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

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| **R.P., Appellant** | ) | |
| | ) | **Docket No. 08-2040** |
| **and** | ) | **Issued: August 6, 2009** |
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| **U.S. POSTAL SERVICE, POST OFFICE, Riverside, CA, Employer** | ) | |

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

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

### ***JURISDICTION***

On July 18, 2008 appellant filed a timely appeal from a June 18, 2008 decision of the Office of Workers' Compensation Programs denying her claim for an emotional condition. 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 met her burden of proof in establishing that her emotional condition was causally related to a compensable employment factor.

### ***FACTUAL HISTORY***

On October 27, 2007 appellant, then a 55-year-old distribution window clerk, filed an occupational disease claim alleging that she developed an anxiety disorder due to harassment by supervisors and postal customers. She alleged that on July 15, 1996 Carol France, a customer service support supervisor, gave her a notice of removal for failure to pass her window training. An August 8, 1996 grievance decision provided that appellant would be retrained and tested

again.[1] Although she was not removed from her position, she began to experience feelings of job insecurity. Appellant perceived her conversations with customers as "noise" which aggravated her anxiety. She considered filing complaints in August 1998 but was afraid of losing her position. Appellant alleged harassment by Cynthia Jackson, a supervisor, stating that she experienced an anxiety attack and went to the hospital. On December 3, 2002 she was confronted by a rude customer during the holiday rush who accused her of skipping her number when standing in line to be served. Appellant asked the customer to present her number slip. The customer refused but still demanded to be served. Appellant closed her window and advised Luanne Jermain, a supervisor, of the situation. She expected the supervisor to handle the matter and went to the restroom to calm down. Upon returning from the restroom, appellant saw the same customer still standing at her window. She was upset over the incident and did not feel prepared to resume her duties at the window. However, Ms. Jermain instructed appellant to go to the window. She did not comply and received a letter of warning.

Appellant alleged that Tom Danberger, a supervisor, followed her when she took breaks and asked how much time she had left. If she took a break outside, Mr. Danberger followed her. Appellant began taking shorter breaks, skipping breaks or taking her break in the restroom to avoid Mr. Danberger. However, Mr. Danberger would wait outside for her or ask a female employee to tell her to hurry. On May 24, 2005 he allegedly stormed into the lunchroom where appellant was taking a designated break and yelled at her.[2]

In fall 2006, appellant was assigned a new supervisor, Roberto Salas. She alleged that Mr. Salas began to harass her after learning of her emotional condition. In August 2007, Don Green, a coworker, told her that he overheard Mr. Salas tell Joel Williams, "You see I got rid of Crystal for you. I can get rid of this one too, you just tell me." Appellant alleged that Mr. Salas assigned tasks and later asked what she was doing, denying that he assigned those tasks. She filed a complaint on September 5, 2007 alleging that Mr. Salas disorganized supervision prevented her from performing her duties. Appellant alleged that Mr. Salas issued a letter of warning in retaliation.

On October 4, 2007 appellant observed that the schedule board indicated that she was to work on Tuesday, October 9, 2007. She advised Mr. Salas that Tuesday was her designated day off and she had scheduled a doctor's appointment. Mr. Salas demanded that appellant provide a note from her physician verifying her appointment. Appellant provided a medical note. She stated that, on October 18, 2007, she submitted a request for leave under the Family and Medical Leave Act (FMLA). Appellant's attending physician, Dr. Camille Reineke, a Board-certfied psychologist, recommended that she have no interaction with customers for at least three months. On October 24, 2007 Mr. Salas told her to stop working in the box section and go to her window. Appellant reminded him of her temporary medical restriction against talking to customers. Mr. Salas became angry and ordered her to go to the window or provide medical documentation immediately. He ordered appellant to see Ms. France who yelled at her for refusing to go to the

[1] The August 8, 2008 grievance decision directed that appellant would receive additional training and retake the window clerk test. The decision did not contain a finding of error or abuse by the employing establishment.

[2] In a May 24, 2005 statement, Barbara Fuhrman stated that on that date Mr. Danberger shouted at appellant in the lunchroom in an angry voice.

window. Ms. France advised that all her medical documentation was at the employing establishment medical unit and she could call to verify this. She became enraged and screamed, "Get out, get out, I am done talking to you." Ms. France gave appellant a direct order to go to the window and handed her a leave form to complete if she refused. She denied appellant's request to call a union representative.

On October 25, 2007 appellant reported to work at 6:00 a.m., her usual time. Ms. France asked for a doctor's note. Appellant advised that she would provide one when she returned from a medical appointment. Ms. France allegedly screamed at appellant and ordered her to leave immediately, saying she was not authorized to be there. At 4:30 p.m. appellant returned to submit a medical note and a Form CA-2 claim for an occupational disease. Ms. France refused to sign or acknowledge the form. She told appellant to leave and not return until authorized. On October 26, 2007 appellant received an express mail letter advising that there was no work available to accommodate her medical condition. On October 30, 2007 she provided an additional note from Dr. Reinke. On November 19, 2007 appellant received another letter advising that there was no work available. She filed a grievance and an Equal Employment Opportunity (EEO) complaint.

The employing establishment controverted appellant's claim. In a March 3, 2008 statement, James Owens, the postmaster, stated that on December 26, 2002 appellant received a letter of warning for failure to follow instructions and unacceptable conduct that was issued by her former supervisor Ms. Jermain. Appellant left her window while a customer was present and went to the restroom. A few minutes later, she walked past Ms. Jermain's desk to another area of the facility. Ms. Jermain advised appellant that it was not her break time and she should return to her window. She continued to walk away. Ms. Jermain repeated the instruction. Appellant turned, looked at Ms. Jermain, threw a hand into the air, turned again and continued walking to the back of the facility. At approximately 3:02 p.m. she returned to the window and took her regular break at 3:30 p.m. Appellant did not provide a reasonable explanation for her conduct.

Mr. Owens noted that Ms. France researched the clerk bid jobs posted since July 7, 2004, the date appellant alleged that her emotional condition began. Out of 73 jobs posted during this period, 17 were mail processing clerk jobs with no window clerk duties but appellant did not bid for the positions. Mr. Owens reiterated Mr. Salas comment that appellant had a habit of not following specific instructions. When he questioned appellant later about tasks she was performing, she would change the instructions to suit what she actually performed.

Mr. Owens stated that on October 22, 2007 Mr. Larsen directed appellant to work at a window where help was needed to open for the day. At the time, appellant was working in the box section. She responded, "I will do it for you because you ask so nicely." Mr. Larsen was surprised that appellant was so cooperative considering that she was argumentative when Mr. Salas asked her to perform the same duties. On October 24, 2007 Mr. Salas instructed appellant to work at a window but she refused. Appellant told him that she had a medical restriction against dealing with the public. Mr. Salas was not aware of this restriction and had not received any medical documentation. He sent appellant to Ms. France who learned that several weeks earlier she sent her FMLA leave documents directly to a FMLA coordinator in another city. Appellant did not advise her supervisors of her medical condition until Mr. Salas

asked her to work the window on October 24, 2007. Ms. France contacted the FMLA coordinator, who advised that appellant submitted medical documentation dated October 18, 2007 indicating that she could miss work for one week at a time, four to five times a year, and could not have interaction with the public. A nurse in the employing establishment medical unit advised appellant to provide a description of the specific tasks she could not perform, along with a request for accommodation because she sought modification of her duties. Mr. Owens noted that appellant performed her job from October 18 to 24, 2007 even though she claimed she could not have contact with the public. Appellant advised Ms. France that she could not interact with "window" customers but could assist box customers. Mr. Owens stated that she could not select which customers she would serve. Appellant's medical restriction included all customers. On October 25, 2007 Ms. France asked her for her medical documentation. Appellant replied that she had a 9:30 a.m. doctor's appointment. Ms. France told appellant that she needed to choose a type of leave to use because she had not been cleared by the medical unit to return to work. When appellant returned at 4:45 p.m. with medical documentation, Ms. France advised that she would fax it to the medical unit but they had probably closed for the day. Ms. France told appellant not to report to work until she received permission from the medical unit. She again asked appellant for a telephone number. Appellant provided it and apologized for her behavior the previous day. She asked that Mr. Larsen sign her CA-2 form and Ms. France told her that he was busy helping customers. Appellant insisted that she wanted the form signed at that time. Later she clarified that she only wanted the receipt signed. Appellant wanted to submit her claim form directly to the Office. Ms. France explained that procedures required submission of the form to the employing establishment injury compensation unit who would then send it to the Office. Appellant submitted her claim form on October 27, 2007.

On October 30, 2007 appellant submitted medical documentation indicating that she was to have no face-to-face contact with customers for three months. On January 15, 2008 she submitted medical documentation stating that her restriction against face-to-face contact with customers was permanent. Mr. Owens stated that appellant had a history of not complying with instructions to work the window and had received disciplinary actions. On October 24, 2007 appellant had not indicated that she had any restriction against working with customers. Mr. Owens noted that appellant had a habit of leaving the front window to ask a question which often turned into a long discussion. Management determined that it was best to ask appellant to return to the window immediately to avoid leaving the window unstaffed for long periods. Mr. Salas noted that when appellant became upset for some reason, she would use it as an excuse to leave often without authorization. Appellant sometimes performed tasks that were not assigned to her, such as taking several outgoing express mail pieces and moving them from their proper location without informing anyone. When the dispatch person came to pick up the outgoing mail, Mr. Salas missed the express mail because she had moved it from the usual location. This situation constituted a "service failure" which would entitle a customer to a full refund of postage because overnight service was guaranteed. In an investigating interview, appellant stated that she moved the express mail pieces because they were in her way. When asked why she did not tell anyone that she had moved the express mail, she responded, "I don't know. I didn't think of it."

In a March 24, 2008 statement, Ms. France addressed appellant's allegation that on May 24, 2005 Mr. Danberger stormed into the lunchroom and yelled at her. She advised that Mr. Danberger had retired and was not available for comment. Ms. France noted that

Mr. Danberger's voice was loud normally and appellant may have misinterpreted this as shouting. Regarding Mr. Danberger's monitoring of appellant's breaks, she explained that management was having difficulty with window clerks taking breaks at the same time. This left the front window area short of clerks to assist customers. Additionally, the back distribution clerks would often take breaks at the time that trucks arrived to be unloaded. Supervisors would have to search the facility to locate enough clerks to staff all the operations. Supervisors checked with clerks on break to determine when they would return to work so the next clerk waiting for a break could be relieved. Some employees extended their breaks without permission. To resolve these problems, management instituted a system for breaks and lunchtimes so that no operation would be left without sufficient coverage. Regarding appellant's allegation that in August 2007 Mr. Green told her that he heard Mr. Salas tell Mr. Williams that he could get rid of her, Ms. France interviewed Mr. Salas and Mr. Williams who denied that they discussed getting rid of appellant. They discussed only the transfer of another clerk to a different facility. Mr. Green told Ms. France that he did not actually hear Mr. Salas and Mr. Williams discussing appellant, he assumed they were discussing her. Ms. France denied ever yelling or screaming at appellant, including October 24, 2007 when she refused to work the window. Although appellant asserted that she had medical documentation stating that she could not interact with the public, she did not mention her medical restriction to Mr. Salas or Ms. France until October 24, 2007. Ms. France pointed out that appellant worked with customers in the box section and she could not choose to assist those customers but not the window customers. She requested that appellant provide clarification of her medical restrictions and formally request light duty because she sought modification of her job duties. When Ms. France saw appellant at the time clock, she requested a telephone number where she could be contacted. She told Ms. France, "Look in my records." Ms. France again asked appellant to write down her telephone number. Appellant asked if this was a direct order and Ms. France responded, "Yes," she needed a telephone number where appellant could be reached. She swiped her time card and stated, "I am off the clock now." Ms. France told appellant that she had requested a telephone number when appellant was still on the clock. Nevertheless, appellant left without leaving a contact number. She stated that management was required to place her on leave without pay (LWOP) status because she would not select a type of leave to use. When appellant reported for work on October 25, 2007, she had not provided the medical unit with any medical documentation and had not received clearance to return to work. Ms. France asked why appellant was at work and requested medical documentation. She informed appellant that if she had contact with customers before obtaining authorization from the medical unit she would be working outside her medical restrictions and this was not allowed. Ms. France asked her to select a type of leave to use if she was not going to perform her regular job. She asked appellant to take 20 minutes to decide what she wanted to do. When Ms. France returned, appellant had clocked out without completing a leave request form. She denied that she ever yelled or screamed at appellant.

In a March 22, 2008 statement, Joel Williams, a box clerk, stated that in August 2007 appellant was awarded a bid job as a box clerk with relief duty as a window clerk. Shortly after beginning appellant's new job, she told Mr. Williams that she was going to change things. Appellant was not going to work the window. Mr. Williams denied having a conversation with Mr. Salas in which they discussed getting rid of appellant. The conversation appellant overheard involved another employee who bid out of the box section because she did not like providing relief to the window clerks. Mr. Williams noted that working at the window meant dealing with some customers who were rude and yelled. Most employees saw this as just part of the job and

learned to handle it. In a March 24, 2008 statement, Susan Fox stated that in all the years she worked at the employing establishment, she could not recall a time when Ms. France yelled at someone. She was present during the conversation between appellant and Ms. France and she did not recall Ms. France raising her voice or screaming.

Appellant submitted medical reports diagnosing anxiety and depressive disorders which she attributed to difficulties at work and some personal problems with her family.

By decision dated June 18, 2008, the Office denied appellant's claim on the grounds that she failed to establish that her emotional condition was causally related to a compensable employment factor.[3]

## ***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 employment but nevertheless does not come within the coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her 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] 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.[5]

Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.[6]

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors of employment, which may be considered by a physician when providing an opinion on causal relationship, and which are not deemed compensable factors of employment and may not be considered.[7] When an employee fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If an employee does implicate a factor of employment, the Office should then determine whether

[3] The Board notes that, while this appeal was pending, the Office issued an August 28, 2008 decision denying appellant's July 31, 2008 request for an oral hearing regarding the June 18, 2008 decision. Because this Office decision was issued while the case was pending before the Board, the August 28, 2008 decision is null and void. *See Douglas E. Billings*, 41 ECAB 880 (1990).

[4] 5 U.S.C. §§ 8101-8193.

[5] *Lillian Cutler*, 28 ECAB 125 (1976).

[6] *Michael Thomas Plante*, 44 ECAB 510 (1993).

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

the evidence of record substantiates that factor.[8] As a rule, allegations alone by an employee are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.[9] Where the employee alleges compensable factors of employment, she must substantiate such allegations with probative and reliable evidence.[10] When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.[11]

## ***ANALYSIS***

Several of appellant's allegations are not established as factual. She alleged that on May 24, 2005, Mr. Danberger stormed into the lunchroom while she was taking a designated break and yelled at her. Ms. France explained that Mr. Danberger, who was retired and unavailable for comment, had a normally loud voice and appellant may have misinterpreted this as shouting. The evidence does not establish this allegation as factual. It does not constitute a compensable factor of employment. In August 2007, Mr. Green allegedly told appellant that he overheard Mr. Salas tell Mr. Williams that he could get rid of appellant. Mr. Salas and Mr. Williams denied that this incident occurred. Mr. Green subsequently acknowledged that he did not hear Mr. Salas discuss appellant with Mr. Williams, he only assumed they were talking about her. Based on the evidence, this allegation is not accepted as factual and is not a compensable employment factor. Appellant alleged that Mr. Salas assigned tasks and later asked what she was doing, denying that he assigned those tasks. Mr. Salas stated that appellant had a habit of not following specific instructions. When he would question her later about tasks she was performing, she would change the instructions to suit what she actually performed. Mr. Owens stated that appellant sometimes performed tasks that were not assigned to her, such as moving outgoing express mail pieces from their regular location without informing anyone. Appellant caused the express mail to be delayed because the dispatch person did not see it in the designated location. The evidence from Mr. Salas and Mr. Owens refutes appellant's allegation regarding her assigned tasks. These allegations are not established as factual and is not a compensable employment factor.

Many of appellant's allegations involved administrative or personnel matters. The Board has held that an administrative or personnel matter will be considered to be an employment factor only where the evidence discloses error or abuse on the part of the employing establishment.[12] In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[13] Appellant

[8] *Margaret S. Krzycki*, 43 ECAB 496 (1992).

[9] *See Charles E. McAndrews*, 55 ECAB 711 (2004).

[10] *Joel Parker, Sr.*, 43 ECAB 220 (1991).

[11] *See Charles D. Edwards*, 55 ECAB 258 (2004).

[12] *Id.*

[13] *Janice I. Moore*, 53 ECAB 777 (2002).

alleged that Ms. France improperly gave her a notice of removal for failure to pass her window training in 1996. An August 8, 1996 grievance decision provided that appellant would be retrained and tested again. However, the decision did not find error or abuse by her supervisor. This allegation does not constitute a compensable employment factor. Appellant received a letter of warning for an incident on December 3, 2002 when she was confronted by a rude customer. She closed her window and advised Ms. Jermain of the situation. Appellant went to the restroom to calm down. Upon returning from the restroom, Ms. Jermain instructed appellant to go to the window but appellant did not feel ready to resume working the window. The Board finds that the evidence does not establish that Ms. Jermain acted unreasonably in issuing a warning letter when appellant refused to return to work. The Board finds that the allegation regarding the December 3, 2002 incident does not constitute a compensable factor of employment.

Appellant alleged that Mr. Danberger followed her when she took her breaks and asked how much time she had left for her break. She began taking shorter breaks, skipping breaks or taking her break in the restroom to avoid Mr. Danberger. However, Mr. Danberger would wait outside for her or ask a female employee to tell her to hurry. The record shows that management was having difficulty with employees taking breaks in such a manner that operations were not adequately staffed at all times. Supervisors checked with clerks while on breaks to determine when they would return to work so the next clerk waiting for a break could be relieved. The evidence does not establish that Mr. Danberger erred or acted abusively in monitoring appellant's breaks in light of the staffing difficulties. This allegation does not constitute a compensable factor of employment.

On October 4, 2007 appellant noted that she was scheduled to work on Tuesday, October 9, 2007. She advised Mr. Salas that Tuesday was her day off and she had a doctor's appointment. Mr. Salas asked her to provide documentation. There is no evidence or error or abuse in his request for medical documentation to support appellant's absence from work. On October 24, 2007 Mr. Salas told appellant to stop working in the box section and go to her window. Appellant reminded him of her medical restriction against talking to customers. She alleged that Mr. Salas and Ms. France became angry with her. She advised that all her medical documentation was at the employing establishment medical unit. Ms. France allegedly screamed, "Get out, get out, I am done talking to you." The employing establishment refuted appellant's allegations. Mr. Salas was not aware of any restriction against appellant talking to customers and had not received supporting medical documentation. Appellant did not advise her supervisors of her medical condition until Mr. Salas asked her to work the window on October 24, 2007. Mr. Owens noted that appellant performed her job from October 18 to 24, 2007 without advising that she was not supposed to deal with customers. Appellant advised Ms. France that she could not interact with window customers but would assist box customers. Management pointed out that her medical restriction did not indicate that she could choose to assist some customers but not others. The supervisors denied that they yelled at appellant. Appellant provided insufficient evidence that her supervisors acted unreasonably in this administrative matter. Ms. France stated that it was appellant, who responded rudely when asked to provide a telephone number where she could be contacted while on leave, telling Ms. France to look in her records. When told that she needed a telephone number where appellant could be reached, appellant clocked out and left work. The Board finds insufficient evidence that

Ms. France erred or acted abusively regarding the events on October 24, 2007. Therefore, appellant did not establish a compensable factor of employment.

On October 25, 2007 Ms. France asked for a doctor's note when appellant reported for work. Appellant stated that she would provide one when she returned from her medical appointment. She alleged that Ms. France began screaming at her and directed her to leave. Ms. France denied that she screamed at appellant. When appellant reported for work on October 25, 2007 she had not provided the medical unit with medical documentation. Ms. France asked her to choose a type of leave to use because she had not been cleared by the medical unit to return to work. She informed appellant that if she had contact with customers before obtaining authorization from the medical unit, she would be working outside her medical restriction which was not permitted. Ms. France asked appellant to take 20 minutes to decide what she wanted to do. When she returned, appellant had clocked out without completing a leave request form. The Board finds that Ms. France did not err or act abusively in her actions on October 25, 2007. Therefore, this allegation does not constitute a compensable employment factor.

The Board finds that appellant failed to submit sufficient evidence to substantiate her allegations. Her supervisors and other officials refuted the allegations with specific details and explanations of the incidents that she alleged were the cause of her emotional condition. Appellant failed to establish that her emotional condition was causally related to a compensable factor of employment. Therefore, the Office properly denied her emotional condition claim.[14]

## ***CONCLUSION***

The Board finds that appellant failed to establish that her emotional condition was causally related to a compensable factor of employment.

[14] *See supra* note 9.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 18, 2008 is affirmed.

Issued: August 6, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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