

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DIANNE P. COBB and U.S. POSTAL SERVICE,  
SKIDAWAY STATION, Savannah, GA

*Docket No. 01-2117; Submitted on the Record;*  
*Issued May 7, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

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

On May 7, 1998 appellant, then a 43-year-old window clerk, filed an occupational disease claim, alleging that sexual harassment at work caused her post-traumatic stress disorder and depression and resulted in her inability to work or function.<sup>1</sup> Appellant stated that she was "sexually harassed by another employee [and] the harassment never ceased." Appellant was hospitalized following threats of suicide during an April 29, 1998 investigation of a large shortage in her stamp stock accountability.

By letter dated May 29, 1998, the Office of Workers' Compensation Programs requested factual information from appellant regarding the alleged sexual harassment and medical evidence from her treating physician. On July 8, 1998 the Office denied appellant's claim on the grounds that she had failed to establish any compensable employment factors.

Appellant requested reconsideration and submitted medical evidence.<sup>2</sup> By decision dated February 6, 2001, the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was insufficient to modify its prior decision.

The Board finds that appellant has failed to establish that her emotional condition was sustained while in the performance of duty.

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<sup>1</sup> Appellant's previous claim for sexual harassment and mental stress was filed on December 1, 1995 and was denied on November 8, 1996 on the grounds that the medical evidence was insufficient to establish a causal relationship between compensable work factors and her emotional condition. Appellant did not appeal this decision.

<sup>2</sup> Appellant's reconsideration request was dated August 3, 1998, but the case was mistakenly closed. The Office reopened the case for reconsideration based on an October 5, 2000 letter from appellant's representative.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.<sup>3</sup> There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the coverage of the Federal Employees' Compensation Act.<sup>4</sup> These injuries occur in the course of the employment but nevertheless are not covered because they are found not to have arisen out of the employment.<sup>5</sup>

In an emotional condition claim, appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the mental condition for which she claims compensation was caused or adversely affected by factors of her federal employment. To establish that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) 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.<sup>6</sup>

The Board has long held that a claimant's allegations alone are insufficient to establish compensable work factors without probative and reliable evidence corroborating the allegations.<sup>7</sup> The claimant must substantiate such allegations by submitting a detailed description of specific employment factors or incidents that she believes caused or adversely affected her condition.<sup>8</sup> Personal perceptions and feelings alone are not compensable under the Act.<sup>9</sup>

In emotional condition cases, the Office 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 to be factors of employment and may not be considered.<sup>10</sup> Therefore, the initial question is whether appellant has alleged compensable factors of employment that are substantiated by the record.<sup>11</sup>

In this case, the Office initially found that appellant had failed to submit evidence supporting her allegations that ongoing sexual harassment at work contributed to her depression

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<sup>3</sup> *Samuel Senkow*, 50 ECAB 370, 373 (1999).

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Frank B. Gwozdz*, 50 ECAB 434, 436 (1999).

<sup>6</sup> *Wanda G. Bailey*, 45 ECAB 835 (1994); *Kathleen D. Walker*, 42 ECAB 603, 608-09 (1991).

<sup>7</sup> *Joe E. Hendricks*, 43 ECAB 850, 857-58 (1992).

<sup>8</sup> *Peggy Ann Lightfoot*, 48 ECAB 490, 493 (1997); *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991).

<sup>9</sup> *Earl D. Smith*, 48 ECAB 615, 650 (1997).

<sup>10</sup> *Margaret Kryzcki*, 43 ECAB 496, 502 (1992).

<sup>11</sup> *Donald E. Ewals*, 45 ECAB 111, 122 (1993).

and post-traumatic stress disorder. In fact, appellant submitted no evidence supporting her allegations. The employing establishment submitted a June 9, 1998 letter from a postal manager stating that appellant had been assigned to the Skidaway station since February 1997 but had never mentioned to him or to any other supervisors that she was being sexually harassed. The employing establishment also submitted a preliminary investigative memorandum on appellant's stamp stock records in March 1998.

On reconsideration appellant submitted several brief notes from Dr. Michael E. Balkunas, Board-certified in psychiatry and neurology; a hospital discharge summary; medical reports from her treating psychologist, Dr. Jay W. Childress; and handwritten chart notes of her treatment with him. However, none of these documents refers to specific work factors or supports appellant's allegation of ongoing sexual harassment at her assigned workplace.<sup>12</sup>

Dr. Childress generally stated that appellant's diagnosed depression resulted from alleged sexual harassment in her workplace but provided no details or specific incidents. Similarly, Dr. Balkunas stated on July 16, 1998 that appellant's depression and post-traumatic stress syndrome were directly related to harassment and stress at work, which impaired her judgment and led to the alleged misappropriation of funds. However, Dr. Balkunas also failed to specify any incidents at work that could have contributed to appellant's condition.

Appellant has generally alleged sexual harassment at work. For harassment to constitute a compensable work factor under the Act there must be evidence that harassment or discrimination did in fact occur.<sup>13</sup> In this case, appellant has offered no evidence that she was harassed at work. In fact, she has submitted no supporting statements or details of the alleged harassment. Therefore, the Board finds that appellant has failed to establish that any harassment actually took place.<sup>14</sup> Inasmuch as appellant provided no detailed explanation of any of her allegations and failed to submit any corroborating evidence, the Board finds that she has failed to establish any compensable factors of employment.<sup>15</sup>

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<sup>12</sup> Appellant's 1995 claim alleged sexual harassment by a coworker at her previous duty station. As part of a settlement, the employing establishment transferred appellant from the Bingville station to the Skidaway station.

<sup>13</sup> *Ronald C. Hand*, 49 ECAB 113, 116 (1997).

<sup>14</sup> See *Christophe Jolicoeur*, 49 ECAB 553, 556 (1998) (finding that appellant failed to establish that his supervisor was verbally abusive).

<sup>15</sup> See *Dinna M. Ramirez*, 48 ECAB 308, 314 (1997) (finding that appellant failed to meet her burden of proof to establish a compensable factor of employment).

The February 6, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
May 7, 2002

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member