

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

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C.L., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Goodells, MI, Employer )

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**Docket No. 06-1047  
Issued: September 6, 2006**

*Appearances:*  
C.L., *pro se*  
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 March 31, 2006 appellant filed a timely appeal from the September 21, 2005 and February 6, 2006 merit decisions of the Office of Workers' Compensation Programs, which denied her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of appellant's claim.

**ISSUE**

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

**FACTUAL HISTORY**

On June 24, 2005 appellant, then a 43-year-old mail carrier, filed a claim alleging that her stress, high blood pressure, bleeding sores and ulcers were a result of her federal employment: "It [has] been going on since Bev was hired as my sub. I know her past history and was really upset." She informed the postmaster that this substitute carrier was "the sub from hell." Appellant was unable to run the larger routes. It took her five hours to do the three-hour routes.

Appellant knew the substitute's history and was not happy to learn that she was being hired for her route. The substitute misdelivered mail. Forwards were being left. The substitute could not make dispatch, and she gave a list of days she was unable to work, including the whole month of September. Appellant's customers were getting upset and complaining on a daily basis. She alleged that she became sick because the postmaster allowed this substitute carrier to do anything she wanted. Appellant stated that, when she showed the postmaster all the mistakes the substitute was making, the postmaster blamed appellant.

On July 12, 2005 the Office notified appellant that it appeared she was alleging that she was being held accountable because another employee was not performing her job properly. The Office asked appellant to provide proof.

The postmaster replied that appellant had a problem with her substitute carrier leaving mail on Monday, the heaviest day of the week, but that flat mail was left at the postmaster's request, a common thing on that route no matter who carried it. The postmaster stated that this caused no hardship to appellant, who always finished her route "way below her evaluation." The postmaster added that appellant did not work with the substitute carrier and hardly ever saw her; the substitute worked on Mondays, appellant's day off. The postmaster stated that she received no more complaints from customers about this substitute carrier, or any other substitute on this route, than she did about appellant "going too fast and making errors of her own." The postmaster stated that appellant had somebody else in mind for the job, but that person turned the job down. The postmaster stated that this particular substitute was the only substitute appellant complained about, no matter how many errors other substitutes made or how much mail they left. The postmaster observed: "[Appellant] is a good carrier, but wants everything to fall her way first, and when it doesn't she gets on a rampage."

In a decision dated September 21, 2005, the Office denied appellant's claim for compensation. The Office found that appellant's allegation of favoritism towards the substitute carrier was unsupported by the evidence and that her complaints about the way the postmaster performed her duty were not compensable absent evidence of unreasonable conduct.

Appellant requested a review of the written record by an Office hearing representative.

In a decision dated February 6, 2006, the Office hearing representative affirmed the denial of appellant's claim for compensation. The hearing representative found that appellant's stress over the way a substitute carrier performed her job was not compensable and that appellant had submitted no proof that the postmaster acted improperly.

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act provides compensation for disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty.<sup>1</sup> The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of

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<sup>1</sup> 5 U.S.C. § 8102(a).

and in the course of employment.”<sup>2</sup> When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her 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 resulted from her emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of her work. 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 employment, such as when disability results from an employee’s fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>3</sup>

Workers’ compensation law does not cover an emotional reaction to administrative or personnel matters unless the evidence shows error or abuse on the part of the employing establishment.<sup>4</sup> As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.<sup>5</sup> The claimant must substantiate her allegations with probative and reliable evidence.<sup>6</sup> The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.<sup>7</sup>

### ANALYSIS

Appellant attributes her stress to the manner in which a substitute carrier performed her duties. According to her, this employee was unable to run the larger routes, misdelivered mail and could not make dispatch. Appellant has not alleged that she experienced emotional stress in carrying out her own duties, or that she had fear and anxiety regarding her ability to carry out her own duties. Her concern, instead, is with the performance of another person’s duties. On its face, then, appellant’s claim does not fall within the scope of the Act, which provides compensation for disability or death of an employee resulting from personal injury sustained while in the performance of her duty. The evidence in this case supports that appellant is a good

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<sup>2</sup> This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers’ compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

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

<sup>4</sup> *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991).

<sup>5</sup> See *Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant’s allegations of unfair treatment to determine if the evidence corroborated such allegations).

<sup>6</sup> *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

<sup>7</sup> *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

carrier, a fast and dedicated worker, someone who always finishes her route in a timely manner. Her emotional reaction to another employee's inability to maintain an acceptable level of performance is not compensable.

Appellant also attributed her emotional condition to the postmaster, whom she alleged allowed this substitute carrier to do anything she wanted. Appellant is not alleging discrimination; she simply wants this employee off her route. The postmaster's actions relating to the performance of the substitute carrier's duties is no basis for the payment of compensation to appellant, because her claimed emotional injury is not alleged to have arisen out of and in the course of appellant's own employment.<sup>8</sup>

Appellant alleged that when she showed the postmaster all the mistakes the substitute carrier was making, the postmaster would yell at appellant, blame her, or scold her for saying bad things about the substitute. As the postmaster's actions were directed toward appellant, this aspect of appellant's claim could fall within the scope of workers' compensation. But as a general rule, a claimant's emotional reaction to the actions of her superiors is not compensable. To bring her claim within the scope of coverage, appellant must establish that the postmaster abused her or committed an administrative error. The record contains no such proof. Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.<sup>9</sup> The Board has specifically held that being spoken to in a loud and harsh voice does not constitute verbal abuse or harassment.<sup>10</sup> Without proof that the postmaster abused appellant or committed an administrative error in reacting to appellant's criticism of the substitute carrier, the evidence in this case fails to establish that appellant sustained an injury in the performance of her duty. The Board will affirm the denial of compensation benefits.

### CONCLUSION

The Board finds that appellant has not met her burden to establish that she sustained an emotional condition in the performance of her duty.

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<sup>8</sup> See *Henry R. Mearis, Jr.*, Docket No. 06-100 (issued February 16, 2006) (claimant's emotional reaction to the perceived failure by management to adequately discipline a coworker, who not only failed to do his job but who also threatened other coworkers, was not compensable).

<sup>9</sup> *Harriet J. Landry*, 47 ECAB 543 (1996).

<sup>10</sup> *Judith A. Tobias*, Docket No. 98-1724 (issued April 14, 2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 6, 2006 and September 21, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 6, 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