

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

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**L.G., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Edinboro, PA, Employer**

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**Docket No. 09-1083  
Issued: January 28, 2010**

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

Oral Argument September 1, 2009

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On December 16, 2008 appellant filed a timely appeal of the December 16, 2008 merit decision of the Office of Workers' Compensation Programs denying her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

**ISSUE**

The issue is whether appellant sustained an emotional condition causally related to factors of her federal employment.

At oral argument, appellant contended that she sustained an emotional condition as a result of working in a hostile work environment caused by the behavior of her supervisor.

**FACTUAL HISTORY**

On June 1, 2008 appellant, then a 56-year-old clerk, filed an occupational disease claim for depression, stress and anxiety due to a hostile work environment. She alleged that on April 29, 2008 Tim Salmonsén the postmaster harassed and threatened her. Appellant went to a

local hospital where she was told to take leave from work immediately. She alleged a hostile work environment for over two years and that she had been retaliated against by the postmaster. The employing establishment controverted the claim.

In a statement dated May 23, 2007, Lyn Twillie-Darby noted that appellant was obsessed with the unfair treatment she perceived at the hands of her supervisor. She noted that appellant's personal life was affected by how she was treated by her supervisor.

In a May 24, 2007 note, Orphelia Williams stated that when she first met appellant at the employing establishment her attitude was good. After Mr. Salmonsens became postmaster, appellant started to complain that he was talking down to her about not being able to do her job on a daily basis. Ms. Williams noted that appellant's personality changed and that she always appeared to be depressed and had been hospitalized twice for chest pains.

On June 26, 2007 Mr. Salmonsens stated that his son called on June 26, 2007, that appellant did not state she was putting him on hold and that when he went to talk to her about her telephone manners, she started yelling and cursing at him. In a June 26, 2007 statement, Jed Deist, a coworker, noted at approximately 11:30 a.m. he heard her tell the postmaster that she could answer the telephone anyway she wanted and that if he did not like it, she would leave for the day. Mr. Deist stated that appellant used profanity and had been very disrespectful and unprofessional.

In a June 27, 2007 note to Junius Johnson, appellant asked to be removed from a "hostile work environment." She indicated that Mr. Salmonsens was harassing her about an Equal Employment Opportunity (EEO) Commission complaint she had in her file. Appellant noted that on Tuesday, June 26, 2007 Mr. Salmonsens's son called the office three different times within 30 minutes and the last time he called Mr. Salmonsens yelled at her, alleging that she did not tell his son that she was putting him on hold, an allegation appellant denied. She alleged that Mr. Salmonsens was constantly trying to find fault with her and intimidating her.

In a July 13, 2007 letter of warning, Mr. Salmonsens indicated that on June 26, 2007, after receiving another remark from a caller he spoke with appellant about her telephone etiquette, at which point she became very combative and proceeded to holler and curse at him. He noted that customer complaints had been received in the past indicating that appellant was rude, short and argumentative with them on the telephone.

In a March 28, 2007 letter to "Denise," appellant asked for a transfer to another office until her EEO investigation was concluded.

In an April 21, 2008 note, Mr. Salmonsens indicated that appellant told him that she was under stress and pain, that he knew she did not curse at him and that she will drop the other EEO complaint if he took the letter of warning out of her file. He stated that he told her that this would not happen and that she needed to change; that it was not everybody else.

In an April 29, 2008 report, Mr. Salmonsens indicated that, on that date, he noted that a tag was left on a tray on the rack. He indicated that when he told appellant that she was supposed to be checking tags, she told him that someone put it on the tray on purpose. When Mr. Salmonsens asked her why they would do that she stated that she did not have to listen to this

and walked back in the building. He followed appellant there and asked her if she was looking for a letter of warning. Mr. Salmonsens told her if he found another tag he would give her a letter of warning because she was supposed to be making sure there were no tags on empty equipment leaving the building. He noted that about 10 minutes after this exchange, appellant told him that she was sick and was going home.

In a letter to Mr. Johnson dated April 30, 2008, appellant asked for an intervention into harassment by Mr. Salmonsens. In this letter appellant made numerous allegations against Mr. Salmonsens. She alleged that when she has nothing to do at work she asked Mr. Salmonsens if she could help him with a report or if there was anything else she could do and he would say that he did not need help. Appellant noted one occasion when she tried to find a report she needed to work on and was told by him that it was gone, that appellant tried but was unable to locate the report, that she worked late to do Mr. Salmonsens's report but that he never said thanks. She noted that she tried to speak with him about the EEO complaint she filed which she noted was the beginning of the harassment by him, that she told him she would drop the report if he would agree to remove a negative letter he put in her file but that he told her that she made her bed and would now have to lie in it. Appellant noted that he told her that she was in charge of making sure all tags were off trays and if any were found it was her responsibility even if someone else left it there.

Appellant noted that she lives in pain from her prior work accident and that on April 20, 2008 she was not given adequate assistance in casing letters and she asked for help because her leg was hurting. She stated that she recently asked for accommodations to work the window but "the committee" would not let her work this position because it was beyond her restrictions but that she told them she would rather work that position than sit five hours a day and do no work but answer the telephone. Appellant noted that she has been asked to handle customer complaints and that if the customer does not like her answer to a question, they ask to speak to her manager.

In support of this letter appellant submitted a document entitled "Retaliation Notes Ongoing" wherein she listed specific incidents between January 16 and July 14, 2007. These entries included, *inter alia*, notations that Mr. Salmonsens stared at her, watched her do her work, told her that if she did not know where mail went to put it down, that he asked her to perform certain duties and that he told her someone else would be answering the telephone. Appellant noted that when she complained her back was hurting that he told her to see a physician. She noted that, one day when there was nothing to do at work, she started reading and Mr. Salmonsens asked if she had taken her lunch and when she said no, he sarcastically told her to take it right now. Appellant noted that he told her not to work at lunch table where she preferred because the chairs had backs and that he told her to drag a chair to her case even though another worker worked at the table. She noted that Mr. Salmonsens let Mr. Deist leave early on certain days and gave him days off home early on Saturday or give him days off. Appellant noted an incident on January 30, 2007 when he was staring at her while she was working, that she told him that this was making her uncomfortable, but that he stated that he was going to make sure she was doing her job. She noted that on February 2, 2007 she asked Mr. Salmonsens a question with regard to a customer who called complaining and he turned around screamed "what" so she turned away and handled the situation the best that she could. Appellant noted an incident where she had an apple

and drink sitting on a paper towel and he moved it to case and told her she was on break and another incident wherein he told her to leave break table as she was just ending her lunch.

Appellant also alleged an incident where Mr. Salmonsens turned the radio up to aggravate her, a time when she was looking for something when he loudly asked what she was looking for, that he took pictures of things on case floor, that he accused her of stealing coupons out of the waste and that he was upset because she unplugged the coffee pot and did not replug it. She also submitted another document entitled "Harassment notes" wherein she listed specific incidents on certain dates between January 7 and April 29, 2008. In these notes appellant noted an incident when Mr. Salmonsens asked her why her headlights were on and she said it takes a few moments for them to get out. On another date she stated that he told her she was too loud when talking to other employees, that he told her to sit in her case, that there was dispute about where she was to park, that he told her that if she put mail in wrong box she would be written up. Appellant noted that on April 14, 2008 she had to work outside her restrictions. She stated that she was told that if the new employee needed help she would ring the bell and appellant was to get her what she needed.

In a May 20, 2007 statement, Sarah M. (Sally) Amy noted that she was employed with the employing establishment since November 1980 until her retirement on March 2, 2007. She noted that she held a variety of positions including management. Ms. Amy noted that starting December 6, 1997 she worked in a craft position as distribution window clerk at the Edinboro office of the employing establishment, the same branch where appellant worked. She noted that Mr. Salmonsens became Officer in charge at the Edinboro branch in October 2002 and became postmaster in December 2002. Ms. Amy noted that at that time the entire working environment changed and became a hostile work environment. She noted various personal incidents that occurred between Mr. Salmonsens and her. With regard to appellant, Ms. Amy noted that in February 2004 during a bad spell of weather she came in from work to see appellant seated at the break table, visibly shaken. She noted that she later learned that appellant had slipped on black ice getting out of her vehicle that morning and fell hard on her back. Ms. Amy noted that since appellant had been seriously injured previously, she knew appellant had a real fear of falling and being hurt. She noted that two days later Mr. Salmonsens was talking to appellant about the fall in a loud voice and seemed to accuse her of wanting to get hurt. Ms. Amy noted that appellant tried to defend herself but he simply spoke over her protests and refused to allow her to finish her statements. Mr. Salmonsens ordered appellant to use certain doors to enter and exit the building but would not listen to any of her questions about it. Ms. Amy stated that she found the interaction between appellant and Mr. Salmonsens upsetting. She also noted that the following Tuesday she was approached by another clerk Gale Brugh, who asked if there was something that could be done about how Mr. Salmonsens treated appellant. Ms. Amy noted that she reported this to Denise Marquis, Mr. Salmonsens's immediate supervisor. She went into detail as to her alleged personal mistreatment by Mr. Salmonsens and noted that he treated other women at the Office, including, appellant, in a similarly poor manner. Ms. Amy noted that this mistreatment included ridiculing appellant for letting the water tap run too long and telling appellant to transfer all of Ken Austin's calls to him. She noted a change in appellant's demeanor since Mr. Salmonsens was at her branch of the employing establishment.

In a May 22, 2007 statement, Louis Gavin, appellant's son, discussed his mother's comments regarding her job, her mental state and contended that appellant's supervisor was out of line and directly responsible for her negative emotional state of being.

In a February 15, 2008 note, Mr. Salmonsens indicated that he spoke with appellant again about parking in the back or west of the building. He told her customer parking is getting very limited and that customers were parking on lawn and double parking and that she would have to park in the back of the other side of the building, as other employees did. Appellant responded that she would not park far away and that it would be his fault if she fell.

In another statement dated July 30, 2008, appellant again detailed her recollections with regard to harassment by Mr. Salmonsens. She noted that when she had her work accident in 2001, he started right away talking about the injury as if it was a joke and that he had dealt with other employees who pretended to be hurt. Appellant noted that when she received the modified job offer, Mr. Salmonsens would not let her take it home and review it, but rather told her to sign it immediately. She noted that when she did not, he became furious. Appellant noted that Mr. Salmonsens continued to belittle her in front of others, told her that he was going to make it real hot for her from now on and told her that when she crossed him, he was her worst nightmare. She noted that he would not give her overtime even though she was on the list, because he told her that she could not handle the job. Appellant again discussed the incidents with tags and telephones.

By letter dated August 21, 2008, the employing establishment controverted appellant's claim, contending that any stress she suffered was self-generated and not causally related to employment factors.

In a letter received by the Office on October 20, 2008, Mr. Salmonsens denied that he ever accused appellant of faking her injury or suggested that she did not get hurt on the job. With regard to the modified job offer, he stated that appellant had the offer for over five months and he asked her to finally sign it or not. Mr. Salmonsens did note that he made a mistake in that appellant was entitled to be converted to a regular position and the modified job was changed to a regular position, but that no threats or harassment occurred. He noted that when he attempted to talk with appellant with regard to the manner in which she answered the telephone, she started hollering and swearing. Mr. Salmonsens noted that other employees complained about her sitting at the break table all day and so he asked that she take a comfortable chair and sit at the case near the door so she would be closer and would not need to walk as far. He noted that he did request of appellant that when the new employee, Martha, rang a bell for her, if she would please find out what she wants. Mr. Salmonsens stated that he talked with appellant numerous times about how tags need to be off the empty equipment and that he told all carriers that if they leave any tags on an empty equipment container anymore, they will receive a letter of warning. He stated that she hollered at him when he said this. Mr. Salmonsens denied laughing at appellant or scolding her in the presence of his peers.

In a decision dated December 16, 2008, the Office denied appellant's claim for compensation as she had not identified any compensable factors of employment.

## LEGAL PRECEDENT

To establish that appellant sustained an emotional condition causally related to factors of her federal employment, she must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.<sup>1</sup>

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 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. However, when disability results from an employee's emotional reaction to his 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.<sup>2</sup>

Administrative and personnel matters, although generally related to the employee's employment are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.<sup>3</sup> However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.<sup>4</sup> In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.<sup>5</sup>

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. 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 other evidence.<sup>6</sup> Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.<sup>7</sup> A claimant must

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<sup>1</sup> *C.F.*, 60 ECAB \_\_\_ (Docket No. 08-1102, issued October 10, 2008); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>2</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>4</sup> See *William H. Fortner*, 49 ECAB 324 (1998).

<sup>5</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>6</sup> See *Charles E. McAndrews*, 55 ECAB 711 (2004).

<sup>7</sup> See *Michael Ewanichak*, 48 ECAB 364 (1997).

establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.<sup>8</sup> The issue is whether the claimant has submitted sufficient evidence under the Act to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>9</sup> 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 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.<sup>10</sup>

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.<sup>11</sup> If a claimant does implicate a factor of employment, it 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.<sup>12</sup>

### ANALYSIS

Appellant has the burden of submitting a detailed description of the employment factors or conditions, which the claimant believed caused or adversely affected her emotional condition. She has provided detailed descriptions, including dates and times, with regard to actions by her supervisor, Mr. Salmonsén. However, not every incident that is somehow connected with appellant's employment is considered a compensable factor of employment. The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

The Board notes that appellant submitted witnesses statements in support of her claim. However, her children, Ms. Twillie-Darby and Ms. Williams basically repeat things that she told them and describe her emotional condition. As these witnesses never actually witnessed any of the allegedly offensive behavior, their statements are not particularly relevant to substantiate whether appellant sustained a compensable factor of federal employment. The only witness who actually discussed specific incidents that the witness actually observed occurring at work was Ms. Amy and the Board will later address her statement.

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<sup>8</sup> *Parley A. Clement*, 48 ECAB 302 (1997).

<sup>9</sup> *See James E. Norris*, 52 ECAB 93 (2000).

<sup>10</sup> *Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>11</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>12</sup> *Id.*

Appellant contended that Mr. Salmonsén reprimanded her for her telephone conduct, told her that she must catch all tags, needed to work on a report that was lost, instructed her to assist a new employee if she needed help, told her that she could not work at the lunch table, accused her of stealing coupons out of the waste, ordered her to use certain doors to enter and exit the building and asked her to sign a modified job-duty offer. Although the handling of disciplinary actions and the assignment of work duties are generally related to employment, they are administrative functions of the employer and not duties of the employee. Absent error or abuse, these matters would not be compensable.<sup>13</sup> Generally, complaints about the manner in which a supervisor performs his or her duties or the manner in which a supervisor exercises his or her discretion fall outside the scope of coverage provided by the Act. This principle recognizes that a supervisor manager must be allowed to perform his or her duties and employees will, at times, dislike the actions taken. Mere disagreement or dislike of supervisory or managerial actions will not be compensable, absent evidence of error or abuse.<sup>14</sup> Appellant's supervisor acted within his discretion in performing his supervisory duties of instructing and reprimanding appellant with regard to her telephone manners and in following up with regard to stolen coupons. Mr. Salmonsén acted reasonably in instructing her where she could park, especially since he noted that customers were having a hard time finding parking and that she was instructed to park with other employees. He acted within his discretion in telling appellant to not work at the break table but rather in her case. There is no evidence that Mr. Salmonsén acted improperly when he told her to assist a new clerk if she had any questions nor is there any evidence of abuse in that he instructed her to remove tags on carts. Furthermore, there is no evidence of abuse in having appellant work on a report that was lost. A failure of a supervisor to thank appellant for performing the duties of her job does not establish abuse or error in the performance of the supervisor's duties. Furthermore, Mr. Salmonsén was not abusing his duties in monitoring appellant by observing her work or asking her to perform certain duties. Taking pictures of appellant's case also would not be outside of his discretion. Appellant alleged that Mr. Salmonsén demanded that she sign a modified job offer but he indicated that she had this job offer for five months.

Appellant was upset that she was not allowed to work a position she desired at the window. She also noted that she was unhappy just answering telephones and desired a transfer to another position or another branch. However, disability is not covered when it results from such factors as an employee's frustration at not being permitted to work in a particular environment or to hold a particular position.<sup>15</sup>

Appellant alleged that another employee was given preferential treatment by the supervisor, but she does not provide support or explain how this impacted her.

Appellant also asserted that she was harassed by her supervisor. To the extent that disputes and incidents amounting to harassment arose from the performance of her regular

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<sup>13</sup> *Kim Nguyen*, 53 ECAB 127 (2001).

<sup>14</sup> *T.G.*, 58 ECAB 189 (2006).

<sup>15</sup> See *Thomas D. McEuen*, *supra* note 3; *Lillian Cutler*, *supra* note 2.

duties, these could constitute employment factors.<sup>16</sup> However, mere perceptions of harassment are not compensable.<sup>17</sup> Appellant made allegations with regard to incidents that occurred on specific dates. She alleged that her supervisor stared at her, told her that he did not need help, insulted her mail handling ability, told her sarcastically to take her lunch break, played the radio too loudly and that she should have replugged the coffee pot. The Board finds that appellant did not submit sufficient evidence to establish these allegations as factual. Appellant's emotional reaction must be considered self-generated in that it resulted from her perceptions regarding her supervisor.<sup>18</sup>

With regard to the statement by Ms. Amy, the Board finds that it is not persuasive with regard to establishing a hostile work environment. Many of her comments concern her own issues with Mr. Salmonsens. With regard to Mr. Salmonsens's alleged mistreatment of appellant, the most serious allegation made by Ms. Amy is that he accused appellant, in front of other employees, of trying to hurt herself, an allegation which he denies. The Board notes that there is no incident report in the record indicating that appellant fell on black ice in February 2004. The Board finds that Ms. Amy's statement is not supported by the evidence of record, especially in light of Mr. Salmonsens's denial. Ms. Amy indicates that he ridiculed appellant for running the tap water too long. The Board notes that this incident was never mentioned by appellant. Ms. Amy indicated that Mr. Salmonsens became angry with appellant for not transferring a call to Mr. Austin despite the fact that the employees were told that they could not take personal calls at work. However, this does not establish that Mr. Salmonsens abused his discretion in performing his duties as a manager. The Board notes that many of the incidents mentioned by Ms. Amy with regard to appellant are not the same ones appellant mentioned. Ms. Amy's statement is insufficient to meet appellant's burden of proof.

The Board finds that 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.<sup>19</sup>

### CONCLUSION

The Board finds that appellant has not established that she sustained an emotional condition causally related to factors of her federal employment.

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<sup>16</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, *supra* note 1 at 608.

<sup>17</sup> *J.F.*, 59 ECAB \_\_\_ (Docket No. 07-308, issued January 25, 2008).

<sup>18</sup> *See David S. Lee*, 56 ECAB 602 (2005).

<sup>19</sup> 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 decision of the Office of Workers' Compensation Programs dated December 16, 2008 is affirmed.

Issued: January 28, 2010  
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