

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

M.R., Appellant

and

**U.S. POSTAL SERVICE, GENERAL MAIL
FACILITY, Long Beach, CA, Employer**

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**Docket No. 07-2216
Issued: February 27, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 29, 2007 appellant filed a timely appeal of the August 15, 2007 merit decision of the Office of Workers' Compensation Programs, which denied her claim for an employment-related emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

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

FACTUAL HISTORY

On May 11, 2005 appellant, then a 54-year-old distribution clerk, filed an occupational disease claim (Form CA-2) for stress, anxiety and depression. She identified December 1, 1997 as the date she first realized her condition was caused or aggravated by her employment. On April 6, 2004 appellant's supervisor, Janie Avery, informed appellant that she was likely to be relocated to a different postal facility. Appellant reacted adversely to Ms. Avery's disclosure.

She stopped working that day and later filed a traumatic injury claim, file number 13-2106920, regarding the April 6, 2004 incident.¹ The Office denied the claim by decision dated September 27, 2004. Appellant subsequently requested an oral hearing.

During the June 29, 2005 hearing, appellant testified to several employment incidents that caused or contributed to her claimed emotional condition. The incidents occurred over a period of years and involved customer service manager, Edward E. Hamm. Because appellant originally filed a traumatic injury claim focusing exclusively on the April 6, 2004 employment incident, the hearing representative limited his analysis to that particular incident. In a decision dated September 26, 2005, the hearing representative affirmed the September 27, 2004 denial of appellant's claim. As appellant filed a CA-2 form on May 11, 2005, the hearing representative instructed the Office to adjudicate the occupational disease claim.

On December 21, 2006 the Office wrote to appellant explaining that it overlooked the hearing representative's directive to open a new occupational disease claim, file number 13-2161860. The Office asked appellant to submit additional medical and factual information to support her emotional condition claim. Appellant replied on January 5, 2007 stating that her June 29, 2005 hearing testimony and the exhibits she previously submitted should suffice.

By decision dated February 6, 2007, the Office denied appellant's emotional condition claim. The Office addressed a dozen alleged incidents involving Mr. Hamm and found that only one of the incidents was factually established. However, it was found noncompensable.

The February 6, 2007 decision was subsequently appealed to the Board. On August 2, 2007 the Board issued an order remanding case.² The Board noted that the case record did not include the June 29, 2005 hearing transcript or any of the exhibits appellant submitted at her hearing. The Board instructed the Office to obtain the missing transcript and exhibits and issue an appropriate final decision.

In her hearing testimony and prior written statement, appellant alleged that Mr. Hamm engaged in a year-long pattern of harassment and humiliation. Because of an earlier occupational injury, appellant had limited use of both hands.³ She was given a limited-duty assignment and wore thumb braces at work for a period of time. Appellant alleged that Mr. Hamm made snide remarks about her medical condition since 1997 and had called her a "cripple" in the presence of another employee, Robert. Between July and December 2003, Mr. Hamm occasionally referred to her and another injured coworker as the "[h]andicapped [s]isters or [t]wins." Lisa Kashinsky, the other injured coworker, provided a June 28, 2005 statement in which she claimed to have heard Mr. Hamm refer to appellant and herself as "the crippled [s]isters" and "the walking wounded." Mr. Hamm provided a June 29, 2005 statement in which he denied ever mocking appellant for wearing braces. He did not recall referring to appellant as a wounded warrior. Mr. Hamm noted that he always treated appellant

¹ Appellant remained off work approximately five months following the April 6, 2004 incident.

² Docket No. 07-991 (issued August 2, 2007).

³ Appellant has an accepted claim, file number 13-1188691, for bilateral thumb tendinitis, which arose on or about December 20, 1997.

with respect and, because she was known to be a sensitive person, he was cautious about what he said to her. He said that she had a tendency to twist things around and exaggerate issues. In a subsequent statement dated December 12, 2006, he again denied having referred to appellant as a “cripple.”

Appellant also alleged that Mr. Hamm did not properly respond to her concerns about workplace safety. She claimed that Mr. Hamm refused to correct problems. On at least three occasions, appellant was stuck by a U-cart or buggy operated by her coworker, Yong Sherman. The first reported incident occurred on November 21, 2002 and was witnessed by Victoria Lam.⁴ Ms. Sherman reportedly struck appellant again on January 25, 2005 and she was struck a third time on January 27, 2005. Appellant believed that the most recent incident was deliberate. She filed safety reports concerning both January 2005 incidents. Mr. Hamm’s signature appeared on these reports. He spoke with Ms. Sherman regarding safety and the need to exercise extreme care when pushing equipment through the work area. On February 25, 2005 appellant and two employing establishment safety officials met with Mr. Hamm to discuss the concerns she raised. After the meeting concluded, Mr. Hamm and a plant safety committee member toured the area where the incidents occurred to see if it was possible to relieve some congestion. A decision was made to relocate appellant to a different work space. After consulting with both appellant and Ms. Sherman individually, an agreement was reached regarding the proposed changes.

Appellant identified another incident involving her and Ms. Sherman. In November 2002, appellant was accused of stealing Ms. Sherman’s driver’s license. She claimed that Ms. Sherman lost her own license, but blamed appellant for the missing license. In a December 12, 2006 statement, Mr. Hamm indicated that he had no recollection of any such incident. Appellant also alleged that Mr. Hamm blamed her every time something was not done or when it was done incorrectly. She claimed that this occurred even when other employees said Ms. Sherman was responsible.

Appellant also claimed that Mr. Hamm routinely harassed her on payday. He allegedly made appellant come to his office to pick up her pay stub. While she was there, Mr. Hamm would wave the pay stub in her face and then pull it away playing tug-of-war with it. According to appellant, Mr. Hamm always did this in front of her coworkers to embarrass her. She filed a formal equal employment opportunity (EEO) complaint in January 2000 and a settlement was reached on March 8, 2000. Mr. Hamm agreed to treat appellant with respect and dignity.⁵ In an August 8, 2005 statement, James R. Griego, a coworker, indicated that appellant asked him to accompany her to Mr. Hamm’s office to pick up her pay stub. While standing by the door outside Mr. Hamm’s office, Mr. Griego heard Mr. Hamm raise his voice. However, Mr. Griego did not recall what was said. In response to appellant’s allegations, Mr. Hamm stated that he did not make demeaning comments to her. As far as he could recall, appellant was paid through

⁴ Ms. Lam also claimed to have been struck by Ms. Sherman’s cart earlier that day.

⁵ Appellant also submitted a copy of the March 8, 2000 EEO settlement agreement. The document, however, does not identify the subject matter of the complaint. According to the agreement, she was required to “be included in activities that place (sic) after she is off duty.” Another provision obligated appellant to advise Mr. Hamm if there was work she had not completed during her shift. The third and final item of the agreement indicated that it was Mr. Hamm’s intention to treat appellant with “dignity, respect and good humor.”

direct deposit. There were only three employees who received paper checks and appellant was not one of them. Mr. Hamm explained that, if an employee was not present when he passed out pay checks, he would place the check in his office for safekeeping. When the employee returned to work, he or she would go to Mr. Hamm's office to pick up the check.

Another incident involved Mr. Hamm's alleged comments about a doctor's note. Appellant stated that when she brought Mr. Hamm a note from her gynecologist, he belittled the doctor's name and wanted to know his medical specialty. Mr. Hamm also wanted details of appellant's particular medical condition, including a diagnosis and prognosis. Appellant stated that the incident occurred in front of several coworkers who were on a break.

On another occasion, Mr. Hamm allegedly told appellant that she could not have any coffee until she finished her work. Appellant stated that she had been late arriving to work on December 21, 2006 and, while she was taking a minute to get coffee, Mr. Hamm told her to finish all her work before having coffee. According to appellant, it was routine for the employees to drink coffee while doing paperwork. But on this particular day, Mr. Hamm singled out appellant in front of other employees. Mr. Hamm stated that he never told appellant that she had to finish her work before she could drink a cup of coffee.

On December 9, 2003 Mr. Hamm reportedly assigned appellant a utility cart full of mail that needed processing. He ordered her to stop what she was doing and immediately work on the mail cart. She was reluctant to perform the requested task because she related her prior left thumb pain to throwing mail. Appellant wanted to obtain approval from her physician before throwing any mail. She asked Mr. Hamm for a form to take to her physician to determine if her problem was job related. Mr. Hamm allegedly became upset and started yelling and screaming. Appellant claimed that he said that her clumsiness and poor performance was not the fault of the work he wanted done. Mr. Hamm accused her of faking an injury and trying to get the employing establishment to pay. He then walked away without giving her the form she requested. Appellant claimed that on at least four subsequent occasions she asked Mr. Hamm for the necessary form to submit to her doctor, but he again refused her requests. In a December 12, 2006 statement, Mr. Hamm denied the remarks attributed to him. He recalled an incident when appellant requested a specific workers' compensation form and, based on advice received from the injury compensation office, he did not provide the requested form because it was not appropriate for the situation.

On January 12, 2004 Mr. Hamm allegedly left appellant a note stating that she had done some things wrong. Appellant said that Mr. Hamm neglected to confirm who was actually responsible for the mistakes. She claimed that, on many occasions including March 16, 2004, Mr. Hamm would get in her face, point his finger and yell. Mr. Hamm denied making embarrassing comments or wagging his finger at appellant. He also denied yelling at her in front of other employees. Mr. Hamm indicated that he may have stated his intentions in a stern fashion, which appellant interpreted as yelling. He explained that a noisy work environment may have caused him to raise his voice so that appellant could hear him.

Another incident allegedly occurred March 18, 2004, when appellant wanted to file an EEO complaint, but decided not to proceed with the filing because she would have been expected to participate in the redress program. Based on prior experience, appellant believed

that the redress program was ineffective. She noted that the last time she participated in the program, Mr. Hamm did not live up to his written agreement to treat her with dignity and respect.

By decision dated August 15, 2007, the Office denied appellant's claim. It found that she did not establish her allegations of harassment or administrative error as factual.

LEGAL PRECEDENT

To establish that she sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.⁶

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.⁷ Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.⁸ 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.⁹

ANALYSIS

Appellant alleged that numerous interactions with Mr. Hamm caused or contributed to her psychiatric condition. However, she did not submit sufficient evidence to establish her allegations as factual. Appellant's allegations of harassment, disrespect, belittlement and humiliation are far too vague to determine their validity. Another allegation that is vague and unsubstantiated was appellant's claim that Mr. Hamm blamed her every time something went wrong. There is a lack of specificity as to what was said and when any remarks were made. The evidence of record is not sufficient to establish this allegation. The Board is also unable to decipher the alleged incident of March 18, 2004. Appellant claimed that she wanted to file an

⁶ See *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁷ *Lillian Cutler*, 28 ECAB 125 (1976).

⁸ See *Kathleen D. Walker*, *supra* note 6. Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

⁹ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

EEO complaint that day, but decided against it. However, her decision not to act because of what she perceived to be an ineffective dispute-resolution process does not establish a compensable employment factor. There is no evidence to establish administrative error or abuse related to her EEO complaints or dispute resolution.

For appellant to prevail on her claim, she must support her allegations with probative and reliable evidence.¹⁰ She provided nothing in support of her allegation that Mr. Hamm left a note on January 12, 2004 accusing her of doing her work incorrectly. Appellant did not submit a copy of the alleged note or otherwise describe the particular mistakes she claimed to have been wrongly accused of making. She provided no support for her allegation that she was wrongly accused of stealing Ms. Sherman's driver's license. Appellant did not specifically implicate Mr. Hamm in this particular incident and he did not have any recollection of the event. She also failed to provide any support for her allegation that Mr. Hamm belittled her gynecologist's name or harassed her concerning her particular medical condition. This incident reportedly occurred in front of several employees on break. However, no witness statements were provided to corroborate appellant's allegation.

There are other incidents of alleged wrongdoing which Mr. Hamm denied. Again, appellant provided no reliable evidence to support her version of events. On December 21, 2006, when appellant arrived late, Mr. Hamm allegedly told her she could not have any coffee until she finished all her work. Mr. Hamm said he never told appellant that she had to finish her work before she could drink a cup of coffee. None of appellant's coworkers that purportedly witnessed the alleged incident provided a statement in support of her allegation. She also provided no support for her allegation that on more than one occasion Mr. Hamm got in her face, pointed his finger and yelled. Mr. Hamm specifically denied making embarrassing comments, wagging his finger at appellant or yelling at her.

Appellant stated that Mr. Hamm refused to correct a problem regarding Ms. Sherman and her unsafe U-cart. The safety report appellant filed on January 25, 2005 indicated that Mr. Hamm spoke with Ms. Sherman about the U-cart incident that same day. The record further indicates that Mr. Hamm addressed the issue in a February 25, 2005 meeting, which appellant attended. Following the meeting, a decision was made to relocate appellant's work space. Both appellant and Ms. Sherman were later consulted and an agreement was reached regarding the proposed changes. Thus, the record does not support appellant's claim that Mr. Hamm refused to correct this particular safety issue.¹¹

¹⁰ See *Kathleen D. Walker*, *supra* note 6.

¹¹ If appellant took exception to the manner in which Mr. Hamm resolved the safety issue, her emotional reaction would be noncompensable. Complaints about the manner in which a supervisor performs his duties or exercises his discretion fall, as a rule, outside the scope of coverage provided by the Federal Employees' Compensation Act. This principle recognizes that a supervisor or manager must be allowed to perform his duties and employees will, at times, dislike the actions taken, but mere disagreement or dislike of a supervisory or managerial action will not be actionable, absent evidence of error or abuse. *Marguerite J. Toland*, 52 ECAB 294, 298 (2001). Appellant has not identified any error or abuse on the part of the employing establishment in handling the safety issue she raised in January 2005.

The record also does not support appellant's allegation that Mr. Hamm called her a cripple in front of coworkers. Mr. Hamm specifically denied calling appellant a cripple and she failed to present any evidence, such as a statement from any coworkers, to corroborate her allegation. Appellant also accused Mr. Hamm of referring to her and Ms. Kashinsky as the "[h]andicapped [s]isters or [t]wins." This reportedly occurred on several occasions during the last six months of 2003. Appellant, however, did not specify whether she heard these remarks or was told about them. But regardless of whether she had first hand knowledge, appellant did not submit any probative evidence to corroborate this particular allegation. In a June 28, 2005 statement, Ms. Kashinsky stated that she heard Mr. Hamm refer to her and appellant as "the crippled [s]isters" and "the walking wounded." In a December 12, 2006 statement, Mr. Hamm denied ever referring to appellant as a cripple and, in his prior statement dated June 29, 2005, he indicated that he did not recall referring to appellant as a "wounded warrior." Ms. Kashinsky's statement is general in nature and fails to specify the dates or times that any such communicate were made. Given Mr. Hamm's denial of the allegation, Ms. Kashinsky's June 28, 2005 statement is not sufficient to establish the allegation as factual in the absence of additional corroborative evidence.

Appellant also accused Mr. Hamm of playing tug-of-war with her pay stubs. Mr. Hamm reportedly made her come to his office to retrieve her pay stub and, while she was there, he would wave the pay stub in her face and then pull it away. Appellant claimed that he did this in front of her coworkers. Mr. Hamm denied the allegation, and none of appellant's coworkers provided a statement corroborating her allegation. On one occasion Mr. Griego accompanied appellant to Mr. Hamm's office to retrieve her pay stub. However, Mr. Griego was positioned outside Mr. Hamm's office door and did not observe the alleged tug-of-war.¹² Appellant also claimed to have filed a formal EEO complaint regarding the alleged payday harassment. Although the record includes a March 8, 2000 EEO settlement agreement signed by both appellant and Mr. Hamm, this document does not specify the basis for the settlement. Therefore, it does not lend support to appellant's allegation that Mr. Hamm harassed her on payday.¹³

Of the numerous incidents alleged by appellant, only one is supported by the record. She claimed that on December 9, 2003 she asked Mr. Hamm for a workers' compensation form that she could take to her physician so he could determine if appellant's left thumb condition was employment related. Appellant alleged that Mr. Hamm became upset, accused her of faking an injury and then walked away without providing the requested form. She also claimed to have asked Mr. Hamm for the form on at least four subsequent occasions, but he repeatedly refused her request. Mr. Hamm denied the specific remarks appellant attributed to him, but acknowledged that on at least one occasion he did not provide her with a workers' compensation form she requested. According to him, appellant requested a Form CA-1. However, he was advised by the injury compensation office, that the situation called for a CA-2 form instead of the form appellant requested. For this reason, Mr. Hamm did not provide appellant with the

¹² Mr. Griego stated that he heard Mr. Hamm raise his voice, but he did not recall exactly what was said. The mere fact that a supervisor may raise his voice during the course of a conversation does not warrant a finding of verbal abuse. *Joe M. Hagewood*, 56 ECAB 479, 492 (2005).

¹³ Absent an admission of fault, a settlement agreement does not establish error or abuse on the part of the employing establishment. *Kim Nguyen*, 53 ECAB 127, 128 (2001).

form she requested. While the record supports appellant's allegation that Mr. Hamm refused to provide her with a requested workers' compensation form, this incident is noncompensable. The evidence does not establish administrative error by the supervisor. Moreover, an employee's emotional reaction from pursuing a workers' compensation claim is not compensable.¹⁴

Despite the numerous allegations of misconduct on the part of Mr. Hamm, appellant failed to establish a compensable employment factor as the cause of her diagnosed psychiatric condition. Therefore, the Office properly denied her May 11, 2005 claim.

CONCLUSION

The Board finds that appellant did not establish that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the August 15, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 27, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

¹⁴ *John D. Jackson*, 55 ECAB 465, 474 n.19 (2004).