

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

S.M., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Conneaut, OH, Employer

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**Docket No. 09-2290
Issued: July 12, 2010**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On September 14, 2009 appellant, through her attorney, filed a timely appeal from an August 18, 2009 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(e), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On September 16, 2008 appellant, then a 52-year-old postmaster, filed a claim alleging that she sustained a traumatic injury on March 16, 2008 in the performance of duty. She stopped work on September 4, 2008 and did not return. Appellant related:

“As a result of my employment with the [employing establishment] as Postmaster, I am the designated contact person during non-business hours should any

irregularities occur at the building. On the evening of March 16, 2008, at approximately 10:00 p.m., I received a telephone call from the National Law Enforcement Communication Center (NLECC). I was informed that the alarm was not set in the building. It is my responsibility to either personally go to the building and investigate or designate someone to check it out.”

Appellant asked Elizabeth Fenton, a supervisor, to investigate as she lived closer to the work site. Ms. Fenton informed her by telephone that Sandra Garot, an employee, was in the building and that the employing establishment was in disarray. When appellant later arrived at the building around 10:45 p.m., she found the floor covered with keys, paper and toilet rolls. They found Ms. Garot’s identification badge, which had her face blackened out with a marker. Ms. Fenton and a police officer told appellant that Ms. Garot had left through a work floor door but that it was unknown whether she was still in the building.

Appellant related:

“The whole scene was surreal. I relive that scene over and over in my head to this day. Only the emergency exit lights were on. We proceeded to the workroom floor to ascertain what was happening. I was so stressed that I couldn’t even locate the light panels to turn on the lights in the building. The policeman said he had taken pictures of the scene inside the door. I went and gathered up all of the items and we looked at what was written on the papers. Everything we looked at didn’t make any sense. The policeman suggested that we look throughout the workroom floor to make sure that everything was OK. We were pretty certain that Ms. Garot had left the building, but we were not hundred percent certain. I also had to make certain that the building was secure, that there was nothing out of place and certainly that the vault room was still locked. While proceeding through the building, we came upon Ms. Garot’s locker, she had removed her name from the locker and there appeared to be clothing strewn out on the floor nearby. I went to open the locker and the policeman immediately stopped me. He said not to open the locker in the event that there might be an explosive in it. We continued on through the dark and I was able to make sure that the vault was still locked and nothing appeared out of place.”

Appellant found a note left by Ms. Garot requesting that funeral home personnel allow no one from the employing establishment at her funeral. The police officer warned appellant that Ms. Garot might be homicidal.

Appellant went home but could not sleep because she was afraid for herself and her family. She stated that before March 16, 2008 she had “never experienced the trauma, anxiety, flashbacks, nightmares and panic attacks that are now part of my daily life.” Appellant and Ms. Fenton had to conduct a predisciplinary telephonic interview with Ms. Garot on June 24, 2008. She again experienced severe anxiety, panic attacks and physical illness as a

result of the interview and listening to Ms. Garot discuss the incidents. Appellant's fear increased when the employing establishment issued Ms. Garot a notice of removal.¹

On September 22, 2008 the employing establishment controverted the claim, contending that appellant's reaction was self-generated and related to administrative matters.

In an April 15, 2008 memorandum of interview, Ms. Garot indicated that she went to the employing establishment the night of Sunday, March 16, 2008 to commit suicide. She had purchased a gun that morning. Ms. Garot went to the employing establishment about 4:00 p.m. but did not "go through with the act." She exited the building when Ms. Fenton arrived.

On September 22, 2008 the employing establishment noted that appellant received a telephone call regarding an alarm activation at her employing establishment. As the postmaster, she was responsible for investigating the matter or assigning the task to a subordinate. Appellant requested that Ms. Fenton investigate the alarm activation. Ms. Garot was found asleep and intoxicated after Ms. Fenton arrived. She ran out of the building when Ms. Fenton called out to see if anyone was inside. An investigation determined that Ms. Garot had a loaded firearm with her at the employing establishment. Appellant was not aware that Ms. Garot was armed. When she arrived on the premises Ms. Garot had already left the building and the police had arrived. The employing establishment related that appellant did not feel threatened by Ms. Garot as she drove around town that night attempting to locate her. It maintained:

"The [employing establishment] appropriately handled the issue and at no time was [appellant] in danger. Ms. Garot has apologized for the incident and is receiving treatment for her condition. [She] states that she has no animosity towards anyone at the [employing establishment] and has never threatened anyone there and would not harm anyone."

In a March 17, 2008 police report, Sergeant Charles J. Burlingham described the March 16, 2008 incident and stated, "I advised [appellant] that I would attempt to locate Ms. Garot, send a teletype to neighboring agencies and request extra patrol of the [employing establishment]. I advised her that she would have to decide how to proceed with concerns of possible booby-traps or explosives left inside the building. I suggested she call her supervisors and let them make the decision."

In response to the Office's request for additional information, appellant described her psychiatric treatment following the March 16, 2008 incident.² She again recounted the events of March 16, 2008, noting that it was her responsibility to respond to the emergency and that she investigated the workplace that night as part of her work duties. Appellant maintained that Ms. Garot left notes at the scene directed against her supervisor and her supervisor's superiors,

¹ On August 18, 2008 the employing establishment issued Ms. Garot a notice of removal for improper conduct, including bringing a firearm and alcohol onto the premises. It was issued by Ms. Fenton as Ms. Garot's supervisor. Other correspondence to Ms. Garot concerning her emergency placement off work and notice of investigative interviews were signed by appellant as postmaster.

² Appellant submitted medical evidence in support of her claim.

which included appellant. She asserted that she experienced fear, panic attacks and flashbacks to the night of March 16, 2008.

By decision dated March 25, 2009, the Office denied appellant's claim that she sustained emotional condition causally related to work events on March 16, 2008. It found that her reaction to the events of March 16, 2008 was self-generated. The Office noted that appellant arrived on the premises after Ms. Garot had left and that there was no evidence that she was threatened. It concluded that she had not established any compensable work factors.

On April 10, 2009 appellant, through her attorney, requested a telephone hearing. At the June 16, 2009 hearing, she again described the events of March 16, 2008. Appellant also related that she experienced a panic attack when she and Ms. Fenton interviewed Ms. Garot over the telephone. Her attorney argued that her condition arose from the performance of her work duties.

By decision dated August 18, 2009, the hearing representative affirmed the March 25, 2009 decision. She found that appellant had not established any compensable work factors.

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 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 his or 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.³ 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 his or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁴

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.⁵ 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.⁶ In determining whether the employing establishment has erred or acted abusively, the Board will

³ 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁵ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 556 (1991).

⁶ See *William H. Fortner*, 49 ECAB 324 (1998).

examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁷

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.⁸ 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.⁹

ANALYSIS

Appellant attributed her emotional condition primarily to responding to a call from law enforcement on the evening of March 16, 2008 reporting an alarm at her employing establishment.¹⁰ She asserted that she was responsible for the security of the building and had the duty to investigate or appoint someone to investigate the matters on her behalf. Appellant requested that a subordinate, Ms. Fenton, investigate the alarm as she resided closer to the building. Ms. Fenton reported back to her that an employee, Ms. Garot, was in the building and that the workplace was in a disordered state with notes, keys and other items strewn around. Appellant went to investigate and found the floor of the building covered with paper, keys, toilet paper and Ms. Garot's identification badge with her face blackened out. Ms. Fenton told her that Ms. Garot had exited the workroom floor but it was unknown if she remained in the building. Appellant related that she became upset and had difficulty locating the lights to the building. She and a police officer looked at the papers left at the scene but could not understand them. Appellant noticed that Ms. Garot had removed her name from her locker and left clothes on the floor. She started to open the locker but the police officer cautioned her it might have an explosive inside. The police officer also advised appellant that Ms. Garot might be homicidal. It was later discovered that Ms. Garot had taken a loaded gun to the employing establishment with the intention of committing suicide. Appellant related that she relived what she saw while walking around the building on March 16, 2008 and experienced flashbacks, panic attacks, nightmares and anxiety.

⁷ *Ruth S. Johnson*, 46 ECAB 237 (1994).

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

⁹ *Id.*

¹⁰ Appellant also attributed her condition, in part, to events occurring subsequent to March 16, 2008. An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift." 20 C.F.R. § 10.5(q). As appellant cited work factors occurring over more than one work shift, her claim is properly characterized as an occupational disease claim.

On September 22, 2008 the employing establishment confirmed that as postmaster appellant was responsible for investigating alarm activations at the work site. It contended, however, that it had appropriately handled the issue and her emotional reaction was self-generated. The employing establishment further alleged that appellant was not in any actual danger. The Office, in denying her claim, noted that Ms. Garot had exited the building by the time appellant arrived; therefore, she did not establish that she was in danger. Whether appellant was in actual danger, however, is not determinative of whether her emotional reaction comes within coverage of the Act. The Board has long held that where a claimed disability results from an employee's emotional reaction to her regular or specially assigned duties or to an imposed employment requirement, the disability comes within coverage of the Act.¹¹ Under *Cutler*, appellant was performing her work duties as postmaster when she went to the employing establishment on March 16, 2008 to investigate an alarm. She alleged that she sustained post-traumatic stress disorder due to the March 16, 2008 incident. The Board finds that appellant has established a compensable work factor.

Appellant attributed her stress and anxiety to participating in an interview of Ms. Garot on June 24, 2008 as part of her work duties. She also alleged that she experienced anxiety when the employing establishment issued Ms. Garot a notice of removal. While the notice of removal was signed by Ms. Fenton, as Ms. Garot's supervisor, the record establishes that appellant participated in the investigation after placing Ms. Garot on emergency leave and in sending notices to Ms. Garot advising of disciplinary matters. The employing establishment did not dispute that she interviewed Ms. Garot as part of the investigation and disciplinary process. As discussed, where the claimed disability results from an employee's emotional reaction to her regular or specially assigned duties, the disability comes within the coverage of the Act.¹² Appellant has, therefore, established these as compensable work factors.

Appellant has established as compensable work factors investigating the work site on March 16, 2008, placing Ms. Garot on emergency leave and participating in interviews and discipline. The case presents a medical question regarding whether her emotional condition arose from these compensable work factors. The Office found that there were no compensable employment factors established in this case and did not analyze or develop the medical evidence. The case will be remanded to the Office for this purpose.¹³

CONCLUSION

The Board finds that the case is not in posture for decision.

¹¹ *Tina D. Frances*, 56 ECAB 180 (2004); *Penelope C. Owens*, 54 ECAB 684 (2003); *Lillian Cutler*, *supra* note 3.

¹² *Jeral R. Gray*, 57 ECAB 6121 (2006).

¹³ *A.K.*, 58 ECAB 119 (2006); *Robert Bartlett*, 51 ECAB 664 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 18, 2009 is set aside. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 12, 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