

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ELLEN A. GOODE and U.S. POSTAL SERVICE,  
POST OFFICE, Hephzibah, GA

*Docket No. 02-2115; Submitted on the Record;  
Issued February 27, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

On May 1, 2001 appellant, then a 40-year-old sales associate, filed an occupational disease claim alleging that she sustained stress, depression, high blood pressure, nerves and panic attacks due to factors of her federal employment. In a statement accompanying her claim, appellant related:

“On February 14, 2001 Billy Pierce physically turned my head around to keep me from talking to the [p]ostmaster. On February 20, 2001 [Mr.] Pierce and Al Mooney called me into the office and immediately began to interrogate me. They scared me so severely that I was in tears. Mr. Pierce was not satisfied with my responses. [He] threaten[ed] me and le[d] me to believe that if I did not cooperate I could be le[d] out of the [employing establishment] in handcuffs. I was intimidated and humiliated. I was accused of making long distance [tele]phone calls, falsifying my time card, asked to write statements [about] Mrs. Roland [the postmaster] which [were] not true. When I refused, Mr. Pierce told me then there was nothing he could do to save my career. I was interrogated and treated like a criminal for a period of over 90 minutes.” (Emphasis in original.)

By decision dated September 19, 2001, the Office denied appellant's claim on the grounds that she did not establish that she sustained an emotional condition due to factors of her federal employment. The Office accepted that Mr. Pierce physically touched her on February 14, 2001 but found that the medical evidence was insufficient to show that she sustained an emotional condition due to this incident. The Office further found that appellant had not established error or abuse by Mr. Pierce or Mr. Mooney during the interview on February 21, 2001.

Appellant requested a hearing, which was held on March 27, 2002. In a decision dated July 16, 2002, the hearing representative affirmed the Office's September 19, 2001 decision.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty causally related to factors of her federal 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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

Appellant attributed her stress to Mr. Pierce, an inspector with the employing establishment, interviewing her on February 21, 2001 during the course of his investigation into alleged misconduct by Ms. Roland, the postmaster. At the hearing, she related that Mr. Pierce accused her of making long distance calls from the employing establishment and falsifying documents, including her time card. Appellant stated that Mr. Pierce questioned her about whether she assisted Ms. Roland in the preparation of Mary Kay fliers at the employing establishment and whether she sold Mary Kay cosmetics. She related that Mr. Pierce threatened her career unless she signed papers and told her that people had been handcuffed for what she had done.

An employing establishment must retain the right to investigate if wrongdoing is suspected. As an investigation is generally related to the performance of an administrative

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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

<sup>3</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>4</sup> *Id.*

function of the employer and not the employee's regularly or specially assigned work duties, it is not compensable absent evidence that the employer erred or acted abusively.<sup>5</sup> In this case, appellant has not submitted evidence to establish error or abuse by the employing establishment during the course of its investigation. An official with the employing establishment informed the Office that Mr. Pierce had questioned appellant because of allegations of wrongdoing by the postmaster and for possible "timekeeping discrepancies." In a statement received by the Office on June 21, 2001, Mr. Pierce indicated that on May 21, 2001 he interviewed all employees at the employing establishment because of allegations against the postmaster. He stated that Mr. Mooney was a witness to the interview with appellant. Mr. Pierce related:

"I did ask [appellant] questions, showing her documentation with her initials and signature, about the improper time recording procedures. I did ask her questions about her involvement with the interview process conducted on January 30, 2001. I did ask [appellant] questions about her involvement of the solicitations and promotion of Mary Kay products at the [employing establishment]. I did ask her a question in regards to some long distance [tele]phone calls from the office. All [of] these questions were asked in a calm and professional manner only to find out what [appellant] had knowledge of in regards to specific violations and impropriety by the [p]ostmaster. Throughout this entire interview there were no threats made. During the interview, when I began to ask [appellant] of her specific involvement in all of the allegations [she] did get emotional, sobbing. [Appellant] told me all she was doing was what the [p]ostmaster told her to do. I informed her that the documentation I was reviewing revealed she had falsified time records on many occasions and there was no [p]ostmaster initial or signature anywhere on the time cards. I informed her this was a serious violation of the rules and regulations of the [employing establishment] but if she cooperated in this investigations and was truthful then I would do all within my power to save her career."

In a statement received by the Office on June 18, 2001, Mr. Mooney, a supervisor, related that during the interview with Mr. Pierce appellant "was presented with numerous improprieties made by her[self] and others while employed at the [employing establishment]. He stated: "At no time during this interview did Mr. Pierce raise his voice to [appellant] nor did he threaten her." In a statement dated March 7, 2001, Mr. Mooney described Mr. Pierce's questioning appellant about time cards, Mary Kay fliers and the sale of Mary Kay products. He related: "Mr. Pierce stated to [appellant] that he was not attempting to end her career with the [employing establishment]. He stated that he was pretty sure that she had been instructed to do the things she had done. Mr. Pierce then ask[ed] [appellant] to give him a statement about being instructed to do the things she had done." Mr. Mooney noted that appellant had not signed the statement. On April 5, 2001 Mr. Mooney also wrote appellant a letter of demand regarding a shortage of funds in her account.

The record contains an Equal Employment Opportunity (EEO) complaint of discrimination by appellant against Mr. Pierce and a preliminary investigative memorandum.

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<sup>5</sup> *Garry M. Carlo*, 47 ECAB 299 (1996).

However, the record does not contain a disposition of the complaint and thus it is insufficient to establish error or abuse by the employing establishment. As appellant has not submitted sufficient evidence to show administrative error or abuse by Mr. Pierce in his interview of her on February 21, 2001, she has not established a compensable factor of employment.

The Office properly found that Mr. Pierce's touching of appellant's head on February 14, 2001 occurred in the performance of duty. Physical contact by a coworker or supervisor may give rise to a compensable work factor, if the incident occurred as alleged.<sup>6</sup> In this case, Ms. Roland provided a statement dated June 5, 2001 corroborating appellant's allegation that Mr. Pierce touched her. Ms. Roland stated: "... I saw Mr. Pierce take his hand, place it on the back of [appellant's] head, turn her head around and take her back inside the [employing establishment] with his hand on her back shoulder as he guided her back inside." Thus, appellant has established a compensable employment factor under the Act.

Appellant's burden of proof, however, is not discharged by the fact that she has established an employment factor, which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.<sup>7</sup>

In an admission report dated April 16, 2001, Dr. R.G. Chambers, a psychiatrist, provided a provisional diagnosis of major depression with a suicide plan. He stated:

"[Appellant] relates her depression to stress on the job. She has worked for the [employing establishment] for six years and ha[s] had a good work record but recently the postmaster there has come under investigation for possibly selling Mary Kay products on their time. [Appellant] works very closely with the postmaster and is her good friend as well and has been very stressed out over the situation. She says she feels threatened by the investigator [Mr.] Pierce, who actually has made some verbal threats to her. [Appellant] says he is out to get her. She has been unable to work secondary to her stress level for two months and states it is because 'I am scared' but then says she does [not] know exactly what she is scared of. [Appellant] recently received a letter from the [employing establishment] saying that she [o]wed them \$1,600.00 to \$1,700.00 for a shortage in her drawer. She says she has never had a shortage before and, again, she is feeling very threatened."<sup>8</sup>

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<sup>6</sup> *Martha L. Watson*, 46 ECAB 407 (1995).

<sup>7</sup> *See William P. George*, 43 ECAB 1159, 1168 (1992).

<sup>8</sup> The record contains a psychological assessment of appellant obtained during her hospitalization. In a psychological summary dated April 17, 2001, a licensed clinical social worker noted that appellant related an "aggressive incident [with] her district manager in which he grabbed her face and turned her head to the side." Dr. Chambers signed the psychological assessment on April 18, 2001. The assessment, however, did not contain any diagnosis or finding regarding causation and thus, is insufficient to establish appellant's claim for benefits.

In a discharge summary dated April 20, 2001, Dr. Chambers discussed appellant's statement that the postmaster was under investigation for allegedly selling Mary Kay products at the employing establishment. He noted that appellant related that the "investigating officers have been pushing [appellant] for more information and she also said that she had been accused of falsifying documents but had not been officially charged with anything." Dr. Chambers diagnosed major depression with a suicide plan and alcohol abuse. However, while he discussed appellant's recent work experiences, he did not attribute her diagnosed condition of major depression to work factors, in particular the accepted compensable factor of employment. As Dr. Chambers did not address the cause of appellant's major depression, his reports are of little probative value.<sup>9</sup>

In an initial evaluation dated August 30, 2001, Dr. R. Adair Blackwood, a Board-certified psychiatrist, noted that appellant experienced problems at work. He reported that appellant related that "she was sexually harassed and when she turned him in he accused her of stealing and falsifying documents." He diagnosed major depressive disorder, single episode without psychotic features, post-traumatic stress disorder and a generalized anxiety disorder. Dr. Blackwood, however, did not specifically attribute appellant's diagnosed condition to her employment. Further, Dr. Blackwood noted an inaccurate history of injury, that of appellant being sexually harassed at work and thus his report is of diminished probative value.<sup>10</sup>

In a report dated October 10, 2001, Dr. Stephen Schmidt, Board-certified in family practice, diagnosed severe depression. He stated that appellant related that the "stressor which triggered her symptoms was reported as an 'investigation' at work which greatly affected her." Dr. Schmidt noted a stressor could trigger depression and stated: "Due to the correlation of her symptoms with the onset of this stressor it seems very likely that this was the inciting event." Dr. Schmidt finding that an investigation at work "very likely" caused appellant's depression is speculative in nature and thus of little probative value.<sup>11</sup> Further, he did not attribute appellant's condition to the identified compensable employment factor, Mr. Pierce touching appellant on February 14, 2001.

In a report dated October 10, 2001, Dr. Eric D. Morgan, Board-certified in family practice, diagnosed severe depression. He stated:

"[Appellant] alleges that her depression was triggered by events that had occurred in her work environment specifically with her supervisor, dating from February 2001. These allegations appear plausible to me, as she has detailed several work events that occurred during this period that caused (and continue to

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<sup>9</sup> *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

<sup>10</sup> *See Joseph M. Popp*, 48 ECAB 624 (1997) (a medical opinion must be based on a complete and accurate factual and medical history).

<sup>11</sup> *Alberta S. Williamson*, 47 ECAB 569 (1996).

cause) significant distress on her part. No other triggers for her depression have been discovered by me.”<sup>12</sup>

Dr. Morgan, however, did not specifically describe the work events to which appellant attributed her stress and thus, his opinion is insufficient to establish that she sustained an emotional condition due to her encounter with Mr. Pierce on February 14, 2001.<sup>13</sup>

Accordingly, the Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

The decisions of the Office of Workers’ Compensation Programs dated July 16, 2002 and September 19, 2001 are affirmed.

Dated, Washington, DC  
February 27, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>12</sup> In a report dated October 18, 2001, Dr. Morgan found that appellant appeared ready to resume work but that the possibility of a relapse remained. In an addendum dated October 22, 2001, Dr. Morgan recommended that appellant return to a different work site to lower the possibility of relapse.

<sup>13</sup> Further, Office procedures provide that a claim for an emotional condition must be supported by an opinion from a psychiatrist or clinical psychologist before the condition can be accepted. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d)(6) (June 1995).