

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

BEVERLY R. JONES, Appellant

and

**U.S. POSTAL SERVICE,
POST OFFICE, Oak Ridge, TN, Employer**

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**Docket No. 03-1210
Issued: March 26, 2004**

Appearances:

*Beverly R. Jones, pro se
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
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On April 10, 2003 appellant filed a timely appeal from the March 14, 2003 decision of the Office of Workers' Compensation Programs which denied her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of appellant's claim.

ISSUE

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

FACTUAL HISTORY

On October 24, 2002 appellant, then a 43-year-old distribution window clerk, filed a claim for compensation alleging that she sustained an emotional condition in the performance of duty. She alleged extreme anxiety and stress which started about 1998 and worsened, stating: "The pressure and expectations put on me pushed me to the edge. I became nonfunctional." Appellant attributed her condition to ongoing harassment, a hostile work environment and

mental abuse. She alleged that her emotional condition had adversely affected her esophagus and colon.

In a separate statement, appellant claimed that management had treated her unfairly. She alleged that her bid job was given to other people and that she found it hard to be rushed and pushed to do jobs that others had more time to do. Appellant wanted to bid on another job but noted that it had window duties and she had a very hard time working the window. She claimed the person who got that bid assignment did not have to work the window a single day and that management added window duties to the job to discourage appellant from bidding on it. Appellant claimed that Dennis R. Camp, a supervisor, asked her and no one else to mow the yard, that he stood over her at work and that she was told not to talk while working. She claimed that she was yelled at, pushed to get things done and “told to do one thing and also be yelled at to do passports, answer the [tele]phone and finish what I was told to do.” Appellant did not feel it was right for her to be yelled at to do other people’s jobs because they were doing something else. She claimed that none of the other clerks were asked to do this. Appellant alleged that the postmaster failed to give her a day’s notice before requiring her to work on a holiday and that he was supposed to work the people with off days first. She claimed that she had to stay over to work the window when the part-time flexible clerks went home. Appellant stated that one day she just fell apart, could not remember anything, could not think clearly and that she got upset around people. When she was home alone, she would have an “attack” and be very afraid. Appellant stated that she just wanted to work and be treated equally. She added that Mr. Camp denied her request for leave without pay and made her use annual leave, while another clerk was given leave without pay from 2001 to some time in 2002. Appellant stopped work on July 17, 2002 and did not return.

Medical evidence supported a diagnosis of major depression, recurrent episode and panic disorder with agoraphobia. A treatment note from December 20, 1999 stated that appellant was very emotional, unable to get a good night’s sleep and under a tremendous amount of stress at work because she felt she was treated badly at the workplace.

On July 17, 2002 appellant presented to the emergency room complaining of anxiety and left-sided chest pain. She related a history of anxiety and panic attacks. Appellant stated that working at the employing establishment had become quite stressful and that some conflict or increased stress at work that day had made her very anxious and short of breath. She lost control of her breathing and could not calm down and that, shortly thereafter, she felt a dull, left-sided chest pain. The assessment was probable viral syndrome. The doctor saw no evidence for significant pathology or need for significant laboratory investigation. Appellant was discharged the following day.

On October 29, 2002 Mr. Camp stated that he had not seen appellant’s statement. He described her basic duties and noted that she had no problems performing any of her assignments.

On January 23, 2003 Dr. Ibrahim F. Shalaby, a Board-certified specialist in internal medicine, completed a form report. He noted the history of injury as “shortness of breath, panic feelings, chest pain, anxious.” Dr. Shalaby diagnosed panic anxiety “as above” and indicated

with an affirmative mark that this condition was caused or aggravated by an employment activity. He noted: "Stress at work [appellant] stated."

On February 17, 2003 Sharon J. Ruffin, a former coworker, stated that appellant was forced to do a vending job while the person who bid on it was being trained, but that person was never ordered to do his bid job and appellant was made to do it. Ms. Ruffin remembered Mr. Camp hovering over appellant and screaming at her on several occasions about moving faster while doing the mail, though clerks had no time standard for mail sorting. Ms. Ruffin noted that both she and appellant had filed an Equal Employment Opportunity (EEO) complaint because Jack Edison had admitted that the postmaster was targeting them for being in the office, even though Mr. Edison gave them permission for union time. Ms. Ruffin stated that appellant was forced to do a junior clerk's work because he did not want to do it. These assignments included working at the window with customers for five days or more and working in the passport office.

On February 15, 2003 Frank N. Bensey stated that he observed Mr. Camp standing behind appellant "in an intimidating manner" while she worked. On February 13, 2003 Joe Stults stated that he remembered a specific time when appellant was working and talking to a coworker. He stated that Mr. Camp came over "and jumped on you and said something like you can work faster if you stop talking so much." Mr. Stults felt this was harassment.

In a decision dated March 14, 2003, the Office denied appellant's claim for compensation benefits. The Office found that the evidence failed to establish that appellant's injury occurred in the performance of duty. Appellant submitted no proof to show that management acted in an abusive, erroneous or improper manner. Rather, the evidence indicated that her claim conditions were reaction to proper administrative actions.

LEGAL PRECEDENT

The Federal Employees' Compensation Act¹ (Act) provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.² The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of performance."³ "Arising in the course of employment" relates to the elements of time, place and work activity. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in her employer's business, at a place where she may reasonably be expected to be in connection with her employment and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto. This alone is not sufficient to establish entitlement to compensation. The employee must also establish an injury "arising out

¹ 5 U.S.C. §§ 8101-8193.

² *Id.* § 8102(a).

³ This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

of the employment.” To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration.⁴

As the Board observed in the case of *Lillian Cutler*,⁵ workers’ compensation law does not cover each and every illness that is somehow related to the employment. When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her duties and the medical evidence establishes that the disability resulted from her 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 resulted from her emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of her work. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers’ compensation law because they are not found to have arisen out of employment, such as when disability results from an employee’s fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.

ANALYSIS

Appellant attributed her emotional condition and associated physical complaints principally to the actions of her supervisor, Mr. Camp. As noted, workers’ compensation law does not cover an emotional reaction to an administrative or personnel action unless the evidence establishes error or abuse on the part of the supervisor.⁶ Assigning work is an administrative function of a supervisor. That appellant ended up doing a vending job while someone else was being trained, that her assignments including working the window, is no proof that Mr. Camp acted erroneously in assigning her such duties. As noted, frustration from not being permitted to work in a particular environment or to hold a particular position is not covered by workers’ compensation.⁷

Monitoring work is also an administrative function of a supervisor. Ms. Ruffin stated that Mr. Camp “hovered” over appellant, and Mr. Bensey stated that Mr. Camp stood behind her, but this is not a compensable factor absent proof of error or abuse on the part of Mr. Camp.⁸ Appellant has submitted insufficient evidence to demonstrate error or abuse by Mr. Camp to admonish her not to talk while she worked.

Approving or denying a leave request is also an administrative function of a supervisor, and while appellant disagreed with the denial of her request for leave without pay, she has not

⁴ See *Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

⁵ 28 ECAB 125 (1976).

⁶ *Thomas D. McEuen*, 42 ECAB 566, 572-73 (1991), *reaff’d on recon.* 41 ECAB 387 (1990).

⁷ See *supra* text accompanying note 5.

⁸ *Daryl R. Davis*, 45 ECAB 907 (1994).

established that the action was administratively erroneous. Appellant asserted that the postmaster failed to give her sufficient notice before requiring her to work the following day, her holiday, and failed to work first the people with off days; however, she submitted no evidence to substantiate her allegation of error. Although Ms. Ruffin indicated that she and appellant had filed an EEO complaint against the postmaster for “targeting” them, appellant submitted no finding or final decision from the EEO Commission to substantiate her allegations. The Board has held that grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.⁹ Appellant has submitted no evidence in this case, apart from her own feelings and the view of a few of several coworkers or former coworkers, that Mr. Camp or the postmaster committed error or abuse in discharging their supervisory or managerial duties.

As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.¹⁰ In *Kathleen D. Walker*,¹¹ the Board held that a claimant’s unfounded perceptions could not constitute a compensable factor of employment. Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.¹²

The Board has underscored that, in claims for a mental disability attributed to work-related stress, the claimant must submit factual evidence in support of his or her allegations of stress from “harassment” or a difficult working relationship. The claimant must specifically delineate those factors or incidents to which the emotional condition is attributed and submit supporting factual evidence verifying that the implicated work situations or incidents occurred as alleged. Vague or general allegations of perceived “harassment,” abuse or difficulty arising in the employment is insufficient to give rise to compensability under the Act. Based on the evidence submitted by the claimant and the employing establishment, the Office is then required to make factual findings, which the Board can review. The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.¹³

With regard to emotional claims arising under the Act, the term “harassment” as applied by the Board is not the equivalent of “harassment” as defined or implemented by other agencies,

⁹ *James E. Norris*, 52 ECAB 93 (2000).

¹⁰ See *Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant’s allegations of unfair treatment to determine if the evidence corroborated such allegations).

¹¹ 42 ECAB 603, 608 (1991).

¹² *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

¹³ *Paul Trotman-Hall*, 45 ECAB 229 (1993) (Groom, M.E., concurring).

such as the EEO Commission, which is charged with statutory authority to investigate and evaluate such matters in the workplace.¹⁴ Rather, in evaluating claims for workers' compensation under the Act, the term "harassment" is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by coemployees or workers.¹⁵ Again, mere perceptions and feelings of harassment will not support an award of compensation.

Appellant alleged that management treated her unfairly, that it added window duties to jobs specifically to discourage her from bidding on them, but she submitted no probative evidence to substantiate her suspicions. She alleged that Mr. Camp yelled at her. Ms. Ruffin alleged that Mr. Camp screamed at appellant on several occasions and Mr. Stults stated that Mr. Camp figuratively "jumped on" appellant once for talking so much. Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.¹⁶ The Board has generally held that being spoken to in a raised or harsh voice does not of itself constitute verbal abuse or harassment.¹⁷

Establishing a claim for compensation is a matter of proof. In this case, the record contains insufficient factual evidence to document or substantiate appellant's allegations of error or abuse in administrative or personnel actions or of harassment, mental abuse or unequal treatment. Appellant has not shown, therefore, that her claim falls within the exception to the general rule that an emotional reaction to an administrative or personnel action is not covered by workers' compensation.

Appellant also alleged that she experienced emotional stress in carrying out her employment duties. She claimed that she felt rushed, that she had no time to finish one thing before having to do three or four other things, that she had too many tasks to do at once and that she had difficulty concentrating on anything. Appellant claimed this was something she experienced everyday. She claimed that handling business reply mail, when another worker was absent, was very hard for her to do because she was not given as much time to perform the work and she had to do other jobs as well. Appellant also claimed that it was very difficult for her to

¹⁴ The Act is remedial in character and the Office has the duty of administering the provisions of the Act with regard to the rights of employees and the intent of Congress. *John J. Feeley*, 8 ECAB 576 (1956). The determination of an employee's rights or remedies under other statutory authority does not establish entitlement to benefits under the Act for disability. Under the Act, for a disability determination, the employee's injury must be shown to be causally related to an accepted injury or factors of employment. For this reason, the determinations of other administrative agencies or courts, while instructive, are not determinative with regard to disability under the Act. See *Daniel Deparini*, 44 ECAB 657 (1993); *George A. Johnson*, 43 ECAB 712 (1992); *Constance G. Mills*, 40 ECAB 317 (1988); *Fabian W. Fraser*, 9 ECAB 367 (1957). Findings made by the Merit Systems Protection Board or EEO Commission may constitute substantial evidence relative to the claim to be considered by the Office and the Board. See *Donna Faye Cardwell*, *supra* note 12; *Walter Asberry, Jr.*, 36 ECAB 686 (1985).

¹⁵ See *Paul Trotman-Hall*, *supra* note 13.

¹⁶ *Harriet J. Landry*, 47 ECAB 543 (1996).

¹⁷ *Judith A. Tobias*, Docket No. 98-1724 (issued April 14, 2000). See also *Karen K. Levene*, 54 ECAB ____ (Docket No. 02-25, issued July 2, 2003).

work the window, that it made her very nervous and that she had to work the window almost every day.

The employing establishment does not dispute this aspect of appellant's claim. Mr. Camp stated on October 29, 2002 that appellant had no problems doing any of her assignments, but this can be taken to mean only that she did her assignments to his apparent satisfaction. Whether she experienced stress or anxiety in trying to accomplish her regular and specially assigned duties is a different matter. The Board has held that conditions related to stress from situations in which an employee is trying to meet his or her position requirements are compensable.¹⁸ While the evidence in this case is insufficient to establish that Mr. Camp overworked appellant or pushed her too hard, the evidence is sufficient to establish that she experienced stress or anxiety in performing her regular and specially assigned duties. Under *Cutler*, appellant has established that her claimed injury arose from a compensable work factor. This is not enough, however, to entitle her to benefits. Appellant must further establish a causal connection between this compensable factor of employment and her diagnosed medical conditions. She must establish that she sustained an injury "arising out of the employment."¹⁹

Causal relationship is a medical issue, and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.²⁰ Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,²¹ must be one of reasonable medical certainty²² and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.²³

The record in this case contains no such medical opinion. Treatment notes merely reported appellant's complaints of stress while at work. Only the January 23, 2003 form report from Dr. Shalaby, an attending internist, addressed the medical connection between appellant's diagnosed condition and her federal employment. Dr. Shalaby indicated with an affirmative mark that appellant's panic anxiety was caused or aggravated by an employment activity. He noted parenthetically "stress at work patient stated." This opinion is of little probative or evidentiary value in part because it lacks an adequate history. Dr. Shalaby gave no description of the compensable factor of employment that is found in this case. He made no mention of

¹⁸ *Trudy A. Scott*, 52 ECAB 309 (2001); see *Richard H. Ruth*, 49 ECAB 503 (1998) (claimant's stress, as related to his regularly assigned duties, constituted a compensable factor of employment); *Lillian Cutler*, *supra* note 5.

¹⁹ See *supra* text accompanying note 4.

²⁰ *Mary J. Briggs*, 37 ECAB 578 (1986).

²¹ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

²² See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

²³ See *William E. Enright*, 31 ECAB 426, 430 (1980).

appellant's working the window or handling business reply mail in another worker's absence or feeling she had no time to finish one thing before having to do three or four other things. Medical conclusions based on inaccurate or incomplete histories are of little probative value.²⁴

Dr. Shalaby also offered no medical rationale to support his opinion on causal relationship. Rather than explain from his medical perspective the nature of the relationship between appellant's diagnosed condition and the established incident or factor of employment, he simply noted her complaint of "stress at work." This notation is inadequate to establish the critical element of causal relationship.²⁵

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 duty. While the evidence is sufficient to establish that she experienced stress in trying to meet her position requirements, no physician has offered a well-reasoned explanation of how this specific factor of employment caused or contributed to her diagnosed emotional condition and physical complaints. On these grounds the Board will affirm the Office's denial of compensation benefits.

²⁴ *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

²⁵ *See Connie Johns*, 44 ECAB 560 (1993) (holding that a physician's opinion on causal relationship must be one of reasonable medical certainty, supported with affirmative evidence, explained by medical rationale and based on a complete and accurate medical and factual background).

ORDER

IT IS HEREBY ORDERED THAT the March 14, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 26, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member