

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

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**SUSAN D. STARKS, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Southfield, MI, Employer**

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**Docket No. 04-331  
Issued: May 5, 2004**

*Appearances:*  
*Steve Burt, for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

WILLIE T.C. THOMAS, Alternate Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On November 19, 2003 appellant, through her representative, filed an appeal of a merit decision of the Office of Workers' Compensation Programs dated August 21, 2003. Pursuant to 20 C.F.R. §§ 501.2 and 501.3(c), the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

**FACTUAL HISTORY**

On July 11, 2001 appellant, then a 39-year-old modified letter carrier, filed an occupational disease claim alleging that she sustained major depression, an anxiety disorder and panic attacks due to factors of her federal employment. Appellant related:

“I had a number of valid on-the-job injuries which were approved by [the Office], but which were a source of friction between me and my supervisors. They used abusive language toward[s] me and frequently shorted my pay. They cut my

hours improperly. They breached my direct deposit improperly, causing my personal banking very serious embarrassment. When I asked them about transferring elsewhere I was ridiculed about my appearance and dress. I received serious discipline which was thrown out on appeal with back pay awarded.”

Appellant stopped work on December 4, 1999. On the claim form, an official with the employing establishment noted that appellant had previously filed a traumatic injury claim alleging that she sustained stress due to employment incidents on December 4, 1999 which had been denied by the Office under file Number A9-460609.

In a statement accompanying her claim, appellant attributed her condition to error and abuse by management at the employing establishment. Appellant contended that management “withheld vital information regarding my fitness-for-duty examination” on April 24, 1998 improperly found her absent without leave on December 6, 1997 and unfairly accused her of retaliation when the Office denied her compensation claims. Appellant further contended that the employing establishment damaged her financially.<sup>1</sup> She noted that she had filed grievances and Equal Employment Opportunity (EEO) complaints regarding the above incidents.

In an undated health care provider form, received by the Office on November 5, 2001, Dr. Spencer Ballard, Board-certified in psychiatry, by the American Osteopathic Association, diagnosed anxiety, depression, panic attacks and insomnia. He attributed appellant’s condition to an altercation with her supervisor on December 4, 1999.<sup>2</sup>

Appellant submitted a December 6, 1997 notice of a suspension for seven days that she received for being absent without leave on October 11, 1997. The notice indicated that on October 10, 1997 she went by ambulance from work to an emergency room due to head pain and numbness in her extremities. The notice indicated that John Halo, a supervisor, informed appellant that she should report to work the following day prior to seeing her physician unless kept at the hospital overnight. The notice indicated that on October 11, 1997 appellant did not show up for work or call to inform her supervisor of her absence and was found absent without leave.

In a grievance settlement dated April 17, 1998, appellant’s December 6, 1997 suspension was expunged and she received back pay for the period of the suspension.

By letter dated November 7, 2001, the Office requested additional information from appellant, who submitted copies of grievances, Equal Employment Opportunity (EEO) complaints, witness statements and medical reports. In a statement dated February 2, 1998, Sharon Wilkens related that appellant had called her on Friday to state that she would not be in on Saturday based on the instructions of an emergency room physician.<sup>3</sup> In an undated

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<sup>1</sup> Appellant described an incident with her supervisor on December 4, 1999. However, as this incident was the basis for her December 4, 1999 traumatic injury claim which was denied by the Office, it is not part of her current claim.

<sup>2</sup> In a disability certificate dated March 4, 2000, Dr. Ballard found appellant unable to work through May 1, 2000. In a note dated November 20, 2001, Dr. Ballard listed the dates that he treated appellant in his office.

<sup>3</sup> The statement indicated that the call in to work was on October 10, 1997 in regards to October 11, 1997.

statement, a coworker related that appellant called her when she arrived home from the emergency room and told her she was not coming to work the following day because she needed to first see her physician.

Appellant filed a grievance on September 24, 1997 because her supervisor told her that she had to use leave on September 22, 1997 to attend a physician's appointment scheduled by the Office. The grievance was settled on April 24, 1998 without prejudice to either party. Appellant received three hours of straight time pay.<sup>4</sup>

The record also contains a grievance filed by appellant alleging that on March 5, 1998 Greg Willis changed a form she signed. She related that on March 5, 1998 she provided Mr. Willis with a claim for compensation on account of disability (Form CA-8). Appellant contended that Mr. Willis changed the figures on the original form. In a settlement agreement dated August 10, 1998, she received eight hours of sick and annual leave added to her leave balances.

Appellant filed a grievance contending that on June 10, 1999 Mr. Halo called her into his office and told her that he was taking her paycheck to pay for a debt she owed the employing establishment for days she received continuation of pay in another claim. She stated that Mr. Halo told her that he would take her subsequent checks as well. Appellant related that she finally got Mr. Halo to give her the check, but noted that her account was overdrawn because her paycheck had not been directly deposited into her bank account, as was customary. The record contains a September 14, 1999 grievance settlement regarding this matter; however, the terms were confidential. The agreement noted that Ted Banks, officer in charge, would write a letter regarding the reason for money withheld from appellant's paycheck.

In a letter dated September 24, 1999, received by the Office on January 4, 2002, Mr. Banks related:

“[Appellant] had been having her check directly deposited into her bank account in lieu of receiving an actual check. On Thursday June 10, 1999 [she] was made aware at the close of business that her paycheck would not be directly deposited that evening, but that in fact she would be issued an actual paycheck the following day. [Appellant] has expressed that her [p]ayroll check not being directly deposited by the [employing establishment] has caused her some difficulties with her financial situation. This letter confirms that she was unaware that this action was to take place.”

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<sup>4</sup> The record also contains a Step 2 grievance dated November 28, 1997, denying appellant's allegation that management withheld vital information. The grievance noted that she had not specified the nature of the vital information that she alleged was withheld.

In a report dated March 9, 2000, received by the Office on January 4, 2002, Dr. Ballard related that he began treating appellant on December 16, 1999.<sup>5</sup> He stated:

“[Appellant] stated to me that her interactions with her supervisors have been stressful and perceived by [her] as harassment for quite some time. She also stated that she feels that she has been treated unfairly, *i.e.*, not in a manner consistent with the [employing establishment’s] policies and procedures. [Appellant] described problems obtaining her checks in [a] timely fashion for example.”

Dr. Ballard further discussed an altercation between appellant and her supervisor on December 4, 1999. He stated:

“My impression is that this episode [December 4, 1999], resulted in an abrupt exacerbation of [appellant’s] symptoms. She had been suffering from chronic mood disturbance, *i.e.*, depression and anxiety brought on by her treatment by her supervisors and this state was then elevated to a level of major depression with anxiety and panic disorder.”

Dr. Ballard diagnosed moderately severe major depression, anxiety disorder and panic disorder. He opined that appellant’s current condition was “directly related to the course of employment at the [employing establishment].”

On May 18, 2001 Dr. Ballard noted that he continued to treat appellant for depression, anxiety and sporadic symptoms of panic. He opined that she remained disabled from her usual employment.

By decision dated April 26, 2002, the Office denied appellant’s claim on the grounds that she did not establish fact of injury.

Appellant, through her representative, requested a hearing, which was held on May 29, 2003. At the hearing, she testified that she was treated in the hospital for a bee sting. Appellant related that she called Ms. Wilkins and told her that she could not come to work the next day because of instructions from the physicians at the hospital. She related that Ms. Wilkins was a supervisor at the employing establishment, but not her direct supervisor. Appellant noted that the disciplinary action she received after management found that she did not report to work or call on October 11, 1997 was expunged. She further described the financial effect of Mr. Halo taking her check to pay off a debt she owed the employing establishment. Appellant also related

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<sup>5</sup> In a psychiatric evaluation dated January 13, 2000, Dr. Ballard noted that appellant felt harassed at work and diagnosed recurrent major depression and moderate anxiety and panic disorder. He found that she should remain off work for four weeks. The record also contains a report from a social worker dated December 16, 1999. However, the report of a social worker does not constitute competent medical evidence as a social worker is not a “physician” as defined by section 8101(2) of the Act. *Ernest St. Pierre*, 51 ECAB 623 (2000).

that her supervisor told her that she had to take her own time for a medical appointment, but that she later received three hours for the time after she filed a grievance.<sup>6</sup>

In a decision dated August 21, 2003, the hearing representative affirmed the Office's April 26, 2002 decision, as modified, to find that appellant did not establish an injury in the performance of duty. The hearing representative found that she had not established any compensable employment factors.<sup>7</sup>

### **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>8</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 her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>9</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>10</sup> This burden includes the submission of a detailed description of the employment factors or conditions which she believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>11</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>12</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that

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<sup>6</sup> Appellant further submitted numerous disability certificates from Dr. Ballard finding that she was unable to resume work. She further submitted disability certificates from Dr. Edison finding that she was disabled and required continued treatment.

<sup>7</sup> The hearing representative noted that the December 4, 1999 incident, which appellant described at the hearing, was not before her at the present time because it was previously adjudicated in a decision with appeal rights.

<sup>8</sup> 5 U.S.C. §§ 8101-8193.

<sup>9</sup> See *Roger Williams*, 52 ECAB 468 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>10</sup> *Claudia L. Yantis*, 48 ECAB 495 (1997).

<sup>11</sup> *Roger Williams*, *supra* note 9.

<sup>12</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

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>13</sup>

### ANALYSIS

With regard to appellant's allegations that management inappropriately instructed her to use leave for a doctors appointment on September 22, 1997 and changed items on a claim for compensation form on March 5, 1998 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 coverage of the Act.<sup>14</sup> Although the handling of leave requests and matters involving compensation claims are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>15</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.<sup>16</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>17</sup> Additionally, mere perceptions of error or abuse are insufficient to establish entitlement to compensation. In order to discharge her burden of proof, appellant must first establish a factual basis for her claim by supporting her allegations with probative and reliable evidence.<sup>18</sup>

Appellant submitted a copy of a grievance settlement dated April 24, 1998, in which she received three hours of pay for the time she used for a medical appointment on September 22, 1997. However, the mere fact that personnel actions are later modified or rescinded does not, in and of itself, establish error or abuse.<sup>19</sup> The grievance was settled on April 24, 1998 without prejudice to either party and thus, is insufficient to establish error or abuse by the employing establishment. Appellant further submitted a settlement agreement dated August 10, 1998, based on her grievance alleging that on March 5, 1998 a supervisor changed figures on her claim form. In the settlement agreement, she received eight hours of sick and annual leave added to her leave balance. However, the circumstances surrounding this event are unclear and the disposition of the grievance is insufficient to show that the supervisor erred in performing administrative or personnel actions. Consequently, appellant has not established a compensable employment factor under the Act with respect to these administrative matters as the evidence pertaining to these allegations fail to establish error or abuse by the employing establishment.

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<sup>13</sup> *Id.*

<sup>14</sup> *James P. Guinan*, 51 ECAB 604 (2000); *Bettina M. Graf*, 47 ECAB 687 (1996).

<sup>15</sup> *Id.*

<sup>16</sup> *Robert W. Johns*, 51 ECAB 137 (1999).

<sup>17</sup> *See Brian H. Derrick*, 51 ECAB 417 (2000).

<sup>18</sup> *Robert Knoke*, 51 ECAB 319 (2000).

<sup>19</sup> *Dennis J. Balogh*, *supra* note 12.

The Board finds, however, that the evidence does establish error or abuse by employing establishment personnel in withholding appellant's paycheck on June 10, 1999. The evidence establishes that on June 10, 1999 a supervisor stopped appellant's paycheck from being directly deposited on that date into her bank account. The record contains a letter dated September 24, 1999 from Mr. Banks, an official with the employing establishment. He stated that appellant was unaware until the close of business on June 10, 1999 that her paycheck would not be sent that day as a direct deposit. A grievance on the issue was settled with the terms of the settlement confidential. As noted above, in evaluating whether the employing establishment committed error or abuse in the performance of an administrative or personnel matter, the issue is whether the employing establishment acted reasonably.<sup>20</sup> The Board finds that it was clearly unreasonable for the employing establishment to prevent appellant's paycheck from being directly deposited without providing her knowledge of the fact until the close of business the day of the scheduled direct deposit. Appellant, consequently, has established a compensable factor of employment as she has established error and abuse by the employing establishment in the performance of an administrative function.

The Board further finds error or abuse by the employing establishment in suspending appellant for seven days based on its determination that she did not appear for work or call in sick. In a letter dated February 2, 1998, Ms. Wilkins, a supervisor at the employment establishment, related that appellant had called her on October 10, 1997 to advise that she would not be at work the following day on the advice of her physician. An April 17, 1998 grievance settlement expunged appellant's suspension and she received back pay for the period of the suspension. She, therefore, has established that the employing establishment erred in suspending her because she had not appeared for work or called to report her absence and, consequently, has established a compensable factor of employment.

Appellant has established compensable factors of employment with respect to the employing establishment's withholding her paycheck from direct deposit on June 10, 1999 and suspending her for being absent without leave on October 11, 1997. However, her burden of proof is not discharged by the fact that she has established employment factors which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder to casually related to the accepted compensable employment factors.<sup>21</sup>

In a report dated March 9, 2000, Dr. Ballard discussed appellant's allegations that the employing establishment treated her in a manner that conflicted with its established procedures and delayed her paychecks. He diagnosed moderately severe depression, anxiety disorder and panic disorder, which he opined was "directly related to the course of employment at the [employing establishment]."

Although Dr. Ballard did not provide sufficient medical rationale explaining how the accepted employment factors caused or contributed to appellant's emotional condition, his report

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<sup>20</sup> *James E. Norris*, 52 ECAB 468 (2001).

<sup>21</sup> *See William P. George*, 43 ECAB 1159, 1168 (1992).

is generally supportive of her claim and sufficient to require further development by the Office.<sup>22</sup> The case, therefore, is remanded to the Office for preparation of a statement of accepted facts and further development of the medical evidence on the issue of whether appellant has sustained an emotional condition in the performance of duty. After such further development as the Office deems necessary, it shall issue an appropriate decision on appellant's entitlement to benefits.

**CONCLUSION**

The Board finds that the case is not in posture for a decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 21, 2003 is set aside and the case is remanded for further proceedings consistent with this opinion by the Board.

Issued: May 5, 2004  
Washington, DC

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>22</sup> *John J. Carlone*, 41 ECAB 354 (1989) (finding that the medical evidence was insufficient to discharge appellant's burden of proof, but remanding the case for further development of the medical evidence given the uncontroverted inference of causal relationship raised).