

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

DANIELLE J. PULS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
TAMPA, FL Employer**

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**Docket No. 04-1285
Issued: October 25, 2004**

Appearances:
Vivian Perez, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On April 15, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs hearing representative's decision dated March 23, 2004, 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 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 February 28, 2003 appellant, then a 36-year-old letter carrier, filed a traumatic injury claim alleging that she was stressed out and continuously harassed in the performance of duty. She indicated that the injury occurred on February 28, 2003. The employing establishment

controverted the claim and alleged that appellant should file her claim as an occupational disease claim. She stopped work on February 28, 2003.

In a separate statement dated February 28, 2003, Donna Obringer, a supervisor, indicated that appellant had a representative with her when she was given the Form CA-1 (notice of traumatic injury and claim for continuation of pay/compensation). She explained that she asked appellant to read the paragraph under her signature regarding false statements and appellant alleged that she was not making any false statements. Ms. Obringer also indicated that she then asked her if she wanted to submit the form and that appellant indicated that she would like to submit the form. Ms. Obringer noted that appellant went home 10 minutes later and was subsequently informed that she was sick and would be out due to stress.

The record contains numerous reports from Dr. Walter E. Afield, a Board-certified psychiatrist and appellant's treating physician. In his February 28, 2003 report, Dr. Afield indicated that appellant experienced a work-related accident in December 2002 to her right arm after lifting a tray of mail and reported the injury to her supervisor. He indicated that she began to experience numbness in her right arm and reported the condition to her supervisor on February 28, 2003.¹ Dr. Afield noted that appellant alleged that she was asked to file the wrong forms and was accused of lying about her problem and that she was consequently subjected to harassment and complaints that she was "falsifying information." He diagnosed a right arm strain, severe depression, severe anxiety with panic attacks and post-traumatic stress disorder. In a March 3, 2003 report, Dr. Afield diagnosed depression and anxiety and responded "yes" in response to whether he believed that appellant's condition was caused or aggravated by the employment activity. He indicated that appellant was disabled.

In a letter dated March 18, 2003, the Office advised appellant that the evidence submitted was insufficient to establish her claim and requested that she submit additional supportive factual and medical evidence.

In support of her claim, appellant submitted a March 19, 2003 statement. She indicated that she reported the injury on the same day she was injured, which was February 24, 2003 at approximately 11:30 a.m., while she was on the street delivering mail. Appellant alleged that she was picking up a tray of mail, which weighed approximately 30 to 35 pounds. She noted physical symptoms in her arm, but did not address her claimed work stress.

In an April 24, 2003 decision, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition in the performance of duty.

Appellant requested a hearing which was held on December 29, 2003. During the hearing, she testified that she filed the stress claim because she was "terrorized" by a supervisor, Ms. Obringer, when she attempted to file a traumatic injury claim with respect to an injury to her right arm that occurred on February 24, 2003. The Office subsequently received additional progress notes from Dr. Afield dating from March 10 to June 19, 2003.

¹ The present appeal pertains only to the denial of appellant's emotional condition claim.

In February 4, 2004 comments to appellant's hearing testimony, Deborah Draga, an employing establishment manager, indicated that, when appellant came in on February 28, 2003, she informed Ms. Obringer, a supervisor, that she wanted to file a traumatic injury claim for an injury that she had in December around Christmas time. Ms. Draga alleged that appellant was advised that she would have to file an occupational disease claim and claim for compensation (Form CA-2) because she could not state a time or place of injury. She related that after appellant was advised that she could not get approval for a doctor's appointment as the injury occurred over a month earlier, she spoke with a shop steward and told Ms. Obringer that she had injured her arm a few days earlier and wanted to fill out a CA-1 form. Ms. Draga indicated that Ms. Obringer requested that appellant read the statement regarding false claims and noted that afterwards appellant left. She stated that appellant returned in the afternoon with paperwork stating that she would be out for an extended period of time. Ms. Draga also denied making any allegations that appellant filed a false claim or of advising her that she was going to jail. She further denied the accusations of a hostile work environment or hostility towards employees. Ms. Draga also noted that appellant had previously informed a supervisor in December that she had injured her arm. Furthermore, she denied that appellant was refused a CA-1 form.

On February 6, 2004 appellant's representative forwarded additional evidence, including a copy of a May 15, 2003 grievance, along with copies of previous reports. In a report dated April 7, 2003, Dr. Arthur J. Pedregal, a Board-certified psychiatrist, indicated that appellant had an injury in September 2002.² He did not address any injury occurring February 28, 2003.

By decision dated March 23, 2004, the Office hearing representative affirmed the April 24, 2003 decision, but modified it to reflect the denial on the basis that appellant's emotional condition was not sustained in the performance of duty.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every 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 concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³ 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 his frustration from not being permitted to work in a particular environment or to hold a particular position.⁴

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

² The report states September 2003, however, this appears to be a typographical error.

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 126 (1976).

adversely affected by employment factors.⁵ 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.⁶

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 the physician when providing an opinion on causal relationship and, which working conditions are not deemed factors of employment and may not be considered.⁷ 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 the matter establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁸

ANALYSIS

Appellant alleged that she sustained an emotional condition on February 28, 2003 as a result of employment incidents and conditions. The hearing representative's March 23, 2004, decision found that she did not establish any compensable employment factors in the performance of duty. The Board must thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegations that her supervisor confronted her on February 28, 2003 when she attempted to file a claim for a traumatic injury, 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.⁹ 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.¹⁰

The employing establishment denied any error or abuse. In a statement dated February 28, 2003, Ms. Obringer explained that, when appellant attempted to file her claim, she advised her to read the portion regarding false statements. In addition, Ms. Draga advised in a

⁵ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁶ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁷ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁸ *Id.*

⁹ An employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. *Sandra Davis*, 50 ECAB 450 (1999).

¹⁰ *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

February 4, 2004 statement, that appellant initially informed Ms. Obringer on February 28, 2003 that she wanted to file a traumatic injury claim for an injury that she had around Christmas time and was subsequently advised that an occupational disease claim would have to be filed if she could not pinpoint the exact date. Ms. Draga indicated that after appellant spoke with a shop steward, she returned and indicated that she injured her arm a few days earlier and thus, Ms. Obringer advised her of the portion of the claim form regarding false claims. In addition, appellant's treating physician, Dr. Afield, noted that she had some type of injury in December 2002, when lifting a tray of mail. In these circumstances, the Board finds that the employing establishment's actions concerning advising appellant of the portion of the claim form regarding the filing of false claims do not constitute unreasonable actions by the employing establishment. Although appellant alleged that the employing establishment engaged in the above activities, she did not provide additional evidence to support her allegations that the actions of the supervisors were unreasonable. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant has also alleged that harassment and discrimination on the part of her supervisors contributed to her claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.¹¹ 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.¹² In this case, 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 discrimination against by her supervisors on February 28, 2003 or any other date. As noted above, appellant alleged that her supervisors made statements and engaged in actions which she believed constituted harassment, but she provided no corroborating evidence such as specific witnesses' statements, to establish that the statements were actually made or that the actions actually occurred in the manner alleged.

Appellant also alleged that her supervisors created a hostile environment. Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by appellant and supported by the evidence, may constitute a compensable factor of employment.¹³ However, the employing establishment denied any improper behavior towards appellant. She did not submit any corroborating evidence to support that her supervisors were hostile towards her. Although appellant submitted a copy of a grievance alleging hostile working conditions at the employing establishment, it contained no resolution or admission. The evidence, therefore, is insufficient to indicate that her supervisors created a hostile environment.

¹¹ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹² *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹³ *Janet D. Yates*, 49 ECAB 240 (1997).

As appellant has not established a compensable employment factor, it is not necessary to address the medical evidence.¹⁴

CONCLUSION

For the foregoing reasons, as appellant has not established any compensable employment factors under the Act, she has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 23, 2004 is affirmed.

Issued: October 25, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹⁴ See *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).