

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

BOKNAMSIK L. HORTEN, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Johnstown, PA, Employer**

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**Docket No. 04-583
Issued: November 23, 2004**

Appearances:
Boknamsik L. Horten, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On December 29, 2003 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated October 8, 2003, denying her claim for an emotional condition. 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 sustained an emotional condition in the performance of duty causally related to factors of her employment.

FACTUAL HISTORY

This case was previously before the Board.¹ By decision dated July 24, 2002, the Board affirmed a May 8, 2001 Office decision denying appellant's claim for an emotional condition. The Board's July 24, 2002 decision is herein incorporated by reference.

¹ Docket No. 01-1721 (issued July 24, 2002).

On July 15, 2003 appellant requested reconsideration and submitted additional evidence.² She provided additional details regarding her allegation that the employing establishment acted improperly when it changed her job and work shift.

Appellant submitted a copy of an October 3, 2002 Equal Employment Opportunity (EEO) Commission decision in which the EEO Commission found that the employing establishment breached a June 22, 1999 EEO Commission mediation settlement agreement with appellant on September 3, 1999 when it notified her that it would no longer honor the agreement.³ The June 22, 1999 mediation settlement agreement provided that appellant would retain her bid position “until [such] time, if any, she bids off her current shift/position.” Appellant has indicated that the breach of the mediation settlement agreement is a factor in her emotional condition claim. The EEO Commission further found, in its October 3, 2002 decision, that appellant failed to prove that the employing establishment discriminated against her when it advised her that she was required to bid on one of two residual positions or she would be placed in one of those positions, and that she and another junior clerk were being reassigned to those positions due to a new operating plan.⁴ The EEO Commission found that the employing establishment articulated legitimate nondiscriminatory reasons for the reassignment and appellant failed to establish that the reasons given were a pretext for discrimination.

Appellant also submitted medical evidence in support of her reconsideration request. In an August 2, 2000 report, Dr. Anil Parekh indicated that appellant was hospitalized for depression and suicidal ideation but he did not state that her condition was causally related to the employing establishment’s breach of the June 22, 1999 mediation settlement agreement. In a report dated May 23, 2003, Grant W. Croyle, a licensed clinical psychologist, stated that appellant was being treated for depression but he did not indicate that her condition was specifically related to the employing establishment’s breach of the June 22, 1999 mediation settlement agreement.⁵

By decision dated October 8, 2003, the Office denied modification of its denial of appellant’s emotional condition claim.

² Appellant also submitted evidence previously of record.

³ The EEO Commission stated, “[W]e note that[,] even if the reason given by the [employing establishment] for breaching its [June 22, 1999] decision is true, namely that it conflicted with the [collective bargaining agreement], this conflict does not negate the fact that the [employing establishment] breached the mediated agreement on September 3, 1999 when it notified [appellant] that it would no longer honor the agreement.”

⁴ Appellant and the second clerk (who had the least seniority at the employing establishment) were assigned to the new positions when no one volunteered for the jobs. In its July 24, 2002 decision, the Board found that the employing establishment had not erred or acted abusively when it abrogated the June 22, 1999 mediation settlement agreement based on its argument that the agreement was null and void because it was in conflict with the collective bargaining agreement.

⁵ The medical reports previously submitted also did not indicate that appellant’s emotional condition was causally related to the breach of the June 22, 1999 mediation settlement agreement.

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.⁶ 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.⁷

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.⁸ 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.⁹

Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act.¹⁰ However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.¹¹ Where appellant alleges compensable factors of employment, she must substantiate such allegations with probative and reliable evidence.¹²

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.¹³ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁸ *Pamela R. Rice*, 38 ECAB 838 (1987).

⁹ *Effie O. Morris*, 44 ECAB 470 (1993).

¹⁰ *Michael L. Malone*, 46 ECAB 957 (1995); *Gregory N. Waite*, 46 ECAB 662 (1995).

¹¹ *Elizabeth Pinero*, 46 ECAB 123 (1994); *Michael Thomas Plante*, 44 ECAB 510 (1993).

¹² *Joel Parker, Sr.*, 43 ECAB 220 (1991).

¹³ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

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.¹⁴

ANALYSIS

In its July 24, 2002 decision, the Board found that the employing establishment had not erred or acted abusively when it abrogated the June 22, 1999 mediation settlement agreement, based on its argument that the agreement was null and void because it was in conflict with the collective bargaining agreement. However, the record before the Board on this appeal contains an EEO decision dated October 3, 2002 in which the EEO Commission found that the employing establishment breached the June 22, 1999 mediation settlement agreement with appellant. The evidence of record including the October 3, 2002 EEO decision supports error or an unreasonable action by the employing establishment regarding the June 22, 1999 mediation settlement agreement. It therefore provides a factual basis for appellant's claim. The Board finds that the October 3, 2002 EEO decision constitutes evidence that the employing establishment erred in an administrative matter by breaching the June 22, 1999 mediation settlement agreement with appellant and, therefore, appellant has established a compensable factor of employment.

However, appellant's burden of proof is not discharged by the fact that she has established an employment factor which may give rise to a compensable disability under the Act. As noted above, appellant must also submit rationalized medical evidence establishing that her claimed emotional condition is causally related to an accepted compensable employment factor.¹⁵ The medical evidence of record in this case is not sufficient to establish that appellant's emotional condition claim because, as noted above, none of the medical reports indicates that her condition was causally related to the breach of the June 22, 1999 medication settlement agreement.

CONCLUSION

The Board finds that appellant has established a compensable factor of employment but the medical evidence does not establish that her emotional condition is causally related to the compensable employment factor.

¹⁴ *Garry M. Carlo*, 47 ECAB 299 (1996).

¹⁵ *Brian E. Flescher*, 40 ECAB 532 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 8, 2003 is affirmed.

Issued: November 23, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member