

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

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SHARON L. BELL, Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,  
Abilene, TX, Employer

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**Docket No. 04-2127  
Issued: May 2, 2005**

*Appearances:*  
Sharon L. Bell, *pro se*  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On August 30, 2004 appellant filed a timely appeal of a decision of the Office of Workers' Compensation Programs dated May 25, 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 claim.

**ISSUE**

The issue is whether appellant has established that she sustained a stress condition in the performance of duty causally related to factors of employment.

**FACTUAL HISTORY**

On October 26, 2001 appellant, a 45-year-old supervisor distribution operations, filed an occupational disease claim alleging that her stress disorder was due to the shortage of personnel, the overwhelming responsibilities of her position and attacks on her private property during her tour of duty.

In a report dated November 2, 2001, Dr. John D. Crowley, a treating Board-certified psychiatrist, diagnosed depression. He opined that appellant could only work from 7:00 a.m. to 5:00 p.m. and “that working outside of these hours will exacerbate and possibly worsen her depressive disorder.”

In a statement received by the Office on December 10, 2001, appellant attributed her condition to the following: “shortage of competent management personnel;” vandalism of her vehicle; harassment by union members; lack of support and training from upper management; receiving telephone calls during the day and on her days off regarding operational problems; denial of leave; problems with coworkers; verbal assaults; lawsuit threats; training employees to perform supplemental support to the management team; forced to falsify records and that her request to resign from management and return to the craft was denied.

By decision dated March 1, 2002, the Office denied appellant’s claim on the grounds that she failed to establish any compensable factors of employment.

Appellant requested an oral hearing before an Office hearing representative in a letter dated March 9, 2002. A hearing was held on October 4, 2002 at which appellant testified.

In an undated report received on December 10, 2001, Coy Pullara, a licensed social worker, diagnosed severe major depression and post-traumatic stress disorder.

In a report dated December 28, 2001 and received on November 22, 2002, Dr. Gary L. Etter, a treating Board-certified psychiatrist, diagnosed major depression without psychosis due to job stress. With regards to her job duties, the physician noted that her “job described as terrible” and increased work less help. He stated that appellant’s depression began in August 2001 when she had significant job stress. Dr. Etter noted that appellant had severe insomnia, “would wake up in tears or rage -- always related to work.”

In a decision dated December 10, 2002, the hearing representative found that appellant had established two compensable factors, a heavy workload and it was stressful for her to prepare statements challenging employees’ compensation claims. The Office hearing representative denied the claim, finding the medical evidence insufficient as it failed to explain how her diagnosed condition was causally related to the accepted factors.

In a letter dated February 21, 2003, appellant requested reconsideration and submitted reports from Drs. Crowley and Etter and Ms. Pullara.

In a report dated January 28, 2003, Dr. Crowley diagnosed severe major depression and post-traumatic stress disorder. He opined that these conditions were “directly caused by the established work factors while functioning as Lead Supervisor.”

In a report dated March 31, 2003,<sup>1</sup> Dr. Etter opined that appellant’s depression was the “direct result of her stress while on the job.” In support of this opinion, he stated that appellant

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<sup>1</sup> This appears to be a typographical error as the report was received by the Office on February 25, 2003.

“had no psychiatric history” prior to August 2001, “she gave no other stressors as to triggers for depression,” and her “depression improved when the stressor was removed from her life.”

On February 25, 2003 the Office received an undated report by Ms. Pullara, who reiterated her diagnosis of severe depression and post-traumatic stress disorder.

By decision dated May 1, 2003, the Office denied modification of the December 10, 2002 decision finding the medical opinion evidence insufficient to support a causal relationship between the two accepted employment factors and her diagnosed condition.

In a letter dated September 9, 2003, appellant requested reconsideration and resubmitted reports from Drs. Etter and Crowley and Ms. Pullara, which were previously of record.

By decision dated May 25, 2004, the Office denied modification of the May 1, 2003 decision. The Office found that she failed to submit any medical evidence supporting a causal relationship between her condition and the accepted factors of employment.

### **LEGAL PRECEDENT**

As the Board noted in the case of *Lillian Cutler*, workers’ compensation law does not cover each and every illness that is somehow related to the employment. When an employee experienced emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her 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 resulted from her emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of her work.<sup>2</sup>

When working conditions are alleged as factors in causing an emotional 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>3</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Where 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>4</sup>

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<sup>2</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

<sup>4</sup> *Sandra F. Powell*, 45 ECAB 877 (1994); *Georgia F. Kennedy*, 35 ECAB 1151 (1984).

## ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, thus, initially review whether the alleged incidents and conditions of employment are compensable under the terms of the Federal Employees' Compensation Act.

Regarding appellant's allegations that the employing establishment denied her request to be relieved of her supervisory position and returned to the craft, and certain leave requests, 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.<sup>5</sup> Although the handling of disciplinary actions, evaluations and leave requests, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.<sup>6</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. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>7</sup> Appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters. She has not submitted any evidence with respect to her allegations of denial of leave requests and denial of her request to return to the craft. The Board finds that appellant has not established a compensable employment factor under the Act with respect to administrative matters as the evidence does not establish error or abuse.

Appellant has also alleged that harassment on the part of her supervisors and union officials contributed to her claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.<sup>8</sup> However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.<sup>9</sup> In the present case, the employing establishment denied that appellant was subjected to harassment and appellant has not submitted sufficient evidence to establish that she was harassed by her supervisors or union officials.<sup>10</sup> Appellant alleged that union officials and supervisors harassed her, but she provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions

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<sup>5</sup> 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)

<sup>6</sup> *Cyndia R. Harrill*, 55 ECAB \_\_\_\_ (Docket No. 04-399, issued May 7, 2004).

<sup>7</sup> *Beverly A. Spencer*, 55 ECAB \_\_\_\_ (Docket No. 03-2033, issued May 3, 2004).

<sup>8</sup> *David W. Shirey*, 42 ECAB 783 (1991); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>9</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>10</sup> See *William P. George*, 43 ECAB 1159, 1167 (1992).

actually occurred.<sup>11</sup> The Board finds that appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

With regards to appellant's allegations that her personal vehicle in the employing establishment parking lot had been damaged by employees/union members and the employing establishment failed to investigate the incident, the Board finds that this has not been established as factual. This incident is outside the scope. The Office accepted as compensable factors that appellant had a heavy workload and it was stressful for her to preparing statements challenging employees' compensation claims. The Board notes that this relates to the performance of her regular and specially assigned duties under *Cutler*. Similarly, her duties as a supervisor required her to train management trainee's and deal with union officials on matters. Because appellant substantiated compensable factors of employment, the Board will examine the medical evidence to determine whether it establishes that this factor contributed to her emotional condition.<sup>12</sup> 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 is causally related to the accepted compensable employment factor.

The record in this case contains no such medical opinion. Ms. Pullara attributed appellant's depression to lack of supporting personnel, increased work and job demands, employees, who belonged to the union, who vandalized her car and being instructed to falsify records. However, the reports of a social worker do not constitute competent medical evidence, as a social worker is not defined as a "physician" under section 8101(2) of the Act.<sup>13</sup>

With regards to the reports of Drs. Crowley and Etter, the Board finds these reports insufficient to establish appellant's claim. In a January 28, 2003 report, Dr. Crowley diagnosed severe major depression which he attributed to "work factors while functioning as Lead Supervisor." This opinion is of diminished probative because it lacks an adequate history of compensable employment factors. Dr. Crowley gave no description of the compensable factors of employment found in this case. He made no mention of appellant's work activities or stress in handling compensation claims. Medical conclusions based on inaccurate or incomplete histories are of diminished probative value.<sup>14</sup> Dr. Etter also attributed appellant's depression to her stress at work based upon her lack of prior psychiatric history and the improvement in her condition once the work stress was removed. The Board has held that an opinion held that the opinion of a physician that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting medical rationale, to establish

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<sup>11</sup> See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

<sup>12</sup> 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 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 is causally related to the accepted compensable employment factors. See *William P. George*, *supra* note 10.

<sup>13</sup> See 5 U.S.C. § 8101(2). See also *Phillip L. Barnes*, 55 ECAB \_\_\_\_ (Docket No. 02-1441, issued March 31, 2004).

<sup>14</sup> *Beverly R. Jones*, 55 ECAB \_\_\_\_ (Docket No. 03-1210, issued March 26, 2004).

causal relationship.<sup>15</sup> Moreover, Dr. Etter failed to provide any rationale explaining how appellant's condition was due to the accepted factors of employment.

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty. While the evidence is sufficient to establish that she experienced a heavy workload and it was stressful for her preparing challenges to employees' compensation claims, no physician has offered a well-reasoned explanation of how these specific factors of employment caused or contributed to her diagnosed emotional condition and physical complaints. On these grounds the Board will affirm the Office's denial of compensation benefits.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 25, 2004 is affirmed.

Issued: May 2, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>15</sup> *Jaja K. Asaramo*, 55 ECAB \_\_\_\_ (Docket No. 03-1327, issued January 5, 2004).