

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

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**O.H., Appellant**

**and**

**U.S. POSTAL SERVICE, WESTSIDE POST  
OFFICE, Little Rock, AR, Employer**

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**Docket No. 10-693  
Issued: October 12, 2010**

*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 January 12, 2010 appellant filed a timely appeal from a September 15, 2009 merit decision of the Office of Workers' Compensation Programs that denied her 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 causally related to factors of her federal employment.

On appeal, appellant asserts that she was treated unfairly after her return to work in June 2008, as shown by the Office's February 19, 2009 decision.

## **FACTUAL HISTORY**

On November 12, 2008 appellant, then a letter carrier working modified duty four hours a day,<sup>1</sup> filed an occupational disease claim alleging that the withdrawal of two hours of duty on October 21, 2008 caused major stress. She stopped work that day. In several statements, appellant alleged that, since returning to modified duty in June 2008, she had been harassed by Percy Gilbert, the station manager. Mr. Gilbert manipulated the supervisors, attacked other employees, caused havoc to her work environment and began to harass her after she filed an occupational disease claim for a cervical condition. Appellant stated that she was previously diagnosed with a stress-related condition in 1994 and described symptoms of sleeplessness, nightmares, aches, pain, tightening in the chest, fatigue and anger.

In reports dated October 22, 2008 and January 28, 2009, James R. Money Penny, Ph.D., a clinical psychologist, advised that appellant had been under his care since April 22, 2008 for complaints of emotional stress caused by interpersonal conflicts with supervisors, unfair and discriminatory treatment and harassment by her employer. He diagnosed adjustment disorder with mixed emotional features and advised that she be off work indefinitely.

The employing establishment submitted statements dated September 30 and October 20, 2008 in which Mr. Gilbert and Veronica Mitchell, customer service supervisor, advised that appellant's performance was substandard. On October 8, 2008 Monica L. Bratton described a meeting she held with appellant and Mr. Gilbert. Appellant stated that she could not perform her job due to neck and shoulder problems, get up and down out of her chair or lift heavy tubs of mail, which were described in her position description. In a letter dated October 20, 2008, Mr. Gilbert advised appellant that she was to submit a properly completed Form CA-17 for her knee and ankle injury only and should apply for light duty for work restrictions due to her cervical and emotional conditions, which were not job related. He noted that a medical report she submitted was in direct conflict with her current work restrictions; therefore, she would be given only two hours of work each day with the other two hours covered by leave, until such time as her other claims were accepted by the Office.

On April 10, 2009 appellant asserted error by Mr. Gilbert was in error on October 21, 2008, as established by a February 19, 2009 Office decision that vacated an August 28, 2008 decision. The August 28, 2008 decision found that appellant's modified duties represented her wage-earning capacity. In a March 20, 2009 letter, the Office notified her that the August 28, 2008 decision was vacated and that she was entitled to wage loss from the date her employer removed her temporary work assignment in October 2008 to February 19, 2009 that she would be entitled to four hours of compensation after that date.<sup>2</sup>

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<sup>1</sup> Appellant has accepted conditions of contusion of the right ankle, old bucket-handle tear of the medial meniscus, bilateral chondromalacia patellae, bilateral carpal tunnel syndrome and rotator cuff tear of the right shoulder, adjudicated under Office file number xxxxxx301. She also has a claim for an employment-related cervical spine condition, adjudicated under Office file number xxxxxx005 that was denied. Appellant has an appeal before the Board on this claim, Docket No. 10-273.

<sup>2</sup> The August 28, 2008 and February 19, 2009 decisions were adjudicated under Office file number xxxxxx301.

By decision dated April 28, 2009, the Office denied the emotional condition claim finding that appellant failed to establish a compensable factor of employment.

Appellant timely requested a review of the written record and, in a September 15, 2009 decision, an Office hearing representative affirmed the April 28, 2009 decision.

### **LEGAL PRECEDENT**

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her stress-related condition.<sup>3</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.<sup>4</sup> 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>5</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,<sup>6</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.<sup>7</sup> There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.<sup>8</sup> When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.<sup>9</sup> Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.<sup>10</sup> Where the claimant alleges compensable factors of employment, he

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<sup>3</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>4</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>5</sup> *Id.*

<sup>6</sup> 28 ECAB 125 (1976).

<sup>7</sup> 5 U.S.C. §§ 8101-8193.

<sup>8</sup> *See Robert W. Johns*, 51 ECAB 137 (1999).

<sup>9</sup> *Lillian Cutler*, *supra* note 6.

<sup>10</sup> *J.F.*, 59 ECAB \_\_\_\_ (Docket No. 07-308, issued January 25, 2008).

or she must substantiate such allegations with probative and reliable evidence.<sup>11</sup> Personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>12</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>13</sup> Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.<sup>14</sup>

For harassment or discrimination to give rise to a compensable disability, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations that the harassment occurred with probative and reliable evidence.<sup>15</sup> With regard to emotional claims arising under the Act, the term "harassment" as applied by the Board is not the equivalent of "harassment" as defined or implemented by other agencies, such as the Equal Employment Opportunity Commission, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers' compensation under the Act, the term "harassment" is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by coemployees or workers. Mere perceptions and feelings of harassment will not support an award of compensation.<sup>16</sup>

### ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition causally related to factors of her federal employment.

Appellant did not attribute her emotional condition to the performance of her modified duties or to any special work requirement arising from her employment duties under *Cutler*.<sup>17</sup>

To the degree that appellant is asserting that her emotional condition was caused by Office error in issuing an August 28, 2008 decision, matters relating to the handling of a workers' compensation claim are administrative in nature and do not arise in the performance of

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<sup>11</sup> *M.D.*, 59 ECAB \_\_\_\_ (Docket No. 07-908, issued November 19, 2007).

<sup>12</sup> *Roger Williams*, 52 ECAB 468 (2001).

<sup>13</sup> *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>14</sup> *Kim Nguyen*, 53 ECAB 127 (2001).

<sup>15</sup> *James E. Norris*, 52 ECAB 93 (2000).

<sup>16</sup> *Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>17</sup> See *James E. Norris*, *supra* note 15.

duty.<sup>18</sup> Her claim pertains to allegations of administrative error and harassment by Mr. Gilbert, particularly when he advised her on October 21, 2008 that her work would be reduced to two hours a day and she would have to take leave or leave without pay for the balance. There is no evidence to establish that Mr. Gilbert erred by sending appellant home on October 21, 2008 after two hours of work. As explained in his October 20, 2008 letter, appellant's hours were reduced on October 21, 2008 because she submitted medical evidence that she could not perform her modified duties due to conditions that had not been accepted as employment related. Furthermore, a review of the record indicates that the Office issued the August 28, 2008 decision based on miscommunication between the employing establishment and the Office regarding whether appellant's modified position was permanent and thus any error in this regard does not rise to the level of error and abuse contemplated under the Act.<sup>19</sup> As to Mr. Gilbert's requirement that appellant provide adequate medical documentation, management's request for medical documentation to support a continued modified duty assignment is an administrative function and does not demonstrate error or abuse.<sup>20</sup> As there is no evidence here to substantiate error or abuse, appellant did not establish a compensable factor of employment with respect to these administrative functions.<sup>21</sup>

Regarding appellant's general contention that she was harassed by Mr. Gilbert, mere perceptions of harassment or discrimination are not compensable under the Act<sup>22</sup> and unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.<sup>23</sup> In the case at hand, while appellant submitted several statements from coworkers, none indicated that she was harassed by Mr. Gilbert. As appellant submitted no evidence to show a persistent disturbance, torment or persecution, *i.e.*, mistreatment by Mr. Gilbert or other members of employing establishment management,<sup>24</sup> she did not establish a factual basis for her claim of harassment by probative and reliable evidence.<sup>25</sup>

The Board therefore concludes 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.<sup>26</sup>

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<sup>18</sup> *Bettina M. Graf*, 47 ECAB 687 (1996).

<sup>19</sup> The Board notes that, following issuance of the February 19, 2009 decision, appellant received appropriate retroactive compensation.

<sup>20</sup> *Helen Casillas*, 46 ECAB 1044 (1995).

<sup>21</sup> *Tina D. Francis*, 56 ECAB 180 (2006).

<sup>22</sup> *James E. Norris*, *supra* note 15.

<sup>23</sup> *Id.*

<sup>24</sup> *Beverly R. Jones*, *supra* note 16.

<sup>25</sup> *See Robert Breeden*, 57 ECAB 622 (2006).

<sup>26</sup> *Leslie Moore*, *supra* note 3.

**CONCLUSION**

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 15, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 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