

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

LESLIE R. FOWLER, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Binghamton, NY, Employer**

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**Docket No. 04-240
Issued: May 3, 2004**

Appearances:
Leslie R. Fowler, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On November 5, 2003 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated March 10, 2003 and the nonmerit decision dated October 20, 2003. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this emotional condition case.

ISSUES

The issues are: (1) whether appellant has established that she sustained an emotional condition in the performance of duty as alleged; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On October 12, 2002 appellant, a 45-year-old letter carrier, filed an occupational disease claim alleging that her depression and anxiety were employment related. Appellant attributed her emotional condition to harassment and discrimination by management, the refusal of

management to approve her request for a hardship transfer from Binghamton, New York to Albany, New York and that it took her longer to complete her assigned route.

Appellant submitted an undated letter she sent to the Postmaster in Albany, New York, in which she requested a hardship transfer to the Albany area in order to be closer to her parents. She also submitted a November 6, 1999 letter sent to the employing establishment's Equal Employment Opportunity complaint section to file a formal complaint alleging discrimination. Appellant alleged that the Postmaster of the Binghamton, New York office, Thomas Jenkins, had thwarted her efforts to obtain a hardship transfer to the Albany, New York area since 1989. She stated that the only denial in writing she received was from a Schenectady office, which based its denial on her safety record.

In a letter dated November 2, 2002, the Office requested additional information from appellant, including a description of the conditions or incidents at work which she believed contributed to her condition and a narrative report from a treating physician explaining how her federal employment contributed to her condition.

Appellant submitted copies of her work diary for the period January 10, 2000 through September 25, 2002. These entries listed the days it took her longer to deliver the mail, including days she requested assistance and whether any assistance was given. She also submitted a copy of a February 23, 2001 grievance she filed against Kathy Henry, acting supervisor cost center for denying her sick leave on December 18, 2000. This was resolved on March 22, 2001 when management agreed to change the leave without pay to sick leave. On March 8, 2001 appellant was issued a letter of warning for failing to follow instructions when she was observed smoking in a nondesignated smoking area.

On July 21, 2002 appellant was issued a letter of warning for failing to obey the instructions by Postmaster Mike Collier, to cease making derogatory comments regarding management and return to her work.

On September 12, 2001 appellant was issued a letter of warning for failing to follow instructions. Appellant failed to supply the documentation requested for her unscheduled absence on September 11, 2001 when she attended a therapy appointment.

In an October 23, 2002 statement, Nathaniel Wood, acting supervisor of customer service, noted that he instructed all carriers, including appellant, regarding loudness on the floor on September 25, 2001. He stated appellant "commented that she was not being loud" and he responded by saying the instruction was for all the carriers not just her.

In an undated statement received by the Office on December 2, 2002, Postmaster Jenkins noted that appellant "resented being cautioned" for anti-management statements and profanity. Regarding denial of leave, Mr. Jenkins stated that appellant's leave requests were denied due to a contractual complement. He noted appellant "continued to work in excess of eight hours and argued against recommendations to improve her efficiency." Mr. Jenkins denied that he laughed at appellant regarding her transfer request. He noted that appellant was issued a letter of warning because she had been smoking in an unauthorized area and did not attend a smoking cessation class, which was part of a grievance settlement.

By decision dated March 10, 2003, the Office denied the claim, finding that appellant failed to meet her burden of proof in establishing that she had an emotional condition sustained in the performance of duty.

On July 10, 2003 appellant requested reconsideration and submitted a June 2, 2003 report by Dr. Suresh V. Undavia, an attending Board-certified psychiatrist, an undated statement by Gene Lord, the NALC president and a statement by appellant. Mr. Lord indicated that, on September 20 or 21, 1999, Mr. Jenkins summoned him to his office, together with appellant, to discuss a hardship transfer request. Mr. Lord noted that Mr. Jenkins stated a position was available in Delmar, New York, that appellant should call the Postmaster there to get a start date and Mr. Jenkins would then release her.

In a June 2, 2003 report, Dr. Undavia concluded that appellant's emotional condition was due to job stress. The psychiatrist stated that appellant's "overall mentation was quite stable" prior to the conflicts with her supervisor and the employing establishment.

In a decision dated October 20, 2003, the Office denied appellant's request for reconsideration of the March 10, 2003 decision.

LEGAL PRECEDENT -- ISSUE 1

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 illness has some connection with the employment, but nevertheless does not come within the coverage of the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.¹

Perceptions and feelings alone are not compensable. 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.² 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 or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.³

¹ *Roger W. Robinson*, 54 ECAB ____ (Docket No. 03-348, issued September 30, 2003).

² *Linda K. Mitchell*, 54 ECAB ____ (Docket No. 03-1281, issued August 12, 2003).

³ *Marlon Vera*, 54 ECAB ____ (Docket No. 03-907, issued September 29, 2003).

ANALYSIS -- ISSUE 1

Appellant alleged that she sustained disability from an emotional reaction to attempting to get her route done in the time allotted, unfairly being issued letters of warning and to harassment and discrimination by management. She also alleged that her emotional condition was due to her supervisor's impeding and/or refusing to grant her request for a hardship transfer to the Albany, New York area office.

The Board has found that an emotional disability is not compensable where it results from an employee's frustration from not being able to work in a particular environment or not being able to secure a transfer to a different location.⁴ Appellant's desire to work in an office in the Albany, New York area is an administrative matter and is not a compensable factor under the Act. The Board has found, however, where the evidence demonstrates that the employing establishment erred or acted abusively in the administration of a personnel matter, an emotional condition arising in reaction to such error or abuse may be compensable.⁵ Appellant did not submit sufficient evidence showing that the postmaster erred or abused his discretion in denying her transfer to an office in the Albany, New York area. Appellant has submitted no evidence to suggest that her supervisor at the employing establishment acted abusively in denying her requests to transfer to the Albany, New York area.

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions, the Board finds that these allegations also pertain to administrative or personnel matters unrelated to her regular or specially assigned work duties and do not fall within the coverage of the Act.⁶ Although these types of matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.⁷ 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.⁸ Appellant has not submitted sufficient evidence to establish that the employing establishment committed error or abuse with respect to the disciplinary actions taken by management with regard to her smoking in a nondesignated area or for failing to follow instructions. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

⁴ *Hasty P. Foreman*, 54 ECAB ____ (Docket No. 02-723, issued February 27, 2003); *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Michael A. Salvato*, 53 ECAB ____ (Docket No. 01-1790, issued July 16, 2002); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁶ *See Janice I. Moore*, 53 ECAB ____ (Docket No. 01-2066, issued September 11, 2002); *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).

⁷ *Ann L. Livermore*, 46 ECAB 425 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁸ *Bobbie D. Daly*, 53 ECAB ____ (Docket No. 01-2115, issued July 25, 2002).

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of her regular duties, these may constitute employment factors.⁹ 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.¹⁰ Appellant's supervisors at the employing establishment denied that appellant was subjected to harassment or discrimination and she has not submitted sufficient evidence to establish that she was harassed or discriminated as alleged.¹¹ Appellant alleged that supervisors made statements and engaged in actions which she believed constituted harassment and discrimination, but she provided insufficient evidence, such as witness statements, to establish that the statements actually were made or that the actions occurred as alleged.¹² Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Appellant claimed that on various days during the period January 10, 2000 through September 25, 2002 she was unable to complete her postal route in the time allotted and that the employing establishment denied her requests for assistance on various dates. Mr. Jenkins noted that appellant "continued to work in excess of eight hours and argued against recommendations to improve her efficiency."

The Board has held that stress-related reactions to situations in which an employee is trying to meet her position requirements are compensable. In *Joseph A. Antal*,¹³ a tax examiner filed a claim alleging that his stress-related condition was caused by the pressures of trying to meet the production standards of his job. The Board, citing the principles of *Cutler*, found that the claimant was entitled to compensation. In *Georgia F. Kennedy*,¹⁴ the Board, also citing the principles of *Cutler*, listed employment factors which would be covered under the Act, including an unusually heavy workload and imposition of unreasonable deadlines. The record contains evidence which support appellant's allegations that she experienced stress from her regularly assigned duties on her delivery route. Therefore, the Board finds that appellant has established a compensable employment factor with regard to her regular and specially assigned requirements.

As appellant has established a compensable employment factor, the Office must base its decision on an analysis of the medical evidence. As the Office found there were no compensable employment factors, it did not analyze or develop the medical evidence. The case will be remanded to the Office for this purpose.¹⁵ The Office should prepare a statement of accepted

⁹ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁰ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹¹ 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).

¹² See *William P. George*, 43 ECAB 1159, 1167 (1992).

¹³ 34 ECAB 608 (1983).

¹⁴ 35 ECAB 1151 (1984).

¹⁵ See *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

facts and refer appellant to an appropriate medical specialist for an opinion on whether she sustained an emotional condition in the performance of duty causally related to her federal employment. After such further development as deemed necessary, the Office should issue an appropriate decision on this matter.

CONCLUSION

The Board finds that this case is not in posture for a decision as appellant established a compensable work factor with regards to attempting to meet her job requirements regarding deadlines for delivery of mail on her route. In view of the disposition of the first issue in this case, *i.e.*, whether appellant established that she sustained an emotional condition in the performance of duty, the Board need not address the second issue, *i.e.*, whether the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 20 and March 10, 2003 are set aside and the case remanded for further development consistent with the above opinion.

Issued: May 3, 2004
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member