

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TYAN SIMS and U.S. POSTAL SERVICE,
POST OFFICE, Milwaukee, WI

*Docket No. 02-688; Submitted on the Record;
Issued September 12, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty on August 1, 2001 causally related to factors of her employment.

On August 1, 2001 appellant, then a 29-year-old box section clerk, stopped work and filed a traumatic injury claim alleging that on that day Phil Warner was seen near her building. Appellant further indicated that she had an accepted claim dating from a shooting at the employing establishment in 1997. In support of her claim, appellant submitted medical evidence from Dr. Pedro Ranola, a Board-certified family practitioner and Deborah A. Stec, Ph.D. The employing establishment submitted evidence regarding the August 1, 2001 fire and controverted the claim.

By letter dated September 5, 2001, the Office of Workers' Compensation Programs informed appellant of the type evidence needed to support her claim. In response she submitted additional medical evidence and several statements. In a decision dated October 19, 2001, the Office denied the claim, finding that appellant failed to establish a compensable factor of employment. The instant appeal follows.

The Board has duly reviewed the case record and finds that appellant has failed to establish that she suffered a new emotional condition while in the performance of duty.

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 her 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.²

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 instant case, appellant is alleging that the news that Mr. Warner had started a fire outside the employing establishment near her workstation on August 1, 2001 caused a panic attack which led to a flashback to a shooting episode at the employing establishment in 1997.⁷ She stated that, after hearing about the fire, she went directly to her doctor's office and that he advised her not to return to work. The employing establishment submitted an incident report dated August 1, 2001, which provided that a fire was observed in a waste receptacle and Mr. Warner⁸ was standing nearby. The employing establishment further indicated that appellant

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).

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.*

⁷ Appellant also provided a statement dated July 30, 2001 in which she informed the employing establishment that she felt traumatized and fearful by Mr. Warner's strange behavior, his prior threats and the fact that he was seen outside the employing establishment.

⁸ The record before the Board does not explain the significance of Mr. Warner in this claim or why appellant is reacting to his proximity to the employment premises.

had an accepted claim for a stress condition related to a shooting that occurred at the employing establishment on December 19, 1997.⁹

The Board finds that appellant failed to establish a new compensable factor of employment in this regard as she did not witness Mr. Warner or the trash can fire, but merely heard about it. Thus, appellant's emotional condition did not arise from her regular or specially assigned duties but must be considered self-generated.¹⁰ The record does not explain why Mr. Warner's proximity would be troubling to appellant. Appellant, therefore, has not established any new compensable employment factors under the Act and, therefore, has not met her burden of proof to establish that she sustained a new emotional condition while in the performance of duty.¹¹

The decision of the Office of Workers' Compensation Programs dated October 19, 2001 is hereby affirmed.

Dated, Washington, DC
September 12, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

⁹ The December 19, 1997 claim was adjudicated by the Office under file number 10-0472656. The instant claim was adjudicated by the Office under file number 10-2002817.

¹⁰ See generally *Tanya A. Gaines*, 44 ECAB 923 (1993).

¹¹ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992). The Board, however, notes that appellant submitted an August 1, 2001 report from Dr. Deborah A. Stec, her treating psychologist, who diagnosed post-traumatic stress disorder, recurrent and acute and advised that appellant could not work. In an August 28, 2001 report, Dr. Stec advised that the August 1, 2001 incident caused a flashback to the 1997 incident. As the Office has not adjudicated whether there was a recurrence of disability due to the 1997 injury, that issue is not before the Board.