U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MELVIN MARIE WILLIAMS and U.S. POSTAL SERVICE,
POST OFFICE, Pittsburgh, PA

Docket No. 01-1868; Submitted on the Record;
Issued May 6, 2002

DECISION and ORDER

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

The issue is whether appellant has established that she sustained a physical or emotional injury on August 24, 1998 in the performance of duty, causally related to factors of her federal employment.

On September 8, 1998 appellant, then a 57-year-old distribution clerk, filed a claim alleging that on August 24, 1998 she sustained severe pain in her head, the left side of her neck, her left arm, chest ("heart pain") and stomach, which she attributed to the limited duties she performed that date.[1] In a handwritten attachment, appellant alleged that two supervisors stood and glared down at her and that they initially refused to send her to the hospital after she complained of neck and head pain. In an additional handwritten statement, appellant alleged that a supervisor threatened to terminate appellant's job if she did not perform her duties, that a supervisor embarrassed her by coming into the break room and ordering her to go back to work stating that she had not earned a break because she had performed no work, that a supervisor accused her of being insubordinate and that the supervisor initially refused her a union representative during counseling. Appellant also claimed that on the date of injury she was forced to perform duties outside her work limitations for another work injury;[2] she stopped work on August 24, 1998 and did not return.[3]

In support of her claim, appellant submitted an August 24, 1998 United Presbyterian Medical Center (UPMC) hospital admissions report noting appellant's admission complaint as

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[1] Appellant was working sedentary limited duty for four hours per day in the held-for-postage area due to a previous occupational injury.

[2] These duties were noted to consist of taking one letter at a time, taping it and then taking another letter and putting it into a tray.

[3] Appellant also filed a September 2, 1998 union grievance, an Equal Employment Opportunity (EEO) complaint and a National Labor Relations Act complaint. On August 24, 1998 her EEO complaint was partially accepted and partially dismissed and on October 7, 1998 the Nation Labor Relations Board (NLRB) denied her appeal.

job-related "stress," as manifested by chest pain, shortness of breath and numbness and tingling radiating down her left arm and up the left jaw to her cheek. Appellant was noted to complain that she was under a lot of stress at work because she had been told that she would be terminated if she did not perform certain job duties which she claimed were prohibited by her treating physician secondary to her previous medical condition. She complained of head, neck and shoulder pain as well as "excruciating" upper back pain.[4]

Appellant also submitted an August 25, 1998 UPMC inpatient discharge instructions sheet which noted a discharge diagnosis of "Atypical chest pain, rule out myocardial infarction," and noted no activity restrictions. Another August 25, 1998 discharge narrative report noted appellant's admission complaint as "job-related stress," indicated that appellant did not suffer a myocardial infarction, based upon a low level of cardiac enzymes,[5] and noted that her left arm pain was due to her preexisting chronic C4-5 stenosis. The report further noted that appellant's "main concern is trying to get out of work," and she appeared to be manipulative, demanding and belligerent.

On August 26, 1998 appellant's treating physician provided a prescription on which he wrote "Please excuse from duty as of August 24, 1998 till further notice," and he noted a diagnosis of "aggravated cervical disc disease [and] angina pectoris."

In a September 9, 1998 memorandum, the employing establishment controverted appellant's injury claim noting that, on the date of alleged injury she was watched by several supervisors for the entire 30 minutes that she worked in the held-for-postage area and did not have a visible incident during this time; she did not complain of dizziness, did not appear to be in pain and was not sweating during this time, but was argumentative and insisted in going to the hospital after 30 minutes of work. The supervisor noted that, on December 23, 1997,[6] appellant was offered a limited-duty position in compliance with her duty restrictions and approved by a physician, that she stated that she was unable to perform the limited-duty assignment because she could not handle repetitive use of her upper extremities and that she had been reporting for duty, punching in and then going to the picnic or break area and reading a book or the newspaper. When the supervisor discussed the duties in the held-for-postage area,[7] appellant claimed that they all involved repetitive motion such that she could not perform any of them. The supervisor noted that appellant was argumentative and insistent that she was not going to do any work. She further noted that appellant refused to be discharged from the hospital until she got a pass stating

[4] Appellant had previously been treated for neck pain related to a March 1980 injury on July 17, 1998 at the UPMC.

[5] Enzymes released when myocardial tissue is injured or destroyed. *See* DORLAND'S Illustrated *Medical Dictionary*, 27th Edition, pp. 273 and 563; (elevation of enzymes is roughly correlated with extent of necrotic myocardium); *The Heart*, fourth edition, 1978, McGraw-Hill, Inc., pp. 1217-18.

[6] By letter dated December 23, 1997, the employing establishment advised appellant that her reasons for refusal of the offered position were unacceptable and indicated that she had 15 days within which to accept the offered position.

[7] The duties were noted to include hand canceling, weighing and rating individual letters, returning mail for postage, etc., and that each duty involved a different type of activity and handling so that there would be no repetitive motions involved.

that she was unable to return to work and stated that, if such a pass were not forthcoming, she would return to the emergency department the next day to be readmitted.

In a September 18, 1998 letter to the Office, the employing establishment again controverted appellant's injury claim noting that on August 24, 1998 after talking with a union steward for 30 minutes, she sat at her work station for 30 minutes and then advised the supervisor that she was experiencing pain in her arms, neck, back and chest and asked to be taken to the hospital, but not to the nearest one, to the one she wanted,[8] where she was admitted with the admission diagnosis of "rule out myocardial infarction." The employing establishment noted that, except for the chest pain, appellant's present complaints appeared to be consistent with her ongoing complaints from her previous injury, but that she advised the employing establishment that she was making a claim for new injury rather than a recurrence claim. The employing establishment noted that the work appellant performed for 30 minutes before stopping with complaints of new injury consisted of "placing one letter at a time into stacks or shallow cardboard trays at tabletop height."[9] The employing establishment noted that the hospital would not give appellant an "off-work certificate" but that she got her regular treating physician, Dr. Robert G. Edwards, a Board-certified family practitioner, to provide an August 26, 1998 certificate. The employing establishment opined that appellant had a secondary agenda which did not include working, that appellant had had five previous claims, that for a substantial portion of her employment she worked limited duty between periods of temporary total disability and that she had been on limited duty for five years with ever-increasingly severe activity restrictions. It noted that on April 10, 1997 an orthopedic specialist found that appellant had completely recovered from her multiple injuries and that he found no objective reason for her continuing complaints. The employing establishment further noted that in January 1998 within a week of beginning her new approved limited-duty assignment she insisted that it was too repetitious and not within her work restrictions. The employing establishment noted that appellant complained that the shrink wrapping function violated her limitations, but it noted that her limited duties did not include shrink wrap duties, nor had she ever been asked to perform that function.[10]

In an October 5, 1998 letter to appellant, the Office requested further information including identification of what aspects of her employment were considered stressful, the results of any grievances filed and a rationalized medical opinion supporting causal relation with her employment factors.

In three October 20, 1998 statements, the human resource specialist and her staff provided narratives of appellant's abusive and inappropriate behavior in their office. In another October 20, 1998 response, the employing establishment concurred with none of appellant's allegations, noted that there were no aspects of her limited-duty job that a reasonable person would find stressful, noted that no extra demands had been made on appellant, noted that the

[8] A supervisor noted that appellant wanted to go to her hospital of choice by postal vehicle.

[9] She could change position at will as needed.

[10] By memorandum dated March 6, 1998, the employing establishment explained to appellant that her limited-duty assignment did not include "shrink wrap duties."

only conflict that occurred was that initiated by appellant when a supervisor requested that she do some work, indicated that appellant provoked confrontational situations, was rude, belligerent and verbally abusive, and noted that appellant had problems with nonperformance and conduct. The employing establishment indicated that appellant also provoked situations outside of the employing establishment, noting that she physically interfered with the Pittsburgh police making an arrest of another person; a newspaper article about appellant's police interference was included.

In an October 28, 1998 report, Dr. Robert Baraff, a Board-certified neurologist, noted that appellant's past history included six work-related cervical spine injuries beginning in 1980, noted that due to her cervical spine injuries she was off work from 1986 through January 17, 1998, noted that she returned to work on limited duty for 20 hours per week sorting mail and noted that on August 24, 1998 she was pulling tags and placing them on envelopes and lifting the pile of envelopes into a box when she experienced neck pain which radiated into her head and down her left arm. He noted that appellant also complained of left anterior chest pain, however, no objective symptoms of injury were determined.

By decision dated November 6, 1998, the Office rejected appellant's injury claim, finding that she failed to establish fact of injury. The Office noted that for the question regarding "cause of injury" on the claim form appellant wrote "See attached five pages," but that no supplemental statements were attached.[11] It also noted that no compensable work-related factors were established.

Thereafter appellant submitted a November 19, 1998 report from Dr. Robert M. Yanchus, a Board-certified orthopedic surgeon, which noted that she was being examined that date for an assessment of physical impairment as a "direct and singular result of injury sustained on March 20, 1985." He noted appellant's history of chronic cervical pain with "neck pain radiating into the left arm dating back to a work injury March of 1980," and noted that upon examination he found left sided neck tenderness with diminished sensation over the left C4-5 and C6 dermatomes. Dr. Yanchus diagnosed "cervical sprain with no objective evidence of radiculopathy; impingement syndrome [of the] left shoulder[12]..., [and] panic attacks unrelated to the work injury of March 20, 1985." He opined that with regard to appellant's cervical strain, "she has completely recovered with no objective findings to support her subjective complaints," and that there were no restrictions as to her work ability. Dr. Yanchus opined that if a proper sized stool, bench or stepladder could be obtained for appellant to eliminate overhead lifting, there would be no restrictions as to use of her left arm. He opined that appellant did continue to suffer residuals of the March 20, 1985 injury in the form of left shoulder impingement, previously misdiagnosed as pain being referred from the cervical spine, but opined that there was no reason appellant could not work an eight-hour workday.

[11] However a xerox copy of her written complaints was later submitted and claimed that her newly assigned duties were not within her activity restrictions, as she was required to take mail from a hamper several times, sit at her table holding mail in her left hand and looking down and up to sort the mail into about 10 different piles, pull stickers and place them on the appropriate letter and that the supervisors stood and stared at her as she worked. No specific employment incident was identified that caused her neck and head pain.

[12] Which he related to her left arm pain.

Appellant also submitted a November 30, 1998 medical report from a physician's assistant which found no subjective or objective changes, and a November 2, 1998 magnetic resonance imaging (MRI) scan report which demonstrated "mild central disc bulge identified at C3-4 and C5-6 without cord or root compression." Causal relation was not discussed.

In a December 14, 1998 report, Dr. Baraff listed appellant's complaints at that time, noted normal examination results, diagnosed "Cervical strain with cervical radiculopathy, August 24, 1998, [and] [m]uscle contraction headaches associated with the cervical strain, August 24, 1998," and noted that she was neurologically stable.

A January 19, 1999 report from Dr. Elliot Goldberg, a Board-certified rheumatologist, opined that appellant had soft tissue rheumatism, most likely in the form of localized fibromyalgia.

An April 13, 1999 report from Dr. Alan H. Klein, a Board-certified orthopedic surgeon, noted that he continued to treat appellant for left shoulder impingement, that she was not working, but that he had released her to return to light duty.

Thereafter appellant submitted a November 1, 1999 report from a psychotherapy nurse and a follow-up report which was cosigned by a physician. The follow-up report[13] noted that appellant had an original injury on September 25, 1980 and experienced a recurrence each time she tried to return to work. The report noted that her last hospitalization was for a diagnosis of panic disorder, with panic symptoms beginning on August 24, 1998 when she was told by a supervisor that she was to work beyond her limitations, or she would be terminated along with her compensation. The report stated that appellant attempted to work but experienced pain symptoms and stated that she had been admitted to UPMC on August 24 and was discharged on the 25th with a diagnosis of "Panic DO (disorder)."[14] The report stated that appellant was originally seen for depression and anxiety, and then was followed up by the nurse-therapist for "a high level of anxiety bordering on panic with any encounter concerning dealing with postal office supervisors or return to work because of ongoing mishandling of her return, finding a job assignment in line with her medical limitations." The report stated that the process of returning appellant to work had become very complex and had caused her a great deal of stress. It noted that the difficulties arose "[d]ue to the ongoing difficulty of living with a lot of pain, the inability so far to return to work in a job appropriate to her limitations, an ever growing difficulty with finances, etc." The report noted that appellant's ongoing anxiety and stress level had exacerbated both her physical and emotional pain which had prolonged her ability to return to work. It was cosigned without comment by Dr. Jeffrey C. Wilson, a Board-certified psychiatrist.

In a reconsideration request dated November 3, 1999, appellant submitted her National Labor Relations Board complaint, EEO affidavits and 15 pages concerning "the threatening and hostile attitude" to which she was allegedly subjected. Appellant identified grievances dating

[13] The date of the report was unclear, appearing to be January 11, 1999 but stating that it was a follow-up of a September 18, 1999 letter.

[14] The Board notes that the UPMC discharge summary actually reported only the diagnoses of "Atypical chest pain, rule out myocardial infarction." She was released without any restrictions.

from January 28, 1998 to the present against various people for various reasons. She further complained that she was having serious emotional and physical difficulties due to open hostility, deprivation, intimidation, threats, ridicule, "demeanment," general harassment, sexual harassment, denial of medical and job accommodations, feelings of inadequacy and violations of her civil rights. Appellant claimed that she sustained panic attacks and anxiety, and complained that her medical bills had not been paid.[15] She claimed that her "condition" of left side neck pain, headache, shoulder pain, left arm, hand and chest pain, and "stress" (panic disorder and anxiety) began with a threatening letter dated December 23, 1997 stating that if she did not accept the limited-duty offer, her compensation benefits would be terminated. Appellant claimed that her limited duty was repetitive and that she had to sit in a cold draft. She claimed that her painful physical condition began on January 21, 1998 and became unbearable on January 29, 1998 when she ended up in the hospital. She claimed that from January 26 to August 24, 1998 her condition worsened as she was subjected to a hostile work environment. Appellant complained that with the tour of her four hour per day limited-duty assignment, the medical unit was closed so that she could not get her heat treatments or rest after taking her medication. She further claimed that on July 17, 1998 she was seen in the emergency room for bilateral shoulder pain, left arm and hand pain, neck pain, headache and feeling faint. Appellant claimed that she was discriminated against because she was a disabled person. She claimed that on August 21, 1998 her problems were exacerbated by discussion of her grievance and that on August 24, 1998 she injured herself "while doing work" her doctor had restricted. Appellant also alleged that her only experience with an emotional condition and hospitalization for an emotional disorder was on August 24, 1998, in contradiction of her earlier statements regarding previous psychiatric problems and the hospital discharge summary, which identified "atypical chest pain, rule out myocardial infarction" as her discharge diagnosis and did not mention any emotional condition.

By letter dated January 28, 2000, appellant reiterated her reconsideration request and alleged that a specific supervisor broke rules, neglected requirements and refused compliance with the regulations with respect to appellant's exposure to cold weather, her need for heat treatments, repetitious duties and rewrap duties.

By decision dated February 4, 2000, the Office denied modification of the November 6, 1998 decision as the evidence submitted in support was insufficient to warrant modification. The Office found that appellant claimed an August 24, 1998 injury but alleged that her injury dated back to January 1998 when she was "forced" to accept a job offer or her compensation would be terminated. It also noted that the UPMC records did not support appellant's contentions of injury on the date in question, that her own physicians' medical reports gave incorrect and inconsistent histories regarding an injury on August 24, 1998 and that she was not discharged from UPMC with a psychiatric diagnosis as she told the psychotherapist.

A March 28, 2000 report from Dr. Michael Levine, a Board-certified orthopedic surgeon, noted appellant's history of injury as including injuries or aggravations in March 1980, September 1980, 1982, 1984 and 1985. No August 24, 1998 injury was noted. Dr. Levine diagnosed "chronic impingement left shoulder [and] chronic cervical strain," and recommended

[15] A bill from a psychiatric nurse for preparation of a letter was not paid. The Board notes that a psychiatric nurse is not a physician under the Act and that the costs of letters or medical reports are not reimbursable. *See Vicky L. Hannis*, 48 ECAB 538 (1997).

a pain management approach; he opined that appellant was not totally disabled, even with the left arm, at that point in time and was capable of full-duty work with the right arm. Dr. Levine opined that appellant's problems all related to the 1980 injury. He also noted some evidence of subjective/objective discrepancies in appellant's physical examination and indicated that there was no reason appellant could not work an eight-hour day.

By report dated January 11, 2001, Dr. Victor R. Adebimpe, a Board-certified psychiatrist, noted that appellant claimed that her anxiety, panic attacks, chronic pain and depression followed the employing establishment's refusal to give her a job that accommodated her work-related injuries. He further stated that appellant claimed that she was subjected to constant threats that she would be escorted off the premises and terminated if she did not do the work they wanted her to do.

By report dated February 15, 2001, Dr. Adebimpe noted appellant's psychiatric diagnosis as "Major Depressive Disorder," noted that the temporal relationship between her work injuries and their emotional sequelae was well documented,[16] and opined that she had been receiving medications for her anxiety and depression since 1998 which established a direct causal relationship between her injuries and her emotional problems.

By decision dated February 15, 2001, the Office denied modification of the February 4, 2000 decision finding that the evidence submitted in support was insufficient to warrant modification. The Office found that the evidence failed to support that appellant was required to work outside of her restrictions and that it failed to establish any psychiatric or physical evidence of injury on August 24, 1998, as alleged.

In a letter dated March 13, 2001, appellant requested reconsideration. She claimed that she had been bending over and lifting trays of mail, carrying trays of mail to her work location and then having to do fine grasping which she claimed that she was not supposed to do. She alleged that she had to do shrink-wrap duties, which were forbidden by her physician, that she had to reach out her left arm, pick up mail and place in a tray and that she was watched constantly by a supervisor. Appellant claimed that she experienced a piercing pain like a bolt of lightening, that it went from her left shoulder up the left side of her neck to her head and down the left side of her back into her left hand and arm, and that it hurt so much her head went dark. She also alleged that her right shoulder was painful such that she had to stop work.

In support of her claim, appellant submitted two additional reports from Dr. Adebimpe dated January 11 and February 15, 2001 which restated his previous opinions and diagnoses based of a history of injury and symptoms as given by appellant.

Additionally submitted was a February 14, 2001 report from Dr. Riccardo Marinelli, an anesthesiologist, which noted appellant's complaints, indicated physical examination results and diagnosed as follows: "Cervical spinal pain, facette (sic) syndrome has been ruled out secondary to nonphysiologic response to diagnostic screening block; Cervical spinal pain possibly secondary to discogenic pain; chronic left shoulder pain; radicular syndrome of the left upper

[16] However, on November 3, 1999 appellant had claimed that her "stress" (panic disorder and anxiety) began with the December 23, 1997 letter, before she had returned to work.

extremity possibly secondary to #2 or #3 above; [and] myofascial pain syndrome." Dr. Marinelli commented on the efficacy of narcotic analgesics and ordered them continued. Causation was not discussed.

By decision dated April 10, 2001, the Office denied modification of the November 6, 1998, February 4, 2000 and February 15, 2001 decisions, finding that the evidence submitted was sufficient to warrant modification. The Office found that the evidence of record did not support that appellant's contention that she was required to and did, perform work outside of her work restrictions on August 24, 1998. Further, the Office found that there was no showing that the employing establishment acted abusively in supervising appellant's work.

The Board finds that appellant has failed to establish that she sustained a physical or emotional injury on August 24, 1998 in the performance of duty, causally related to factors of her federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act[17] has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[18] These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[19]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place and in the manner alleged.[20] Second,

[17] 5 U.S.C. §§ 8101-8193.

[18] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[19] *Victor J. Woodhams*, 41 ECAB 345 (1989); *Delores C. Ellyet*, 41 ECAB 992 (1990).

[20] *John J. Carlone*, 41 ECAB 354 (1989). To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim. *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984); *see also George W. Glavis*, 5 ECAB 363 (1953).

the employee must submit sufficient evidence, generally only in the form of rationalized medical evidence, to establish that the employment incident caused a personal injury.[21]

In this case, appellant has not established that a specific work incident or activity occurred on August 24, 1998 in relation to her claimed injuries, as she merely implicated in general her limited duties performed during the 30 minutes she worked that day. No specific duties were implicated, as appellant claimed that she had to take mail from a hamper, reach out her left arm and pick up mail using fine grasping, look up and down as she read it, place stickers or tape on it as necessary, sort mail and place in stacks or in a tray. The supervisors monitoring appellant indicated that no demonstrable incident occurred and that appellant merely stopped work and claimed that she needed to go to the hospital. Appellant alleged that she was required to work outside of her medical restrictions, however, no further specifics or examples were provided and no documentation corroborating or supporting this allegation was presented.[22] It is therefore not established as occurring as alleged. Consequently, no specific incident of employment identifiable at the time, place and in the manner, that potentially caused an injury has been established as occurring.

Further, no personal injury or diagnosed condition has been established as being related to appellant's limited duties on that date. Although appellant presented at the hospital with numerous pain complaints, including but not limited to head, neck, left shoulder, left arm, left hand, right shoulder and chest pain complaints, after hospitalization and work up, the final diagnoses were "[a]typical chest pain, rule out myocardial infarction," and no activity restrictions were noted. No opinion on causal relation with appellant's limited employment duties was provided. Therefore, no personal injury or injury-related diagnosis has been established as having occurred.

As appellant has failed to establish both that an employment incident occurred at the time, place and in the manner alleged, and that a specific diagnosed condition resulted from that incident, she has failed to establish "fact of injury."

Additionally, to establish appellant's occupational disease aspect of her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (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 or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.[23] Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal

[21] *Id.* For a definition of the term "traumatic injury," see 20 C.F.R. § 10.5(ee). "(Traumatic injury means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be 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*)." (Emphasis added).

[22] Appellant's allegation that everything she had to do involved repetitive motion is not supported by the factual record.

[23] *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.[24]

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 has some connection with the employment but nevertheless does not come within the concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Act. Generally speaking, when an employee experiences an emotional reaction to his or her regular or special assigned employment duties or to a requirement imposed by his employment or has fear or anxiety regarding his or her ability to carry out assigned duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.[25] Conversely, if the employee's emotional reaction stems from employment matters which are not related to his or her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment, and does not come within the coverage of the Act.[26] Noncompensable factors of employment include administrative and personnel actions, which are matters not considered to be "in the performance of duty."[27]

When working conditions are alleged as factors in causing 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.[28] When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.[29] When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of

[24] *Id.*

[25] *Donna Faye Cardwell, supra* note 23, *see also Lillian Cutler,* 28 ECAB 125 (1976).

[26] *Id.*

[27] *See Joseph DeDonato,* 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

[28] *See Barbara Bush*, 38 ECAB 710 (1987).

[29] *Ruthie M. Evans*, 41 ECAB 416 (1990).

record.[30] If the evidence fails to establish that any compensable factor of employment is implicated in the development of the claimant's emotional condition, then the medical evidence of record need not be considered.[31]

In the present case appellant has not established that an emotional condition resulted from any compensable factors of her federal employment. Many of appellant's allegations of employment factors that caused or contributed to his condition fall into the category of administrative or personnel actions. In *Thomas D. McEuen*[32] the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.[33] Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. The incidents and allegations made by appellant which fall into this category of administrative or personnel actions include: appellant's allegation that she suffered "stress" because of a December 23, 1997 administrative letter that advised her that her reasons for not accepting the offered suitable work were not sufficient to justify nonacceptance and advised that compensation would be terminated if she did not return to work in the offered suitable limited-duty capacity,[34] that a supervisor advised appellant that she would be terminated if she did not perform her limited-duty assignment,[35] that a supervisor embarrassed her by ordering her to end her break and return to work,[36] appellant being monitored by supervisors as she worked,[37] that she was advised that she was being insubordinate and that she was refused union representation during counseling,[38] and that the medical unit was closed during her four-hour shift assignment. Appellant has presented no evidence of administrative supervisory error or abuse in the performance of these actions and therefore they are not now compensable under the Act.

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[30] *See Gregory J. Meisenberg*, 44 ECAB 527 (1993).

[31] *See Donna Faye Cardwell*, *supra* note 23; *see also Lillian Cutler*, *supra* note 25.

[32] 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[33] *See Richard J. Dube*, 42 ECAB 916 (1991).

[34] *See James H. Botts*, 50 ECAB 265 (1999); *Bonnie Goodman*, 50 ECAB 139 (1998).

[35] *See O. Paul Gregg*, 46 ECAB 624 (1995); *Martha L. Watson*, 46 ECAB 407 (1995) (actions involving a compensation claim bear no relation to an employee's day-to-day or specially assigned duties and are not compensable factors of employment).

[36] *See Janet I. Jones*, 47 ECAB 345 (1996).

[37] *Id.; see also Sandra Davis*, 50 ECAB 450 (1999) (no administrative error in monitoring her work activities).

[38] *See Gary M. Carlo*, 47 ECAB 299 (1996); *Barbara E. Hamm*, 45 ECAB 843 (1994); *Marie Boylan*, 45 ECAB 338 (1994) (counseling sessions are not compensable absent evidence of error or abuse and union activities are personal in nature). This was also not factually established.

Appellant also alleged that her claimed emotional condition arose because she was discriminated against and harassed generally and on the basis of race, sex and disability, and with violations or her civil rights. With regard to her allegations of harassment or discrimination, it is well established that for harassment to give rise to a compensable disability under the Act there must be some evidence that the implicated incidents of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable.[39] An employee's charges that he or she was harassed or discriminated against are not determinative of whether or not harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[40] Words and actions that appellant implicated as being harassment must be confirmed by supporting evidence that they did, in fact, occur as alleged. However, in this case such corroboration was not forthcoming from appellant. Moreover none of the union grievances, EEO or NLRB findings supported a finding of discrimination or harassment. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant further alleged that she was subjected to open hostility, deprivation, intimidation, threats, ridicule, "demeanment," and denial of medical and job accommodations. However, no factual corroboration of these allegations was provided and therefore they are not established as having occurred as alleged.

The medical evidence in support of appellant's alleged emotional conditions was largely from a psychotherapy nurse, who is not considered to be a "physician" under the Act and therefore it was not considered to be probative medical evidence.[41] However, the unclearly dated follow-up psychological report cosigned by a physician may be considered to be probative medical evidence.[42] This report indicated that appellant experienced stress and an aggravation approximating a panic disorder when dealing with postal officials, or facing returning to work without proper accommodations,[43] with the mishandling of her return,[44] difficulty with finances and living with pain. None of these implicated factors arose out of and in the course of her employment, but were instead related to unemployment and reemployment efforts, which were not appellant's assigned duties. Further, several of these factors were not substantiated or supported by the record as having occurred. The medical report was additionally based on an improper factual and medical background, as the therapist accepted as fact the history as presented by appellant. In fact, the record supports that appellant was offered suitable employment for her medical limitations, that she was not required to work outside these limitations, that she was not harassed or discriminated against as alleged, that she was not hospitalized on August 24, 1998 for "stress" and was not discharged from UPMC on August 24,

[39] *Helen Casillas*, 46 ECAB 1044 (1995); *Ruth C. Borden*, 43 ECAB 146 (1991).

[40] *See Anthony A. Zarcone*, 44 ECAB 751 (1993).

[41] *See supra* note 14.

[42] *See e.g., Robert J. Krstyen*, 44 ECAB 227 (1992); *John H. Smith*, 41 ECAB 444 (1990).

[43] This allegation was not factually supported by the record.

[44] This allegation was also not factually supported by the record.

1998 with a diagnosis of "panic disorder," as she had advised the psychotherapy nurse. As this cosigned medical report is based upon an inaccurate factual and medical history it is of diminished probative value and is insufficient to establish that appellant developed an emotional condition causally related to any compensable factors of her employment.

As appellant has failed to establish that she sustained a traumatic employment injury at the time, place and in the manner alleged, and has failed to establish that she developed an emotional condition causally related to compensable factors of her federal employment, she has failed to establish her claims.

Consequently, the decisions of the Office of Workers' Compensation Programs dated April 10 and February 15, 2001 are hereby affirmed.

Dated, Washington, DC
May 6, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member