

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**HARRIET RICHARDSON, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Fort Pierce, FL, Employer**

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**Docket No. 04-451  
Issued April 23, 2004**

*Appearances:*  
*Harriet Richardson, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On December 8, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated November 21, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

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

**FACTUAL HISTORY**

On August 28, 2003 appellant, then a 50-year-old retail window clerk, filed a claim for traumatic injury alleging that on August 12, 2003 she developed stress and anxiety due to harassment by management. She stopped working on August 12, 2002 and did not return. The employer noted on the Form CA-1 that appellant was not harassed by management but was issued instructions after filing her emotional condition claim and reacted in a hostile manner.

Appellant submitted a statement alleging that she was subjected to several instances of harassment by her supervisors on August 12, 2003. She indicated that, on that date, Linda Barr “jumped in her face” while she was speaking to another person on the telephone, and that Michael Lloyd, a supervisor, yelled at her after she filed her claim and indicated that she had to leave immediately from work. Appellant claimed that she was denied union representation at a meeting with Mr. Lloyd on August 12, 2003 in which they discussed her emotional condition claim. Appellant indicated that Mr. Lloyd explained in great detail the procedures to be followed when filing a compensation claim and denied her request for continuation of pay and advised her that she must use annual or sick leave.

Appellant submitted reports from Dr. Michael C. Riordan, a psychologist, dated June 11 to November 24, 2003, which diagnosed anxiety disorder due to stressors at work. In a report of October 9, 2003, he advised that appellant’s worksite caused severe anxiety and stress and indicated that she was totally disabled from work. In a hospital admission report dated August 12, 2003, Dr. Babar Shareef, Board-certified in emergency medicine, noted that appellant presented with chest pains after a confrontation with her supervisor at work. He diagnosed chest pain and ruled out a myocardial infarction, and opined that appellant’s condition was possibly related to uncontrolled hypertension. He noted that she had a history of hypertension, panic attacks and anxiety. Also submitted was a statement from Tawanda Barron, a coworker, who observed appellant in distress at work and that she left for the emergency room.

In letters dated September 19 and 23, 2003, the employing establishment controverted the claim, noting that on August 12, 2003 a meeting was held at which Mr. Lloyd inquired as to compensation claim filed by appellant on August 11, 2003. Appellant was advised that she was required to file a Form CA-17, work restriction form, in support of the August 11, 2003 claim, and that the employing establishment could not offer her work without knowledge of any medical restrictions. Mr. Lloyd denied appellant’s request for continuation of pay and appellant was instructed to use annual or sick leave. The employing establishment indicated that appellant became confused and hostile and telephoned her union representative. Thereafter, appellant was asked to leave the facility by management and the union representative. The employing establishment noted that appellant had been advised on August 1, 2003 that she would be terminated due to irregular attendance effective in 30 days, and thereafter she filed 2 compensation claims. The employing establishment further contended that at no time did management harass appellant.

By letter dated September 24, 2003, the Office asked appellant to submit additional information including a detailed description of the employment factors or incidents which she believed had contributed to her claimed illness, and a comprehensive medical report from her treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to her claimed emotional condition. No additional evidence was submitted.

In a decision dated November 21, 2003, the Office denied appellant’s claim on the grounds that the evidence of record failed to demonstrate that the claimed emotional condition occurred in the performance of duty.

## LEGAL PRECEDENT

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>1</sup> Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.

In the case of *Lillian Cutler*,<sup>2</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.<sup>3</sup> 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 under the Act.<sup>4</sup> When an employee experiences emotional stress in carrying out his employment duties, and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.<sup>5</sup> 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 under the Act. 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 Act.<sup>6</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>7</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

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<sup>1</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>2</sup> 28 ECAB 125 (1976).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> See *Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

<sup>5</sup> *Lillian Cutler*, *supra* note 2.

<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, *supra* note 2.

factors of employment and may not be considered.<sup>8</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>9</sup>

### ANALYSIS

Appellant alleged that on August 12, 2003 Ms. Barr “jumped in her face” while she was speaking on the telephone. She further alleged that Mr. Lloyd yelled at her after she filed her compensation claim and indicated that she had to leave. To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant’s performance of his regular duties, these may constitute employment factors.<sup>10</sup> However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did, in fact, occur. Mere perceptions of harassment are not compensable under the Act.<sup>11</sup> In the present case, the employing establishment noted that, after appellant filed her compensation claim, on August 12, 2003, a meeting was held between appellant and her supervisors. Appellant was advised that she was required to file a Form CA-17, medical restrictions form, in support of her August 11, 2003 injury claim, and that the employing establishment could not offer her work without knowledge of her restrictions. The employing establishment indicated that appellant became confused and hostile and telephoned her union representative. Thereafter, appellant was asked to leave the facility by management and the union representative. Mr. Lloyd denied appellant’s request for continuation of pay and instructed her to use annual or sick leave. The employing establishment denied harassment of appellant. The Board finds that appellant has not submitted sufficient evidence to establish that she was harassed by her supervisors.<sup>12</sup>

Although appellant alleged that her supervisors made statements and engaged in actions which she believed constituted harassment, she provided insufficient evidence, such as witness statements, to establish that the alleged statements actually were made or that the actions actually occurred.<sup>13</sup> Additionally, the employing establishment has refuted such allegations. Although appellant submitted a statement from Ms. Barron, a coworker, she merely noted that she observed appellant in distress and that she left the emergency room. Ms. Barron did not address the specific allegations pertaining to August 12, 2003 or the conduct or statements attributed to appellant’s supervisors. The Board has recognized the compensability of verbal abuse in certain

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<sup>8</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>9</sup> *Id.*

<sup>10</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>11</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>12</sup> See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

<sup>13</sup> See *William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.<sup>14</sup> Appellant's vague allegations that her manager and supervisor "jumped in her face" and yelled at her are insufficient to establish that she was in fact, harassed. Appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

Appellant also alleged that she was denied union representation at the August 12, 2003 meeting with Mr. Lloyd. However, the record does not substantiate this allegation. Mr. Lloyd reportedly advised appellant that no other union stewards were available at that time. Appellant indicated in her statement dated August 12, 2003, that she received a call on her cellular telephone prior to the meeting with Mr. Lloyd, and the telephone call was from the union local president. She advised that she spoke with the union president regarding the meeting with her supervisor and the filing of her compensation claim.

Appellant's other allegations of employment factors that caused or contributed to her condition fall into the category of administrative or personnel actions. In *Thomas D. McEuen*,<sup>15</sup> the Board held that 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. The Board noted, however, 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. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>16</sup>

Appellant alleged that, on August 12, 2003, her supervisor Mr. Lloyd explained the procedures to be followed after filing a compensation claim. It appears from the record that Mr. Lloyd simply advised appellant of the workers' compensation procedures with regard to obtaining medical treatment and the use of leave. Appellant further noted that Mr. Lloyd denied her request for continuation of pay and advised her that she had to use annual or sick leave. Although the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>17</sup> In this case, the Board finds that the employing establishment acted reasonably in this administrative matter. Appellant has presented no evidence to establish that Mr. Lloyd erred or acted abusively on August 12, 2003. She has not established administrative error or abuse in regard to Mr. Lloyd's explanation of the procedures in filing a compensation claim and in his denial of appellant's request for continuation of pay.

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<sup>14</sup> See *Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991).

<sup>15</sup> See *Thomas D. McEuen*, supra note 7.

<sup>16</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>17</sup> See *Judy Kahn*, 53 ECAB \_\_ (Docket No. 00-457, issued February 1, 2002).

**CONCLUSION**

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.<sup>18</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 21, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 23, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>18</sup> As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).