

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

T.W., Appellant	)	
	)	
and	)	<b>Docket No. 10-122</b>
	)	<b>Issued: October 1, 2010</b>
U.S. POSTAL SERVICE, CERNON STATION	)	
POST OFFICE, Vacaville, CA, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*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 October 16, 2009 appellant filed a timely appeal from the August 19, 2009 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 over the merits of this case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

**FACTUAL HISTORY**

On February 13, 2009 appellant, then a 34-year-old acting station manager, filed a claim alleging that she sustained a stress-related condition in the performance of duty. She first became aware of her claimed condition and its relationship to her employment on February 1, 2009.

Regarding the cause of her claimed emotional condition, appellant stated, “Due to stress caused by additional activities and duties as an acting manager at the Cernon Station Post Office.”<sup>1</sup>

In a February 13, 2009 statement, appellant noted that when she was detailed to become acting station manager in March 2008, the prior station manager had not started the Program Evaluation Guide (PEG), a program that evaluated management’s compliance with Occupational Safety and Health Administration (OSHA) standards. She asserted that during this period she worked from about 7 a.m. to 6 p.m. and was not given any assistance from Karen Dragon, the postmaster. Appellant indicated that there were two supervisors running the operations at the employing establishment and claimed that she had to spend time mentoring Don Fernandez, one of the supervisors, who was not performing up to standards. She was also managing the PEG files and the rest of the office. Appellant repeatedly asked Ms. Dragon for advice and guidance but she did not provide any assistance with respect to the underperforming supervisor or other matters, including the correction of errors in a prior rural route examination. In May 2008, Ms. Dragon told her that the employing establishment had begun to improve, but that she needed “to get it done faster.” Appellant asserted that Ms. Dragon told her that another employee, Mr. Wright, had requested to be placed in the position of acting manager. On numerous occasions, Ms. Dragon “made it clear” that her position was not a permanent one and appellant felt that she was being threatened with removal if she did not improve the performance of the office. Appellant claimed that she had to mentor an employee who only worked for her when he felt like it and who repeatedly threatened to go back to delivering only his mail route.<sup>2</sup> She stated, “With all this pressure from Ms. Dragon, issues with PEG, new supervisors all along with the normal operations, I began to fell [sic] stressed and my emotions and moods were getting bad.”

In a February 11, 2009 report, Dr. Zoe Berna, an attending Board-certified family practitioner, stated that she had treated appellant since June 7, 2006 and that a colleague had treated her prior to that time. Appellant took various medications during this period and was currently taking Prozac, a medication used for anxiety, depression and stress. Dr. Berna stated, “The patient tells me that she has to restart her Prozac because of increased amount of stress related to her work. It has been my medical recommendation for her to avoid [the] cause of the stress and if necessary to continue to stay off work.”

In a February 18, 2009 statement, Ms. Dragon noted that she gave appellant an opportunity to serve as an acting station manager because she had previously filled in when the prior station manager was on leave and was familiar with the operation of the station. The station had previously operated with only one supervisor and a station manager, but a second supervisor was added prior to the time that appellant became the station manager. Ms. Dragon noted that the station did not begin participating in the PEG program until appellant became the station manager and she was responsible for managing the PEG program once it began. She provided appellant assistance with the PEG program by giving her copies of documents related to the conduct of a

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<sup>1</sup> Appellant last worked for the employing establishment on October 31, 2008 and was terminated on February 13, 2009 for engaging in personal use of postal funds.

<sup>2</sup> The employee was designated as a 204B employee, a craft employee who was brought up to a higher level of service.

PEG program at another station and by referring her to additional personnel who could provide help. Ms. Dragon did not require appellant to work overtime and she did not ask for permission to work overtime. As part of her duties, appellant was required to manage her office, including handling the PEG program and mentoring Mr. Fernandez. Ms. Dragon provided advice when appellant talked to her about the failure of Mr. Fernandez to follow instructions and she believed that appellant made a good decision when she took actions to remove Mr. Fernandez from his position. She stated that appellant, as part of her regular duties, had to correct errors to the rural routes made by a prior manager. During a May 2008 mid-year performance evaluation, Ms. Dragon suggested changes so that appellant could speed up the performance of her station and meet the targets for the end of the year. She indicated that it was proper for her to advise appellant that, after she served as a station manager for at least six months, Mr. Wright would be allowed to serve for a few months in the position as he also had career advancement ambitions. Ms. Dragon stated that it was part of appellant's duties to supervise the 204B employee who was threatening to go back to his mail delivery route. She gave appellant advice regarding this employee and provided her with another employee when he eventually did return to his delivery route.

On March 5, 2009 the Office requested that appellant provide additional factual and medical evidence in support of her claim. It asked her to respond to the February 18, 2009 statement of Ms. Dragon.

In a March 23, 2009 statement, appellant agreed that the PEG program did not start until she became station manager, but asserted that Ms. Dragon did not provide her with enough time to gather the necessary files for the program. She claimed that Ms. Dragon only provided limited guidance with respect to how to handle the 204B employee and failed to provide adequate guidance to allow her to speed up the performance of the station. Appellant asserted that Mr. Fernandez falsified time documentation records pertaining to delivery routes and that Ms. Dragon should have dealt with this situation rather than requiring her to resolve it. She was placed on medication in March 2008 due to issues she began having a week or two after assuming the position of acting station manager.

In an August 19, 2009 decision, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. It found that Ms. Dragon provided appellant with adequate support and guidance to work as an acting station manager.

### **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 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.<sup>3</sup> The Board has held that emotional reactions to situations in which an employee is trying to

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<sup>3</sup> See 5 U.S.C. §§ 8101-8193; *Lillian Cutler*, 28 ECAB 125 (1976).

meet her position requirements are compensable. 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.<sup>4</sup>

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 employment factors.<sup>5</sup> This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>6</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>7</sup> 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.<sup>8</sup>

### ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of several employment incidents and conditions. In an August 19, 2009 decision, the Office denied her emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether the alleged incidents and conditions of employment are compensable employment factors under the terms of the Act.

Appellant alleged that, after she became an acting station manager in early 2008, she sustained stress because she was responsible for managing her station, including handling rural route examinations and administering the PEG program which required evaluating management's compliance with OSHA standards. She spent time mentoring a subordinate supervisor who was not performing up to standards. Appellant also alleged stress due to managing a 204B employee (a former craft employee brought up to a higher level of service) who constantly threatened to go back to mail delivery job. The Board finds that, under the principles of *Cutler*,<sup>9</sup> appellant has

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<sup>4</sup> See *supra* note 3.

<sup>5</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>6</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>7</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>8</sup> *Id.*

<sup>9</sup> See *supra* note 3.

established employment factors with respect to the above-described responsibilities as an acting station manager.

The evidence of record establishes that these management responsibilities were part of appellant's regular or specially assigned duties. Ms. Dragon, the postmaster, acknowledged that it was part of appellant's duties to manage her employees, including Mr. Fernandez and the 204B employee.<sup>10</sup> She also advised that appellant, as part of her regular duties, had to correct errors to the rural routes made by a prior manager and had to manage the PEG program. As these work assignments pertain to appellant's regular or specially assigned duties and relate directly to her position requirements as an acting station manager, they are compensable employment factors under *Cutler*.

Appellant also alleged that Ms. Dragon did not provide her adequate support with respect to various matters, including the management of the PEG program and rural route examinations or the handling of employees who had performance problems. She asserted that Ms. Dragon unfairly criticized her by telling her to speed up the production of her work unit. The Board finds that these allegations relate to administrative or personnel matters unrelated to appellant's regular or specially assigned work duties and do not fall within the coverage of the Act.<sup>11</sup> Although the evaluation of employee performance and the provision of supervisory support are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.<sup>12</sup> The Board has found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employer. In determining whether the employer erred or acted abusively, the Board has examined whether the management acted reasonably.<sup>13</sup>

The Board finds that appellant did not submit sufficient evidence to establish that Ms. Dragon committed error or abuse with respect to these matters. Ms. Dragon explained that she provided support to appellant regarding various matters by providing advice, referring her to employees who could help her, and assigning employees to her work unit.<sup>14</sup> She noted that it was appropriate for her to counsel appellant regarding the nature of her work performance. Appellant did not submit evidence, such as a positive final finding of a grievance or complaint or witness statements, to establish error or abuse by her manager.<sup>15</sup> She has not established a compensable employment factor under the Act with respect to these administrative matters.

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<sup>10</sup> Ms. Dragon stated that appellant made a good decision when she took action to remove Mr. Fernandez from his position.

<sup>11</sup> See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

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

<sup>13</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>14</sup> There is no indication in the record that it was inappropriate for Ms. Dragon to give appellant the responsibility of disciplining Mr. Fernandez.

<sup>15</sup> The Board notes that appellant did not claim stress due to her removal for cause in February 2009 and the record does not show error or abuse by the employing establishment in taking this action.

Appellant felt that her job was at risk because Ms. Dragon told her to speed up the station's production and because it was structured to be temporary in nature.<sup>16</sup> Regarding her allegation that she developed stress due to insecurity about maintaining her position, the Board has held that a claimant's job insecurity, including fear of a reduction-in-force, is not a compensable factor of employment under the Act.<sup>17</sup> Ms. Dragon explained that she wished to provide both appellant and another employee with an opportunity to gain experience working as an acting station manager for purposes of career advancement.

The Board finds that appellant established compensable factors of employment with respect to her supervisory duties, which included managing subordinates (such as Mr. Fernandez and the 204B employee) and handling the PEG program and rural route examinations. However, her burden of proof is not discharged by the fact that she has established employment factors which may give rise to a compensable condition or disability. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence to establish that her condition is causally related to the accepted employment factor.<sup>18</sup>

Appellant submitted a February 11, 2009 report from Dr. Berna, an attending Board-certified family practitioner, who stated that she had treated appellant since June 7, 2006 and that a colleague had treated her prior to that time. Appellant was prescribed medications during this period for anxiety, depression and stress. Dr. Berna stated that appellant told her that she had to restart on medication because of "increased amount of stress related to her work" and recommended that she avoid the cause of the stress and, if necessary, continue to stay off work.

The report is of little probative value on the question of whether appellant sustained an employment-related emotional condition. Dr. Berna did not provide a firm medical diagnosis or any findings upon examination or testing. Moreover, she did not provide an opinion on causal relationship.<sup>19</sup> Although appellant attributed her need for medication to stress caused at work, Dr. Berna did not provide any independent opinion on the cause of her condition. The record does not contain any other medical evidence to establish that appellant sustained an emotional condition due to the established employment factors.

### CONCLUSION

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.

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<sup>16</sup> Appellant indicated that Ms. Dragon told her that another employee would have a chance to serve as an acting station manager after she served in that position for at least six months.

<sup>17</sup> See *Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

<sup>18</sup> See *William P. George*, 43 ECAB 1159, 1168 (1992).

<sup>19</sup> See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 19, 2009 decision of the Office of Workers' Compensation Programs be affirmed. The August 19, 2009 decision is modified to reflect that appellant established employment factors pertaining to her supervisory duties, but that she did not submit sufficient medical evidence to establish that she sustained an emotional condition due to these factors.

Issued: October 1, 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