

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

C.F., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
New Orleans, LA, Employer)

**Docket No. 08-1840
Issued: January 23, 2009**

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 June 16, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated October 25, 2007 and a March 25, 2008 decision denying her request for a review of the written record. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established an emotional condition causally related to compensable work factors and (2) whether the Office properly denied appellant's request for a review of the written record.

FACTUAL HISTORY

On June 27, 2007 appellant, then a 47-year-old manager of distribution operations, filed an occupational claim (Form CA-2) alleging that she sustained depression, anxiety and fibromyalgia as a result of her federal employment. She stated she was subject to unprofessional and

disrespectful comments from Mr. Jerry LeDoux a plant manager, as well as harassment by Mr. Jerry Johnson, a supervisor.

In a statement dated June 24, 2007, appellant discussed her claim and alleged “public humiliation, verbal harassment and a hostile work environment.” She noted specific incidents involving Mr. LeDoux at “telecom” meetings. Appellant indicated that she received a letter of warning for unsatisfactory work performance.¹ She provided an additional statement dated August 15, 2007. Appellant alleged in detail specific incidents of interaction with Mr. LeDoux. In September 2006 at a telecom meeting, Mr. LeDoux grabbed her index finger; brought it to a paper with a box he had drawn and told her to stay in her box. Appellant also alleged incidents in June 2007 involving Mr. Johnson. In addition, she asserted that she generally worked from 11:00 p.m. until 10:30 or 11:00 a.m.

By letter dated September 13, 2007, the Office requested the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant’s allegations. In a statement dated September 12, 2007, Mr. Johnson noted that all managers were required to participate in daily telecommunication sessions, but he could not recall appellant participating in any telecoms. He indicated that appellant should have known she had to work additional hours as a manager and when she informed him she could not work more than eight hours, he instructed her to work eight hours per day.

In a decision dated October 25, 2007, the Office denied the claim for compensation. The Office found no compensable work factors were established, noting that the employing establishment denied any verbal or physical abuse and appellant’s supervisor did not recall her participation in conference calls.

Appellant requested a review of the written record in a letter postmarked February 28, 2008. By decision dated March 25, 2008, the Office’s Branch of Hearings and Review found the request untimely. The Branch of Hearings and Reviews stated that it had in its discretion considered the request and found the issue could equally well be addressed by requesting reconsideration and submitting new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.² 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.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

¹ The record contains a letter of warning dated March 8, 2007 for work performance on March 2, 2007.

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

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 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

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors 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.⁵ 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.⁶

ANALYSIS

Appellant made specific and detailed allegations with respect to her claim. Many of the alleged incidents involved Mr. LeDoux, a supervisor, at daily telecommunication meetings. The Office did not address the specific allegations, other than to make a general finding that Mr. Johnson, the other supervisor, did not recall appellant participating in the meetings. This does not adequately address the specific allegations in this case. The Office requested comments from a knowledgeable supervisor regarding appellant's allegations and it is apparent that Mr. Johnson had a limited knowledge of the accuracy of appellant's allegations. The October 25, 2007 decision provided a general finding that the employing establishment denied any verbal or physical abuse, without clearly explaining the evidentiary basis for such a determination.

When the employing establishment disagrees with a claimant's factual allegations or argument, it shall submit a statement describing the factual allegations and provide evidence or argument to support its position.⁷ If the employing establishment provides an inadequate response to the Office's request for information, the Office should request the employing establishment provide a detailed statement from an appropriate supervisor addressing each

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

⁵ *See Norma L. Blank*, 43 ECAB 389-90 (1992).

⁶ *Id.*

⁷ 20 C.F.R. § 10.117(a).

allegation made by appellant.⁸ On remand, it should request a statement from Mr. LeDoux regarding the specific allegations as well as any other relevant evidence from the employing establishment. After such further development as the Office deems necessary, it should issue an appropriate decision with proper factual findings as to appellant's allegations. If a compensable work factor is established, the Office should consider the medical evidence. In view of the Board's holding, it will not address the denial of her request for review of the written record issue.

CONCLUSION

The Office did not make adequate factual findings with respect to the claim for an employment-related emotional condition and the case is remanded for further development.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 25, 2007 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: January 23, 2009
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

⁸ See *Alice F. Harrell*, 53 ECAB 713 (2002). As the Board noted, if the Office cannot secure an adequate response from the employing establishment, it may accept appellant's allegations as factual.