

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUNE A. NICKERSON and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, OH

*Docket No. 01-1035; Submitted on the Record;
Issued September 6, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
DAVID S. GERSON

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

On January 6, 2000 appellant, then a 49-year-old clerk, filed an occupational disease claim.¹ She stopped work that day. In support of her claim, she submitted a number of statements and supporting documentation as well as medical evidence. The employing establishment also submitted a number of statements copies of emails, a job description and information regarding a seven-day suspension.

By decision dated April 4, 2000, the Office denied the claim on the grounds that her condition had not occurred in the performance of duty. On May 3, 2000 appellant, requested a hearing that was held on October 26, 2000 at which time she testified regarding her claim and submitted additional evidence regarding a grievance and an Equal Employment Opportunity (EEO) Commission decision, in which a finding was made that appellant was retaliated against by being assigned to work nights at the air mail facility. By decision dated February 12, 2001, an Office hearing representative affirmed the prior decision. The instant appeal follows.

The Board finds that appellant failed to establish that she sustained an emotional condition causally related to factors of employment.

¹ The record indicates that appellant filed a prior claim on March 25, 1998 alleging that factors of employment caused incapacitating stress. By decision dated June 19, 1998, the Office of Workers' Compensation Programs denied the claim on the grounds that her emotional condition was not in the performance of duty. Appellant did not appeal that decision. On April 10, 2000 the instant claim, which was initially adjudicated under file number A9-461560, was doubled into the 1998 claim which had been adjudicated by the Office under file number A9-439117. The record further indicates that the Office has accepted that appellant sustained employment-related bilateral leg strain and right knee strain caused by standing and lifting. This claim was adjudicated by the Office under file number A9-442781.

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.² Workers' compensation law is not applicable to each and every injury or illness that is somehow related to employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.³ On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.⁴

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁵ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Act. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁶ When an employee experiences emotional stress in carrying out her employment duties, or has fear and anxiety regarding her ability to carry out these duties and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of her work.⁷

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.⁸ This includes matters involving the training or discipline of employees. In determining whether the employing

² *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ 28 ECAB 125 (1976).

⁶ See *Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

⁷ *Lillian Cutler*, *supra* note 4 at 130.

⁸ See *Gregory N. Waite*, 46 ECAB 662 (1995).

establishment has erred or acted abusively, the Board will examine the factual evidence of the case to determine whether the employing establishment acted reasonably.⁹

In the present case, appellant has specifically contended that when she returned to work in May 1998, she was assigned below her grade level and outside her contractual hours and that in June 1998 she was transferred to a manual unit at the air mail facility from 6:00 p.m. to 2:30 a.m. and was still under her previous supervisor Edward McCarthy. Appellant noted that she had been given both 7-day and 14-day suspensions, which had been overturned and that her hours at the air mail facility were changed in February 1999 to an 8:00 a.m. to 5:00 p.m. schedule. Appellant further contended that beginning in February 1999, she had a confrontational relationship with a coworker, Denise Ferris, which continued until January 2000 when she stopped work.

Generally, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act.¹⁰ However, error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage.¹¹ Likewise, a claim based on a difficult relationship with a supervisor must be supported by the record,¹² and a claimant's burden of proof is not discharged by the fact that the employee has identified some employment factors. In the instant case, the employing establishment provided a number of statements that provided valid explanations for its actions. Therefore, in the absence of evidence substantiating the above allegations, appellant did not establish that harassment or discrimination by Ms. Ferris had occurred. Moreover, there is no evidence in the instant case, that the employing establishment erred in suspending appellant, or regarding the grievances and all but one of the EEO complaints she filed.

The record, however, contains an EEO decision dated May 16, 2000, that was favorable to appellant in that it was deemed that the employing establishment retaliated against her in assigning her to work nights at the airport mail facility as a distribution clerk. As such, this decision supports error or an unreasonable action by the employing establishment regarding appellant's termination. It, therefore, provides a factual basis for appellant's claim,¹³ and the Board finds that in this regard appellant has established a compensable factor of employment.

Appellant's burden of proof, however, is not discharged by the identification of a compensable work factor. To establish his claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional condition and that such condition is causally related to the identified compensable work factor.

⁹ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁰ 5 U.S.C. §§ 8101-8193.

¹¹ *Norman A. Harris*, 42 ECAB 923 (1991).

¹² *See Diane C. Bernard*, 45 ECAB 223 (1993).

¹³ *See Ruthie M. Evans*, 41 ECAB 416 (1990).

The medical evidence¹⁴ in the instant case, contains reports from Dr. James C Overholser, Ph.D., who provided a July 17, 1998 treatment note in which Dr. Overholser stated that he did not feel comfortable “making a more decisive demand re[garding] what hours [appellant] should work and the medical necessity of daytime hours.” In an August 12, 1999 note, Dr. Overholser advised that he had not seen appellant since the previous November, stating that she requested a letter to return to her old job “because manual labor is too hard.” Appellant also submitted a February 3, 2000 report, from Dr. Alan S. Castro, a psychiatrist, who advised that, while she was suffering from depression, Dr. Castro found no contraindication for her return to work. He concluded:

“It is, however, unfortunate that [she] perceives her current work environment as stressful and this may negatively impact her overall mental health. My understanding is that she is currently trying to seek a different position ... and this may prove to be helpful to her.”

While the medical evidence in this case indicates that appellant was receiving psychiatric treatment for depression, none of the reports indicate that this condition was caused by the compensable employment factor. Appellant, therefore, did not meet her burden of proof to establish that her emotional condition was work related because she did not submit rationalized medical evidence explaining how this factor of employment caused or aggravated her emotional condition.

The decision of the Office of Workers’ Compensation Programs dated February 12, 2001 is hereby affirmed.

Dated, Washington, DC
September 6, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

¹⁴ Appellant also submitted medical evidence that is not relevant to whether the established employment factor caused her condition.