

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

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KAN P. LEUNG, Appellant

and

U. S. POSTAL SERVICE, COMPUTERIZED  
FORWARDING SYSTEM, Brooklyn, NY,  
Employer  
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**Docket No. 06-207  
Issued: March 23, 2006**

*Appearances:*  
Paika Leung, for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On November 7, 2005 appellant filed a timely appeal of a January 26, 2005 merit decision of the Office of Workers' Compensation Programs, denying her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board also has jurisdiction over an August 15, 2005 decision that denied her request for reconsideration.

**ISSUES**

The issues are: (1) whether appellant has established an emotional condition causally related to compensable work factors; and (2) whether the Office properly denied her request for reconsideration under 5 U.S.C. § 8128.

**FACTUAL HISTORY**

On October 16, 2003 appellant, then a 42-year-old letter carrier, filed a traumatic injury claim alleging that she sustained a stress condition on October 14, 2003 when Angela Slater, her supervisor, yelled and screamed at her when she requested a parking permit for the employees'

parking lot. She experienced paralysis in her body, a nervous breakdown and was taken to the hospital. Appellant believed that she might be having a stroke and requested that she be taken to nearby Brookdale Hospital but she was taken by ambulance to the psychiatric ward at Jamaica Hospital. She alleged that Ms. Slater acted abusively and out of “spite” in sending her to a hospital for treatment of a mental disorder. Appellant alleged that the employing establishment acted abusively in requesting medical documentation when she returned to work after the hospitalization. She alleged discrimination against her for her ethnicity (Chinese) and gender. Appellant submitted medical evidence in support of her claim.

Ms. Slater indicated that on October 14, 2003 appellant seemed to be upset when she reported to work because all the employees had been stopped at the entrance to the employee parking lot and were told they needed parking permits for security purposes, a new policy. She told the employees that she would issue permits later that day. Appellant was concerned about the matter but Ms. Slater told her not to get upset because she would be given a parking permit later in the day and to return to her workstation. Ms. Slater indicated that she did not yell or scream at appellant but merely told her to return to her seat and do her work. Appellant walked away and began to “mumble.” Two coworkers subsequently reported that appellant was standing by a mail hamper and looked sick. Ms. Slater approached appellant, who asked for an ambulance and said she could not move. Appellant was taken to a hospital by responding paramedics. Ms. Slater stated that she had exhibited similar behavior on four previous occasions and had cried and experienced shortness of breath. She stated that appellant would eventually stop crying and resume working if she was not paid any attention.

In an October 20, 2003 statement, an employing establishment human resources specialist controverted appellant’s claim on the grounds that she had reacted to a proper administrative action, a request that she obtain a parking permit to obtain access to the employee parking.

A coworker indicated that on October 14, 2003 she heard Ms. Slater talking to appellant, who was holding onto a mail hamper with her eyes shut. Ms. Slater told her to go to the bathroom but appellant said she needed an ambulance. She telephoned for an ambulance and the coworker stayed with appellant until the ambulance arrived. A second coworker stated that on October 14, 2003 she did not hear Ms. Slater yell at appellant.

By decision dated April 1, 2004, the Office denied appellant’s claim on the grounds that the evidence did not establish that her emotional condition was causally related to a compensable work factor.

Appellant requested an oral hearing that was held on November 17, 2004. She also submitted additional evidence. In a November 12, 2004 affidavit, Anthony Riccardo stated that on October 14, 2003 he saw appellant approach Ms. Slater and later heard Ms. Slater yell at appellant, telling her to go to the bathroom to compose herself. Appellant looked pale and her body appeared to have “locked up.” Mr. Riccardo stated that, Ms. Slater yelled for everyone to return to work but appellant indicated that her body felt numb and she requested an ambulance. Ms. Slater telephoned for an ambulance and appellant requested that she be taken to nearby Brookdale Hospital. Mr. Riccardo stated that Ms. Slater asked the paramedics to take appellant

to a mental facility. He stated that Ms. Slater could be obstinate and confrontational and many individuals did not get along with her. Mr. Riccardo stated his opinion that Ms. Slater had abused her authority in asking the paramedics to transport appellant to a mental facility

In a written statement received by the Office on December 10, 2004, Ms. Slater denied that she yelled or cursed at appellant on October 14, 2003. She had asked the paramedics to take appellant to Brookdale Hospital but was informed that they could not transport anyone there because Brookdale Hospital was already handling a large number of emergencies. They advised that appellant would be transported to the next available facility, Jamaica Hospital. Ms. Slater telephoned appellant's family to advise them of her hospitalization.

By decision dated January 26, 2005, an Office hearing representative affirmed the April 1, 2004 decision.

Appellant requested reconsideration and submitted medical records from Jamaica Hospital which provided a history of the October 14, 2004 incident at work and a mental evaluation. Dr. Afia Hussain diagnosed an adjustment disorder with anxious mood, rule out conversion disorder and recommended psychotherapy. The Jamaica Hospital records do not indicate that Ms. Slater was responsible for appellant being taken to its psychiatric ward.

By decision dated August 15, 2005, the Office denied appellant's request for reconsideration on the grounds that the evidence did not warrant further merit review of her claim.<sup>1</sup>

### **LEGAL PRECEDENT -- ISSUE 1**

To establish a claim that she sustained an emotional condition in the performance of duty, a claimant 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>2</sup>

The Board has held that workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. 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 of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to her regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation

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<sup>1</sup> Appellant submitted additional evidence subsequent to the August 15, 2005 decision. The Board's jurisdiction is limited to the evidence that was before the Office at the time of its final decision. *See* 20 C.F.R. § 501.2(c). The Board has no jurisdiction to consider this evidence for the first time on appeal.

<sup>2</sup> *Pamela D. Casey*, 57 ECAB \_\_\_\_ (Docket No. 05-1768, issued December 13, 2005; *George C. Clark*, 56 ECAB \_\_\_\_ (Docket No. 04-1573, issued November 30, 2004).

Act. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of his or her work or the fear and anxiety regarding their ability to carry out her work duties.<sup>3</sup>

By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of the employment, such as when disability results from an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>4</sup>

The Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors of employment, which may be considered by a physician when providing an opinion on causal relationship and which are not deemed compensable factors of employment and may not be considered.<sup>5</sup> As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim; the claim must be supported by probative evidence.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

On October 14, 2003 Ms. Slater spoke to appellant concerning the requirement that a parking permit be obtained to access the employee parking lot in the future. Generally, such actions of the employing establishment are administrative matters, unrelated to the employee's regular or specially assigned work duties and do not fall within coverage of the Act.<sup>7</sup> However, 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.<sup>8</sup> The Board has held that mere disagreement or dislike of a supervisory or management action will not be compensable without a showing, through supporting evidence, that the incidents or actions complained of were unreasonable.<sup>9</sup> Appellant alleged that Ms. Slater yelled at her when she asked for a parking permit. Ms. Slater denied that she yelled at appellant and two employees who witnessed the encounter and stated that Ms. Slater did not yell at appellant during the incident on October 14, 2003. Mr. Riccardo stated that he heard Ms. Slater "yell" at appellant to go to the bathroom to compose herself, but he also indicated that she "yelled" for the other employees to return to work. His description of the incident does not establish that the manner in which Ms. Slater spoke to appellant rose to the level of abuse. Appellant has submitted insufficient probative evidence to establish error or abuse with respect to the conversation she

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<sup>3</sup> *Id.*; see also *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Id.*

<sup>5</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>6</sup> See *Charles E. McAndrews*, 55 ECAB \_\_\_\_ (Docket No. 04-1257, issued September 10, 2004).

<sup>7</sup> *Michael L. Malone*, 46 ECAB 957 (1995).

<sup>8</sup> *Charles D. Edwards*, 55 ECAB \_\_\_\_ (Docket No. 02-1956, issued January 15, 2004).

<sup>9</sup> *Janice I. Moore*, 53 ECAB 777 (2002).

had with Ms. Slater regarding a parking permit. Therefore, the incident on October 14, 2003 is not a compensable factor of employment.

Appellant alleged that the employing establishment asked her to provide medical documentation when she returned to work. However, this is an administrative function and there is insufficient evidence that the employing establishment erred or acted abusively in this matter. Therefore, the allegation that she was required to submit medical documentation for her absence from work is not deemed a compensable employment factor.

Appellant also alleged that Ms. Slater abused her authority by directing the paramedics to transport her to Jamaica Hospital to be evaluated for a mental condition. However, Ms. Slater stated that she asked the paramedics to take appellant to Brookdale Hospital but was informed that it was already handling a large number of emergencies and appellant would be transported to Jamaica Hospital. She denied asking the paramedics to take appellant to a mental facility. Although Mr. Riccardo alleged that Ms. Slater asked the paramedics to transport appellant for a mental evaluation, his account is not supported by the records from Jamaica Hospital, which do not establish that appellant was taken to the psychiatric ward at the direction of Ms. Slater. The Board notes that appellant described her reaction to the conversation with Ms. Slater in terms of a complete nervous breakdown as well as a possible stroke. The record does not establish that Ms. Slater asked the paramedics to take appellant to Jamaica Hospital but, if she had, such action would not be abusive in light of appellant acknowledgement of a possible nervous breakdown. For these reasons, this allegation regarding the October 14, 2003 incident is not deemed a compensable factor of employment.

Appellant further alleged that she was discriminated against because of her Chinese ethnicity and her gender. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from her performance of her regular duties, these could constitute a compensable employment factor.<sup>10</sup> However, for harassment and discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.<sup>11</sup> Appellant did not submit detailed descriptions of any incidents of discrimination or probative evidence of discrimination. Therefore, this allegation of discrimination is not deemed a compensable employment factor.

Appellant failed to establish that her emotional condition was causally related to a compensable factor of employment. Therefore, the Office properly denied her claim.

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<sup>10</sup> *Charles D. Edwards, supra* note 8.

<sup>11</sup> *Donna J. DiBernardo, 47 ECAB 700 (1996).*

Section 8128(a) of the Federal Employees' Compensation Act<sup>12</sup> vests the Office with discretionary authority to determine whether it will review an award for or against compensation. The Act states:

“The Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application. The Secretary, in accordance with the facts found on review may --

(1) end, decrease or increase the compensation awarded; or

(2) award compensation previously refused or discontinued.”

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent evidence not previously considered by the Office.<sup>13</sup> When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>14</sup>

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

In support of her request for reconsideration, appellant submitted copies of medical records from her hospitalization at Jamaica Hospital for the October 14, 2003 incident. These records describe the history given by her for the October 14, 2003 incident and her course of treatment. The records are not probative on the issue of whether Ms. Slater erred or acted abusively in the handling of the parking permit matter and do not indicate that she directed the paramedics to take appellant to the hospital for a mental evaluation. Therefore, the records from Jamaica Hospital do not constitute relevant and pertinent evidence not previously considered by the Office. Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument or submit relevant and pertinent evidence not previously considered by the Office. Therefore, the Office properly denied her reconsideration request.

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<sup>12</sup> 5 U.S.C. § 8128(a).

<sup>13</sup> 20 C.F.R. § 10.606(b)(2).

<sup>14</sup> 20 C.F.R. § 10.608(b).

**CONCLUSION**

The Board finds that appellant failed to establish that her emotional condition was causally related to a compensable factor of employment.<sup>15</sup> The Board further finds that the Office properly denied her request for reconsideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated August 15 and January 26, 2005 are affirmed.

Issued: March 23, 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

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<sup>15</sup> Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence. See *Barbara J. Latham*, 53 ECAB 316 (2002); *Garry M. Carlo*, 47 ECAB 299 (1996).