

December 6, 2005.¹ Appellant submitted a statement from a witness, Juanita P. Richardson, who noted that appellant was assigned to work in a small room cluttered with 20 to 30 scanners and a full coat rack. Ms. Richardson stated that the room appeared to be a storage area with a small desk and chair. On December 19, 2005 Rayna B. Rufus stated that appellant's assigned workspace was a utility room with three long racks of scanners and a file cabinet, a coat rack full of coats and a small desk and chair. She noted that appellant had no windows and very little ventilation. Appellant described her assigned work area as an office with 40 to 50 scanners, file cabinets, a filthy coat rack with old coats, rat debris, dirty carpet, an old desk and boxes of outdated information. She did not believe that it was appropriate to work first-class mail in an area without windows.

The Office requested additional factual and medical information by letter dated February 22, 2006. On February 16, 2006 Dr. Antoine Jean-Pierre, a Board-certified psychiatrist, diagnosed aggravation of anxiety disorder and dysthymic disorder depressed. On March 17, 2006 he stated that appellant's work restrictions prohibited working in an isolated storage room.

By decision dated April 6, 2006, the Office denied appellant's claim for an emotional condition finding that the medical evidence was not sufficient.

Dr. Jean-Pierre completed a report on April 24, 2006 and stated that appellant was placed in a closed and isolated storage room to work with no ventilation and no windows he stated that appellant's work environment and continual harassment on the job was directly responsible for her depression, anxiety and panic attacks.

Appellant requested reconsideration of the April 6, 2006 decision on May 7, 2006. By decision dated June 15, 2006, the Office denied her claim finding that her claim was not based on a compensable factor of employment, but instead on the desire to work in a particular environment.

Appellant again requested reconsideration on July 25, 2006 and submitted additional medical evidence. She submitted a list of stipulated facts including that she could not work first-class mail because of the standard operating procedures. In a June 29, 2005 statement, Ms. Rufus noted that appellant was working first-class mail in a private storage room. She opined that first-class mail was not to be worked in a closed in area, but in an area "where it can be inspected through a postal inspection gallery."

By decision dated December 11, 2006, the Office declined to reopen appellant's claim for consideration of the merits.

On March 1, 2007 appellant requested reconsideration on the grounds that she was instructed by her supervisor to violate employing establishment policy as she was instructed to sort first-class mail in a closed room with no windows, no supervisor and no ability for the postal inspectors to do their job. She also submitted additional medical evidence. In a statement dated

¹ Appellant has several prior claims accepted by the Office for carpal tunnel syndrome, temporary aggravation of a personality disorder and aggravation of anxiety disorders. She returned to work and filed the present claim.

March 8, 2007, appellant attributed her emotional condition not only to working in an isolated storage room, but also to performing duties without proper procedures to guard the security of the mail, such as postal inspectors gallery, cameras or video monitors to accommodate standard operating procedures. She stated that working first-class mail in a storage area caused her to experience panic and anxiety attacks.

In response to a query by the Office, an employing establishment supervisor confirmed that it was permissible for first-class mail to be handled in offices without windows or cameras. Appellant disputed this statement.

By decision dated June 20, 2008, the Office reviewed appellant's claim on the merits and denied modification of its prior decision.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.² On the other hand, the disability is not covered where it results from such factors as an employees' 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.³

The Board has held that the manner in which a supervisor exercises his or her discretion falls outside the coverage of the Act. This principal recognizes that a supervisor or manager must be allowed to perform their duties and that employee's will at times disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.⁴

ANALYSIS

Appellant alleged that she developed panic attacks and anxiety when she returned to work on December 6, 2005 assigned a work station without windows. She described this area as a small, dirty and cramped storage room or office filled with equipment and a coat rack. Appellant submitted witness statements that her work station was small, windowless and contained a coat rack, scanners and a small desk. Neither she nor her witnesses provided any statement or evidence explaining or describing why or how this work location was unsafe or unsuitable to the work to be performed. As found by the Office, this aspect of appellant's claim,

² 5 U.S.C. §§ 8101-8193.

³ See *Thomas D. McEuen*, 41 ECAB 387, 390-91 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁴ *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

clearly relates to her desire to work in a particular environment and does not pertain to her regular or specially assigned duties.⁵

Appellant also alleged that her work area violated employing establishment policy as she was required to work first-class mail in a location with no window, security camera or postal inspectors' gallery. The employing establishment responded to this allegation and denied that first-class mail was required to be processed in an open observable area. Appellant did not submit any evidence to establish that her supervisors committed error or abuse by instructing her to process first-class mail in her assigned work station.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.⁶

CONCLUSION

The Board finds that appellant has failed to substantiate that a compensable factor of employment as caused or contributed to her emotional condition and that the Office therefore properly denied her claim.

⁵ *But see, Brenda L. DuBuque*, 55 ECAB 212 (2004) (in which being forced to work near a restroom with the accompanying noises and smells was found to relate to the claimant's regular and specially assigned work duties.)

⁶ 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, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the June 20, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 3, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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