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

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| **C.N., Appellant** | ) | |
| | ) | **Docket No. 09-344** |
| **and** | ) | **Issued: August 24, 2009** |
| **U.S. POSTAL SERVICE, POST OFFICE, Mentor, OH, Employer** | ) | |

*Appearances:*
*Alan J. Shapiro, Esq.*, for the appellant
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On November 17, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' September 2, 2008 merit decision 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 case.

### ***ISSUE***

The issue is whether appellant met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.

### ***FACTUAL HISTORY***

On June 10, 2008 appellant, a 47-year-old letter carrier, filed an occupational disease claim alleging that she developed an emotional condition due to factors of her federal employment. She maintained that she experienced depression, stress and anxiety as a result of the employing establishment's decision to abolish her delivery route due to her medical restrictions.

In a letter dated June 23, 2008, the Office informed appellant that the information submitted was insufficient to establish her claim. It instructed her to submit additional factual and medical evidence, including evidence that her route was abolished due to her medical restrictions and a comprehensive medical report, with symptoms, a diagnosis and an opinion, with medical reasoning as to the cause of her condition.

Appellant submitted medical evidence including a May 28, 2008 report from Dr. Janet L. O'Hara, a Board-certified internist, who stated that appellant had recently experienced an increase in symptoms related to her panic disorder condition. The record also contains May 20, June 3 and July 7, 2008 notes and work slips from Dr. O'Hara reflecting a worsening of symptoms related to stress in the workplace. On May 30, 2008 Myron Bud Stern, a clinical psychologist, noted that appellant, who had a history of depression had recently been informed that her route was being abolished. On June 9, 2008 Erin Niksik, a nurse (BSN), stated that appellant was suffering from severe anxiety related to the abolishment of her delivery route.

In a June 9, 2008 statement, appellant asserted that, on May 14, 2008, her union steward informed her that her delivery route was being abolished because of her limited-duty work restrictions and that the only people involved in the "negotiated route adjustment" were the postmaster and the union president. She contended that there were three routes that were vacant due to retirement, which should have been eliminated before her route. In an undated letter, appellant stated that she had filed an Equal Employment Opportunity (EEO) claim for the employing establishment's action. In an undated timetable of events, she stated that, on May 14, 2008, her union steward informed her that her route was eliminated because of her medical restrictions and that the decision was partially political. Appellant alleged that her union president was "out to get rid of [her]."

The record contains a May 28, 2008 memorandum from the employing establishment informing appellant of its determination that her present duty assignment was not considered essential to the section operations and that, accordingly, her route would be abolished effective June 19, 2008 and she would become an unassigned full-time employee. Appellant was advised that, effective June 14, 2008, her work schedule would be changed to 7:30 a.m. to 4:00 p.m. and was encouraged to bid for any assignment for which she was eligible and interested.

The employing establishment controverted appellant's claim. In a June 12, 2008 statement, appellant's supervisor indicated that appellant's light-duty job was designed to accommodate restrictions to a previous on-the-job injury. The supervisor stated that she informed appellant that the decision to abolish her route was "strictly a business decision and it was not due to her limited-duty restrictions," that she assured appellant that the employing establishment was obligated to provide her with a position that was within her restrictions and that she encouraged appellant to remain in her position as an address manager system (AMS) coordinator. On June 23, 2008 the employing establishment reported that the decision to eliminate appellant's route was made in accordance with the union agreement, that other employees' positions were also eliminated due to changes in operational needs and that, after her bid job was eliminated, she was informed that she could apply for vacant posted positions, which would be limited to employees in the same section and with the same salary level and status. On July 1, 2008 the postmaster contended that appellant's claim was fraudulent, stating that she was

told that her job description would not change and that she would not be required to perform duties outside of her restrictions.

Appellant submitted witness statements in support of her claim. In an undated statement, her husband indicated that she had been under a great deal of stress since learning that her job was being abolished. Coworkers Nakia Ransaw, Julie Baldzicki and Charmaine Patrick reported that appellant had been very depressed since the elimination of her route.

By decision dated September 2, 2008, the Office denied appellant's emotional condition claim on the grounds that she had failed to establish a compensable factor of employment. It found that the elimination of appellant's route was an administrative decision, which did not constitute error or abuse.

## ***LEGAL PRECEDENT***

To establish a claim that an emotional condition arose in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.[1]

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 employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to his regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Act. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of his work or his fear and anxiety regarding his ability to carry out his work duties.[2] 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 reduction-in-force (RIF) or frustration from not being permitted to work in a particular environment or to hold a particular position.[3] An employee's emotional reaction to an administrative or personnel matter is generally not covered by workers' compensation. The Board has held, however, that error or abuse by the employing establishment in an administrative or personnel matter may afford coverage.[4]

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[1] *D.L.*, 58 ECAB ___ (Docket No. 06-2018, issued December 12, 2006).

[2] *Ronald J. Jablanski*, 56 ECAB 616 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[3] *Id.*

[4] *Margreate Lublin*, 44 ECAB 945 (1993). *See generally Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

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. 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.[5]

The Board has held that allegations, alone, by a claimant are insufficient to establish a factual basis for an emotional condition claim but must be substantiated by the evidence.[6] Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must establish such allegations with probative and reliable evidence.[7]

## ***ANALYSIS***

Appellant did not allege that she sustained an emotional condition as a result of her regular or specially assigned duties, or due to harassment or discrimination on the part of her coworkers or supervisors. Rather, she alleged that her emotional condition was due to the employing establishment's act of abolishing her delivery route. The Office denied appellant's claim on the grounds that she failed to establish a compensable employment factor. The Board finds that she failed to establish that she sustained an emotional injury in the performance of duty.

Appellant's allegation that the employing establishment improperly eliminated her delivery route relates to administrative or a personnel matter unrelated to her regular or specially assigned work duties and does not fall within the coverage of the Act.[8] Although the handling of disciplinary actions and leave requests, the assignment of work duties and the monitoring of work activities are generally related to the employment, they are administrative functions of the

[5] *D.L., supra* note 1; *T.G.*, 58 ECAB ___ (Docket No. 06-1411, issued November 28, 2006); *C.S.*, 58 ECAB ___ (Docket No. 06-1583, issued November 6, 2006); *A.K.*, 58 ECAB ___ (Docket No. 06-626, issued October 17, 2006).

[6] *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Arthur F. Hougens*, 42 ECAB 455 (1991) and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence established such allegations).

[7] *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) (it was found that the employee failed to establish the incidents or actions characterized as harassment).

[8] *See Lori A. Facey*, 55 ECAB 217 (2004). *See also Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

employer and not duties of the employee.[9] However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[10]

Appellant has not submitted sufficient evidence to show that the employing establishment committed error or abuse with respect to this matter. She alleged that her mail route was abolished due to her medical restrictions. Appellant has not; however, established a factual basis for this claim. Although she submitted witness statements corroborating the fact that the position was abolished and that she experienced stress as a result of its elimination, she provided no corroboration for her allegation that it was abolished because of her medical restrictions[11] On the other hand, the employing establishment controverted appellant's claim, contending that the position was eliminated for business reasons. The record reflects that, on May 28, 2008, it informed appellant of its determination that her current duty assignment was not considered essential to the section operations and that, accordingly, her route would be abolished effective June 19, 2008, and she would become an unassigned full-time employee. Appellant was encouraged to bid for any assignment for which she was eligible and interested. Her supervisor informed her that the decision to eliminate the route was "strictly a business decision and [] was not due to her limited-duty restrictions." She assured appellant that the employing establishment was obligated to provide her with a position that was within her restrictions and encouraged her to remain in her position as an AMS coordinator. On June 23, 2008 the employing establishment reported that the decision to eliminate appellant's route was made in accordance with the union agreement, that other employees' positions were also eliminated due to changes in operational needs and that, after her bid job was eliminated, she was informed that she could apply for vacant, posted positions, which would be limited to employees in the same section and with the same salary level and status. The postmaster told appellant that her job description would not change and that she would not be required to perform duties outside of her restrictions.

The Board finds that appellant has not shown that employing establishment's administrative act of abolishing her route constituted error or abuse. There is no evidence that that appellant's light-duty position was withdrawn for reasons related to her light-duty restrictions. On the contrary, the evidence reflects that the employing establishment negotiated an agreement with the union regarding the elimination of routes; that other employees' routes were also eliminated due to changes in operational needs and that the decision to abolish appellant's route was made for business reasons. Appellant was assured that her job duties would not change and that she would not be required to work outside her restrictions. The Board finds that the employing establishment's actions in this case were reasonable.

[9] *Id.*

[10] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[11] When a light-duty position is withdrawn, appellant has the burden to establish that any increase in disability for work is due to an accepted injury, rather than to another cause. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.7a (1) (May 1997).

Appellant stated that she became depressed and anxious over the decision to abolish her route. She alleged that the union president was "out to get rid of [her]" and that the decision to eliminate the route was partially political. However, under the circumstances of this case, the Board finds that appellant's emotional reaction must be considered self-generated, in that it resulted from her perceptions regarding her employer's actions.[12] The Board also notes that appellant's frustration from not being permitted to work in a particular job is not a compensable factor under the Act.[13]

For the foregoing reasons, appellant has not established a compensable employment factor under the Act. Therefore, she has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.[14]

## ***CONCLUSION***

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

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the September 2, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 24, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[12] *See David S. Lee*, 56 ECAB 602 (2005).

[13] *See Cyndia R. Harrill*, 55 ECAB 522 (2004).

[14] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *See Margaret S. Krzycki*, 43 ECAB 496 (1992).