

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FRANCES A. RUSSELL and U.S. POSTAL SERVICE,  
POST OFFICE, Newton Falls, OH

*Docket No. 03-752; Submitted on the Record;  
Issued August 5, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,  
DAVID S. GERSON

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

On or about December 17, 2001 appellant, then a 53-year-old full-time rehabilitation distribution clerk, filed a claim alleging that her moderate to severe depression and anxiety was a result of her federal employment. After explaining how a city carrier named Harvey Martin was fired for using vulgar language with her on February 16, 2000, appellant related the following: "On 10-09-01 I was told that Harvey Martin got his job back and would be returning to the Newton Falls Post Office. I was crying and shaking when I found out. I called my EAP [Employee Assistance Program] counselor and Dr. [Pradeep] Mathur, my psychiatrist to make appointments to get help."

To support her claim, appellant submitted medical evidence attributing her major depression and post-traumatic stress disorder to the "return of another employee who has previously threatened patient and husband" and recommending that she be transferred to another facility "due to the stress she is experiencing from return of a coworker."

On December 17, 2001 appellant's supervisor explained that on February 16, 2000 Mr. Martin had an altercation with appellant's husband and used foul language with appellant. "Because of this he was removed," she stated. "An arbitrator returned him to work October 15, 2001. [Appellant] had not been to work since she has been on sick leave."

Appellant last worked on October 13, 2001. She stated that she could not work with a coworker who repeatedly referred to her in vulgar terms and who received no punishment for his improper conduct. On January 5, 2002 she stated: "I have no doubt in my mind that Mr. Martin will retaliate given the opportunity. The arbitrator told Mr. Martin that he was walking on thin ice. I feel that is telling Mr. Martin he only has one chance to retaliate so he better make it a good one."

In a decision dated May 6, 2002, the Office of Workers' Compensation Programs denied appellant's claim for compensation on the grounds that the evidence failed to establish that she was injured at work. The medical evidence supported that her disability was caused by the anticipated contact with Mr. Martin, not an actual one, which was not a compensable factor of employment.

In a decision dated August 7, 2002, the Office modified its prior decision to find that the incident that occurred on February 16, 2000, when Mr. Martin used foul language in front of appellant; however, the medical evidence was insufficient to support that appellant's claimed emotional condition was a direct result of what occurred on February 16, 2000.

Appellant requested reconsideration and submitted an August 28, 2002 report from Dr. Mathur.

In a decision dated January 10, 2003, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. The Office found that Dr. Mathur's opinion was insufficient to establish that appellant's claimed emotional condition was causally related to compensable factors of employment.

Appellant requested reconsideration on January 14, 2003. On January 24, 2003 she filed, through her attorney, an appeal with the Board seeking review of the Office's January 10, 2003 decision.<sup>1</sup>

The Board finds that the evidence in this case fails to establish that appellant sustained an emotional condition in the performance of duty.

Workers' compensation law does not cover each and every illness that is somehow related to one's employment.<sup>2</sup> An emotional reaction to an administrative or personnel action is not compensable unless the evidence shows error or abuse on the part of the employing establishment.<sup>3</sup>

Appellant attributed her emotional condition to the news she heard on October 9, 2001 that Mr. Martin would be returning to work at the employing establishment. The medical opinion evidence tends to support that her diagnosed emotional condition was causally related to Mr. Martin's return. The record contains no probative evidence that the administrative decision to return Mr. Martin to work was erroneous. Instead, it appears that appellant's emotional condition and disability arose from the prospect of having to work in the same environment with Mr. Martin and the anticipated retaliation he would make against her. This fear of future conflict and retaliation is not compensable; however, any emotional condition that appellant may

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<sup>1</sup> The Office issued a decision on February 11, 2003 denying appellant's January 14, 2003 request for reconsideration. Under the principles discussed in *Douglas E. Billings*, 41 ECAB 880 (1990), the Office's February 11, 2003 decision, issued while the Board had jurisdiction over the matter in dispute, is null and void.

<sup>2</sup> *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

<sup>3</sup> *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566, 572-73 (1991).

have developed as a result of hearing the news about Mr. Martin lies outside the scope of workers' compensation.<sup>4</sup> For this reason the Board will affirm the denial of her claim for benefits.

The January 10, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
August 5, 2003

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

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<sup>4</sup> It is well established that fear of future injury, or fear of a recurrence of disability if the employee returns to work, is not compensable. *William A. Kandel*, 43 ECAB 1011 (1992); *Mary A. Geary*, 43 ECAB 300 (1991).