

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

ADELAIDE M. DOMENICK-MANLEY,
Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Elmhurst, PA, Employer

)
)
)
)
)
)
)
)
)
)
)
)

Docket No. 04-955
Issued: July 23, 2004

Appearances:

David P. Tomaszewski, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On March 1, 2004 appellant's counsel filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated January 29, 2004, in which an Office hearing representative affirmed the denial of her emotional condition on the grounds that it was not sustained in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this emotional condition case.

ISSUE

The issue is whether appellant has established that her severe stress, anxiety and depression were causally related to factors of her employment.

FACTUAL HISTORY

On June 20, 2002 appellant, a 51-year-old postmaster, filed an occupational disease claim alleging that her severe stress, anxiety and depression were due to her employment. She stopped work on May 6, 2002.

In a June 13, 2002 report, Dr. Linda Sebastian Frantz, an attending Board-certified internist, diagnosed anxiety, depression and gastritis due to stress. She attributed appellant's condition to stress caused by her excessive work hours and the "inability of the postal service to keep any employees at the facility to help her."

In an undated statement, which the Office received on August 23, 2002 appellant attributed her condition to:

"The stress from three [p]ost [m]aster [r]elief's quitting the position within a six-week period, coupled with the fact that I had to work six days a week became overwhelming."

Appellant also attributed her stress to not knowing if she would have someone to relieve her if she was unable to work due to illness, weather or other emergency.

In a report dated October 24, 2002, Priscilla Pancoast, a licensed clinical social worker diagnosed major depression and generalized anxiety disorder. Appellant was referred to Ms. Pancoast by the Employee Assistance Program (EAP) at the employing establishment and the counseling was for work stress.

In an August 1, 2002 treatment note, Dr. Danil A. deSoto, a treating Board-certified psychiatrist, reported that appellant has been shorthanded for approximately the past one and one-half years and has been unable to get assistance despite her request for help. Dr. deSoto diagnosed generalized anxiety disorder.

The employing establishment responded to appellant's allegations on October 24, 2002. It contended that she had a very minimal workload due to the size of the post office she managed and that "the environment is free of stress." She had no employees to supervise and no deadline. The employing establishment agreed with appellant's statement that she was only allowed one postmaster relief the size of her post office did not necessitate two relief postmasters. With regards to her allegations of working six days a week and having no days off, the employing establishment stated that it was "finding coverage for her when she needed time off" and it "was aware of her difficulty in finding a new postmaster relief and made arrangements with other offices for coverage."

The record contains a copy of appellant's leave use for the period October 2001 through October 2002, which indicates that she used 81 hours of sick leave and 60 hours of annual leave during this period. Total work hours were noted as 963.00.

By decision dated January 13, 2003, the Office denied appellant's claim on the grounds that she failed to establish any compensable factors of employment.

On January 31, 2003 appellant's counsel requested an oral hearing before an Office hearings representative. A hearing was held on November 20, 2003 at which she was represented by counsel and provided testimony.

By decision dated January 29, 2004, the Office hearing representative affirmed the denial of appellant's claim.

LEGAL PRECEDENT

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 factors of her federal employment.¹ To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.²

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.³ 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.⁴

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.⁵ 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.⁶

¹ *Edward C. Heinz*, 51 ECAB 652 (2000); *Martha L. Street*, 48 ECAB 641, 644 (1997).

² *Judy L. Kahn*, 53 ECAB ____ (Docket No. 00-457, issued February 1, 2002); *Ray E. Shotwell, Jr.*, 51 ECAB 656 (2000); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ 5 U.S.C. §§ 8101-8193.

⁴ *See Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *See Charles D. Edwards*, 55 ECAB ____ (Docket No. 02-1956, issued January 15, 2004); *Norma L. Blank*, 43 ECAB 384 (1993).

⁶ *Lori A. Facey*, 55 ECAB ____ (Docket No. 03-2015, issued January 6, 2004); *Norma L. Blank*, *supra* note 5.

ANALYSIS

In the present case, appellant alleged that she sustained an emotional condition as a result of her excessive work hours, working six days a week and the stress from having three postmaster relief people quit the position. In an October 24, 2002 letter, the employing establishment disputed appellant's allegations that she was required to work excessive hours and to work six days a week. The employing establishment stated that coverage was found for appellant "when she needed time off" and "was aware of her difficulty in finding a new postmaster relief and made arrangements with other offices for coverage." In addition, the employing establishment indicated that appellant had a very minimal workload due to the size of her post office. The record contains a copy of her leave use for the period October 2001 through October 2002, which noted that she used 81 hours of sick leave and 60 hours of annual leave during this period. Appellant has not submitted any evidence to support her allegation that she was unable to take time off or was required to work six days a week. The employing establishment disputed this allegation and a copy of leave use for the period October 2001 to October 2002 indicates that appellant was able to take time off using either sick or annual leave. Overwork may be a compensable factor of employment but must be established on a factual basis.⁷ The record contains no evidence supporting appellant's allegations and the record contains evidence that she was able to take leave. In this case, the evidence of record does not corroborate appellant's allegations of overwork. She has not established that working overtime constituted a compensable factor of employment.

CONCLUSION

The Board finds that appellant has not established that severe stress, anxiety and depression were due to her employment.

⁷ *Robert Bartlett*, 51 ECAB 664, 666 (2000); *Sherry L. McFall*, 51 ECAB 436, 439 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 29, 2004 is affirmed.

Issued: July 23, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member