

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

DAWN ALFRED, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Orange, TX, Employer**

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**Docket No. 05-548
Issued: June 3, 2005**

Appearances:
Dawn Alfred, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On December 29, 2004 appellant filed a timely appeal from the November 20, 2004 merit decision of the Office of Workers' Compensation Programs, finding that she did not sustain an emotional condition while in the performance of duty. 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 has established that she sustained an emotional condition while in the performance of duty on September 24, 2004.

FACTUAL HISTORY

On September 28, 2004 appellant, then a 32-year-old rural letter carrier, filed a traumatic injury claim alleging that, on September 24, 2004 at 11:40 a.m., a "young Black male grab[bed] and touch[ed] my private part in a sexual way" while she was putting mail in the mailboxes of an apartment building. She stopped work on September 27, 2004.

By letter dated October 21, 2004, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office advised her about the type of factual and medical evidence she needed to submit in support of her claim. Appellant submitted an undated statement from Vester Thompson, an employing establishment supervisor, who noted that the September 24, 2004 incident involving appellant was originally reported to several employing establishment officials. Detective Keith Longlois of the Orange, Texas Police Department conducted an onsite investigation and interviewed appellant. She was referred to the employee assistance program on the same date. Mr. Thompson noted that on September 25, 2004 appellant asked how she was going to get paid for time missed from work. He stated that she requested a traumatic injury claim form (CA-1) on September 28, 2004 but did not submit any documentation supportive of her claim. On October 5, 2004 appellant gave him a statement from her physician.

Appellant also submitted an incident report prepared by Mr. Thompson, which described the September 24, 2004 incident. He indicated that on September 24, 2004 at approximately 11:45 a.m., appellant was delivering mail to an apartment building when an unidentified male was standing in front of the wall unit. Appellant asked him to please step back until all mail was delivered to the wall units. When she opened the door to the wall unit, the man came around the door and reached behind her and grabbed her by her crouch. Mr. Thompson reported that appellant turned in reaction and shouted obscenities to the man. Appellant then apologized, got in her car and drove to the nearest residence to call the employing establishment. Mr. Thompson stated that he arrived at the residence to meet appellant who was visibly shaken by the incident. She explained to him what happened and he then contacted the police who arrived at the scene shortly thereafter. Appellant went to the police station where she gave a report to a detective and an investigation of the incident was conducted by the police department.

In a September 30, 2004 report, Dr. Erica J. Hayes, a psychiatrist, noted that she was treating appellant for acute stress disorder. She stated that appellant would likely benefit from pharmacological treatment, which had been initiated. Dr. Hayes requested that, during the initial phases of this treatment, appellant refrain from employment activities over the next four weeks. Dr. Hayes' October 28, 2004 report reiterated that appellant had been under her care since September 30, 2004 and her diagnosis of acute stress disorder. Dr. Hayes requested that appellant refrain from employment activities for an additional three weeks.

A request for or notification of absence from dated November 1, 2004, indicated that appellant wished to receive continuation of pay. A March 20, 2002 medical report of Dr. Ramaswamy Lakshmanan, a Board-certified psychiatrist, stated that appellant's symptoms of depression first appeared on October 23, 2001. Dr. Lakshmanan diagnosed dysthymic disorder and prescribed medication and psychotherapy. He stated that appellant was unable to work from October 23 through 26, 2001.

A September 25, 2004 report from the Orange Police Department described the September 24, 2004 incident. Appellant advised that she was in the process of delivering mail to the complex and was in the area of the main office when she walked past a Black male. Appellant stated that, as she walked past the subject who was unknown to her, he grabbed her. She began to scream and the subject let go of her. The apartment manager, Linda Winn, was in the area at the time of this incident and stated that she did not witness the assault personally but

looked immediately upon hearing appellant scream. Ms. Winn further stated that other subjects were in the area and that she believed the suspect was not a resident. She believed the subject was visiting a relative at the apartment complex. The police officer went to the apartment of the person whom Ms. Winn believed the subject was visiting but no one answered the door. Appellant and Mr. Thompson went to the police station and met with Sergeant Longlois and appellant filed charges.

In a December 4, 2001 letter, appellant discussed the handling of the use of leave, payroll and disciplinary matters by the employing establishment. A subpoena was issued to appellant requiring her to appear in court on December 15, 2004 regarding her assault case. In a November 17, 2004 letter, the employing establishment requested that Dr. Hayes submit information regarding appellant's medical condition including her ability to return to work.

By decision dated November 20, 2004, the Office accepted that the September 24, 2004 incident constituted a compensable factor of employment but found the medical evidence of record was insufficient to establish that she sustained a medical condition causally related to this compensable employment factor. The Office noted that appellant submitted Mr. Thompson's undated statement, the employing establishment's September 24, 2004 incident report and Dr. Hayes' September 30 and October 28, 2004 notes. The Office found that, although Dr. Hayes provided a diagnosis, she failed to explain how the diagnosed condition was causally related to the accepted compensable employment factor.¹

LEGAL PRECEDENT

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

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁴ the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁵

¹ Following the issuance of the Office's November 20, 2004 decision, additional evidence was received. On appeal appellant also submitted new evidence. The Board, however, may not review evidence for the first time on appeal that was not before the Office at the time it issued its final decision. See 20 C.F.R. § 501.2(c).

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ 28 ECAB 125 (1976).

⁵ 5 U.S.C. §§ 8101-8193.

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 under the Act.⁶ When an employee experiences emotional stress in carrying out her employment duties and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of her work.⁷ 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 under the Act.

In case 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.⁸ 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.⁹

ANALYSIS

In this case, there is no dispute that on September 24, 2004 appellant was delivering mail when she was assaulted by an unidentified male. Therefore, the Board finds that appellant has established a compensable factor of employment.

Appellant's burden of proof, however, is not discharged by the fact that she has established a compensable employment factor. To establish her claim for an emotional condition, she must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.¹⁰

Dr. Hayes' September 30 and October 28, 2004 reports provided a diagnosis of acute stress disorder and recommended that appellant refrain from performing any work activities for certain periods of time. However, the physician failed to address whether the diagnosed condition and disability for work was causally related to the September 24, 2004 employment factor. Dr. Hayes did not provide a history of the accepted incident or provide findings on

⁶ See *Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

⁷ *Lillian Cutler*, *supra* note 4.

⁸ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁹ *Id.*

¹⁰ See *William P. George*, 43 ECAB 1159, 1168 (1992).

examination. The Board finds that Dr. Hayes' reports are insufficient to establish appellant's claim.

Dr. Lakshmanan provided a diagnosis of dysthymic disorder and indicated that appellant was disabled for work from October 23 through 26, 2001. However, this predates the September 24, 2004 compensable employment factor and does not describe what happened on this date or address the causal relationship between the accepted work factor and the emotional condition for which appellant seeks compensation. As Dr. Lakshmanan's report does not address the relevant time period or issue in this case, his opinion is insufficient to establish appellant's claim.

As appellant has not submitted any rationalized medical evidence establishing that she sustained an emotional condition causally related to the accepted compensable employment factor, the Board finds that she has failed to meet her burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an emotional condition while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the November 20, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 3, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member