

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LILLIAN C. JAMES and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, CA

*Docket No. 02-671; Submitted on the Record;
Issued October 4, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to establish that she sustained an emotional condition while in the performance of duty.

On September 30, 2001 appellant, then a 57-year-old distribution clerk, filed a traumatic injury claim alleging that beginning on August 21, 2001, she suffered emotional distress as a result of a work environment that was dirty and nasty with maggots. Appellant stopped work on August 24, 2001. By decision dated December 11, 2001, the Office of Workers' Compensation Programs accepted that appellant's initial symptoms occurred during the course of her employment, but denied the remainder of appellant claim finding that she failed to establish any compensable factors of employment.

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.¹ 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.²

¹ 5 U.S.C. §§ 8101-8193.

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

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.³ 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.⁴

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.⁵ 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.⁶

In the present case, appellant alleged that she sustained an emotional condition as a result of several employment incidents and conditions. By decision dated December 11, 2001, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

In a narrative statement submitted in support of her claim, appellant stated that beginning in March 2001, she was assigned to work in an area of the first floor that appellant considered to be dirty and nasty, necessitating that she empty the wastebasket and clean the area the best she could prior to starting work. Appellant stated that she reported the poor working conditions to her supervisor, Glen Grey, but he did nothing to improve her situation. On August 21, 2001 she saw two worms in her work area and called supervisor Jamie who came and stepped on them. More worms appeared, at which point a coworker stated that they were not worms, but maggots. Appellant stated that when she moved a tray under the table where she sat, there were at least 10 more maggots. Appellant stated that after leaving work she felt unclean, was unable to sleep and woke feeling nauseated. For the next two days, she was able to sit at a temporarily vacant workstation, but on August 24, 2001 appellant's supervisor directed her to return to her regular work area. Appellant stated that her head began to hurt, her stomach turned and appellant started shaking so she went to see the employing establishment nurse, who sent her to the hospital for stress.

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

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

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

⁶ *Id.*

In a medical report dated October 24, 2001, Dr. Geoffrey Watson noted that appellant's history of having reported to her supervisor on August 21, 2001 that there were maggots in her work area, which she felt to be an unsafe and dirty work environment. Dr. Watson diagnosed stress related to work environment with depression and anxiety and indicated that appellant would be totally disabled for work for several months while she underwent treatment.

Regarding appellant's allegations that the dirty condition of her work environment caused her stress reaction, the Board has held that claims that an emotional condition arose from filthy, bug infested premises and refusals by the employing establishment to consider complaints about the work premises relate to a frustration from not being permitted to work in a particular environment and, therefore, are not considered to be within the performance of duty.⁷ Regarding appellant's assertion that her work area was unsafe, the Board notes that appellant had been working in the same area for approximately five months and while she generally described the area as dirty, she never before reported seeing any insects. Similarly, as appellant did not return to her workstation, there is no evidence in the record that insects were ever present. Therefore, as appellant presented no evidence demonstrating that she was endangered by exposure to insects, or the disease they might carry, in her employment, appellant has not established a compensable factor of employment.⁸

In addition, while appellant reported that she did not sleep well the night of August 21, 2001, after encountering the insects, appellant was able to perform her duties on August 23 and 24, 2001 and did not actually require any medical treatment until August 24, 2001, when she was instructed to return to her regular work station. Therefore, appellant's reaction also constitutes a fear of future injury, which is not a compensable factor of employment.⁹

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty. Consequently, as appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record.¹⁰

⁷ *Ralph O. Webster*, 38 ECAB 521 (1987).

⁸ *Peggy Ann Lightfoot*, 48 ECAB 490 (1997).

⁹ *Beverly Diffin*, 48 ECAB 125 (1996).

¹⁰ *See Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

The December 11, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 4, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member