

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

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MARY C. SIMMONS, Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Waterford, NY, Employer )

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**Docket No. 04-959  
Issued: August 13, 2004**

Appearances:  
Paul Kalker, Esq., for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On March 1, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated December 12, 2003, denying modification of a May 20, 2003 decision that found that appellant had not established that she sustained an emotional condition in the performance of her federal duties. 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 met her burden of proof to establish that she sustained an emotional condition in the performance of her federal duties.

**FACTUAL HISTORY**

On October 28, 2002 appellant, then a 50-year-old clerk, filed an occupational disease claim alleging that her federal employment caused her acute anxiety and depression. Specifically, she cited as causing her conditions, that management yelled and swore, talked to

coworkers about her medical conditions,<sup>1</sup> mocked coworkers and herself, stared, scowled continuously with intimidation, practiced unfair treatment, neglected zero tolerance and ignored its responsibility to provide a safe work environment.

In a January 27, 2003 letter, appellant elaborated. She stated that on March 29, 2001 a coworker, Christina Prusinski, verbally lashed out at her, yet management failed to support her. On April 11, 2001 appellant was experiencing a difficult episode of irritable bowel syndrome and was in the bathroom frequently. After leaving the bathroom Missy Boisey, appellant's supervisor, waited outside the bathroom holding the telephone and tapping her foot. Appellant also alleged that on April 18, 2001 she was told by Ms. Boisey that other employees and the union leadership were complaining that management showed favoritism toward appellant. Ms. Boisey asked her to help out by doing some heavy lifting. On April 27, 2001 Ms. Boisey again asked appellant to help out by doing some heavy lifting. On April 30, 2001 Linda Van Bergen, manager of the CFS, was screaming explicatives about employees and that she needed to make more demands on all employees, including appellant and another employee with a medical condition. Appellant stated that on May 2, 2001 Ms. Van Bergen went into the bathroom while appellant was there and handed her the telephone underneath the stall. Appellant stated that, when she took time off to tend to her ailing mother, she returned to work and noticed friction and tension and was told by her supervisor that it was because appellant got away with too little work. Appellant also stated that on November 30, 2001 Ms. Van Bergen and Ms. Boisey told her she needed to submit medical documentation for more than three consecutive days of sick leave. On December 14, 2001 a mail package from Iraq broke open and when appellant said she would not touch it without gloves, she was told by Ms. Boisey to "just process the mail." According to appellant, Ms. Boisey's attitude caused her anxiety. On January 15, 2002 Ms. Van Bergen questioned appellant repeatedly about medical documentation for her absences from work. Appellant alleged that on February 8, 2002 Ms. Van Bergen was screaming at all employees and throwing boxes in the air. On July 1, 2002 Eunice Maticchiero, an acting supervisor, asked appellant to do some lifting and when she refused on medical grounds, she was asked for medical documentation. Appellant added that on July 13, 2002 she was lifting a box and felt an electrical shock go through her body, which caused her to become upset and to ask her supervisor how she could ever ask appellant to do such work. On October 21, 2002 appellant's supervisor slammed a telephone down on her desk. Appellant also stated that, when she asked Lisa Lynch, in human resources, for a copy of all the complaints she had filed against the employing establishment, she was told that she did not have them, causing appellant to be upset.

In a December 16, 2002 Equal Employment Opportunity complaint, appellant alleged harassment and a hostile work environment. Appellant also submitted numerous medical reports. In a November 4, 2002 report, Joan Levine, a clinical social worker, repeated many of appellant's allegations and diagnosed post-traumatic stress disorder, anxiety disorder and stomach and back problems, attributable to her work environment. In a November 8, 2002 report, Dr. Mary Panzetta, a psychiatrist, stated that appellant suffered from post-traumatic stress disorder, depression, diverticulosis, irritable bowel syndrome, bulging lumbar discs and chronic

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<sup>1</sup> Appellant had preexisting conditions of diverticulitis and irritable bowel syndrome that caused her to miss work occasionally.

psychological and physical illnesses, including work stress; all related to her ongoing hostile working conditions.

On May 15, 2003 Ms. Van Bergen stated that the incident with Christina Prusinski was resolved after a meeting with several supervisors and union officials when it was determined that it was impossible to know exactly what happened so both employees were told their behavior was unacceptable and would not be tolerated. Neither employee was formally punished. Ms. Van Bergen said that she asked appellant for medical documentation because she knew appellant had a medical condition but she had never seen any documentation and was not aware of any restrictions. Ms. Van Bergen added that whenever appellant asked for accommodations she was given them. Ms. Van Bergen also denied making any comments about appellant getting away with too much, swearing or throwing boxes. She added that some of appellant's allegations referred to days and times that appellant was not even at work.

In a May 15, 2003 letter, Joe Finan, the manager of postal operations, stated that he and other supervisors met with appellant and Ms. Prusinski, but they could not, with certainty, know what happened; so neither employee was punished. Mr. Finan noted that he is not aware that swearing is a problem as it had never come up as an issue in employee surveys.

In a May 20, 2003 letter, the Office denied appellant's claim finding that she had not factually established any compensable factors as causing her emotional conditions. Appellant requested reconsideration and argued, through her representative, that the Office incorrectly accepted the denials of the supervisors as dispositive without further investigation and failed to give appellant's statement appropriate weight of the evidence. She also argued that the Office should consider the medical reports and witness statements as corroborating appellant's allegations.

In a December 12, 2003 decision, the Office denied modification finding that appellant had not established any compensable factors as many of her allegations related to administrative duties and other allegations were not established as factual. The Office also noted that appellant had failed to provide corroborating evidence.

### **LEGAL PRECEDENT**

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 her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>2</sup> On the other hand the disability is not covered where it results from such factors as an

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>3</sup>

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.<sup>4</sup> This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>5</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 factors of employment and may not be considered.<sup>6</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>7</sup>

### ANALYSIS

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decisions dated May 20 and December 12, 2003, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions such as not reprimanding Ms. Prusinski, or otherwise supporting appellant, improperly assigned work duties such as lifting boxes and unreasonably monitored her activities at work such as bathroom breaks or use of sick leave, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.<sup>8</sup> Although the handling of

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<sup>3</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>5</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>6</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>7</sup> *Id.*

<sup>8</sup> See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

disciplinary actions and leave requests, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>9</sup> However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>10</sup> However, appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters. Appellant submitted no corroborating evidence from witnesses. She did submit reports from her Dr. Panzetta and Ms. Levine, but neither of them witnessed the alleged events. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant has also alleged that harassment and discrimination on the part of her supervisors and coworkers contributed to her claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.<sup>11</sup> However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.<sup>12</sup> In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors or coworkers.<sup>13</sup> Appellant alleged that supervisors and coworkers made statements, such as that appellant "got away with too much," and engaged in actions which she believed constituted harassment and discrimination, but she provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.<sup>14</sup> Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.<sup>15</sup> The Board notes that appellant's reaction to such conditions and incidents at work must be considered self-generated in that it

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

<sup>10</sup> *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>11</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>12</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>13</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>14</sup> *See William P. George*, 43 ECAB 1159, 1167 (1992).

<sup>15</sup> *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

resulted from her frustration in not being permitted to work in a particular environment or to hold a particular position.<sup>16</sup>

Appellant alleged that she was asked to do heavy lifting and the Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if such activity was substantiated by the record.<sup>17</sup> However, appellant has not established that she was medically restricted from lifting heavy objects nor is it established in the record that she lifted beyond any restrictions.

Appellant alleged that she had an altercation with Ms. Prusinski. Generally, an altercation between coworkers which arose out of a claimant's regularly or specially assigned duties would be considered an employment factor, but an altercation which arose out of nonemployment factors, *i.e.*, a purely personal dispute, would not be considered an employment factor.<sup>18</sup> The Board has recognized the compensability of physical threats or verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.<sup>19</sup> The evidence regarding the altercation with Ms. Prusinski is inconclusive as to what, why and how it occurred.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that she sustained an emotional condition in the performance of duty.<sup>20</sup>

### CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of her federal duties.

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<sup>16</sup> *Tanya A. Gaines*, 44 ECAB 923, 934-35 (1993).

<sup>17</sup> *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

<sup>18</sup> *See Irene Bouldin*, 41 ECAB 506, 514 (1990); *Lester O. Rich*, 32 ECAB 1178, 1180 (1981).

<sup>19</sup> *See Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991).

<sup>20</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 12 and May 20, 2003 decisions by the Office of Workers' Compensation Programs are affirmed.

Issued: August 13, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member