



Appellant submitted a supplemental statement to the record wherein she described her employment duties. She alleged that she performed intermittent periods of light-duty assignments since “at least” 1994.<sup>1</sup> Appellant performed modified duties as a bulk mail clerk with medical restrictions. In 2004, additional duties were added to her duties as a business mail entry clerk and, further, she began working in the registry cage. These employment duties generally included answering telephone inquiries, inventorying and sorting pieces of mail, performing postage accounting, cash reconciliation, computer data entry and coding invoice duties for the business reply/postage due mail. Appellant’s registry cage duties involved issue and receipt of carrier scanners, keys, “undeliverable and accountable mail,” as well as “nixie table” duties repairing damaged mail and address corrections. On January 12, 2005 appellant received a new eight-hour schedule that included registry cage duties, business mail entry unit duties and “nixie table” duties. On this date, she allegedly experienced shoulder pain after performing her newly assigned duties. Appellant stated that, since “at least” February 14, 2007, her employment duties were subject to medical restrictions that limited lifting or carrying to no more than 15 pounds as well as activities involving “grasping,” “fine manipulation,” and “keyboarding.”

Appellant submitted a note dated December 20, 2004, bearing an illegible signature as well as personal notes, one of which was dated January 14, 2005. In her January 14, 2005 note, appellant stated that when she received her new schedule on January 12, 2005, she “reminded” Tony Concert that she has “cysts” on her wrists, to which Mr. Concert responded, “Jeri, this is your schedule!” She also alleged that on January 14, 2005, she developed “bulging veins.”

On March 8, 2007 Dr. Roger Kerr, a Board-certified diagnostic radiologist, reported that a magnetic resonance imaging (MRI) scan of appellant’s cervical spine revealed a disc bulge with “borderline stenosis” at the C5-6 and C4-5 vertebrae.

In a September 25, 2007 report, Dr. Chi-Bao Le Phung, a Board-certified internist, diagnosed a “mild area of ischemia” on the anteroapical wall of appellant’s left ventricle. On December 21, 2007 he presented findings on examination and diagnosed obesity, hypertension, coronary artery disease and chest pain.

Appellant submitted a report dated October 22, 2007, signed by Dr. Chantal Gianghvong Le-Pham, an internist, who diagnosed “essential hypertension” and coronary artery disease. Dr. Le-Pham commented that appellant experienced stress-related chest pains at work. He also noted that appellant’s chest pains “only happened in a particular area of mail.”

By letters dated November 19 and February 4, 2008, the Office notified appellant that the evidence of record was insufficient to support her claim. It advised her that she needed to submit additional evidence and provided guidance concerning the type and form of evidence required.

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<sup>1</sup> Appellant filed other additional workers’ compensation claims. File No. xxxxxx913 concerned a left shoulder injury. File No. xxxxxx730 was accepted for bilateral wrist contusions. File No. xxxxxx733 concerned contact dermatitis that appellant allegedly sustained in performance of her duties as a bulk mail clerk. File No. xxxxxx672 concerned bilateral knee and hand injuries. This claim was denied. File No. xxxxxx182 concerned minor knee contusions. File No. xxxxxx160 concerned a minor right knee injury.

By separate letters also dated November 19 and February 4, 2008, the Office contacted the employing establishment seeking additional information concerning appellant's claim. Among other evidence, it sought comments from a knowledgeable supervisor concerning the accuracy of the statements appellant provided relative to her claim.

In a subsequent note dated November 29, 2008, as well as an undated narrative statement, appellant described her employment duties, her medical conditions and history. She noted that her "cage duties" were added to her "already very, very busy schedule" as a business mail entry unit employee. Appellant alleged experiencing anxiety, stress and chest pains while performing her "cage duties." She alleged she became "nervous and unable to concentrate" and, furthermore, could not "remain focused much of the time."

Appellant stated that she was "always rushed and under tremendous pressure to meet deadlines." She alleged that she was "always under stressful time restraints," was never adequately trained and, further, "even when requested," there was "never enough" or "adequate help." Appellant alleged that her supervisors knew she was experiencing problems with pain in her hands and chest pains.

Appellant alleged that when she sought assistance from a supervisor, he told her "something to the effect [of] 'I don't want to hear that; just do what I tell you to do. There is no help for you' [and] something like '[d]o you want your job or not?!!!'" She alleged that she "feared discussing [her problems with her supervisor] for fear that [her] duties might increase." She alleged that on July 24, 2007, after performing her employment duties, she experienced chest pains, for which she sought medical treatment.

On February 4, 2009 the employing establishment reported that it had not responded to the Office's November 19 and February 4, 2008 letters because "the managers had ... gone." It was noted that appellant took regular retirement on December 3, 2007, which may have been an early out. The employing establishment noted that appellant "had numerous claims" and had "been on medical restrictions for a variety of conditions" but "could not be more specific."

Appellant submitted a March 10, 2009 note in which she described her employment duties and explained how they caused her conditions. She described her working conditions as "chaotic." Appellant alleged that she only experienced symptoms such as distress and chest pains when performing "rushed duties and stressful duties in the registry cage." She alleged that, on November 6, 2004, while working the registry cage, she was "under much stress" and experienced chest pains, "discomfort in [her] arms," leg pain and "got sweaty."

Appellant also submitted a copy of the Office's statement of accepted facts from one of her other workers' compensation claims.<sup>2</sup>

On April 28, 2009 the employing establishment reported contact with officer-in-charge Tyrone Williams concerning appellant's employment duties. Mr. Williams reported that, when he began working at the employing establishment's facility, appellant was "not doing any work so he assigned her tasks within her medical restrictions." He stated that appellant's limited-duty

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<sup>2</sup> Office File No. xxxxxx293.

position required her to process only one tray of mail per day and that the trays in her department were “not full on a given day.” Mr. Williams stated that there were other employees performing similar duties at the time and disputed appellant’s assertion of being overwhelmed with work and deadlines.

By decision dated April 28, 2009, the Office denied the claim because, although it accepted several of the employment factors appellant deemed responsible for her condition, the medical evidence of record did not demonstrate that these employment factors caused a medically diagnosed condition. It accepted appellant’s modified duties as a bulk mail clerk with medical restrictions as compensable employment factors. The Office accepted that additional duties were added to appellant’s workload in 2004, including work in the registry cage, and appellant felt rushed while meeting her duties. It accepted that appellant’s employment duties required “multi-tasking.” The Office accepted that appellant received a new eight-hour schedule on January 12, 2005, which included the duties appellant described. It accepted that, on January 12, 2005, appellant experienced shoulder pain after performing her new work duties and that she fell down. The Office accepted that in addition to shortness of breath, appellant experienced body and chest pain at work on November 4, 2006. It also accepted that, on July 24, 2007, appellant experienced chest pains after performing her employment duties for which she sought medical treatment at a hospital.

However, the Office did not accept appellant’s assertion that the workload was overwhelming and caused anxiety and stress as compensable employment factors. It did not accept that appellant labored under stressful time constraints and deadlines. The Office also did not accept appellant’s assertion that she received inadequate training in her duties or the changing rules and regulations she was expected to know. It did not accept that appellant received no help with her duties. The Office rejected appellant’s assertion that Tony Concert shouted at her and that on several occasions in 2005, 2006 and 2007 she experienced discomfort in her chest at work, leg pain or bulging veins. It also did not accept that when appellant requested help, she was told “something like ‘I don’t want to hear that’ or ‘do you want this job or not?’” or that appellant’s work duties increased because her managers did not like her. The Office did not accept appellant’s allegation that her managers harassed her. Finally, it did not accept that appellant feared a heart attack and that her job might kill her as a compensable employment factor.

On May 22, 2009 appellant requested review of the written record.

By decision dated September 15, 2009, the Office affirmed its April 28, 2009 decision because the evidence of record did not demonstrate that the established employment factors caused a medically diagnosed condition.

### **LEGAL PRECEDENT**

To establish that she sustained an emotional condition in the performance of duty, a claimant 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 is not applicable 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. When the disability results from an emotional reaction to regular or specially-assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>6</sup> On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.<sup>7</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>8</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>9</sup>

### ANALYSIS

The Office accepted a limited set of the employment factors appellant deemed responsible for her condition. Therefore the Board must determine whether appellant established any of the other alleged employment incidents constitute compensable employment factors.

The Office did not accept appellant's allegations that her workload was overwhelming and that she labored under stressful time constraints and deadlines. The Board has held that emotional reactions to situations in which an employee is trying to meet her position

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

<sup>7</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>8</sup> *Dennis J. Balogh*, *supra* note 4.

<sup>9</sup> *Id.*

requirements are compensable.<sup>10</sup> In *Kennedy*, the Board, citing principles of *Cutler*, listed employment factors which would be covered under the Act, including an unusually heavy workload and imposition of unreasonable deadlines. The Board finds, however, that appellant has not established the factual aspects of her claims regarding her workload and time constraints/deadlines. Appellant generally discussed her claim that her work was overwhelming, but her statements in this regard lack specificity. She did not submit sufficient evidence to support her claim, as she only provided vague and generalized accounts of these alleged factors. The Board also notes that the employing establishment has disputed appellant's account of overwork, indicating that appellant had little or no work assigned and that over a period of time additional work was assigned.

Appellant has also alleged that harassment on part of her supervisor contributed to her stress-related condition. To the extent that disputes and incidents alleged as constituting harassment by supervisors are established as occurring and arising from appellant performance of her regular duties, these could constitute employment factors. However, for harassment to give rise to a compensable factor, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.<sup>11</sup> Appellant's allegations that Tony Concert shouted at her, that when she requested help she was told "I don't want to hear that" or "do you want this job or not?" are not substantiated with probative and reliable evidence that the incidents occurred as alleged, and that management's actions in this regard were in fact unreasonable.<sup>12</sup> There are no witness statements to corroborate his assertions and the employer denied any harassment.

Regarding appellant's allegation that she was improperly trained, the Board has held that 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. This includes matters involving training of employees.<sup>13</sup> The Board has held that if the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be administrative matter coverage will be afforded. In the present case, appellant has not submitted any evidence substantiating error or abuse regarding the training provided to her by the employing establishment.

Appellant's burden is to demonstrate that the established employment factors caused a medically-diagnosed cardiac or emotional condition. This is a medical issue that can only be proven by probative medical opinion evidence and thus appellant's lay opinion is not relevant.<sup>14</sup> Because appellant has not submitted sufficient medical opinion evidence, the Board finds appellant has not established that she sustained a cardiac or emotional condition in the performance of duty causally related to her employment.

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<sup>10</sup> See *Georgia F. Kennedy*, 35 ECAB 1151 (1984).

<sup>11</sup> *Robert Breeden*, 57 ECAB 622 (2006).

<sup>12</sup> See *Richard J. Dube*, 42 ECAB 916 (1991).

<sup>13</sup> *James E. Norris*, 52 ECAB 93 (2000).

<sup>14</sup> 5 U.S.C. § 8101(2). See *Sheila Arbour Victor E. Arbour*, 43 ECAB 779 (1992).

Taken as a group, the reports from Drs. Kerr, Le-Pham, and Phung have little probative value on causal relationship because they lack an opinion explaining how the established employment factors caused the conditions they diagnosed.<sup>15</sup> Dr. Le-Pham commented that appellant experienced stress-related chest pains at work and that these chest pains “only happened in a particular area of mail.” He did not describe or identify the “particular area of mail” or explain how this “area” caused the conditions he diagnosed. Dr. Le-Pham did not specifically identify or describe appellant’s employment duties or explain how they caused appellant’s alleged chest pains, cardiac or emotional conditions. Furthermore, he did not discuss the established employment factors or explain how they caused appellant’s alleged condition. Thus, this evidence does not establish the required causal relationship.

The Board notes that appellant submitted a note bearing an illegible signature. Such a note does not qualify as competent medical evidence because it lacks proper identification demonstrating that it was prepared by a physician.<sup>16</sup> Thus, this evidence does not establish a causal relationship between the identified employment factors and appellant’s condition.

An award of compensation may not be based on surmise, conjecture or speculation.<sup>17</sup> Neither the fact that appellant’s claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.<sup>18</sup> The fact that a condition manifests itself or worsens during a period of employment<sup>19</sup> or that work activities produce symptoms revelatory of an underlying condition<sup>20</sup> does not raise an inference of causal relationship between a claimed condition and employment factors.

Because the medical evidence contains no reasoned discussion of causal relationship, one that soundly explains how the established employment factors caused or aggravated a diagnosed medical condition, the Board finds appellant has not established the essential elements of causal relationship.

### CONCLUSION

The Board finds appellant has not established that she sustained a cardiac or emotional condition in the performance of duty causally related to her employment.

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<sup>15</sup> See *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

<sup>16</sup> See *R.M.*, 59 ECAB \_\_\_ (Docket No. 08-734, issued September 5, 2008); *Richard Williams*, 55 ECAB 343 (2004).

<sup>17</sup> *Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant’s subjective symptoms and self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

<sup>18</sup> *D.I.*, 59 ECAB \_\_\_ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

<sup>19</sup> *E.A.*, 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

<sup>20</sup> *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson*, 12 ECAB 155, 157 (1960).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 15 and April 28, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 14, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board