

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

L.W., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Tulsa, OK, Employer

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**Docket No. 08-2038
Issued: February 13, 2009**

Appearances:
Appellant, pro se
No appearance, for the Director

Oral Argument January 8, 2009

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 25, 2008 appellant filed a timely appeal from the May 17 and December 3, 2007 merit decisions of the Office of Workers' Compensation Programs, which denied compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant sustained a traumatic emotional injury in the performance of duty on March 11, 2005.

FACTUAL HISTORY

On February 28, 2007 appellant, then a 54-year-old modified distribution clerk, filed a claim alleging that she sustained an emotional injury on March 11, 2005. Her psychiatrist, Dr. Mark A. Kelly, saw her that day and described what happened:

“This was a 3:00 p.m. appointment that was set up urgently due to the patient being distressed at work by Randy [Cameron] and Lois [Oxley]. [Appellant]

talked of clocking in on time, that she came in and had eye contact with Randy, but that he said nothing at that point. She described that later, as she went about her routine and setting up her machine, when it was about set up he came and told her not to do that, but to do another machine, that they were not going to work that one. [Appellant] indicated she would undo what she had done. [Mr. Cameron] directed her not to do that. [Appellant] indicated with her method, that nobody else went by her method, she needed to do it that way. [Mr. Cameron] got Lois to assist him. [Appellant] told the patient that Randy was the boss in that area and pressed her to comply. She was directed to do inefficient type work on another machine.”

Appellant told Dr. Kelley that she sensed it could be retaliation. She also sensed that it could be a setup by the two, Mr. Cameron and Ms. Oxley, to cause her problems. Appellant indicated that she spoke loudly, so there were other witnesses. She stated that, after the incident, people came to her and told her they might be setting her up (to be fired). Appellant recalled another employee once going over Ms. Oxley’s head and ending up experiencing retaliation. She told Dr. Kelly that might be what was going on. Dr. Kelley reported that appellant developed stomach distress, was upset and sick. Appellant told him, “My stomach was on fire.” On February 28, 2007 Dr. Kelley reported that appellant was traumatized by this incident.

Appellant stated that, when Mr. Cameron and Ms. Oxley ganged up on her, they made her feel like a trapped animal. She stated that Ms. Oxley growled at people and talked harshly to them. Mr. Cameron, she stated, just stood there and laughed about it. Appellant described her reaction:

“I did not like feeling trapped with no way out. Everyone does not respond the same to similar situation. I supposed my borderline personality disorder made me respond the way I did. I got sick at my stomach, I suppose because I was trying to keep from doing what I was feeling inside me to do. I wanted to fight, but I could not, it was like I was caged, trapped. All of this occurred on March 11, 2005.”

In a decision dated May 17, 2007, the Office denied appellant’s claim for compensation. It found that she failed to establish a compensable factor of employment.

Following an oral hearing on September 19, 2007, an Office hearing representative issued a decision on December 3, 2007 affirming the denial of appellant’s claim. The hearing representative found that appellant’s reaction to a supervisor’s instructions was not a compensable factor of employment absent evidence of error or abuse.

LEGAL PRECEDENT

The Federal Employees’ Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.¹ Workers’ compensation does not cover each and every illness that is somehow related to the employment. When an employee experiences emotional stress in carrying out her employment

¹ 5 U.S.C. § 8102(a).

duties or has fear and anxiety regarding her ability to carry out her duties, and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.²

Workers' compensation does not cover an emotional reaction to an administrative or personnel action unless the evidence shows error or abuse on the part of the employing establishment.³ It is well settled that an employee's reaction to supervisory instructions is not a compensable factor of employment in the absence of error or abuse.⁴ Further, the Board has generally held that being spoken to in a raised or harsh voice does not in itself constitute verbal abuse or harassment.⁵

In general, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.⁶ In claims for a mental disability attributed to work-related stress, the claimant must submit factual evidence in support of his or her allegations of stress from harassment or a difficult working relationship. The claimant must specifically delineate those factors or incidents to which the emotional condition is attributed and submit supporting factual evidence verifying that the implicated work situations or incidents occurred as alleged. Vague or general allegations of perceived harassment, abuse or difficulty arising in the employment is insufficient to give rise to compensability under the Act. Based on the evidence submitted by the claimant and the employing establishment, the Office is then required to make factual findings which are reviewable by the Board. The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566, 572-73 (1991).

⁴ *Reco Roncaglione*, 52 ECAB 454 (2001) (disagreement with the associate warden held not compensable, whether viewed as a disagreement with supervisory instructions or as perceived poor management); *Robert Knoke*, 51 ECAB 319 (2000) (where the employee attributed his emotional injury to the manner in which his supervisor spoke to him about undelivered mail, the Board found that a reaction to the instruction itself was not compensable, as work assignments given by supervisors in the exercise of supervisory discretion are actions taken in an administrative capacity, and as such, are outside the coverage of the Act); *Frank A. Catapano*, 46 ECAB 297 (1994) (supervisory instructions, with which the employee disagreed, held not compensable in the absence of evidence of managerial error or abuse); *Rudy Madril*, 45 ECAB 602 (1994) (where the employee questioned his supervisor's instructions to move from belt number five to belt number six and unload mail, and became upset because he felt he was being pushed and picked on, the Board found that the incident was not a compensable factor of employment).

⁵ *Beverly R. Jones*, 55 ECAB 411, 418 (2004).

⁶ *See Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.⁷

ANALYSIS

Appellant attributes her emotional reaction on March 11, 2005 to an incident that is not generally covered by workers' compensation. Although the incident occurred at work, it was not the performance of her assigned duties that traumatized her. Appellant was traumatized by supervisors directing her to follow certain instructions. As the Board noted earlier, an employee's reaction to supervisory instructions is not a compensable factor of employment in the absence of error or abuse.⁸

Appellant argued that there was a confrontation with her supervisors on March 11, 2005. She stated that Mr. Cameron and Ms. Oxley surrounded her, confronted her in a confined space, and this caused her to flashback to a traumatic childhood incident. However, there is no evidence to support appellant's description of how Mr. Cameron and Ms. Oxley treated her on that date.

Appellant has submitted no independent evidence, such as a statement from a witness, to establish that Mr. Cameron and Ms. Oxley treated her abusively on March 11, 2005.⁹ Because allegations alone are insufficient to factually establish error or abuse, the evidence in this case does not support a compensable factor of employment. It is established that Mr. Cameron gave appellant an instruction and, with Ms. Oxley's assistance, impressed upon her the importance of following directions. It is not established, by the evidence submitted, that the parties treated appellant erroneously or in an abusive manner. For this reason, the Board will affirm the Office decisions denying benefits.

CONCLUSION

The Board finds that appellant has not met her burden to establish that she sustained a traumatic emotional injury in the performance of duty on March 11, 2005.

⁷ *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

⁸ *See* cases cited in note 4.

⁹ Even if the record showed that supervisors spoke to appellant in a raised or harsh tone of voice, this would not be enough to show error or abuse.

ORDER

IT IS HEREBY ORDERED THAT the December 3 and May 17, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 13, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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