

U. S. DEPARTMENT OF LABOUR

Employees' Compensation Appeals Board

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In the Matter of DEBORA L. CAUDLE and U.S. POSTAL SERVICE,  
POST OFFICE, Colorado Springs, CO

*Docket No. 03-791; Submitted on the Record;  
Issued December 16, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that she sustained an emotional condition in the performance of duty causally related to compensable factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's claim for a further review on its merits.

On September 28, 2000 appellant, then a 46-year-old clerk, filed a claim alleging that on August 31, 2000 she was doused with water in the break room by a coworker, Tony Kellam, which caused her emotional stress.<sup>1</sup> She contended that she was not safe working around Mr. Kellam and that he had previously harassed her, which resulted in a recurrence of post-traumatic stress disorder (PTSD).<sup>2</sup> Appellant did not stop work.

In supplemental statements, appellant alleged incidents to which she attributed the development of her emotional condition. She alleged that Mr. Kellam deliberately splashed her with water while she was at the sink in the break room peeling a cantaloupe and that he further harassed her by watching her and talking to her in a loud obnoxious manner. Appellant alleged that he told her not to park in a reserved space, walked around her on the dock, pushed a folder in front of her and told her to read it. She also alleged that Mr. Kellam was rude and physically abusive towards her. Appellant also alleged harassment on the basis of race (white), sex (female), age (40+) and mental disability PTSD and harassment by supervisors for changing her hours, denying administrative leave and for calling her at home.

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<sup>1</sup> Appellant also filed a Form CA-2a recurrence of disability claim that date alleging that this incident triggered a recurrence of a previously accepted emotional condition that was caused by a May 4, 1998 assault by another coworker. The present claim was assigned No. 12-0193152.

<sup>2</sup> Appellant's previous emotional claim had been accepted for "temporary aggravation of a preexisting adjustment disorder, resolving, not PTSD. It was designated as No. 12-0175540.

By letter dated November 20, 2000, the Office requested that appellant submit further information including details regarding specific implicated events, witness statements, Equal Employment Opportunity (EEO) complaints and grievances, medical reports documenting an emotional condition and outside sources of stress.

Appellant submitted a December 8, 2000 statement by coworker Donald E. Brown, who noted that on August 31, 2000 when appellant came over to where he was sitting, he noticed that the front of her work apron was wet. He also noted appellant's comments to Mr. Kellam about being splashed while she was standing at the sink and he noted that she was upset.

In a September 6, 2000 report, Dr. Philip A. Pennington, a Board-certified family practitioner, noted that on September 5, 2000 appellant presented in distress and frustration about an incident with a coworker. He opined that this incident triggered a recurrence of symptoms related to her 1998 assault and made it difficult for her to work around the coworkers. In an additional statement, Dr. Pennington indicated that this situation created a reaction to old traumatic experiences. He diagnosed PTSD and suggested that appellant change her work hours.

Appellant filed a grievance, seeking that Mr. Kellam cease and desist harassing her. She sought mandatory sexual harassment training for all personnel. In a January 14, 2001 statement, appellant reiterated her allegations and contested the employing establishment's responses to her allegations.

A January 19, 2001 statement from Yong Choi, a coworker, noted that she saw Mr. Kellam call appellant's name and ask something. One day he walked by when appellant was working on the box section.

Appellant's supervisor, Susan Luck, indicated that she talked to Mr. Kellam and that he stated that he tried to stay away from appellant, that he did not talk to her and that, when he got water on her while washing out his cup, it was an accident. Regarding any physical contact, Mr. Kellam told Ms. Luck that he once bumped into appellant's shoulder when he came around a corner and the front of his arm bumped her shoulder. Ms. Luck indicated that she told Mr. Kellam to avoid appellant.

In a March 29, 2001 statement, Karen K. Fairlee, the customer service manager, indicated that it was not true that Mr. Kellam had touched appellant when he pushed papers toward her to read and that one of the grievances appellant referred to had nothing to do with her. She stated that appellant was not on an urgent telephone call when Mr. Kellam presented her with a window communication and that he was within the scope of his duties in so doing Mr. Kellam did not circle appellant on the dock, but was merely going to his car and that incidents of aggressive behavior as described by appellant did not occur as alleged.

By letter dated April 5, 2001, the employing establishment controverted appellant's claim contending that none of the implicated incidents were compensable factors of her employment. The employing establishment noted that her allegations of harassment were not substantiated and that some of the incidents alleged were administrative functions, such as Mr. Kellam giving appellant instructions, the postmaster's denial of her request for administrative leave and her supervisor calling her at home.

By decision dated April 6, 2001, the Office denied appellant's claim for an emotional condition, finding that none of the implicated work events or incidents were compensable factors of employment. The Office found that there was no evidence that Mr. Kellam deliberately splashed water on appellant. There was insufficient evidence to establish administrative error or abuse. Mr. Kellam had certain duties as a work leader which he was responsible for carrying out and that he was within his authority in his communicating with appellant. Many of her allegations were found vague and general in nature.

By letter dated April 13, 2001, appellant requested an oral hearing before an Office hearing representative. She requested that two subpoenas be issued.

Appellant's requests for subpoenas were denied on November 1, 2001 as she failed to make a showing that the individuals to be subpoenaed would provide information that was relevant to the issue and which could not be presented in a written statement or another form. A hearing was held on November 13, 2001 at which she testified.

Appellant's grievance regarding denial of work/pay for an absence due to lack of medical documentation was denied on May 24, 2001. Her appeal was denied on October 29, 2001.

In a December 10, 2001 investigative interview, Mr. Kellam denied appellant's allegations of harassment.

By decision dated January 31, 2002, the hearing representative affirmed the April 6, 2001 decision, finding that she had not established any compensable work factors in the development of her emotional condition. The hearing representative found that there was no evidence that Mr. Kellam deliberately splashed water on appellant and, that she was not improperly asked by him not to park in a spot reserved for the union steward. It was found that Mr. Kellam accidentally bumped into appellant's shoulder as she was walking in a hall and the alleged incidents of harassment were not corroborated by witnesses.

By letter dated May 21, 2002, appellant requested reconsideration of the January 31, 2002 decision and argued that her present claim should be accepted as a consequential injury causally related to her previously accepted emotional claim.<sup>3</sup> Appellant's representative requested that the present claim be combined with the previously accepted claim.

By decision dated June 19, 2002, the Office denied appellant's request for reconsideration finding that, there was no new evidence submitted to consider under the present claim. The Office noted that she could file for a consequential emotional condition under the prior claim.

The Board finds that appellant has failed to establish that she sustained an emotional condition in the performance of duty causally related to compensable factors of her federal employment.

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<sup>3</sup> Case No. 121-0175540.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>4</sup>

To establish appellant's occupational disease claim that she has sustained an emotional condition in the performance of duty, she must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized 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>5</sup> Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.<sup>6</sup>

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 illness has some connection with the employment, but nevertheless does not come within the concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Act. Generally speaking, when an employee experiences an emotional reaction to his or her regular or special assigned employment duties or to a requirement imposed by his employment or has fear or anxiety regarding his or her ability to carry out assigned duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.<sup>7</sup> Conversely, if the employee's emotional reaction stems from employment matters which are not related to his or her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment and does not come within the coverage of the Act.<sup>8</sup> Noncompensable factors of

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<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>6</sup> *Id.*

<sup>7</sup> *Donna Faye Cardwell*, *supra* note 5, *see also Lillian Cutler*, 28 ECAB 125 (1976).

<sup>8</sup> *Id.*

employment include administrative and personnel actions, which are matters not considered to be “in the performance of duty.”<sup>9</sup>

When working conditions are alleged as factors in causing 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.<sup>10</sup> When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.<sup>11</sup> When the matter asserted is a compensable factor of employment and the evidence of record establish the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.<sup>12</sup> If the evidence fails to establish that any compensable factor of employment is implicated in the development of the claimant’s emotional condition, then the medical evidence of record need not be considered.<sup>13</sup>

Appellant generally alleged harassment by a coworker, Mr. Kellam and by management. The Board has held that actions of an employee’s coworker or supervisor which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.<sup>14</sup> However, in order for harassment to give rise to a compensable disability under the Act, there must be some evidence that such harassment did in fact occur. Mere perceptions of harassment alone are not compensable under the Act.<sup>15</sup>

Many of appellant’s allegations are general, vague and nonspecific, with no particular dates proven or parties identified. She alleged that she was not safe working around Mr. Kellam, that he watched her, spoke to her in an obnoxious manner, bothered her and asked her to do things. Appellant also alleged that he stood near her, walked into her area and around her while on the dock. However, no specific incidents were alleged or identified by appellant. These

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<sup>9</sup> See *Joseph DeDonato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

<sup>10</sup> See *Barbara Bush*, 38 ECAB 710 (1987).

<sup>11</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>12</sup> See *Gregory J. Meisenberg*, 44 ECAB 527 (1993).

<sup>13</sup> See *supra* note 7.

<sup>14</sup> *Sylvester Blaze*, 42 ECAB 654 (1991).

<sup>15</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

vague allegations, therefore, are insufficient to be compensable under the Act as they merely constitute appellant's perception regarding Mr. Kellam.<sup>16</sup>

Other alleged incidents were more specific, but were uncorroborated or contradicted by witness or supervisory statements that did not agree with appellant's allegations. These incidents include Mr. Kellam telling appellant not to park in a reserved space and placing a folder in front of her and telling her to read it and telling her to file some slips. These uncorroborated incidents, therefore, were not substantiated as occurring as alleged and are consequently not compensable.<sup>17</sup> Rather, these incidents were explained as communications made in the course and scope of Mr. Kellam's job as a work leader. These instances arose in an administrative nature which, absent evidence of administrative error or abuse, do not arise in the performance of appellant's duties and are not compensable.<sup>18</sup>

The harassment allegations involving incidents of being splashed with water and being bumped while walking in a hall were not established as instances of harassment, as alleged.<sup>19</sup> The Board finds that appellant has failed to submit sufficient specific, reliable, probative and substantial evidence to support her allegations of harassment. She has the burden of establishing a factual basis for her allegations; however, the allegations made in this case were not supported by credible evidence and were refuted by statements from appellant's employer and coworkers. The Board finds that these allegations are not compensable factors of employment since appellant has not established a factual basis for them.

The other harassment incidents appellant implicated were a few administrative decisions on changing her hours, denying her leave request and calling her at home. The Board finds that these were administrative functions and appellant did not present evidence of administrative error or abuse. These allegations are not compensable and the record does not establish harassment.<sup>20</sup>

The Board also finds that the Office did not abuse its discretion in refusing to reopen appellant's case for further review on its merits.

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<sup>16</sup> See generally *Constance I. Galbreath*, 49 ECAB 401 (1998); *William Karl Hansen*, 49 ECAB 140 (1997) (mere perceptions of harassment, without a specific factual basis, are not compensable).

<sup>17</sup> See *Sherry L. McFall*, 51 ECAB 436 (2000); *Sherman Howard*, 51 ECAB 387 (2000); *Ernest J. Malagrida*, 51 ECAB 287 (2000).

<sup>18</sup> See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *James E. Norris*, 52 ECAB 252 (2001).

<sup>19</sup> See *Ernest J. Malagrida*, 51 ECAB 287 (2000); *Frank B. Gwozdz*, 50 ECAB 434 (1999); *Anna C. Leanza*, 48 ECAB 115 (1996) (a comment or action must rise to a form of harassment).

<sup>20</sup> See *supra* note 18; see also *James P. Guinan*, 51 ECAB 604 (2000) (absent evidence of error or abuse, leave and attendance matters are administrative functions and are not compensable).

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by submission as follows:

“(b) The application for reconsideration, including all supporting documents must:

(1) Be submitted in writing; (2) Set forth arguments and contain evidence that either; a. Shows that [the Office] erroneously applied or interpreted a specific point of law; b. Advances a relevant legal argument not previously considered by [the Office]; or c. Constitutes relevant and pertinent new evidence not previously considered by [the Office].”<sup>21</sup>

When a claimant fails to meet one of the above-mentioned standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>22</sup>

Appellant argued that she sustained a consequential injury. The Office did not previously accept appellant’s claim for employment-related PTSD, but accepted a temporary aggravation of a preexisting adjustment disorder. The Office reviewed her contention and determined that it was irrelevant to this case. Appellant was advised that a consequential injury claim could be filed under the case number of the initial accepted injury. The Board findings that her contention as to a consequential injury is irrelevant to the issue of establishing a compensable work factor in this case. The Office did not abuse its discretion by denying further merit review.

Accordingly, the decisions of the Office of Workers’ Compensation Programs dated June 19 and January 31, 2002 are hereby affirmed.

Dated, Washington, DC  
December 16, 2003

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>21</sup> 20 C.F.R. § 10.606(b)(1),(2).

<sup>22</sup> 20 C.F.R. § 10.608(b); *see Mohamed Yunis*, 46 ECAB 827 (1995); *Elizabeth Pinero*, 46 ECAB 123 (1994).