

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

D.P., Appellant

and

**U.S. POSTAL SERVICE, MAIN POST OFFICE,
Houston, TX, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 07-839
Issued: July 25, 2007**

Appearances:
Stephen V. Hunt, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 5, 2007 appellant filed an appeal of a January 19, 2007 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 has jurisdiction over the merits of the claim.

ISSUE

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

FACTUAL HISTORY

On October 20, 2004 appellant, then a 43-year-old general clerk in limited-duty status, filed a traumatic injury claim (Form CA-1) alleging that she sustained anxiety and consequential hypertension due to October 19, 2004 meetings with Supervisors Karen W. Lambert and Edwin Joseph. The supervisors counseled her about excessive, improper personal telephone use while on duty. Union stewards Karen Woods and Sheila Outley also attended the meetings. Appellant alleged that Mr. Joseph yelled at her and would not listen to her explanation that her duties

required her to use the telephone. After the meeting, the stewards escorted appellant to the medical unit. A nurse obtained a blood pressure reading of 210/110 and referred her to an emergency room. Appellant also attributed her condition to working outside medical restrictions pertaining to a wrist injury beginning on October 1, 2004.¹ She stopped work on October 19, 2004 and did not return.

In a November 24, 2004 letter, the Office advised appellant of the type of additional evidence needed to establish her claim, including a detailed description of the work factors alleged to have caused her condition and a rationalized report from her physician explaining how and why those factors would cause the claimed condition.

In a December 17, 2004 letter and email, Ms. Lambert stated that, on September 22, 2004, she had a discussion with appellant regarding her constant personal telephone calls while on duty. A September 30, 2004 job discussion concerned appellant's inappropriate friendliness with male visitors. On October 19, 2004 appellant was carrying out her assigned duties of escorting visitors to and from the medical unit and issuing identification tags. Ms. Lambert reminded appellant that she was not to use her cellular telephone while on the clock and to use the medical unit telephones only for business.² She alleged that appellant "got upset and started talking loud. [Appellant] stated that 'she was tired of all the f**king rules, and that she had just called home to check on her family.'" Ms. Lambert then calmed appellant down and stated that it was her job to remind employees of work policies. Appellant then began to cry and stated that she was "always getting picked on" and that she was "just tired of this s**t." Ms. Lambert again calmed appellant and told her to "get [tough] and just go along with the program and everything would be fine." Appellant assured Ms. Lambert that she was okay and resumed her duties.

In a December 17, 2004 letter, Mr. Joseph stated that he had received numerous complaints about appellant's conduct while on duty. He alleged that appellant wore inappropriately short dresses and allowed men to loiter at her post "in a party like manner." Mr. Joseph recalled that, on an unspecified date, he met with appellant and union stewards, Ms. Woods and Ms. Outley, in his office regarding appellant's allegations of harassment by Ms. Lambert. He reiterated the employing establishment's dress code and cellular telephone policies. Ms. Woods then told appellant that she knew how to handle this by going to the nurse.

In a December 20, 2004 investigative memorandum, the employing establishment's inspection service noted that Ms. Lambert asserted that appellant was not asked to perform any tasks beyond her medical restrictions. Ms. Lambert stated that appellant "was talked to on several occasions about her misuse of [employing establishment] telephones and her prolonged use of her personal cellular telephone while on duty."³ After Ms. Lambert counseled appellant

¹ Appellant accepted the modified-duty position on August 8, 2003, with restrictions against lifting more than five pounds and repetitive upper extremity motions. His prior position was abolished effective May 4, 2002 by a technology productivity initiative.

² The employing establishment submitted a March 19, 1999 district-wide policy memorandum prohibiting employees from carrying or using pagers or cellular telephones while on duty except when authorized for official business or emergency situations. Appellant signed a copy of this policy.

³ Appellant was also counseled beginning on December 10, 2002 regarding chronic attendance problems.

on October 19, 2004, appellant appeared at Mr. Joseph's office with two union stewards who discussed matters in his office.

Appellant submitted medical evidence in support of her claim. In a November 2, 2004 slip, Dr. Amir Ghebramious, an attending family practitioner, referred appellant to a psychiatrist. In a December 3, 2004 report, Dr. Gary Tipton, an attending licensed clinical psychologist, reiterated appellant's account of the October 19, 2004 meeting with Mr. Joseph. He diagnosed an adjustment disorder, anxiety and major depression. Dr. Tipton opined that the October 19, 2004 meeting caused appellant's psychiatric conditions. In a December 9, 2004 form report, Dr. Howard Grant, an attending physician specializing in emergency medicine, diagnosed anxiety, hypertension, chest pain and dizziness. He opined that appellant was totally disabled from working at the employing establishment.⁴

By decision dated January 7, 2005 and finalized January 8, 2005, the Office denied appellant's claim on the grounds that she failed to establish that the claimed emotional condition occurred in the performance of duty. The Office found that appellant failed to establish any compensable factors of employment. The Office accepted as factual that appellant was "involved in a confrontation with [her] supervisor over the use of" the telephone. However, the Office found that the meeting was an administrative function of the employer not in the performance of appellant's duties. The Office further found that appellant did not establish that she was asked to work outside of her medical restrictions.

In a letter postmarked May 19, 2005, appellant requested a review of the written record. By decision dated May 27, 2005, the Office denied appellant's request for a review of the written record on the grounds that it was not timely filed within 30 days of the Office's January 8, 2005 decision. The Office additionally denied the hearing on the grounds that the issue involved could be addressed equally well by requesting reconsideration and submitting evidence establishing a compensable factor of employment.

In an August 11, 2005 letter, appellant requested reconsideration. She submitted additional evidence.

In an October 19, 2004 chart note, an employing establishment health unit nurse noted that appellant presented upset, crying and complaining of a headache after a "grievance meeting" with Mr. Joseph and Ms. Wood. Appellant's blood pressure was 210/110. The nurse advised appellant to seek emergency room treatment.

In May and June 2005 letters, appellant's coworkers Donna R. Baker, Johnny Fortune and Lawrence Mathews stated that appellant received telephone calls on two medical unit telephones notifying her to escort a visitor to the unit.

In a November 16, 2006 letter, Ms. Lambert reiterated that she asked appellant "not to use her cellular telephone while on duty. She used her cellular telephone excessively, as well as

⁴ Appellant also submitted unsigned medical forms and chart notes with an illegible signature. It is well established that medical evidence lacking proper identification is of no probative medical value. *Thomas L. Agee*, 56 ECAB ____ (Docket No. 05-335, issued April 19, 1985); *Merton J. Sills*, 39 ECAB 572 (1988).

text messaging while working in the lobby.” Appellant also had extensive personal conversations on the in-house business telephone. Ms. Lambert emphasized that appellant was not assigned to perform any tasks in violation of her restrictions relating to a wrist injury.

Appellant submitted form reports from Dr. Grant dated from May 18, 2005 to November 29, 2006 finding her totally disabled for work due to anxiety, stress and hypertension.

By decision dated January 19, 2007, the Office affirmed the January 8, 2005 decision, finding that the evidence submitted on reconsideration was insufficient to establish any compensable factor of employment. The Office found that appellant established that she received work-related calls on two business lines. However, the October 19, 2004 meeting did not concern official telephone use but her personal calls while on duty. The Office further found that appellant did not establish her allegations of mistreatment by her supervisors as factual.

LEGAL PRECEDENT

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 his 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.⁵ 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 his frustration from not being permitted to work in a particular environment or to hold a particular position.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

⁵ 5 U.S.C. §§ 8101-8193.

⁶ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ See *Norma L. Blank*, 43 ECAB 384 (1992).

⁸ *Id.*

ANALYSIS

Appellant alleged that she sustained anxiety and consequential hypertension as a result of employment incidents and conditions which the Office found to be noncompensable. Therefore, the Board must review whether these alleged incidents and conditions are covered employment factors under the terms of the Act.

Appellant attributed her condition, in part, to October 19, 2004 disciplinary discussions with supervisors Ms. Lambert and Mr. Joseph. Both Ms. Lambert and Mr. Joseph submitted December 17, 2004 statements corroborating that on October 19, 2004, they met with appellant to discuss her excessive personal telephone use while on duty. The Office accepted these meetings as factual. However, disciplinary actions including oral reprimands, discussions or letters of warning for conduct pertain to noncompensable, administrative actions unless the employee shows that management acted unreasonably.⁹ Ms. Lambert and Mr. Joseph's letters clearly explain appellant's failures to abide by workplace telephone use procedures. Appellant did not allege that her supervisors' characterizations of her personal telephone use were inaccurate. Also, appellant did not provide any evidence corroborating her allegation that Mr. Joseph yelled at her, refused to listen to her assertions or otherwise mistreated her. Although Ms. Lambert stated that appellant yelled and cried during the October 19, 2004 meeting, she also stated that appellant calmed down quickly and was able to resume her duties. The Board finds that these discussions were reasonable under the circumstances of the case and do not evince administrative error or abuse. Thus, appellant has failed to establish a compensable factor of employment with regard to the disciplinary meetings.

Appellant also attributed her condition to being made to work beyond medical limitations pertaining to a wrist injury. She did not specify the tasks assigned to her that were not in accordance with her work restrictions. Also, Ms. Lambert asserted in a December 20, 2004 investigative memorandum and November 16, 2006 letter that appellant was not made to work beyond her restrictions. The Board finds that due to the vague nature of appellant's allegations and her supervisor's direct controversion, appellant has not established that she performed any tasks outside of her medical limitations.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty as she failed to establish any compensable factors of employment. As appellant has not established any compensable work factors, the medical record need not be addressed.¹⁰

CONCLUSION

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty as alleged.

⁹ *Janice I. Moore*, 53 ECAB 777 (2002).

¹⁰ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 19, 2007 is affirmed.

Issued: July 25, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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