

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA A. MAU and U.S. POSTAL SERVICE,
POST OFFICE, Fennimore, WI

*Docket No. 03-590; Submitted on the Record;
Issued June 6, 2003*

DECISION and ORDER

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

The issues are: (1) whether appellant met her burden of proof to establish that she developed an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

On September 20, 2001 appellant, then a 37-year-old postal clerk, filed a claim for an emotional condition which she related to the death of her postmaster. On her claim form, and in an accompanying narrative statement, appellant stated that she had been a normally functioning individual until 1998 when her postmaster was killed in an automobile accident. Appellant stated that she had been the last person to see and work with her postmaster, and that she was devastated by her death. Appellant asserted that she and the postmaster were close, and that her death triggered symptoms of deep depression and anxiety, making it difficult to concentrate, make decisions or cope under pressure. Appellant stopped work on September 12, 2001 and returned to work, four hours a day, on September 26, 2001. Appellant resumed full-time work on October 2, 2001.

By letters dated November 20, 2001, the Office asked appellant and the employing establishment to submit additional factual and medical information, and in particular, to describe how the postmaster's death related to appellant's day-to-day duties.

In a letter dated January 4, 2002, Nancy Ruf, a representative of the employing establishment, controverted appellant's claim and submitted several statements from appellant's coworkers disputing that she had had a close relationship with the late postmaster. In a narrative response, appellant reiterated that she had been the last person to see and talk with the postmaster, and that she had had a difficult time adjusting to her death. In a decision dated February 1, 2002, the Office rejected appellant's claim on the grounds that the evidence she submitted was insufficient to establish that her diagnosed emotional condition arose in the performance of her federal employment duties. By letter dated February 12, 2002, appellant requested reconsideration of the Office's prior decision and submitted additional medical

evidence in support of her request. In a decision dated October 25, 2002, the Office found that the evidence submitted with appellant's request was insufficient to warrant merit review of her claim. The instant appeal follows.

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

Congress, in providing for a compensation program for federal employees, did not contemplate an insurance program for every injury, illness, or mishap that might befall an employee contemporaneous or coincidental with his or her employment; liability does not attach merely upon the existence of an employee-employer relation.¹ Instead, Congress provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.² "While in the performance of duty" is the equivalent of the commonly found requisite in workers' compensation law of "arising out of and in the course of employment." "In the course of employment" deals with the work setting, the locale and time of injury whereas "arising out of the employment" encompasses not only the work setting but also a causal concept, the requirement being that an employment factor caused the injury.³

To occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be said to be engaged in his or her master's business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.⁴ Where an employee experiences emotional stress in carrying out employment duties and the medical evidence establishes that the disability resulted from his or her reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of the employment, and would therefore come within the coverage of the Act. This is true where the employee's disability resulted from his or her emotional reaction to regular day-to-day or specially assigned work duties or to a requirement imposed by the employment.⁵

In her narrative statements, appellant stated that she had been close to her postmaster, and that her sudden death in an automobile accident had triggered symptoms of depression and anxiety. Appellant was not involved in the automobile accident, nor did she witness it. Rather, she was told of the accident by a postal customer approximately 20 minutes after it occurred, and learned of her postmaster's death over the telephone. While appellant stated that she had been the last person to see and work with the postmaster, and that she had had a hard time adjusting to

¹ *Lois F. Watson*, 42 ECAB 400 (1991); *Christine Lawrence*, 36 ECAB 422 (1985); *Minnie M. Huebner (Robert Adam Huebner, Jr.)*, 2 ECAB 20 (1948).

² See 5 U.S.C. §§ 8101-8193.

³ *Lois F. Watson*, *supra* note 1; *Dennis F. Rafferty*, 16 ECAB 413 (1965).

⁴ *Lois F. Watson*, *supra* note 1; *Carmen B. Gutierrez*, 7 ECAB 58 (1954).

⁵ *Lois F. Watson*, *supra* note 1; *Carla E. Phillips*, 39 ECAB 1040 (1988); *Pauline Phillips*, 36 ECAB 377 (1984); *Lillian Cutler*, 28 ECAB 125 (1976).

the postmaster's death, she did not identify any specific duty or duties within her job description or any factors reasonably incidental thereto which caused her disability. As appellant's condition did not result from her day-to-day activities or specially assigned duties or any other requirement imposed by her employment, her emotional condition is not covered by the Act, nor has appellant presented any evidence that her emotional condition was a reaction or response to duties incidental to her employment.⁶

The Board further finds that the Office did not abuse its discretion in denying appellant's request for merit review.

Section 10.606 of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁷ Section 10.608 provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.⁸

As noted above, following the Office's February 1, 2002 decision, by letter dated February 12, 2002, appellant requested reconsideration and submitted additional evidence in support of her request. In a decision dated October 25, 2002, the Office denied appellant's request on the grounds that she neither raised substantive legal questions nor included new and relevant evidence.

The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.⁹ In support of her argument, appellant submitted medical evidence documenting the diagnosis and treatment of her psychiatric condition.

It is not disputed that appellant suffers from an emotional condition. However, in its most recent merit decision dated February 1, 2002, the Office specifically found that appellant failed to establish any compensable factor of employment. With respect to appellant's request for reconsideration, the Board notes that none of the documents submitted are relevant to the issues in the current claim, *i.e.*, whether appellant has established that her condition resulted from her day-to-day activities or specially assigned duties or any other requirement imposed by her employment. Evidence which does not address the particular issue involved does not constitute a basis for reopening the claim.¹⁰ As appellant failed to raise substantive legal questions or to

⁶ See *Carla E. Phillips*, *supra* note 5 at 1049; see also 5 U.S.C. § 8102(a) (compensation is payable only for injury sustained while in the performance of duty).

⁷ 20 C.F.R. § 10.606(b).

⁸ 20 C.F.R. § 10.608.

⁹ See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

¹⁰ *Richard L. Ballard*, 44 ECAB 146, 150 (1992).

submit new relevant and pertinent evidence not previously reviewed by the Office, the Office properly refused to reopen appellant's claim for review of the merits.

The decisions of the Office of Workers' Compensation Programs dated October 25 and February 1, 2002 are hereby affirmed.

Dated, Washington, DC
June 6, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member