

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

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**SANDRA K. KINLER, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Ama, LA, Employer**

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**Docket No. 04-1519  
Issued: November 14, 2005**

*Appearances:*  
*Sandra K. Kinler, pro se*  
*Office of the Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
WILLIE T.C. THOMAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On May 24, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decisions dated August 13, 2003 and May 12, 2004. Under 20 C.F.R. §§ 501(c)(2) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant sustained an emotional condition in the performance of duty.

**FACTUAL HISTORY**

This is the second appeal before the Board. Appellant, a 40-year-old rural carrier, filed a Form CA-2 claim for benefits based on an emotional condition on April 12, 2001, which she alleged that she first became aware was caused by factors of employment on March 12, 2001. Appellant claimed that she developed an anxiety disorder caused by harassment and verbal abuse on the part of her supervisor.

Appellant alleged that she had been working as a rural carrier associate covering the Ama Route, which was reclassified on November 4, 2000. She stated that, although this route was posted for bidding on January 9 and 22, 2001, she did not get the job. Appellant contended that her postmaster's antagonism toward her due to her union activity resulted in the job going to another employee.<sup>1</sup> The employing establishment rebutted appellant's allegations on the Form CA-2, stating that she became upset when she did not bid successfully for a vacant position. The postmaster responded to appellant's allegations in a statement received by the Office on May 14, 2001:

“[Appellant] was hired as a [temporary rural carrier] in July of 1999 as a Luling post office employee. She was converted to [rural carrier associate] status in January of 2000. She has been working as a [temporary rural carrier/rural carrier association] on an auxiliary route domiciled in Ama since the time of her employment. In September 2000, the administrative responsibilities of the above mentioned route were transferred to the Ama post office. At that time [appellant] was reassigned to the Ama post office. After the annual inspection of the route it was determined that it was large enough to become a full[-]time position. The route, by contrast, was bid district wide and [appellant] was not the senior bidder. Another employee was awarded the route and at that time [appellant] began alleging numerous, false [improprieties.]”

Appellant submitted a March 13, 2001 report from Dr. Robert W. Davis, Board-certified in psychiatric and neurology, who stated that appellant complained of anxiety, nervousness and irritability, which stemmed from her being denied benefits by her postmaster. Dr. Davis related that appellant constantly cried and became stressed and overwhelmed because she filed a complaint against her postmaster, who has not spoken to her since December 2000. He stated that appellant complained of an emotionally abusive work environment where the postmaster will not speak with her. Dr. Davis diagnosed generalized anxiety disorder.

Appellant's postmaster, Janet Pritt, submitted an undated statement rebutting appellant's allegations, which was received by the Office on June 28, 2001. Ms. Pritt stated that appellant began working on an auxiliary route as a temporary rural carrier in Luling, Louisiana, in July 1999. The route entailed administrative responsibilities for Ama, Louisiana. In September 2000, the route was moved to Ama and appellant elected to relocate with the Ama route, on which she worked for 90 days until January 2001. Ms. Pritt stated that on November 4, 2000 she received a telephone call from a postal union representative who informed her that when a route converted to a regular 39-hour route, as it had as of November 2000, the position was required to be offered through the bidding process to the most senior carrier. Accordingly, Ms. Pritt put the Ama route up for bidding and pursuant to union procedures and the union

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<sup>1</sup> Appellant also alleged that, although she completed her 90-day probationary period at another post office before being transferred to Ama, the employing establishment required her to undergo another 90-day probation, which resulted in her being deprived of all her employee benefits. Appellant filed four grievances on March 10, 2001 pertaining to these incidents, which were denied on March 21, 2001. In addition, appellant alleged that she was forced to work one day after being in the emergency room because of poison sumac, which affected her eyesight. Appellant alleged that her supervisor insisted that she find someone to drive her mail vehicle or replace her in delivering the mail the next day.

agreement awarded the route to the senior bidder in the district; she asserted that this selection was approved by union officials as being in accordance with the management/labor agreement. Ms. Pritt asserted that she did not become aware that appellant was displeased with the bidding and route awarding process until March 10, 2001, when she filed grievances against her. At this time Ms. Pritt stated that she met with the union representative and the Luling postmaster and that they jointly agreed that appellant's rights were respected and that the bidding and awarding of the route to a senior carrier was done in accordance with the labor/management agreement.<sup>2</sup>

Ms. Pritt attached a June 14, 2001 statement from postal employee Susan Zeringue, who denied appellant's assertion that she had overheard or witnessed her yelling at appellant on occasion. Ms. Zeringue stated that she was told by appellant that the postmaster yelled at her, but that she herself did not witness or hear any yelling.

By decision dated July 10, 2001, the Office denied appellant's claim on the basis that she failed to establish any compensable factor of employment and thus fact of injury was not established.

By letter dated to the Office dated April 11, 2002, appellant stated: "Please review my file for review of reconsideration." Appellant submitted a written statement on May 7, 2002 in which she claimed that Ms. Pritt deprived her of opportunities to obtain new employment by giving false information to prospective employers, from who appellant was seeking a new job, when they telephoned Ms. Pritt and asked her for a job reference. Appellant submitted statements, from three of these employers, Ethel Matherne, Scott Nolan and Dianne Landry, who asserted that Ms. Pritt behaved in a rude, unhelpful and unprofessional manner when they called her and asked for a job reference.<sup>3</sup>

On June 10, 2002 the Office construed appellant's letter as a request for a review of the written record, which it denied as untimely filed. In a May 13, 2003 decision,<sup>4</sup> the Board affirmed the Office's denial of appellant's claim for benefits based on an emotional condition, finding that appellant failed to establish a compensable work factor. The Board found that appellant failed to substantiate her allegations of harassment, mistreatment and being unfairly passed over for the Ama route. The Board further found that the Office abused its discretion in denying appellant's request for review of the July 10, 2001 decision. The Board found that the Office misconstrued appellant's April 11, 2002 letter as a request for review of the written record, noting that she also sought reconsideration in her letter. The Board therefore set aside the Office's June 10, 2002 decision and remanded for further proceedings. The complete facts of this case are set forth in the Board's May 13, 2003 decision and are herein incorporated by reference.

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<sup>2</sup> Ms. Pritt also stated that she exchanged Christmas gifts and hugs with appellant in December 2000 and asserted that appellant sent her flowers in January 2001, when she was recuperating from cancer surgery.

<sup>3</sup> Ms. Matherne asserted that Ms. Pritt was "very rude and not helpful," and would only say that appellant did her job and that Ms. Matherne would have to submit a written request.

<sup>4</sup> Docket No. 02-1844 (issued May 13, 2003).

On remand, appellant resubmitted her May 7, 2002 written statement alleging that Ms. Pritt gave false information and spoke in a derogatory manner to prospective employers and resubmitted the written statements from these employers, which the Office and the Board had previously considered below. Appellant also resubmitted Dr. Davis' March 13, 2003 report.

By decision dated August 13, 2003, the Office denied modification of its earlier decisions.

By letter dated December 17, 2003, appellant requested reconsideration of the July 10, 2001 Office decision. Appellant stated that she is now employed with the Louisiana Department of Transportation and Development, which attempted to contact the employing establishment for a job reference and request a job reference. Appellant alleged that the employing establishment failed to respond to this request. In support of her claim appellant submitted: (1) reports dated April 12, June 13, July 18 and October 17, 2001 from Dr. Davis; (2) a September 10, 2001 affidavit from appellant which reviewed her previously submitted allegations of a hostile work environment, harassment, mistreatment and verbal abuse on the part of Ms. Pritt; (3) a copy of her daily diary covering the period of December 2000 and January, February, March, April, May and August 2001, which purported to document a hostile and abusive work environment and continued harassment and mistreatment from Ms. Pritt; (4) an undated letter from appellant's daughter, Paige, which asserted that due to Ms. Pitt's ill-treatment of her mother, she had become distraught and tense and was always crying and screaming at her; and (5) an August 22, 2001 letter to Ms. Pritt from Courtney Wilson, an attorney, who stated that he had reports from at least four people that she had been making negative and inaccurate statements about appellant when contacted about an employment reference and advised her to refrain from such activity.

By decision dated May 12, 2004, the Office denied modification of its earlier decisions.

### **LEGAL PRECEDENT**

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.<sup>5</sup> There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.<sup>6</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability

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<sup>5</sup> See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

<sup>6</sup> See *Ruth C. Borden*, 43 ECAB 146 (1991).

comes within the coverage of the Federal Employees' Compensation Act.<sup>7</sup> On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.<sup>8</sup>

### ANALYSIS

The Board finds that the administrative and personnel actions taken by management in this case contained no evidence of agency error and are therefore not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.<sup>9</sup> In the instant case, appellant has presented no evidence that the employing establishment acted unreasonably or committed error with regard to the incidents of alleged unreasonable actions involving personnel matters on the part of the employing establishment. Regarding appellant's allegations that she was improperly denied the Ama route and that she was wrongly forced to undergo a second 90-day probationary period, these were considered and rejected by the Office and the Board in previous decisions, who properly determined that these were managerial functions and were not compensable absent a showing of error or abuse.

Regarding appellant's allegation that Ms. Pritt deprived her of opportunities to obtain new employment by acting in a rude and unhelpful manner in telephone conversations to prospective employers, this is not a compensable factor of employment as it does not involve the employee's ability to perform his or her regular or specially assigned work duties but rather reflects on his or her desire to work in a different position.<sup>10</sup> Again, this allegation was previously rejected by the Office and the Board in its March 13, 2003 decision. Without a showing by appellant that these actions by Ms. Pritt directly pertained to her administrative responsibilities in the workplace and that they constituted abuse or error in her discharge of these responsibilities, such conduct on the part of management is not compensable.

Accordingly, a reaction to such factors did not constitute an injury arising within the performance of duty; such personnel matters were not compensable factors of employment in the absence of agency error or abuse.

The Board finds that appellant has failed to submit sufficient evidence to establish her allegations that her supervisor engaged in a pattern of harassment toward her. These included appellant's allegations contained in her September 10, 2001 affidavit and in her daily diary that her supervisor, Ms. Pritt, mistreated her, verbally abused her and acted in a hostile and abusive manner toward her during the months of December 2000 and January, February, March, April,

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<sup>7</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>8</sup> *Id.*

<sup>9</sup> *See Alfred Arts*, 45 ECAB 530, 543-44 (1994).

<sup>10</sup> *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

May and August 2001. Appellant has alleged, in general terms, that Ms. Pritt harassed her, but has not provided the evidence to support her allegations that she was harassed mistreated or treated in a discriminatory manner by management.<sup>11</sup> Appellant's allegations constitute mere perceptions or generally stated assertions of dissatisfaction with a certain superior at work which do not support her claim for an emotional disability.<sup>12</sup> For this reason, the Office properly determined that these incidents constituted mere perceptions of appellant and were not factually established. In addition, the Board previously held in its May 13, 2003 decision, that appellant failed to provide corroboration for her allegations that Ms. Pritt mistreated her by giving her the silent treatment three days out of five and then yelled and screamed at her, causing appellant emotional distress. The Board found in that decision that, although appellant alleged that two coworkers and the people on her route were aware of the distress caused by her supervisor's treatment of her, she failed to provide witness statements corroborating her allegations; thus, these allegations were determined to be not factual. The Board finds herein that appellant's diary and September 10, 2001 affidavit, submitted with her December 17, 2003 request for reconsideration, contain no new, corroborating evidence from witnesses to support the allegations rejected below. The statement from her daughter is not relevant because she did not purport to witness any alleged mistreatment or verbal abuse on the part of Ms. Pritt, who denied appellant's allegations of verbal abuse and mistreatment in her two written statements; she also submitted a statement from coworker Ms. Zeringue, who denied appellant's allegation that she had overheard or witnessed her yelling at appellant on occasion. Inasmuch appellant submitted no evidence in support of her allegations.

Accordingly, the record indicates that the Office reviewed appellant's allegations of harassment, abuse and mistreatment, which allegedly occurred over several months and found that they were not substantiated or corroborated.<sup>13</sup> To that end, appellant failed to establish that her supervisor harassed, threatened or verbally abused appellant during the periods and dates she alleged these episodes to have occurred. The Board therefore finds that the Office properly found that the episodes of harassment cited by appellant did not factually occur as alleged by appellant, as she failed to provide any corroborating evidence for her allegations. As such, appellant's allegations constitute mere perceptions or generally stated assertions of dissatisfaction with a certain superior at work which do not support her claim for an emotional disability.<sup>14</sup> For this reason, the Office properly determined that these incidents constituted mere perceptions of appellant and were not factually established.

The Board notes that, since appellant has not established a compensable work factor, the medical evidence will not be considered.<sup>15</sup>

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

<sup>12</sup> See *Curtis Hall*, 45 ECAB 316 (1994).

<sup>13</sup> *Merriett J. Kauffmann*, 45 ECAB 696 (1994).

<sup>14</sup> See *Debbie J. Hobbs*, *supra* note 5.

<sup>15</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

**CONCLUSION**

The Board finds that appellant met her burden to establish that she sustained an emotional condition in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 12, 2004 and August 13, 2003 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: November 14, 2005  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board