

In a statement accompanying her claim, appellant noted that she had worked at the employing establishment for 14 years. She experienced no difficulties until a change in management two or three years ago. Management refused appellant's request to give some of her overtime to other carriers, did not let her meet with a shop steward and did not provide her an interpreter even though she is deaf. After she returned to the office after delivering mail on August 20, 2004, a supervisor told her to go out and deliver additional mail. When appellant became upset and protested, the supervisor stated that the additional work had been announced over the loudspeaker in the morning. She noted that, as she was deaf she could not hear loudspeaker announcements. The employing establishment referred her for anger management counseling.

In a statement dated August 24, 2004, Robert Thompson, appellant's supervisor, informed Mike Deignan, the postmaster, that appellant had requested her auxiliary street assignment that date. When he provided her the 30-minute assignment she started "to pace around and show signs of irritation on her face." Appellant showed him the route she wanted and when he pointed out that it was a 40-minute route she "immediately started pulling her hair[,] stomping her feet and making loud[,] unusual screaming sounds."

In a statement dated September 28, 2004, Mr. Thompson notified Mr. Deignan that on September 24, 2004 he suspended appellant's driving privileges in accordance with procedure as she had a motor vehicle accident on September 22, 2004. Appellant became upset, stomped her feet and walked to the work floor making unusual sounds. Mr. Thompson thought at one point that appellant might strike him.

In a statement dated January 29, 2005, Mr. Thompson related that management had "never denied [appellant's] request to meet with her shop steward..." He disputed appellant's account of what happened on August 20, 2004 noting that she was told that she had additional work before leaving the office in the morning and "created an uncooperative disturbance on the work floor..." Appellant did not perform the extra work on August 20, 2004. Mr. Thompson also related that the employing establishment retained an interpreter for her subsequent to the September 24, 2004 incident and was in the process of purchasing a pager and a telecommunications device. Appellant was referred to the Employee Assistance Program (EAP) rather than anger management.

By letter dated February 15, 2005, the Office requested additional factual and medical information from appellant. In a response dated March 4, 2005, appellant reiterated that she was not informed of her additional assignment prior to leaving on her route on August 20, 2004. She was told that, if she wanted to meet with a shop steward she had to pay for an interpreter even though the previous postmaster provided her with an interpreter. Appellant asserted that she worked forced overtime for around two years. She noted that she was not provided with a report of her motor vehicle accident. Appellant related:

"The [employing establishment] since I started fourteen years ago has changed dramatically. They do not respond to my handicap needs properly. There has been more forced overtime for me. The volume of mail I deliver has increased and become heavier. My routes are changed and more streets are added. These

new improvements put into force by the [employing establishment] ha[ve] caused me a lot of stress.”

* * *

“Management has changed by the reassignment of new supervisors and a new Postmaster. Heavier volumes of mail and heavier packages have been added to my route. I was informed by the new management that if[,] I wanted an interpreter I would have to pay for one [and] one would not be provided as was previously done.”

In a statement dated August 10, 2005, Mr. Thompson related that appellant was required to work overtime because of reductions in staff, the need to eliminate downtime, vacations schedules and other unforeseen circumstances. Appellant’s assignments were provided to her in writing and she was allowed to meet with shop stewards. Mr. Thompson noted that the employing establishment was changing to be more efficient which had “resulted in adjustments in employees daily assignments to ensure [eight] hours work.”

By decision dated September 1, 2005, the Office denied appellant’s emotional condition claim finding that she did not establish any compensable employment factors.

On September 15, 2005 appellant requested an oral hearing on her claim.

In a notice dated February 23, 2006, the Office informed appellant that a hearing on her claim would be held at 2:00 p.m. on March 30, 2006. The notice further informed her of the procedure to follow on the date of the hearing and her rights regarding the hearing.¹ Appellant did not appear.

By decision dated April 12, 2006, the Office determined that appellant had abandoned her request for a hearing. It noted that she had not appeared for the scheduled hearing on March 30, 2006 and had not contacted the Office either before or after the scheduled hearing to explain her failure to appear.

LEGAL PRECEDENT -- ISSUE 1

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 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 Federal Employees’ Compensation Act.² On the other hand, the disability is not covered where it results from such factors as an

¹ Appellant listed her address as 36 Alexis Court, Colonia, New Jersey 07076, on her letter requesting an oral hearing. On the accompanying form requesting an oral hearing, she listed her address as 36 Alexis Court, Colonia, New Jersey 07067. It appears from the record that the correct zip code is 07067, the address the Office mailed the notice of hearing.

² 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

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.³

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.⁴ However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.⁵ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁶

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.⁷ 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.⁸

ANALYSIS -- ISSUE 1

Appellant alleged that, after she returned to the office from delivering mail on August 20, 2004, a supervisor instructed her to go out and deliver more mail. When she became upset, the supervisor told her that the additional work assignments had been announced over the loudspeaker that morning. Appellant noted that she was unable to hear loudspeaker announcements because she was deaf. Although the assignment of work duties is generally related to the employment, it is an administrative function of the employer and not a duty of the employee. 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.⁹ In a statement dated January 29, 2005, Mr. Thompson, appellant's supervisor, indicated that he

³ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁴ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 556 (1991).

⁵ See *William H. Fortner*, 49 ECAB 324 (1998).

⁶ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁷ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁸ *Id.*

⁹ *Lori A. Facey*, 55 ECAB ____ (Docket No. 03-2015, issued January 6, 2004).

informed appellant of her additional work assignment on August 20, 2004 in the morning before she left on her route. He maintained that she “created an uncooperative disturbance” and did not perform the extra work.¹⁰ Appellant has not submitted any evidence establishing a factual basis for her allegation that management failed to inform her of the additional work assignment until after she returned to the office from delivering mail. Further, she has not provided any evidence of error or abuse by the employing establishment in assigning her additional mail to deliver. Thus, appellant has not established a compensable employment factor.

Appellant also attributed her condition to management’s refusal to allow her to meet with a shop steward and failure to provide her with an interpreter. Mr. Thompson asserted that she was allowed to meet with a shop steward and indicated that the employing establishment retained an interpreter for her subsequent to August 20, 2004. Appellant has not submitted any evidence to establish that the employing establishment denied her requests to meet with a shop steward or evidence that its failure to provide her with an interpreter constituted error or abuse in an administrative matter; consequently, she has not established a compensable employment factor.¹¹

Regarding appellant’s contention that she sustained stress due to working forced overtime, the Board has held that an employee’s emotional reaction to overwork is a compensable factor of employment if substantiated by the evidence.¹² The Board has also held that working overtime may be sufficiently related to regular or specially assigned duties to constitute a compensable employment factor.¹³ Mr. Thompson confirmed that appellant was required to work overtime due in part to staff reductions. As appellant has established a factual basis for her allegation that she worked mandatory overtime, she has established a compensable employment factor under the Act.¹⁴

Appellant also related that she experienced stress because of an increased volume of mail on her route, the requirement to deliver heavier packages and a change in routes. Mr. Thompson noted that assignments were adjusted daily to ensure a full day of work. He did not dispute appellant’s statement that the volume and weight of the mail she delivered had increased and that changes were made to route assignments. The Board has held that stress from situations in which an employee is trying to meet her position requirements or carrying out her employment

¹⁰ The employing establishment also submitted evidence relevant to an incident which occurred on September 24, 2004 when Mr. Thompson suspended appellant’s driving privileges following a motor vehicle accident. However, appellant has not attributed her emotional condition to the September 24, 2004 incident. She did note that she was not provided with a copy of the accident report but has not submitted any evidence that this constituted error on behalf of the employing establishment.

¹¹ See *Earl D. Smith*, 48 ECAB 615 (1997).

¹² *Robert Bartlett*, 51 ECAB 664 (2000).

¹³ *Ezra D. Long*, 46 ECAB 791 (1995).

¹⁴ See *Robert Bartlett*, *supra* note 12.

duties is compensable.¹⁵ Appellant, consequently, has established an employment factor under *Cutler*.¹⁶

As appellant attributed her emotional condition, in part, to the performance of her regular or specially assigned work duties, the case presents a medical question regarding whether her emotional condition arose from the compensable employment factors. The Office, therefore, must base its decision on an analysis of the medical evidence. As it found there were no compensable employment factors, it did not analyze or develop the medical evidence. The case will be remanded to the Office for this purpose.¹⁷ After such further development as deemed necessary, the Office should issue a *de novo* decision on this matter.

CONCLUSION

The Board finds that the case is not in posture for decision on the issue of whether appellant sustained an emotional condition in the performance of duty. In view of the Board's disposition of the merits, the issue of whether appellant abandoned her request for an oral hearing is moot.¹⁸

¹⁵ *Beverly R. Jones*, 55 ECAB ____ (Docket No. 03-1210, issued March 26, 2004).

¹⁶ *See Lillian Cutler*, *supra* note 2.

¹⁷ *See Robert Bartlett*, *supra* note 12.

¹⁸ *See generally Luis R. Flores*, 54 ECAB 250 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 12, 2006 and September 1, 2005 are set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: November 1, 2006
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board