

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MELISSA D. CANTRELL and U.S. POSTAL SERVICE,
POST OFFICE, Columbia, TN

*Docket No. 03-46; Submitted on the Record;
Issued June 19, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant established that she sustained an emotional condition in the performance of duty due to employment factors that occurred on or after August 26, 2000.

On April 1, 2001 appellant, then a 47-year-old modified distribution window clerk, filed a notice of occupational disease alleging that she sustained a psychiatric condition as a result of harassment and disparate treatment at the employing establishment since her modified rehabilitation job changed. She indicated on her CA-2 claim form that she first became aware that her emotional condition was due to her federal employment in May 2000. There is no indication that appellant stopped work.

By letter dated September 19, 2001, the Office of Workers' Compensation Programs informed appellant of the type of evidence needed to support her claim. In a second letter that day, the Office requested that the employing establishment provide evidence regarding appellant's allegations.

In response, appellant submitted a statement dated September 26, 2001 medical evidence and evidence regarding a prior accepted claim. She alleged: (1) her modified distribution clerk position had changed with more duties added to the job description and the volume of mail needed to be processed was increased; (2) she became the target of hostility and was constantly being reprimanded, without cause, several times a day. This resulted in either the police being called or her being sent home following a meeting with management; (3) she had to work only inches away from Frank Stewart, a coworker. Appellant had filed a previous claim, 06-072081, against Mr. Stewart alleging that he had hit her left arm with a tray of mail; (4) management informed her and provided her a list of people with whom she was not allowed to speak to; (5) she suffered continued harassment by Mr. Stewart in the form of gestures (crossing his arms and laughing) and kicking the door, trying to get into her office; (6) Wayne Voss, another coworker, sabotaged her work on November 2, 1999 by moving mail from screened location to another location; (7) when she returned to work in the modified distribution clerk position, she

was purposely moved to a “noisy” work area, where she could not hear the callers. She stated that she had to enlist assistance from other coworkers and she was forbidden to call for help. Appellant further stated that she was responsible for approximately 30 to 35 calls per day, in addition to other duties; (8) she was not allowed to go to the bathroom when anyone else was in the bathroom. She stated that other coworkers did not have these “bathroom” restrictions.

The Office issued a statement of accepted facts dated October 30, 2001. The following factors were considered work related. After appellant returned to work approximately August 26, 2000 from a prior disability period, she was moved to a noisy work area where she could not hear the carriers speaking while checking them in. She had to obtain assistance to relay what was said. Appellant had her telephone amplifier removed, so she could not facilitate customer complaints and had sought assistance from other employees to speak to customers. She was responsible for approximately 30 to 35 calls per day. A coworker sabotaged her work, by moving mail from a screened location to another location. Appellant was made to pull mail from a former coworker’s case while he was present. The Office noted that this coworker was a former assailant. The employing establishment agreed to supply quiet workspace to accommodate appellant in handling telephone calls, due to her hearing problem; however, she was ordered to take leave without pay until such accommodations were completed.

Factors which the Office considered nonwork related were: appellant’s office was taken away; she was constantly reprimanded for various reasons; and her workstation was placed in the corner facing the wall outside her supervisor’s office.

Claimed factors, which the Office found to be unsubstantiated were: work volume increased requiring appellant to work outside her work restrictions; appellant was given a list of people she was forbidden to talk to; appellant was accused and reprimanded for following certain people to the restroom, but she did not say anything to the person; and appellant was told she could not go to the bathroom when someone else was present.

In a decision dated October 30, 2001, the Office denied the claim on the grounds that appellant failed to establish fact of injury. The Office found that although appellant had alleged several compensable work factors, they were unsubstantiated. Appellant’s other allegations were either nonwork related or were unsubstantiated. By letter dated November 16, 2001, appellant requested reconsideration and submitted additional evidence. In an April 11, 2002 decision, the Office modified the October 30, 2001 decision to reflect that appellant failed to establish a compensable factor of employment since the alleged actions were administrative and thus not in the performance of duty. The Office noted that appellant’s allegations, which were considered work related, were unsubstantiated.

The Board finds that appellant failed to establish that she sustained an emotional condition in the performance of duty.¹

Initially the Board notes that the Office limited this claim to factors of employment occurring on or after August 26, 2000. The record reflects that the Office, in claim number 060720851, had accepted a left arm contusion and anxiety reaction arising from a traumatic injury sustained on January 26, 1999. After appellant returned to work on August 26, 2000, following a period of disability in claim number 060720851, she alleged new intervening work factors. The Office advised appellant in its decisions arising under claim number 060720851 that a separate claim for occupational disease should be filed. The instant case, arising under claim number 062039810, concerns appellant's emotional condition claim for work factors which arose on or after August 26, 2000 and are unrelated to the work factors identified in the prior claim, claim number 060720851. Accordingly, the evidence of record which concerns incidents arising under the prior claim or predating the current claim will not be considered as it is not relevant to the allegations of the current claim.²

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition, and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.³ There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.⁴

The first issue to be addressed is whether appellant has established factors of employment that contributed to her alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁵ On the other hand, disability is not covered where it results

¹ On November 27, 2002 the Board issued an order dismissing appeal on the grounds that, although the Board provided appellant with a "reasonable opportunity" to furnish the necessary information to enable the Board to properly process her appeal, appellant failed to submit the requested information in the time allotted. On February 27, 2003 the Board issued an order vacating prior Board order and reinstating appeal. The Board noted that at the time it issued the November 27, 2002 order dismissing appeal, it had the completed AB-1 form in its possession and such continuous possession predated the issuance of the Board's order. Therefore the order was void *ab initio* and the Board did not relinquish jurisdiction over the appeal.

² The record indicates that on May 31, 2000 appellant filed a recurrence claim in case number 060720851. In a decision dated June 20, 2000, an Office hearing representative affirmed an October 25, 2000 decision denying the recurrence claim and advised appellant to file a new claim for disability after May 31, 2000. It is, however, unclear from the record whether a claim was filed for any condition and/or disability for the period May 31 to August 26, 2000 and the Board notes that in letters dated November 16 and 17, 2001, appellant asserted that she was not claiming factors after August 26, 2000.

³ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

⁴ See *Ruth C. Borden*, 43 ECAB 146 (1991).

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.⁶ Perceptions and feelings, alone, are not compensable. Only when the matter asserted is a compensable factor of employment and the evidence establishes the truth of the matter asserted may the Office then base its decision to accept or reject the claim on an analysis of the medical evidence.⁷

Appellant alleged that her modified distribution clerk position changed with increased volume of mail needed to be processed; she was the target of hostility by management and was constantly being reprimanded, without cause; she was forced to work inches away from a coworker with whom she filed a prior claim against; she was forbidden to talk to certain people as directed by management; the coworker with whom she filed a previous claim against continued to harass her; another coworker had sabotaged her work on November 2, 1999 by moving mail from screened location to another location; management purposely moved her to a "noisy" work area, where she could not hear the callers and she had to enlist assistance from other coworkers as she was forbidden to call for help; she was not allowed to go to the bathroom when anyone else was in the bathroom.

In support of her claim, appellant submitted statements from Vivian Timmons dated October 3 and November 17, 2001, which contain duplicate information. Although Ms. Timmons claimed that she witnessed various incidents appellant alleged management and her coworkers took, the Board finds that Ms. Timmons' statements are devoid of the specific details concerning appellant's allegations. For example, although Ms. Timmons stated that management (Kathy Hinkle) deliberately increased appellant's workload after she complained that the repetitive movement were against her restrictions, Ms. Timmons fails to provide any specific dates or times or provide any evidence of how the number of "return to sender" letters appellant had to stamp with her left arm was increased. Ms. Timmons additionally stated that she had witnessed Wayne Voss sabotaging appellant's mail and had made a verbal complaint to this effect, but she failed to give any specific details concerning the nature of the "sabotage" or when it occurred. Ms. Timmons stated that she had witnessed Jerry Brady give appellant a direct order to pull her Nixie Mail from the case where Mr. Stewart sat, but she failed to address when such order was given or what happened after appellant complied with the work order. Accordingly, Ms. Timmons' statements do not affirmatively establish that appellant's coworkers or management harassed, abused or mistreated appellant after she returned to work in her modified-duty position.⁸ The Board finds that appellant has failed to submit evidence to support her general allegations that she was harassed, mistreated, or treated in a discriminatory manner by management or her coworkers.

⁶ *Id.*

⁷ *Id.*

⁸ *Merriett J. Kauffmann*, 45 ECAB 696 (1994).

Appellant further alleges that she sustained an emotional condition due to harassment by her supervisors. As a general rule, appellant's reaction to administrative decisions undertaken by her supervisors would fall outside the scope of coverage under Act;⁹ however, an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment.¹⁰ In determining whether the employing establishment erred or acted abusively, the Board determines whether the employing establishment acted reasonably. There is insufficient evidence of record to establish that appellant's supervisors acted unreasonably or in an improper manner as alleged by appellant.

Appellant maintains that the modified distribution clerk duty position, which she had accepted, had changed. She contended that the employing establishment failed to accommodate her nonwork-related hearing impairment, had removed her telephone audio amplifier and failed to replace it. Appellant asserted that she was required to take leave without pay during the period the employing establishment was preparing or attempting to complete the accommodations required for her nonwork-related hearing impairment. She further alleged that her "office" was taken away and her new workstation was in a corner, facing the wall outside her supervisor's office.

The Board notes that the assignment of an employee to a specific work location is recognized as an administrative function of the employing establishment and, absent any error or abuse, does not constitute a compensable factor of employment.¹¹ Since appellant's work location is an administrative function of the employing establishment, her emotional reaction to how the employing establishment responded to her request is not covered under the Act and is not a compensable factor of employment. While it is apparent from the record that appellant had a nonwork-related hearing impairment which the employing establishment accommodated, the evidence of record does not show error or abuse in this matter. Appellant has not shown persuasive evidence in support of her contention that the employing establishment's actions in relocating her and taking away her telephone audio amplifier constituted error or abuse.

The Board initially notes that the record in the instant case does not indicate that the employing establishment responded to the Office's letter of inquiry dated September 19, 2001. The Board therefore finds that as appellant was required to take 30 to 35 calls per day from customers and asserts she was unable to hear the callers, this constitutes a compensable factor of employment.¹² The medical evidence will be addressed.

The medical evidence relevant to appellant's condition on or after August 26, 2000 includes a September 25, 2000 report from Dr. Raju V. Indukuri, a Board-certified psychiatrist, in which he diagnosed depression, anxiety disorder and post-traumatic stress disorder. Although Dr. Indukuri appeared to suggest that appellant might have sustained an aggravation of her

⁹ See *Michael L. Malone*, 46 ECAB 957 (1995).

¹⁰ See *Mary A. Sisneros*, 46 ECAB 155 (1994).

¹¹ See *Peggy R. Lee*, 46 ECAB 527 (1995).

¹² See *Lillian Cutler*, *supra* note 5.

preexisting mental conditions which the Office had previously accepted under case number 060720851, this evidence is not relevant to the current claim. He stated that he last examined appellant on August 24, 2000, which predates the instant claim. There is therefore no relevant contemporaneous medical evidence pertaining to appellant's disability on or after August 24, 2000.

Thus, appellant failed to establish that her emotional condition after August 26, 2000 was caused by a compensable factor of employment.

The decision of the Office of Workers' Compensation Programs dated April 11, 2002 and October 30, 2001 are hereby affirmed.

Dated, Washington, DC
June 19, 2003

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member