

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MALINDA M. SMITH and U.S. POSTAL SERVICE,  
PROCESSING & DISTRIBUTION CENTER, Lancaster, PA

*Docket No. 02-1480; Submitted on the Record;  
Issued March 19, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
A. PETER KANJORSKI

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

On April 5, 2000 appellant, then a 42-year-old distribution clerk, filed a claim for an occupational disease for "stress" that she attributed to having to reach deadlines in her job in automation and to hassles with the Office of Workers' Compensation Programs regarding her on-the-job injury. The Office had previously accepted that an employment injury on January 23, 1997 resulted in rotator cuff tendinitis of both shoulders, lateral epicondylitis of the left elbow and surgery on appellant's left elbow that was performed on August 4, 1997.

By decision dated May 3, 2001, the Office found that appellant had not established that she sustained an emotional condition in the performance of duty, as her allegations of employment factors were vague and unsubstantiated<sup>1</sup> and the medical evidence did not support that her emotional condition was related to her employment.

By letter dated May 7, 2001, appellant requested a hearing. At a hearing held on October 26, 2001 appellant testified that she had no arm or emotional problems before she was hired by the employing establishment in December 1986, that she last worked on September 28, 2001 and that she retired on disability effective October 1, 2001. She further testified that she was pressured to return to work from June to August 1997, that the employing establishment constantly went to her doctor to get updates and that when she returned to work in January 1998 she was casing rejects from the machines, which subjected her to deadlines to get the mail out by the end of Tour 1 to avoid delayed mail. Appellant also attributed her emotional condition to rumors and griping of coworkers about her performance of a limited-duty job, "smart remarks

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<sup>1</sup> Appellant did not reply to the Office's May 4, 2000 request for details of the factors to which she attributed her emotional condition.

like, can't you move faster, gimp" by her supervisors and the requirement to provide new paperwork for her new supervisors when she moved to Tour 2.

Commenting on appellant's testimony, both the supervisors appellant named at the hearing acknowledged that updated medical documentation was requested: one stated that he could "never remember talking to [appellant] in a degrading manner" and the other stated that he "would never have given her a smart remark about an injury" and that appellant was not pressured to return to work. The employing establishment's acting manager of injury compensation stated that it was their policy that any employee unable to perform full duty must provide a medical update every 30 days, that Tour 2 had "no urgent deadlines for casing manual mail" and that through weekly staff meetings the Tour 2 supervisors were aware of appellant's status.

By decision dated February 4, 2002, an Office hearing representative found that appellant failed to establish that she sustained an emotional condition in the performance of duty, as there was "no evidence that the claimant was pressured to return to work, meet unreasonable deadlines or work alone to get the mail processed." The Office hearing representative concluded that there were "no compensable factors of employment involved in this claim."

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

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 work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act. 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>

Any stress appellant experienced with regard to the processing of her claim by the Office and by the employing establishment does not arise in the performance of duty, as it bears no relation to appellant's day-to-day or specially assigned duties.<sup>3</sup> A request for medical documentation for continued absence or limited duty does not involve appellant's duties, but rather is an administrative function of the employing establishment.<sup>4</sup> Generally, actions of the employing establishment in administrative or personnel matters unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.<sup>5</sup> Appellant has

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<sup>2</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *George A. Ross*, 43 ECAB 346 (1991); *Virgil M. Hilton*, 37 ECAB 806 (1986).

<sup>4</sup> *Helen Castillas*, 46 ECAB 1044 (1995).

<sup>5</sup> *Michael Thomas Plante*, 44 ECAB 510 (1993).

not shown that the employing establishment's requests for medical documentation were unreasonable.

Appellant's fear of gossip and rumors is a personal frustration which was not related to her job duties or requirements and, therefore, is not compensable.<sup>6</sup> Although verbal abuse can be compensable,<sup>7</sup> appellant has not corroborated her assertion that her supervisors made smart remarks or called her a gimp.<sup>8</sup> These assertions were specifically denied by the supervisors named by appellant at the hearing. Also denied and not corroborated was appellant's assertion that the employing establishment pressured her to return to work prior to her surgery in August 1997.

The only compensable factor of her employment that appellant has established is the pressure to meet deadlines in her limited-duty position of casing mail. Emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable and there is no requirement that the duties or deadlines be unreasonable, contrary to the finding by the Office hearing representative.<sup>9</sup> Appellant testified, at an October 26, 2001 hearing, that there were deadlines to get the rejected mail that she was casing, out by the end of Tour 1 and that she experienced pressure in attempting to get this mail out. The employing establishment stated that there were no urgent deadlines on Tour 2, as the majority of each day's mail was processed by 8:00 a.m. The evidence establishes deadlines to process the mail by the end of Tour 1, but the case record does not establish when appellant moved from Tour 1 to Tour 2.<sup>10</sup>

Although appellant has identified a compensable factor of employment, this does not discharge her burden of proof to establish an employment-related emotional condition. She 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 employment factor.<sup>11</sup>

The medical evidence submitted by appellant is not sufficient to meet her burden of proof. In a report dated August 9, 2000, appellant's attending physician, Dr. Kenneth L. Hurst, a Board-certified family practitioner, stated that appellant had "a history of anxiety and some depression, although I [am] not sure that [i]s related to any workmen's compensation injury." In a report dated February 15, 2001, on an Office form, Dr. Hurst diagnosed chronic pain syndrome, bilateral epicondylitis and stress reaction. Dr. Hurst answered "yes" to the form's question whether he believed the condition found was caused or aggravated by an employment activity, adding "[s]he was asymptomatic prior to the accident at work. All this has evolved

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<sup>6</sup> *Mary A. Sisneros*, 46 ECAB 155 (1994).

<sup>7</sup> *Harriet J. Landry*, 47 ECAB 543 (1996).

<sup>8</sup> Where appellant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence. *Joel Parker, Sr.*, 43 ECAB 220 (1991).

<sup>9</sup> *Donna J. Dibernardo*, 47 ECAB 700 (1996); *Joseph A. Antal*, 34 ECAB 608 (1983).

<sup>10</sup> At the hearing appellant testified that she moved to tour two in January 1998 or 1999.

<sup>11</sup> *William P. George*, 43 ECAB 1159 (1992).

since Jan[uary] [19]97.” In a report dated July 17, 2001, Dr. Hurst stated that appellant’s depression was “a preexisting problem and had caused previous work absences,” and that appellant was “emotionally and physically disabled and partially so because of the inciting injury in January [19]97 that occurred at work, but also emotionally so from preexisting and ongoing conditions. Careful review of the record and her history indicates that she had been on treatment, with office visits and also several work absences due to stress and anxiety even prior to this injury.” These reports from Dr. Hurst rebut appellant’s claim for an emotional condition more than they support it and do not contain any indication that Dr. Hurst considered such a condition to be related to the accepted employment factor. Appellant has not met her burden of proof.

The February 4, 2002 and May 3, 2001 decisions of the Office of Workers’ Compensation Programs are affirmed.

Dated, Washington, DC  
March 19, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member