jackson, regarding the uniform policy and how it was not enforced equally among all employees. While this package was date stamped as received by the Office on April 17, 2001, the Office did not specifically address these findings in its April 20, 2001 decision. In fact, the Office stated that it did not receive a response from appellant. Inasmuch as the Board's decisions are final as to the subject matter appealed, it is crucial that the Office address all relevant evidence properly submitted to the Office prior to the issuance of its decision.¹

For this reason, the case will be remanded to the Office to enable it to properly consider all of the evidence submitted prior to the issuance of its April 20, 2001 decision. Following such further development as the Office deems necessary, it shall issue a *de novo* decision on the merits.

¹ 20 C.F.R. § 501.6(c); see *William A. Couch*, 41 ECAB 548, 553 (1990).

It is ordered that the April 20, 2001 decision of the Office of Workers' Compensation Programs be set aside. The case record is remanded to the Office for further proceedings consistent with this order of the Board.

Dated, Washington, DC
March 15, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member