

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

DARLENE L. LLANOS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia, PA, Employer**

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**Docket No. 05-1300
Issued: October 13, 2005**

Appearances:
Darlene L. Llanos, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 31, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated August 12, 2004 and May 17, 2005 which denied her claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

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

FACTUAL HISTORY

On May 11, 2004 appellant, then a 40-year-old sales and service associate, filed an occupational disease claim alleging that she developed stress and anxiety after experiencing a continuing pattern of harassment by her supervisors. She stopped working on May 4, 2004 and did not return.

Appellant submitted statements dated July 11 and December 8, 2003, January 2 and May 4, 2004 alleging that: (1) she was generally harassed, tortured, physically and mentally abused by management; (2) on February 7, 2003 her supervisor, Patricia Williams, improperly instructed her to receive and process money orders during her scheduled break time and on February 8, 2003 appellant attempted to speak with Ms. Williams regarding this incident and she was spoken to in a threatening manner; (3) Charmaine Carolina, a supervisor, changed appellant's lunch and break schedule on at least two occasions; (4) on January 2, 2004 Ms. Carolina denied appellant's request for sick leave and instructed her to use annual leave and on May 14, 2004 she was improperly classified as absent without leave (AWOL); and (5) on May 4, 2004 appellant was instructed by Ms. Carolina to work at the mail window until closing at 5:00 p.m. and perform her closing duties from 5:00 p.m. to 5:30 p.m. which she did not believe was enough time to complete the tasks.

Appellant submitted a report from Dr. Joseph Danial, a Board-certified internist, dated May 11, 2004, who diagnosed work-related stress. She also submitted reports from Dr. Evan J. Thomas, a Board-certified psychiatrist, who noted treating appellant for depressive disorder and recommended that she not return to work for one year.

The employing establishment controverted appellant's claim.

In a June 23, 2004 letter, the Office asked appellant to submit additional information including a detailed description of the employment factors or incidents that she believed contributed to her claimed illness. In a letter of the same date, the Office asked the employing establishment to address the incidents alleged by appellant.

Appellant submitted a grievance dated December 15, 2003 which alleged that she was harassed by management and sent on break and lunch too early. A settlement dated March 23, 2004, noted that her breaks would be scheduled in accordance with the union agreement. Appellant submitted a June 7, 2004 report from Dr. Rahiana R. Beg, a Board-certified psychiatrist, who recommended continued psychotherapy and medication. She submitted several letters from her husband addressing her work environment and emotional condition. A June 15, 2004 letter from Harmon P. Elliott, a union representative, noted that appellant was wrongfully classified as AWOL on May 14, 2004 which the employing establishment corrected to reflect that she use annual leave. A letter from a social worker dated July 8, 2004, advised that she was undergoing counseling for depression. In a witness statement, Diane Watton, a coemployee, reported that Freda Justice, a manager, Ms. Williams and Ms. Carolina harassed and tormented appellant. She noted that management required her to take her breaks and lunch close in time and sometimes she did not get a second break in the afternoon. Additionally appellant stated that management frequently assigned her work and that she was performed the work of two people.

The employing establishment submitted a statement from Henry L. Dix, postmaster, dated June 15, 2004. He noted that appellant's nonpaid work status on May 14, 2004 was an oversight that was corrected the same day. A July 9, 2004 statement from Norman E. Chichester, supervisor of customer service, noted that on May 4, 2004 appellant failed to comply with instructions from her supervisor to stay at the window at 4:45 p.m. Rather, she left her duty station, shouted, banged on a desk and refused to submit her window account. He noted that she

was confrontational when a supervisor attempted to give her instructions. A statement from Ms. Justice dated July 12, 2004 noted that appellant did not like to be instructed by her supervisor. She advised that on February 7, 2003, appellant's supervisor mistakenly thought it was the last day to close the window account and instructed her to assist in these duties. Ms. Justice further noted that appellant's schedule changed by 15 minutes; however, other employees schedules also changed by 15 to 60 minutes. Appellant was informed by management and the union that schedules could change up to 60 minutes to better serve the public. A statement from Ms. Carolina dated July 22, 2004, noted that, on May 4, 2004, appellant was instructed to stay at the window until 5:00 p.m. and that she would have enough time to perform her closeout responsibilities and leave by 5:30 p.m. She indicated that appellant refused to stay on the window until 5:00 p.m. and became hysterical. Ms. Carolina advised that appellant did not like to receive instructions and, on a number of occasions, raised her voice and walked away in the middle of conversations.

In decision dated August 12, 2004, the Office denied appellant's claim on the grounds that the evidence did not establish that the claimed emotional condition arose in the performance of duty.

By a letter dated February 23, 2005, appellant requested reconsideration and submitted additional medical evidence. In a report dated October 20, 2003, Dr. Leonard A. Winegrad, an osteopath, noted that she was not to work overtime due to generalized anxiety and stress. Appellant submitted a grievance dated December 15, 2003 which alleged that management improperly changed her scheduled breaks and lunch time. Also submitted was a schedule of the employing establishment's associates. Correspondence dated February 22, 2005 from Mr. Elliott, a union representative, noted that appellant experienced scheduling difficulties with regard to her lunch and breaks commencing in December 2003. She was reporting back from her first break and was being sent to lunch 30 minutes later, which violated the union contract. A report from Dr. Thomas dated March 29, 2005, addressed his continued treatment of appellant.

In a decision dated May 17, 2005, the Office denied modification of the August 12, 2004 decision.

LEGAL PRECEDENT -- ISSUE 1

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.¹

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*,² the Board

¹ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² 28 ECAB 125 (1976).

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.³ 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.⁴ When an employee experiences emotional stress in carrying out his or 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.⁵ 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 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.⁶ 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.⁷

To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.⁸ 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.⁹ General allegations of harassment are insufficient.¹⁰ The Board has recognized the compensability of physical threats or verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.¹¹

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

⁵ See *Lillian Cutler*, *supra* note 2.

⁶ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁷ *Id.*

⁸ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁰ See *Paul Trotman-Hall*, 45 ECAB 229 (1993).

¹¹ See *Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991).

ANALYSIS -- ISSUE 1

Appellant alleged that she was generally harassed and abused by management. She alleged that she was asked to work during her break on February 7, 2003, that Ms. Carolina repeatedly changed her break and lunch schedules and that, on February 8, 2003, Ms. Williams spoke to her in an unprofessional and threatening manner.

The employing establishment submitted a statement from Ms. Justice, who advised that, on February 7, 2003, appellant's supervisor mistakenly believed it was the last day to close the window and requested that appellant assist in this task. There is no evidence that she was deprived of a break or lunch. Appellant also alleged that her lunch and break schedule was repeatedly changed and that she was reporting back from her first break and was being sent to lunch 30 minutes later. Ms. Justice provided a reasonable explanation for this change, noting that, in order to provide better service, appellant's schedule changed by 15 minutes and that other employee schedules were changed by 15 to 60 minutes. Appellant was informed by management and the union that schedules could change up to 60 minutes in order to better serve the public. With regard to her work status on May 14, 2004, Mr. Dix, postmaster, noted that appellant's nonpaid work status on that date was an oversight which was corrected the same day. The employing establishment contended that at no time was harassed or threatened, as alleged.

Appellant provided insufficient evidence such as witness statements to establish her allegations.¹² She submitted a statement from Ms. Watton, who noted that she witnessed Ms. Justice, Ms. Williams and Ms. Carolina harass and "torment" appellant. However, Ms. Watton did not relate any specific incidents of harassment. The Board has held that general allegations of harassment are insufficient to establish a compensable factor. In this case, appellant has not submitted sufficient evidence to establish that she was harassed by her supervisors.¹³ She noted that she filed an Equal Employment Opportunity (EEO) complaint for harassment. The Board has noted that grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.¹⁴ The Board notes that there is insufficient evidence to establish appellant's allegations. Thus, she has not established a compensable employment factor under the Act with respect to the claimed harassment.

Appellant alleged that Ms. Williams threatened her on February 8, 2003. The Board has recognized the compensability of physical threats or verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.¹⁵ Appellant's vague allegations are insufficient to establish that she was threatened by Mrs. Williams. The employing establishment denied that any such statements

¹² See *William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

¹³ 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).

¹⁴ *James E. Norris*, 52 ECAB 93 (2000).

¹⁵ See *supra* note 11.

were made and the witness statement does not address any threats. Appellant has not established a compensable employment factor with regard to this allegation.¹⁶

Appellant's other allegations fall into the category of administrative or personnel actions. In *Thomas D. McEuen*,¹⁷ the Board noted that 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. The Board found, however, that coverage under the Act would attach if the factual circumstances established error or abuse by management in dealing with the employee. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁸

Appellant alleged that on February 7, 2003 her supervisor, Ms. Williams improperly requested that she receive and process money orders during a scheduled break. The Board has found that an employee's reaction to such instructions would not be compensable, as work assignments given by supervisors in the exercise of supervisory discretion are actions taken in an administrative capacity.¹⁹ An employee's dislike concerning the manner in which a supervisor performs his or her duties or the manner in which a supervisor exercises his or her supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor or manager is allowed to perform his or her duties and that employees will at times dislike the actions taken; mere disagreement or dislike of a supervisory or management action will not be compensable, absent evidence of error or abuse.²⁰ Ames Justice advised that, on February 7, 2003, appellant's supervisor mistakenly thought it was the last day to close the window account and requested appellant to assist in this matter. Under circumstances presented, the employing establishment did not act unreasonably. Appellant has not presented evidence to support that the employing establishment erred or acted unreasonably with regard to this allegations.

To the extent that appellant has alleged that the change in lunch and breaks initiated by Ms. Carolina on at least two occasions constituted punishment or was inconvenient this would be

¹⁶ To the extent that appellant alleged a verbal altercation with Ms. Williams on February 7, 2003 there is insufficient evidence to establish this as a compensable employment factor. Although the Board has recognized the compensability of physical threats or verbal abuse in certain circumstances, not every statement uttered in the workplace will give rise to coverage under the Act. See *Charles D. Edwards*, 55 ECAB ____ (Docket No. 02-1956, issued January 15, 2004). The Board notes that there is no evidence corroborating that the supervisor spoke to appellant in an unprofessional or threatening manner or that, in a situation where she was not cooperating with supervisory instructions, the interaction with appellant rose to the level of verbal abuse or otherwise fell within the coverage of the Act.

¹⁷ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹⁸ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁹ See *Robert Knoke*, 51 ECAB 319 (2000).

²⁰ See *Marguerite J. Toland*, 52 ECAB 294 (2001).

analogous to emotional frustration in not being allowed to work specific hours. It is well established that, when disability results from an employee's frustration over not being permitted to work in a particular environment, to hold a particular position or to secure a promotion, such disability does not arise in the performance of duty.²¹

Appellant has not submitted sufficient evidence to establish that the administrative change in her lunch or breaks constituted administrative error or abuse by the employing establishment management. An employee's frustration over not being permitted to work a particular shift or to hold a particular position is not covered under the Act. Changes in workdays and hours, positions, locations and changes in an employee's duty shift may constitute a compensable factor of employment arising in the performance of duty. However, a change in a duty shift does not arise as a compensable factor *per se*. The factual circumstances surrounding the claim must be carefully examined to discern whether the alleged injury is being attributed to the inability to work regular or specially assigned job duties due to a change in duty shift, *i.e.*, a compensable factor arising out of and in the course of employment or whether it is based on a claim that is premised on frustration over not being permitted to work a particular shift or to hold a particular position. The assignment of a work schedule or tour of duty is recognized as an administrative function of the employing establishment and, absent any error or abuse, does not constitute a compensable employment factor.²²

Appellant's supervisor explained that employee schedules were changed to better serve the public. Appellant asserted that the change in work shift caused her to have her morning break and lunch break too close in time. The Board finds that the evidence does not establish that her emotional reaction was due to an inability to work her regular or specially assigned job duties, but was premised on frustration over not being permitted to work her shift with breaks occurring at the times she preferred. Appellant has presented no corroborating evidence to support that the employing establishment erred or acted abusively with regard to the assignment of breaks during her shift. Thus, she has not established a compensable employment factor under the Act with respect to the proposed change in lunch or breaks.

Appellant also attributed her claimed condition to a schedule adjustment on May 4, 2004 when she was instructed to work at the mail window until closing at 5:00 p.m. and perform her closing duties from 5:00 p.m. to 5:30 p.m., which she did not believe was enough time to complete the tasks. As noted above, work assignments given by supervisors in the exercise of supervisory discretion are actions taken in an administrative capacity. Ms. Carolina instructed appellant to stay on the window until closing time of 5:00 p.m. and advised her that she would have enough time to perform her closeout responsibilities and leave by her scheduled departure time of 5:30 p.m. She indicated that appellant refused to stay on the window and became hysterical. Mr. Chichester, supervisor of customer service, noted that on May 4, 2004 appellant failed to comply with instructions from her supervisor. Rather, she became confrontational and left her duty station while shouting and banging on a desk. Appellant has presented insufficient evidence to support that the employing establishment erred or acted abusively with regard to this

²¹ See *Lillian Cutler*, *supra* note 2.

²² *Penelope C. Owens*, 54 ECAB ____ (Docket No. 03-1078, issued July 7, 2003).

request. Instead, it appears that her reaction was self-generated as she exhibited frustration from not being able to work a particular schedule. Thus, appellant has not established administrative error or abuse in the performance of these actions and, therefore, they are not compensable under the Act.

Appellant alleged that on January 2, 2004 Ms. Carolina denied her request for sick leave and instructed her to use annual leave and that, on May 14, 2003, the employing establishment improperly classified her as AWOL. The handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.²³ In this case, the Board finds that the employing establishment acted reasonably in this administrative matter. Appellant indicated in her statement that Ms. Carolina did not deny her request for sick leave, but rather advised that the leave would be considered unscheduled. She further indicated that Ms. Carolina subsequently checked her employment manual and granted her leave request. With regard to her work status on May 14, 2004, a statement from Mr. Dix, postmaster, dated June 15, 2004 advised that appellant's nonpaid work status on May 14, 2004 was an oversight which was corrected the same day. She has presented no corroborating evidence to support that such action was taken to harass her. Instead, the employing establishment acted reasonably and, when a mistake was discovered, it was rectified expeditiously.

Consequently, appellant has not established a compensable employment factor as being the cause of her claimed condition.²⁴

CONCLUSION

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

²³ See *Judy Kahn*, 53 ECAB 321 (2002).

²⁴ As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the May 17, 2005 and August 12, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 13, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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