

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

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**P.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Fort Lauderdale, FL, Employer**

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**Docket No. 11-177  
Issued: August 9, 2011**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On October 28, 2010 appellant filed a timely appeal from the September 21, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her emotional condition claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> and 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 December 30, 2007 appellant, then a 51-year-old letter carrier, filed a claim for occupational disease, alleging that her work environment caused her to sustain panic attacks.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> OWCP had previously denied appellant's claim that she sustained an emotional condition due to factors at work on September 9, 2006. This matter is not the subject of the present appeal.

Appellant claimed that management unfairly overburdened her mail delivery route by about 30 to 45 minutes depending on mail volume. She was not given any route assistance, but stated that when she was off work the people who covered her route, whether experienced or not, were given more time. Appellant claimed that, during conversations on December 17 and 18, 2007, a supervisor fabricated a conversation with her. She alleged that she was unfairly denied one hour of leave on December 18, 2007 for a doctor's appointment. On December 17, 2007 appellant requested an hour of leave for the next day and gave the request form to a manager other than Joanne Fleszar, her immediate supervisor, because Ms. Fleszar was leaving for the day. On December 18, 2007 Ms. Fleszar directed someone to go home early due to lack of work, but did not allow appellant to leave early as previously arranged. Appellant contended that her request was unfairly denied due to lack of medical documentation. She claimed that she was forced to work on weekends despite her medical restrictions and that her 1999 knee injury had been an "open issue" on the workroom floor and had been improperly discussed in front of coworkers. Appellant asserted that she had been harassed by coworkers for having had an injury and for working with restrictions and claimed that different supervisors had dealt with her work restrictions in different manners.<sup>3</sup>

In a January 30, 2008 statement, Ms. Fleszar stated that appellant had been working in a limited-duty position due to a 1999 knee injury and asserted that her delivery route was appropriate given her medical condition. She made no announcement about anyone going home on December 18, 2007 and explained that she properly denied appellant's leave request based on her failure to submit adequate medical documentation. Ms. Fleszar denied that she harassed appellant or improperly discussed her medical condition with her coworkers.

In an April 8, 2008 decision, OWCP denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors.

Appellant requested a hearing before OWCP's hearing representative. At the November 18, 2008 hearing, she further discussed her work. Appellant reiterated that coworkers had harassed her due to her medical condition and called her "sick, lame and lazy." She claimed that harassment in the workplace was not adequately addressed by management.

In a February 11, 2009 decision, OWCP's hearing representative set aside OWCP's April 8, 2009 decision and remanded the case for further development. Appellant indicated that OWCP had not adequately considered several claimed work factors, including those relating to her mail delivery route or harassment by coworkers.

The employing establishment submitted a March 24, 2009 statement advising that appellant's mail delivery route was in accordance with the relevant procedures and that her leave requests were properly denied. It asserted that she was given appropriate support for her mail route and that she was not treated differently from similarly situated employees.

In a May 5, 2009 decision, OWCP again denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors.

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<sup>3</sup> Appellant also submitted several medical reports regarding treatment of her psychiatric condition.

In a January 14, 2010 decision, OWCP's hearing representative set aside the May 5, 2009 decision and remanded the case for further development. She directed OWCP to obtain further information about appellant's claimed work factors, including her claim that her mail delivery route required delivery of more mail than those of her coworkers and her claim that the issue of workplace violence was not adequately addressed by management.

The employing establishment provided a February 4, 2010 statement in which it noted that appellant's mail delivery route was not heavier than her coworkers' routes and stated that all employees were appropriately advised about the zero tolerance rule for workplace violence. It reiterated that her leave requests were properly denied.

Appellant requested another hearing before OWCP's hearing representative and, at an August 3, 2010 hearing, she further discussed her claimed employment factors.

In a September 21, 2010 decision, OWCP's hearing representative denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment 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 her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.<sup>4</sup> 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>5</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>6</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>7</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>8</sup>

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<sup>4</sup> 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>6</sup> *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>7</sup> *William H. Fortner*, 49 ECAB 324 (1998).

<sup>8</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.<sup>9</sup> However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.<sup>10</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>11</sup> This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.<sup>12</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, 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>13</sup> If a claimant does implicate a factor of employment, OWCP 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, OWCP must base its decision on an analysis of the medical evidence.<sup>14</sup>

### ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of several employment incidents and conditions. OWCP denied her emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must initially review whether the alleged incidents and conditions of employment are covered employment factors under the terms of FECA. The Board notes that appellant's allegations do not pertain to her regular or specially assigned duties under *Cutler*.<sup>15</sup> Rather, she has alleged error and abuse in administrative matters and harassment and discrimination on the part of her managers and coworkers.

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<sup>9</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>10</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>11</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>12</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>13</sup> *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>14</sup> *Id.*

<sup>15</sup> *See Lillian Cutler*, *supra* note 4.

Appellant alleged that the employing establishment committed error and abuse with respect to various administrative matters. She claimed that management unfairly overburdened her mail delivery route relative to those of her coworkers and that she was not given adequate support on her route. Appellant alleged that she was improperly denied leave, particularly regarding her request for leave on December 18, 2007, and that management did not adequately or fairly account for her medical condition in assigning work duties. She also claimed that management did not adequately address policies regarding harassment and violence in the workplace. Although these matters are generally related to appellant's employment, they are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and would only be covered if the employing establishment committed error or abuse with respect to them. The standard for evaluating the existence of such error or abuse is reasonableness.<sup>16</sup>

The Board finds that appellant has not established error or abuse by management with respect to these administrative matters. Appellant indicated that she filed grievances with respect to some of these matters, but she did not submit favorable holdings of grievances or other probative evidence supporting her belief that such wrongdoing occurred. On appeal she alleged that the employing establishment repeatedly violated the national agreement between management and employees. However, appellant did not submit any evidence to support this assertion. Therefore, she has not established any compensable employment factors with respect to administrative or personnel matters.

Appellant alleged that coworkers harassed her by making light of her medical condition, including making references to her as being sick and lazy. She also claimed that supervisors harassed her by unnecessarily discussing her medical condition with coworkers. In the present case, the employing establishment denied that appellant was subjected to harassment and appellant has not submitted sufficient evidence to establish that she was harassed by her supervisors or coworkers.<sup>17</sup> Appellant alleged that supervisors and coworkers made statements and engaged in actions which she believed constituted harassment, but she provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.<sup>18</sup> Thus, she has not established any compensable employment factors under FECA with respect to the claimed harassment.

For the foregoing reasons, appellant has not established any compensable employment factors under FECA 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>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

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<sup>16</sup> See *supra* notes 6 through 8.

<sup>17</sup> See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

<sup>18</sup> See *William P. George*, 43 ECAB 1159, 1167 (1992).

<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).

**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.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 21, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 9, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board