

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

DIANE S. PERSSON, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Lincoln, NE, Employer**

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**Docket No. 04-1236
Issued: October 5, 2004**

Appearances:
Diane S. Persson, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On April 8, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated November 7, 2003 and March 5, 2004, which denied her claim that she sustained an emotional condition in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

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

FACTUAL HISTORY

On September 4, 2003 appellant, then a 46-year-old highway transportation clerk,¹ filed an occupational disease claim alleging that she sustained fibromyalgia, gastrointestinal

¹ Appellant began working as a transportation clerk in January 1998 and later became a highway transportation clerk.

symptoms, depression, ear, nose and throat problems, and other stress-related conditions due to incidents and conditions at work.

Appellant claimed that, when she started work in January 1998, Jim Tesina, a supervisor, intended that she fail her computer test so that he could retain another employee. She asserted that Mr. Tesina failed to maintain critical records and avoided disciplining employees and, therefore, she had to field calls from angry employing establishment officials and spend extra time developing and managing records. Appellant alleged that for almost six years management failed to provide adequate coverage for the dock expediter position and that for at least an hour per day she was required to perform the position's duties, including unloading incoming shipments, completing paperwork, and making computer entries. She alleged that she was required to act as a supervisor on numerous occasions when Mr. Tesina was absent due to illness.² Appellant asserted that Mr. Tesina was not comfortable using a computer and that she was initially asked to perform his computer duties but was then told she was not authorized to do so. She was required to train Jim Murphy, a new supervisor, when Mr. Tesina retired in April 2003. Appellant asserted that the office ventilation system was filthy and inadequate and that she had inadequate space between her chair and the wall behind her chair. She advised the plant manager and two assistant plant managers regarding these matters but they did not take any action.

Appellant submitted medical evidence in support of her claim. In a report dated March 14, 2003, Dr. Mark G. Griffin, an attending Board-certified internist, stated that appellant was being treated for gastroesophageal reflux disease. He noted, "While not a causative effect, stress can certainly make the symptoms of reflux worse. It seems as though her job has been quite stressful." In a report dated October 16, 2003, Dr. Griffin indicated that "stressors at work" contributed to appellant's gastroesophageal reflux disease.

In a report dated March 27, 2003, Dr. Shane Kepler, an attending chiropractor, stated that he first treated appellant on March 15, 2000 at which time she complained of daily headaches and constant pain in her neck and shoulders. Dr. Kepler noted that both he and appellant had concluded that her stress "was from her job." In a report dated November 10, 2003, Dr. Kepler stated that a person with a subluxation often will have pain symptoms produced by that subluxation. He indicated that stress can cause excess secretion of hormones that in turn can lead to tension in the spinal muscles and subluxations. Dr. Kepler concluded that stress contributed to appellant's condition.³

The record was supplemented to include statements of supervisors who addressed appellant's allegations. In a statement dated September 25, 2003, Mr. Murphy stated that, on occasions, when Mr. Tesina was absent he was only able to cover the supervisory duties for four hours per day. He also noted that appellant developed and maintained records that were used by

² She indicated that Barb Scribner served as a supervisor during a six-month period Mr. Tesina was absent in 2000, but suggested that no supervisor was provided for more than 600 hours that Mr. Tesina was absent between 2000 and 2003.

³ The record also contains several medical progress notes, dated between 1997 and 2003, in which appellant reported to her physicians that she experienced stress in the workplace, including stress from working long hours and dealing with the absence of her supervisor.

the office and stated that highway transportation clerks were expected to answer the telephone and assist customers when the dock expediter was absent.

By decision dated November 7, 2003, the Office denied appellant's claim on the grounds that she did not establish any compensable employment factors.

On December 15, 2003 appellant requested reconsideration of her claim. She provided additional information regarding the incidents and conditions at work that she believed caused her emotional condition. Appellant alleged that prior to October 2003 the computer system she used failed on many occasions to communicate with the office printer and sporadically locked up causing her to lose documents. She claimed that when she received a new computer system in October 2003 she initially was unable to retrieve her computer files and that, when the files were restored to her computer, most of them had to be reformatted. Appellant asserted that the position of her computer keyboard caused her to type in an awkward and ergonomically improper manner and claimed that the temperature in her office exceeded 80 degrees. She alleged that in addition to performing many of the duties of the dock expediter she had to train him how to perform his job. Appellant asserted that when Mr. Tesina was absent her work routine was interrupted every 5 to 10 minutes by supervisory tasks that she was not supposed to perform and that she was forced to make a number of decisions that should have been made by management.

In a statement dated January 16, 2004, Carl Bouges, a supervisor, stated that appellant was in "an unusual situation" because her supervisor, Mr. Tesina, was very ill and often was absent with very short notice. He noted, "During his absences, she would be required to answer the phone, take messages and take action within her scope of responsibility as a PS-6 Transportation Clerk." Mr. Bouges indicated that appellant was instructed to contact a workroom supervisor if a situation arose which she could not effectively deal with. He further noted that, after Mr. Tesina retired, the new supervisor was much more consistent in his attendance and a workroom supervisor would fill in during his absences.

In a statement dated January 30, 2004, Louise Crooks, a safety and injury compensation specialist for the employing establishment, responded to some of appellant's assertions regarding her work conditions. Ms. Crooks stated that Mr. Tesina did not provide computer training to appellant and that he had no control over whether she passed or failed the training. She acknowledged that appellant performed some overtime work but noted that this work was minimal in that it averaged about one hour per week between 1998 and 2003.⁴ The record was also supplemented with statements from employing establishment officials that indicate that a number of employees had problems transferring their computer files when the computer systems were changed in October 2003.

By decision dated March 5, 2004, the Office affirmed its November 7, 2003 decision. The Office modified its prior decision to reflect that appellant established that she had problems with her computer system, including the fact that the system was unreliable prior to its

⁴ The record contains documents memorializing appellant's overtime use between 1998 and 2003. These documents show that appellant's use of overtime during this period was minimal.

replacement in October 2003. It further determined that the medical evidence did not show that appellant developed an emotional condition due to this accepted employment factor.

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.⁵ 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.⁶

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.⁷ 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.⁸

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.⁹ 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.¹⁰

ANALYSIS

In the present case, appellant alleged that she sustained stress-related conditions of a physical and emotional nature due to a number of employment incidents and conditions. The

⁵ 5 U.S.C. §§ 8101-8193.

⁶ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁸ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁹ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁰ *Id.*

Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that her supervisor, Mr. Tesina, intended that she fail her training when she first began working for the employing establishment in January 1998. She also claimed that Mr. Tesina mismanaged the office by failing to maintain critical records and avoiding the discipline of employees. Regarding appellant's allegations that Mr. Tesina mishandled matters pertaining to training, record keeping and discipline, 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 the coverage of the Act.¹¹ Although these matters are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.¹² 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. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹³

Appellant has not shown that Mr. Tesina mishandled any matters pertaining to training. In fact, the record suggests that Mr. Tesina was not directly responsible for appellant's training. In a statement dated January 30, 2004, Ms. Crooks, a safety and injury compensation specialist for the employing establishment, stated that Mr. Tesina did not provide computer training to appellant and that he had no control over whether she passed or failed the training. With regard to her claims of Mr. Tesina's mismanagement, appellant only provided generalized accusations lacking in detail. She did not provide specific instances of Mr. Tesina's alleged failure to maintain records or discipline employees. Nor did she explain how these alleged lapses in duty affected her own work situation.¹⁴ Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant alleged that she was exposed to several environmental conditions that effectively became part of the conditions of her employment.¹⁵ For example, she alleged that the office ventilation system was filthy and inadequate, that she had inadequate space between her chair and the wall behind her chair, that the position of her computer keyboard caused her to type in an awkward and ergonomically improper manner, and that the temperature in her office exceeded 80 degrees. However, appellant did not establish the factual bases of these assertions. With respect to air quality, the record contains the results of air testing performed in April 2000

¹¹ See *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).

¹² *Id.*

¹³ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁴ The record reflects that appellant developed and maintained some records for the employing establishment, but the record does not show that she had to develop and maintain records due to any failure of Mr. Tesina.

¹⁵ The Board has recognized that certain environmental conditions in the workplace, including unsafe conditions, can be considered to be employment factors. See *Peggy Ann Lightfoot*, 48 ECAB 490, 494 (1997).

which showed that the employing establishment premises generally had very low levels of respirable dust.

Appellant alleged that between 1998 and 2003 she was required to perform the duties of Mr. Tesina during his many absences from work due to health problems and that she also had to perform increased duties due to the absences of the dock expeditor. She further claimed that she encountered various problems with the computer systems between 1998 and 2003. The Board has held that emotional reactions to situations in which an employee is trying to meet his position requirements are compensable.¹⁶ In *Antal*, a tax examiner filed a claim alleging that his emotional condition was caused by the pressures of trying to meet the production standards of his job and the Board, citing the principles of *Cutler*, found that the claimant was entitled to compensation. In *Kennedy*, 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 Board finds that appellant has established an employment factor due to the increased work she had to perform when Mr. Tesina was absent. While it is unclear to what extent appellant had to perform supervisory duties or make supervisory decisions, it is clear that Mr. Tesina's absences placed increased burdens on appellant. In a statement dated January 16, 2004, Mr. Bouges, a supervisor, suggested that Mr. Tesina's absences created additional work for appellant. In a September 25, 2003 statement, Mr. Murphy, a supervisor, noted that on occasions that Mr. Tesina was absent he was only able to cover the supervisory duties for four hours per day. In addition, appellant has established that the absences of the dock expeditor caused her to perform additional duties. In his September 25, 2003 statement, Mr. Murphy indicated that highway transportation clerks were expected to answer the telephone and assist customers when the dock expeditor was absent.¹⁷ Lastly, the Office accepted in its March 5, 2004 decision that appellant had problems with her computer between 1998 and 2003. The record establishes that appellant lost files under the computer system used prior to October 2003 and that she had difficulty transferring files when the new computer system was instituted in October 2003. Therefore, an employment factor has been established in this regard.

In the present case, appellant has established employment factors with respect to the computer problems she encountered and the extra work necessitated by the absences of Mr. Tesina and the dock expeditor. 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. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has a stress-related disorder and that such disorder is causally related to the accepted compensable employment factor.¹⁸

¹⁶ See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

¹⁷ It should be noted that the record shows appellant did not work large amounts of overtime between 1998 and 2003.

¹⁸ See *William P. George*, 43 ECAB 1159, 1168 (1992).

Appellant did not submit sufficient medical evidence to show that she sustained a stress-related condition due to the accepted employment factors. She submitted March 14 and October 16, 2003 reports in which Dr. Griffin, an attending Board-certified internist, stated that her gastroesophageal reflux disease was affected by stress at work. However, Dr. Griffin did not provide any opinion regarding what type of work stress he felt contributed to appellant's medical condition and, therefore, he did not relate her condition to any of the accepted employment factors. In reports dated March 27 and November 10, 2003, Dr. Kepler, an attending chiropractor, indicated that appellant's headaches and pain symptoms were related to work stress. However, Dr. Kepler's reports do not constitute medical evidence under the Act. Under section 8101(2) of the Act, chiropractors are only considered physicians, and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.¹⁹ Although Dr. Kepler suggested that appellant had a subluxation, his reports do not show that such a finding was demonstrated by x-rays to exist.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the March 5, 2004 and November 7, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 5, 2004
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁹ 5 U.S.C. § 8101(2). See *Jack B. Wood*, 40 ECAB 95, 109 (1988).