

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

J.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Glendale, AZ, Employer**

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**Docket No. 07-2014
Issued: January 24, 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 8, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated May 29, 2007 with respect to her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish an emotional condition causally related to compensable work factors of her federal employment.

FACTUAL HISTORY

On August 4, 2005 appellant, then a 30-year-old letter carrier, filed an occupational disease claim (Form CA2) alleging that she sustained an emotional condition as a result of her federal employment. In narrative statement, she stated that she became uncomfortable and nervous when a supervisor asked how much time she needed to complete her route. After responding, the supervisor would say "Oh come on, you don't need that much time, I need you to

take some mail off another route.” Appellant stated that, after she called in to use sick leave, her supervisor would treat her differently and not say “good morning.” According to her, her first anxiety attack occurred on October 6, 2004 when she requested one hour of leave for the next day. Appellant alleged that her supervisor became upset and spoke in a loud voice, calling her “underhanded” and refusing to do “more favors” for her, such as letting her begin work at 7:15 a.m. instead of 7:30 a.m. She began experiencing anxiety attacks. Thereafter, a new supervisor called appellant a “milkmaid,” suggesting that she was milking her time and taking too long to complete her route. She stated that the supervisor stopped after she asked her to stop, but found other ways to belittle her. Appellant alleged that on March 23, 2005 she had an anxiety attack after the supervisor questioned the time needed for her route and in April 2005 the supervisor pointed out to another carrier that appellant was casing mail the wrong way.

In an undated statement, Mike Miller, appellant’s first supervisor, stated that it was part of his job to determine the time needed to deliver a mail route. He asserted that he did not treat employees differently if they had used sick leave and said good morning to employees unless he was running behind in schedule. On October 6, 2004 Mr. Miller was not upset and did not yell at appellant. He denied ever calling her underhanded, but said that putting in one hour of leave prior to a holiday was an underhanded trick. Mr. Miller indicated that an employee was not allowed to request less than eight hours of leave prior to a scheduled day off. After appellant became upset he allowed her leave for the day.

Another supervisor, Carla Meyer, indicated in an August 8, 2005 statement that she did not recall calling appellant a milkmaid. However, if she did, it was used as a joke rather than an attempt to belittle appellant. Ms. Meyer stated that she would ask other carriers how much time “are you going to milk me for today?” referring to the amount of overtime needed. Mr. Miller stated that appellant’s responsibilities included observing carriers work and in April 2005 another carrier was used to illustrate the proper technique for casing mail.

Appellant submitted a statement from Marshall Richardson, a coworker, indicating that he heard Ms. Meyer call appellant a milkmaid. Ronald Carter, a union steward, reported that in October 2004 appellant became upset after a conversation with her supervisor in which she was called an underhanded person and a person that could not be trusted. In an undated statement, received by the Office on September 28, 2005, appellant reiterated her allegations. She stated “constant harassment by my supervisors Mr. Miller and Ms. Meyer along with the excessive amount of overtime finally mentally and physically exhausted me.” Appellant submitted additional medical evidence, including a September 20, 2005 report from Dr. Heather Ellwod, diagnosing panic disorder with panic attacks.

By decision dated January 24, 2006, the Office denied the claim for compensation. The Office found that appellant had not established any compensable work factors.

Appellant requested an oral hearing before an Office hearing representative, which was held on February 20, 2007. She submitted a statement from Kathy Wieand, a coworker, who discussed her interactions with Mr. Miller.

By decision dated May 29, 2007, the Office hearing representative affirmed the January 24, 2006 decision.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment.¹ This burden includes the submission of detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.² A claimant must also submit rationalized medical opinion evidence establishing a causal relationship between the claimed condition and the established, compensable work factors.³

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 illness has some connection with the employment but nevertheless does not come within the coverage of workers compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁴

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.⁵ Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.⁶ With respect to a claim based on harassment or discrimination, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁷

ANALYSIS

Appellant has alleged an emotional condition as a result of actions of her supervisors. She became nervous when questioned about her route time, but this is clearly an administrative matter involving a supervisory responsibility. The evidence of record does not establish any

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

³ *See Bonnie Goodman*, 50 ECAB 139, 141 (1998).

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

⁶ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

⁷ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

error or abuse in this regard. With respect to such actions as being instructed on casing mail techniques before another carrier, there is no probative evidence the supervisor was abusive or attempting to belittle appellant.

There are specific allegations of verbal abuse by supervisors, such as the allegation that Mr. Miller called appellant “underhanded” or that Ms. Meyer called her a “milkmaid.” The evidence of record does not establish that these incidents rose to the level of verbal abuse or otherwise constitute a compensable work factor. While 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 a compensable work factor.⁸ Mr. Miller denied raising his voice or yelling at appellant, and stated that the term “underhanded” was in reference to a leave request of less than eight hours made immediately prior to a scheduled day off. He indicated that appellant had asked for one hour of leave on a day prior to a scheduled day off, and although such a leave request was improper she ultimately was allowed to take the day off. Ms. Meyer indicated the term “milkmaid” was intended as a joke and similar comments were made to other carriers. Appellant indicated that Ms. Meyer stopped using the term as soon as she asked her to stop. The Board finds that the comments made by the supervisors do not constitute verbal abuse.

Appellant also characterized the actions of her supervisor as harassment, but as noted above, there must be probative and reliable evidence to support a claim of harassment. The evidence of record does not establish harassment, administrative error or verbal abuse. The Board notes that, while appellant briefly referred to working excessive amounts of overtime, she did not provide further detail. As noted by the hearing representative, appellant indicated at the oral hearing that she was not claiming that the overtime contributed to an emotional condition. The Board finds that the allegations raised by her and the evidence submitted do not substantiate a compensable work factor in this case. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.⁹

CONCLUSION

The evidence of record does not substantiate a compensable work factor and, therefore, appellant did not meet her burden of proof to establish an emotional condition causally related to compensable work factors.

⁸ *Judy L. Kahn*, 53 ECAB 321, 326 (2002).

⁹ *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 29, 2007 is affirmed.

Issued: January 24, 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