

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

L.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cheshire, CT, Employer**

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**Docket No. 08-1118
Issued: March 3, 2009**

Appearances:
Linda Temple, 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 March 5, 2008 appellant filed a timely appeal from a December 27, 2007 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 February 1, 2006 appellant filed a claim for a traumatic injury alleging that on January 31, 2006 she experienced stress and anxiety when Ed Nobles, the postmaster, handed her a copy of a CA-17 medical form dated October 27, 2005¹ and she saw that he had written a note

¹ Appellant has a traumatic injury claim accepted for temporary aggravation of cervical and lumbar degenerative disc disease under OWCP File No. xxxxxx958.

on the physician's side of the form. In January 31 and February 6, 2006 disability certificates, Dr. Gary Miller, her attending physician, placed her off work beginning January 31, 2006 due to work stress. The employing establishment controverted the claim. In a January 31, 2006 statement, Mr. Nobles stated that on one copy of appellant's October 27, 2005 CA-17 form he wrote a note based on a discussion with her in which she told him that she wrote the note on the CA-17 to clarify her medical restrictions. He indicated that he sometimes wrote notes on copies of medical documents in case questions arose later about an employee's work restrictions or other matters. Mr. Nobles stated that on another copy of the CA-17 form he wrote a note indicating that he asked appellant about driving and she advised that she could not turn around to see behind her vehicle.² He wrote on copies of documents, not the original documents.

In a February 2, 2006 Form CA-17 duty status report, Dr. Miller diagnosed stress syndrome with an injury date of January 31, 2006. He indicated that appellant could perform light-duty work for four hours a day beginning February 6, 2006. In a December 22, 2006 Form 6a work capacity evaluation, Dr. Paul C. Horton indicated that appellant was having conflicts at work.

On February 14, 2006 appellant submitted a copy of the October 27, 2005 Form CA-17 medical report on which Mr. Nobles had written a note and on which there was another handwritten note from a medical assistant in her physician's office. She alleged that Mr. Nobles incorrectly indicated in his note on the CA-17 that she had written the note that was actually written by the medical assistant. Appellant stated that another copy of the CA-17 form had a note on the physician's side of the form in which Mr. Nobles wrote "driving an issue cannot turn around to see behind her." The copy of the October 27, 2005 CA-17 she submitted shows a sticky note on top of the form which states "could do only express mail handling 4 hours" and signed "T.P. CMA." Under the initials was written "I am a medical asst. for Dr. Beck's office. This note was written by me." A separate sticky note reads "Linda wrote this note" signed "Ed."³

By decision dated March 23, 2006, 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.

Appellant requested an oral hearing that was held on October 17, 2007. She testified that she was on limited duty answering telephones and performing clerical work due to a prior injury when, on January 31, 2006, Mr. Nobles handed her four copies of the CA-17 form dated October 27, 2005. On one copy Mr. Nobles had handwritten "please call." On a second copy he had crossed this out and written "please write." Appellant alleged that in the first note Mr. Nobles was attempting to improperly initiate telephone contact with her physician. She asked him to remove the first note but he refused. Appellant alleged that in crossing out "please

² The record reflects that on November 24, 2004 appellant filed another claim for an emotional condition on November 6, 2004 under OWCP File No. xxxxxx578. After an initial denial of the claim on June 10, 2005, the Office accepted the claim on January 16, 2007 for a temporary aggravation of conversion disorder.

³ A copy of the CA-17 form submitted at the hearing in this case does not show the handwritten message beginning "I am a medical assist ..." under the handwritten message "could do only express mail handling four hours."

call” and writing “please write” in the second CA-17 copy, Mr. Nobles was attempting to correct his error. On the third copy of the CA-17, Mr. Nobles had written, in the physician’s portion of the form, “driving is an issue, cannot turn around to see behind her” and initialed this note. Appellant alleged that this third note altered what her doctor had determined, that she could drive and deliver express mail for four hours a day. She alleged that anyone reading the note would think her physician had added the words that Mr. Nobles wrote. Appellant asserted that Mr. Nobles knowingly made a false statement and altered or made a false entry in her personnel record. On the fourth copy of the CA-17, Mr. Nobles wrote a note stating that appellant had written the note that appellant asserted was from the medical assistant. Appellant was concerned that anyone reading Mr. Nobles’ note might think that she had committed fraud by altering the document. She stated that, when she asked Mr. Nobles about his note, he explained that he thought that she had told him that she had written the note. Appellant asserted that she never told him this. She testified that a grievance she filed concerning Mr. Nobles’ actions on January 31, 2006 was resolved and management was ordered to cease and desist from the practice of writing on originals and copies of official documents after they had been submitted by an employee. Appellant asserted that the settlement of this grievance and three other complaints established wrongdoing on the part of management. Peter Dellaselva, her representative, stated at the hearing that, prior to the incident on January 31, 2006, there were a number of things occurring in the workplace which caused appellant a great deal of stress, including a compensation claim, EEO complaints and grievances against management. It was while an EEO complaint was being processed that she and Mr. Dellaselva discovered the problems with the CA-17 form. Mr. Dellaselva stated that appellant filed a grievance challenging the propriety of a manager writing in the physician’s portion of a CA-17 form. He argued that Mr. Nobles was not acting within the scope of his managerial authority when he wrote on the CA-17 forms. It was improper for him to alter a document by writing on it. The April 27, 2006 grievance resolution provided that management would cease and desist from the practice of writing on an original or a copy of an official document that was submitted by an employee. Management was directed to make notes on a separate piece of paper. The resolution provided that appellant be given access to her personnel file and, if she found a document that had been altered by management, she could request that the document be removed from her file.⁴

By decision dated December 27, 2007, the Office hearing representative affirmed the March 23, 2006 decision.

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

⁴ At the hearing appellant also submitted copies of two decisions from a joint union/management Dispute Resolution Team regarding incidents in 2005 which do not relate to the January 31, 2006 emotional condition claim.

Act.⁵ 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.⁶

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.⁷

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.⁸ 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 the evidence of record substantiates that factor.⁹ 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.¹⁰ Where the employee alleges compensable factors of employment, she must substantiate such allegations with probative and reliable evidence.¹¹ 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.¹²

ANALYSIS

Appellant's allegation regarding the incident with Mr. Nobles on January 31, 2006 involving her CA-17 medical form concerns actions he took in his administrative capacity as a supervisor. It is a supervisory function to keep records related to an employee's documentation for medical treatment. The record shows that Mr. Nobles wrote on copies of documents, not on the originals. He indicated that he sometimes wrote notes on copies of medical documents in case questions arose later about an employee's work restrictions or other matters. The Board has held that an administrative or personnel matter will be considered to be an employment factor

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁸ *Dennis J. Balogh*, 52 ECAB 232 (2001).

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

¹⁰ *See Charles E. McAndrews*, 55 ECAB 711 (2004).

¹¹ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

¹² *See Charles D. Edwards*, 55 ECAB 258 (2004).

only where the evidence discloses error or abuse on the part of the employing establishment.¹³ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁴ Although the April 27, 2006 grievance resolution provided that management would cease and desist from the practice of writing on an original or a copy of an official document that was submitted by an employee, there was no finding of wrongdoing. Management was directed to make notes on a separate piece of paper in the future instead of writing on a document submitted by an employee. The grievance resolution provided relief for appellant's complaint about Mr. Nobles in that management was directed to give her access to her personnel file and, if she found a document that had been altered by management, she could request that the document be removed from her file. The Board finds that the evidence does not establish that Mr. Nobles acted unreasonably regarding the CA-17 form. The evidence shows that there was some misunderstanding between Mr. Nobles and appellant regarding the CA-17 medical form but his actions do not rise to the level of abuse. It is also not established that he erred in writing on the CA-17 form, *i.e.*, that he violated some employing establishment rules in writing on forms submitted by an employee, although he was directed to write any future notes on a separate piece of paper. The Board finds that the allegation regarding the incident on January 31, 2006 involving Mr. Nobles and appellant's medical documentation does not constitute a compensable factor of employment.

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.¹⁵

CONCLUSION

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

¹³ *Id.*

¹⁴ *Janice I. Moore*, 53 ECAB 777 (2002).

¹⁵ *See supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 27, 2007 is affirmed.

Issued: March 3, 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