



In an addendum dated July 15, 2004, appellant indicated that her condition commenced in July 2004 after a new postmaster was assigned to her branch.

The employing establishment submitted a statement from Patricia Sullivan, postmaster, dated August 11, 2004. She disagreed with appellant's contention that her emotional condition began upon Ms. Sullivan's arrival as postmaster. Ms. Sullivan indicated that appellant was unwilling to adapt to her management style and believed her behavior was due to Ms. Sullivan's race and gender. She noted that appellant was unwilling to perform tasks and follow instructions and would get confused when performing her duties. Ms. Sullivan advised that appellant's behavior bordered on insubordination and that the claim was filed after she was confronted with unauthorized overtime and for falsifying her clock rings.

By letter dated September 2, 2004, the Office asked appellant to submit additional factual and medical information, including a detailed description of the employment factors or incidents that she believed contributed to her claimed illness.

Appellant submitted an undated statement alleging that she was harassed and discriminated against by Ms. Sullivan and forced to work in a hostile work environment. She alleged that Ms. Sullivan was critical of how she performed her job, returned her work multiple times for revisions and attacked her abilities and character. Appellant also alleged that Ms. Sullivan threatened to fire her on a daily basis. She filed an Equal Employment Opportunity (EEO) complaint which was pending. Appellant alleged that she was improperly disciplined and reprimanded for not following instructions and noted that Ms. Sullivan instructed her to order items on a credit card which was against employing establishment rules. She also ordered appellant to plan luncheons and did not provide the funds to pay for the event. Appellant alleged that Ms. Sullivan improperly reassigned her duties to others, including the budget book and supply cabinet. After she underwent foot surgery, Ms. Sullivan prohibited her from returning to her job prior to obtaining a medical release from her physician and on several other occasions disputed her leave requests. Appellant alleged that Ms. Sullivan delayed six months in filing her compensation claim.

Appellant submitted reports from Dr. Gary K. Sellman, a Board-certified family practitioner, dated April 6 to September 10, 2004. He treated her since April 2004 for work-related stress. Dr. Sellman opined that the negative work environment caused tightness in the chest, insomnia, nausea and fatigue. Appellant alleged that Ms. Sullivan caused her stress which was becoming progressively worse. She accepted an early retirement due to Ms. Sullivan's harassment.

By letter dated October 12, 2004, the Office asked appellant to submit additional factual and medical information, including information regarding her EEO claim and additional medical evidence which addressed exposure or incidents at work which caused or contributed to her claimed illness. In a letter of the same date, the Office requested that the employing establishment submit a letter addressing appellant's claim.

On October 22, 2004 appellant submitted two EEO complaints dated June 7 and July 30, 2004 which addressed her allegations of harassment and retaliation.

In a December 13, 2004 decision, the Office denied appellant's claim, finding that the claimed emotional condition did not arise in the performance of duty.

By letter dated December 20, 2004, appellant requested an oral hearing which was held on April 18, 2005.

In a June 2005 letter, Ms. Sullivan addressed appellant's comments at the oral hearing. She indicated that appellant was never responsible for handling the budget rather this duty was performed by a customer support employee. Appellant indicated that she filed an EEO claim in April 2004 after she was confronted about using unauthorized overtime and that she had enough discrepancies in her clock rings to warrant corrective action. Ms. Sullivan never told appellant that "she would get rid of her." With regard to her job performance, Ms. Sullivan indicated that on one occasion appellant placed tabs in a file incorrectly and was instructed on the proper procedure. Ms. Sullivan indicated that appellant was not required to pay for luncheons out of her own money and any money expended would be reimbursed at the window or appellant could have used the employing establishment credit card. As to appellant's allegation that she was not permitted to return to work after her foot surgery, Ms. Sullivan indicated that her physician indicated that she could not walk and Ms. Sullivan could not allow her to resume her to work in a position that required walking. She advised that, when appellant presented an updated doctor's note, she was permitted to resume her job. As to appellant's allegation that it took Ms. Sullivan six months to file her claim, she indicated that appellant left an envelope with her claim form on her desk in August 2004 and she promptly prepared the paperwork and forwarded the documents to the Office for processing. With regard to appellant's claim that she retired early due to her illness and work conditions, Ms. Sullivan indicated that she attended a seminar on early retirement and retired without indicating that it was due to any work-related issue. She believed appellant had a difficult time adjusting to a black postmaster.

By decision dated September 20, 2005, the hearing representative affirmed the December 13, 2004 decision.

In a letter dated November 7, 2005, appellant requested reconsideration and submitted additional evidence. She submitted a deposition of Dr. Sellman dated June 24, 2005 which summarized his treatment of appellant since April 2004 for anxiety and stress which he stated was work related.

By decision dated February 2, 2006, the Office denied appellant's reconsideration request on the grounds that her request neither raised substantive legal questions nor included new and relevant evidence and was insufficient to warrant review of the prior 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 her condition; and (3) rationalized medical

opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>1</sup>

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*,<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup>

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<sup>1</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>2</sup> 28 ECAB 125 (1976).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

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

<sup>5</sup> *Lillian Cutler*, *supra* note 2.

<sup>6</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, *supra* note 2.

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

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

## ANALYSIS -- ISSUE 1

Appellant alleged that she was harassed and discriminated against by Ms. Sullivan, the new postmaster, and worked in a hostile work environment. She noted that Ms. Sullivan was critical of how she performed her job, returned her work multiple times for revisions and attacked her abilities and character. 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.<sup>9</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>10</sup>

The factual evidence fails to support appellant's claim regarding harassment. Ms. Sullivan indicated that she was unwilling to adapt to her management style and failed to perform tasks that she was assigned and follow instructions. She advised that appellant's behavior bordered on insubordination and indicated that this claim was filed after appellant was confronted with unauthorized overtime and errors in clock rings. In a statement dated June 2005, Ms. Sullivan indicated that in one instance appellant placed tabs in a file incorrectly and was instructed on the proper procedure. She indicated that appellant did not attempt to perform the task as requested. The factual evidence fails to support appellant's claim that she was harassed by Ms. Sullivan.<sup>11</sup> Rather the evidence supports that appellant refused to comply with a reasonable request of a superior.

Appellant also alleged that Ms. Sullivan threatened to fire her on a daily basis. She did not submit evidence or witness statements in support of her allegation and her supervisor and manager denied that they threatened or harassed appellant. General allegations of harassment are insufficient<sup>12</sup> and in this case, appellant has not submitted sufficient evidence to establish disparate treatment by her supervisor.<sup>13</sup> Although she alleged that her supervisors engaged in actions which she believed constituted harassment, appellant provided insufficient evidence, such as witness statements, to establish her allegations.<sup>14</sup> Ms. Sullivan refuted the allegations. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

To the extent that appellant alleged a verbal or physical threat by Ms. Sullivan, 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

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<sup>9</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>10</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>11</sup> *See Michael A. Deas*, 53 ECAB 208 (2001).

<sup>12</sup> *See Paul Trotman-Hall*, 45 ECAB 229 (1993).

<sup>13</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>14</sup> *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).

coverage under the Act.<sup>15</sup> The Board finds that the facts of the case, noted above in the analysis of the allegation of harassment, does not reveal that appellant's superior made any threats to fire her or otherwise threaten her or acted unreasonably in view of appellant's conduct. She has not otherwise shown how supervisory comments or actions rose to the level of verbal abuse or otherwise fell within coverage of the Act.

Appellant also indicated that she filed an EEO claim for harassment and discrimination. The Board has held that grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.<sup>16</sup> Appellant submitted two EEO complaints dated June 7 and July 30, 2004 that summarized her pending EEO complaint for harassment against Ms. Sullivan. However, none of the information submitted establishes improper action by the employing establishment with regard to appellant. Thus, the evidence regarding the EEO matter does not establish a compensable employment factor under the Act.

Other allegations by appellant regarding her work assignments relate to administrative or personnel actions. In *Thomas D. McEuen*,<sup>17</sup> the Board held 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 noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. 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.<sup>18</sup>

Appellant's allegations that she was improperly reprimanded and disciplined relate to administrative or personnel matters unrelated to her regular or specially assigned work duties.<sup>19</sup> Although the handling of disciplinary actions and evaluations are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>20</sup> Appellant alleged that she was improperly reprimanded for not following instructions and felt as though Ms. Sullivan was "setting her up." She noted that Ms. Sullivan instructed her to order items on a credit card which was against employing establishment rules and ordered appellant to plan luncheons and did not provide the funds to pay for the event. Ms. Sullivan refuted these allegations and noted that appellant was not required to pay for luncheons and was provided with an employing establishment credit card to pay for expenses or if she expended personal funds,

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<sup>15</sup> *Charles D. Edwards*, 55 ECAB \_\_\_ (Docket No. 02-1956, issued January 15, 2004).

<sup>16</sup> *James E. Norris*, 52 ECAB 93 (2000).

<sup>17</sup> See *Thomas D. McEuen*, *supra* note 6.

<sup>18</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>19</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>20</sup> *Id.*

she would be reimbursed at the window. Additionally, she noted that appellant was never formally disciplined for any infraction. The evidence indicates that the employing establishment acted reasonably. Appellant has presented no corroborating evidence to support that the employing establishment erred or acted abusively with regard to these allegations and the employing establishment denied acting improperly. Thus, she 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 Ms. Sullivan improperly reassigned her duties to others, including the budget book and supply cabinet. However, assignment of work is an administrative matter.<sup>21</sup> The Board finds that appellant has not offered sufficient evidence to establish error or abuse regarding her work assignments. The evidence does not establish that the employing establishment acted unreasonably. Ms. Sullivan also indicated that appellant was never responsible for handling the budget, rather this duty was performed by a customer support employee. The Board has also held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform her regular or specially assigned work duties, but rather constitute her desire to work in a different position.<sup>22</sup> The employing establishment has either denied appellant's allegations or explained the reasons for its actions in these administrative matters. She has presented no corroborating evidence to support that the employing establishment acted unreasonably. Appellant has not established a compensable factor of employment in this regard.

Appellant alleged that Ms. Sullivan prohibited her from returning to work after her foot surgery until she obtained a medical release from her physician and on several occasions disputed her leave requests. The Board notes that 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.<sup>23</sup> The Board finds that the employing establishment acted reasonably in this administrative matter. Ms. Sullivan indicated that appellant's physician advised that she could not walk and that, since her position required that she walk, Ms. Sullivan could not allow appellant to resume her work. Appellant has not presented evidence to support that the employing establishment erred or acted abusively in this matter. Instead, the employing establishment acted reasonably in its administrative capacity and, when she presented a release from her physician, she was permitted to resume her job.

Appellant alleged that Ms. Sullivan failed to assist her in filing an occupational disease claim which took six months to file. The Board notes that the development of any condition related to such matters would not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties.<sup>24</sup> Ms. Sullivan disputed this allegation and noted that she promptly prepared the paperwork and

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<sup>21</sup> *Donney T. Drennon-Gala*, 56 ECAB \_\_\_\_ (Docket No. 04-2190, issued April 26, 2005).

<sup>22</sup> *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

<sup>23</sup> *See Judy Kahn*, 53 ECAB 321 (2002).

<sup>24</sup> *See George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

forwarded documents to the Office. Appellant presented no corroborating evidence to support that the employing establishment erred or acted abusively with regard to this matter. The employing establishment acted reasonably in its administrative capacity.

The Board finds that appellant failed to establish a compensable factor pertaining to her allegation that the Office failed to assist her in handling her compensation claim.<sup>25</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Under section 8128(a) of the Act,<sup>26</sup> the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,<sup>27</sup> which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

- “(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
- (ii) Advances a relevant legal argument not previously considered by the (Office); or
- (iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office].”

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.<sup>28</sup>

### **ANALYSIS -- ISSUE 2**

Appellant’s November 7, 2005 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office.

Appellant’s reconsideration request noted that she was submitting a transcript from Dr. Sellman. However, her letter did not show how the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Appellant did not set forth a particular point of law or fact that the Office had not considered or

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<sup>25</sup> 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).

<sup>26</sup> 5 U.S.C. § 8128(a).

<sup>27</sup> 20 C.F.R. § 10.606(b).

<sup>28</sup> 20 C.F.R. § 10.608(b).

establish that the Office had erroneously interpreted a point of law or fact. Consequently, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, as noted above, appellant submitted the June 24, 2004 deposition of Dr. Sellman. Although this was new evidence, this evidence is irrelevant to the pertinent issue in this case, whether she sustained an injury in the performance of duty. The Board notes that, since appellant did not establish a compensable employment factor, new medical evidence from her family practitioner is irrelevant to whether she sustained an injury in the performance of duty. Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her November 7, 2005 request for reconsideration.

### **CONCLUSION**

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty. The Board further finds that the Office properly denied appellant's request for reconsideration.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the February 2, 2006 and September 20, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 21, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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