

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ANTOINETTE H. JOHNSON and U.S. POSTAL SERVICE,  
AIR MAIL FACILITY, Grand Rapids, MI

*Docket No. 03-479; Submitted on the Record;  
Issued June 9, 2003*

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DECISION and ORDER

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

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

On June 30, 2001 appellant, then a 44-year-old ramp clerk, filed a notice of an occupational disease alleging work-related anxiety. She explained in an attached statement to her Form CA-2 that on June 26, 2001 she had been told that a fitness-for-duty examination revealed that she suffered from paranoid schizophrenia. The record indicates that appellant stopped work on February 26, 2001 and was separated from her employment effective September 1, 2001.

The employing establishment provided a copy of a May 22, 2001 fitness-for-duty report prepared by Dr. William Decker, a Board-certified psychiatrist, who had seen appellant on April 5, 2001. Dr. Decker discussed appellant's habits, hobbies, marital, work and medical histories. He related that appellant had been fired from a furniture manufacturing company in the past for insubordination and that she had received at least six letters of warning from the employing establishment during the period 1991 through 2001. Dr. Decker stated that appellant had been placed on suspension on February 26, 2001 for telling two coworkers that she was so mad she was going to kill everyone. Appellant, however, was noted by the physician as denying the remark. Dr. Decker expressed his opinion that appellant suffered from paranoid schizophrenia and was not capable of performing the functional requirements of an air mail facility ramp clerk position without posing a threat or hazard to herself and others. He noted in the past that appellant had refused in the past to take Prozac and had a history of long-standing difficulty with interpersonal relationships." Dr. Decker stated as follows:

“[A]ppellant's paranoid and delusional beliefs have become more deeply entrenched and her response to them progressively more hazardous to the point of intimating 'going postal' and more recently [a reported threat] to kill those whom she felt were against her or who had at one time or another offended her or caused her distress. There is no 'cure' for her condition. Some medications currently

available in some cases are able to dampen the [hostile] aggressive behavior of the individual but usually have little or no *affect* on the attitudinal or ideational state of the individual: they continued to distrust the motivations of others and feel victimized. An undertaking of a course of treatment would require an acknowledgment for the need of treatment and compliance with the treatment plan. Given her avowed attitude that she does what she wants to do irrespective of the consequences which she will deal with after the fact, her discontinuance of previous medication prescribed for her ... [it] is unlikely that [she] would participate in a remedial therapeutic program or if she did that she would lend the necessary cooperation in terms of working toward modifying her attitude and belief systems sufficiently and cooperatively, harmoniously and without hazard to others.” (Emphasis in the original.)

In an August 6, 2001 letter, the Office of Workers’ Compensation Programs advised appellant of the factual and medical evidence required to establish her claim.

By letter dated August 15, 2001, appellant related that she had been examined by an independent psychologist who informed her that she was misdiagnosed with paranoid schizophrenia. She alleged that due to the misdiagnosis she was injured in her ability to perform the essential functions of her job.

On August 23, 2001 letter the employing establishment advised that appellant had been removed from her position as a ramp clerk because of her verbal threats and propensity for violence as confirmed by the fitness-for-duty examination.

In September 5, 2001 report, Dr. Don A. Boyd, a licensed psychologist, expressed his opinion that appellant did not suffer from paranoid schizophrenia. He noted that appellant had discussed with him the allegations regarding her behavior, but denied acting in an aggressive, retaliatory or physically threatening manner to other employees. Dr. Boyd recommended counseling and mediation with her supervisors so that she could return to work.

In a report dated November 26, 2001, Dr. Tariq M. Faridi, a Board-certified psychiatrist, indicated that appellant had been examined on October 5 and November 21, 2001. He related that appellant had been let go by the postal service for allegedly making a comment to two coworkers that she was going to “kill everyone.” Dr. Faridi noted that appellant denied making the statement and felt that the employing establishment undertook to remove her from her position due to racial discrimination. He stated as follows:

“When seen here she did not present any evidence of any paranoid ideation, any delusional thinking process and no history of hallucinations. She has felt frustrated, anxious, upset and angry when she was let go or accused of things she did not do or did not say. She is not showing any evidence of hopelessness or worthlessness, and no evidence of any depression or suicidal thoughts. There is no evidence of any anxiety and she is doing well since she is off work, even though it is a financial hardship, as she does not have to go through day to day issues at her job.

I do n[o]t see any evidence of any thinking disorder or mood disorder at this point and no evidence of any schizophrenia which she was diagnosed with when she was evaluated by the company psychiatrist. She does not need to take any medication and I may see her once more to reevaluated (sic) in six to eight weeks. Then there wo[uld] n[o]t be any need for to her to see me.”

In a supervisor statement prepared by Phillip Roth dated October 1, 2001, taken in conjunction with appellant’s application for disability with the Federal Employees’ Retirement System (FERS), it was noted that “[a]irport security will not allow conduct of employee in the ramp position she formally held.” He stated that a forensic psychiatrist had documented appellant as unable to perform her duties due to safety concerns for herself and other workers. He further stated: “[a] ramp clerk works in a very secure area of the airport and Federal Aviation Administration with not allow actions of the nature cited by the psychiatrist.”

The record further contains a July 9, 2001 notice of proposed separation for disability and a November 30, 2001 letter from appellant to the employing establishment requesting reemployment.

In a decision dated December 18, 2001, the Office denied compensation on the grounds that appellant had alleged no compensable work factor and therefore was unable to establish that that her emotional condition was sustained in the performance of duty. Appellant subsequently filed a request for a hearing on December 20, 2001.

By letter dated April 24, 2002, appellant was denied disability retirement by the Office of Personnel Management (OPM). It was noted that the evidence was insufficient to show that appellant’s service deficiencies were the result of a disabling condition of paranoid schizophrenia. The OPM also stated that appellant could not be considered disabled since the medical record suggested that her psychiatric illness was amenable to treatment, but that she refused to participate in a remedial therapeutic program.

In a May 5, 2002 letter, appellant advised the Office that she wished to expand her claim to include negligent infliction of emotional distress and misdiagnosed schizophrenia. An oral hearing was held on May 30, 2002 at which time appellant was given the opportunity to testify with regard to her claim. Additional evidence was also received into the record.<sup>1</sup>

Appellant submitted documents pertaining to her claim for disability under FERS, a May 7, 2002 letter from the employing establishment denying her request for reemployment, letters from appellant to the employing establishment asking that they provide information as to the specific behavior deemed to be a direct threat, a handout entitled “Management Instructions”

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<sup>1</sup> On November 24, 2002 appellant requested reconsideration. She argued that she was separated from her employment in retaliation for filing a workers’ compensation claim. Appellant argued that the diagnosis of paranoid schizophrenia was caused by racism at work. She alleged that her supervisor, Mr. Roth, refused to give her proper training to accomplish her job requirements of scanning mail and SAMS training. Appellant stated that she was left out in the cold when coworkers deliberately ignored her banging on the door to get into the facility. She stated that she was forced to discuss personal matters with her supervisor on the workroom floor in the earshot of her coworkers and that she was the subject of a racial attack when a “gasoline soaked rag” was left in the trash can near her desk.

for fitness-for-duty examinations, copies of certificates of completion and appreciation, a 1991 performance award authorization, a copy of a handout regarding unemployment compensation, a copy of a decision issued by an administrative law judge dated May 17, 2001 finding that appellant was not disqualified from receiving disability benefits, a copy of a handout entitled "Introduction to Reasonable Accommodation," a copy of a handout regarding the reasonable accommodation, an employee probationary period report, a priority mail proposal, a copy of a handout regarding hiring policy, a January 9, 2001 memorandum regarding a sweepstakes competition and "sneaky sam winners," and various employment documents pertaining to appellant's notification of separation based on disability.

Appellant also submitted a May 21, 2002 report by Dr. Richard L. King, a limited licensed psychologist, who diagnosed that appellant suffered from adjustment reaction with mixed anxiety and depressed mood based on the results of Minnesota Multiphasic Personality Inventory (MMPI)-2 profile, a beck depression inventory and a wahler self-description inventory.

In a decision dated September 10, 2002, an Office hearing representative affirmed the Office's December 18, 2001 decision.

In a decision dated December 17, 2002, the Office denied appellant's request for reconsideration on the merits. Appellant again requested reconsideration on December 27, 2002 alleging that the employing establishment acted abusively by separating her from her employment without first attempting a reasonable accommodation of her psychological handicap. In a January 14, 2003 decision, the Office denied modification of its prior decision.

Initially, the Board notes that appellant filed her appeal with the Board on December 13, 2002. The Office and the Board may not have simultaneous jurisdiction over the same issue in the same case. Following the docketing of an appeal with the Board, the Office does not retain jurisdiction to render a further decision regarding a case on appeal until after the Board relinquishes its jurisdiction. Any decision rendered by the Office on the same issues for which an appeal is filed is null and void.<sup>2</sup> Because the Office in this case issued two decisions on reconsideration subsequent to the docketing of appellant's appeal with the Board on December 13, 2002, the Board considers the Office decisions dated December 17, 2002 and January 14, 2003 to be null and void.

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

In order to establish that an employee sustained an emotional condition in the performance of duty, the employee must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the emotional condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.<sup>3</sup> Rationalized

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<sup>2</sup> *Noe L. Flores*, 49 ECAB 344 (1998); *Douglas E. Billings*, 41 ECAB 880 (1990).

<sup>3</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the employee's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 the employee.<sup>4</sup>

Workers' compensation law is not applicable 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 coverage of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.<sup>5</sup> On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.<sup>6</sup>

As a general rule, an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee.<sup>7</sup> However the Board has also held that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.<sup>8</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>9</sup>

In this case, appellant contends that she is entitled to compensation for anxiety and depression she experienced as a result of first being diagnosed as a paranoid schizophrenia by an employing establishment physician following her fitness-for-duty evaluation and then being forced to leave her job based on the erroneous diagnosis.

The Board notes that, while appellant has submitted reports from Drs. Boyd and Tariq stating that she does not suffer from paranoid schizophrenia, the Board's inquiry is whether the employing establishment acted in error or in an abusive manner in first requiring appellant to undergo a fitness-for-duty evaluation and then for relying on the physician's report. The Board finds no error or abuse on either count. The employing establishment acted reasonably in

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<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> *Joel Parker, Sr.*, 43 ECAB 220 (1991).

<sup>7</sup> See *Michael L. Malone*, 46 ECAB 957 (1995); *Gregory N. Waite*, 46 ECAB 662 (1995).

<sup>8</sup> See *Elizabeth Pinero*, 46 ECAB 123 (1994).

<sup>9</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

seeking to determine whether appellant was an emotionally stable worker based on the verbal statements she made to two coworkers. Although appellant denies making a threat, witness statements are consistent in relating appellant's anger and inappropriate comment that she was going to "kill everyone." The employing establishment is under an obligation to maintain a safe workplace; therefore, the Board finds no error or abuse in the administrative action of having appellant undergo a fitness-for-duty examination.<sup>10</sup>

Appellant's disagreement that she has paranoid schizophrenia does not in and of itself prove that the employing establishment erred in releasing her from her job based on Dr. Decker's diagnosis. The Board points out that the reports from Drs. Boyd and Faridi rely on appellant's denial of making any verbal threats or statements that could have been perceived as threats. The physicians of record may disagree as to whether appellant's behavior constitutes paranoid schizophrenia, but there is no evidence to support appellant's allegation that the employing establishment acted erroneously or abusively in relying on Dr. Decker's warning that she could present a danger to herself or others if she stayed on the job. Thus, with respect to her termination, appellant has not established that the employing establishment actions were improper. The employing establishment acted reasonably in suspending appellant after receiving information that she had made statements to coworkers that were suggestive of violence.<sup>11</sup>

Additionally, the Board finds no factual support for appellant's general allegation of harassment in the workplace. The mere perception of harassment or discrimination is not sufficient to establish a compensable factor of employment,<sup>12</sup> and appellant has provided no corroboration that such harassment occurred. Thus, because appellant failed to allege a compensable work factor, she was unable to show that her emotional condition arose in the performance of duty.<sup>13</sup> The Board therefore finds that the Office properly denied compensation.

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<sup>10</sup> See generally *Mary M. Washington*, 46 ECAB 382 (1994). (Appellant alleged that harassment by the employing establishment took the form of having to take fitness-for-duty examinations; however, the Board found that the employing establishment acted reasonably in carrying out the administrative function of ascertaining whether appellant had the work capabilities necessary for the job).

<sup>11</sup> The actions of an administrative agency in reviewing an investigating charges and rendering decisions do not relate to appellant's assigned duties and are not compensable factors of employment. *Blondell Blassingame*, 48 ECAB 130 (1996).

<sup>12</sup> *Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>13</sup> As appellant did not establish a compensable factor of employment, the Board need not address the medical evidence of record regarding causal relationship; see *Margaret S. Krzycki*, 43 ECAB 496 (1992).

The decisions of the Office of Workers' Compensation Programs dated September 10, 2002 are hereby affirmed.

Dated, Washington, DC  
June 9, 2003

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member