

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

D.E., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
North Benton, OH, Employer**

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**Docket No. 10-1976
Issued: June 22, 2011**

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 27, 2010 appellant filed a timely appeal from the March 22, 2010 Office of Workers' Compensation Programs' (OWCP) decision, which affirmed the denial of her emotional condition claim. Pursuant to the Federal Employees' Compensation Act¹ 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 has met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On July 8, 2009 appellant, then a 53-year-old postmaster filed an occupational disease claim alleging that she sustained stress, depression, and anxiety when she was subjected to questioning regarding specific financial transactions that were conducted in her current and

¹ 5 U.S.C. § 8101 *et seq.*

former jobs with the employing establishment. She alleged that she first realized the disease or illness was caused or aggravated by her employment on April 6, 2009. Appellant stopped work on July 21, 2009.

In separate statements identified as attachment 16 and 13, appellant noted that her office was audited at the end of March 2009. She explained that she was targeted regarding her use of her personal credit card to purchase stamps. Appellant noted that she was questioned extensively and then issued a letter of indebtedness from the employer demanding that she pay it \$740.06. She noted that she was advised that this amount was for transaction fees charged to the employing establishment with regard to her using her credit card. However, there was no explanation as to how the amount was calculated. Appellant also noted that the employing establishment was aggressive in pursuing this amount without any regulations to show what regulations she had violated or why it could collect the fees.

On August 11, 2009 OWCP advised appellant of the type of evidence needed to establish her claim. It also requested that the employer submit additional evidence.

OWCP received additional evidence which included an August 17, 2009 statement from Bethany Snyder, a manager in health and resource management with the employing establishment. Ms. Snyder controverted the claim noting that appellant's condition was a reaction to an administrative matter, involving a predisciplinary hearing. She indicated that the matter was related to the purchase of stamps using appellant's own personal credit card and then reselling the stamps to businesses outside that area. Ms. Snyder indicated that appellant's use of her own credit card to purchase the stamps was "essentially the same as stealing business away from her neighboring post offices, as they would have gotten credit for the business." She alleged that appellant suggested that her post office would go out of business if local businesses did not support it. Ms. Snyder noted that a newspaper published a story in which the local retirement community took credit for saving appellant's post office from being shut down because they purchased 8,940 forty-one cent stamps. She explained that this artificially inflated sales for appellant's work location and affected her pay rates. Ms. Snyder noted that appellant would buy the stamps with her own credit card and then have the local businesses pay her directly. She stated that the employing establishment incurred fees totaling \$740.06 that were charged by the credit card company for purchases at issue due to appellant's use of her personal credit card. Ms. Snyder indicated that appellant also received usage points on her credit card. She explained that appellant was given a predisciplinary interview in order to determine if there would be discipline due to her actions; however, she was given a proposed letter of warning in lieu of a 14-day suspension. A copy of the July 15, 2009 proposed letter of warning was submitted along with a copy of the employer's policy on cash and cash equivalents.

Appellant also submitted medical evidence. This included an August 12, 2009 report from Dr. Linda Beeler, a clinical psychologist, who noted treating appellant for symptoms of depression following misconduct allegations by her employer, and a July 15, 2009 report from Dr. George Ellis, a Board-certified internist, who opined that appellant had a work-related acute stress reaction.

In a response received August 28, 2009, appellant noted that the audit did not cause her medical situation, but rather, she alleged that she was being investigated under the guise of an

audit because of a complaint from another postmaster that she stole his customers, and that it was really not an audit but rather a fishing expedition. She asserted that the employer's handbook provided that personal purchases with credit cards were acceptable. Furthermore, appellant provided the service to local businesses because they did not want to wait five to seven days to get stamps by mail. A copy of the handbook pertaining to payments was provided. She also noted that she received a letter of praise from the local business regarding her professionalism and service and provided a copy of the letter from the business. Appellant believed that she was targeted because she filed a discrimination complaint. She also believed that she was targeted because she was the president of the local postmaster organization, or because the auditor asked her out and she refused his advances. Appellant also noted that she feared the loss of her job and pension as a result of the employing establishment's actions.

Appellant also provided documents pertaining to her appeal of the notice of debt collection. They included the request for a cost break down, and a petition for hearing, which was held on October 28, 2009. Appellant also provided a copy of the administrative law judge's findings under the Debt Collection Act. The administrative law judge determined that the employing establishment failed to meet its burden of proof to establish entitlement to the debt and that they could not collect the \$740.06. He found that the employer did not clearly establish a link between appellant's purchase and resale of stamps and transaction fees charged by the bank. The administrative law judge found that, while the purchaser of resold stamps from appellant may have previously not used a credit card to purchase directly from the employing establishment, this alone did not establish that it would have acted in the same manner in the future.

By decision dated January 29, 2010, OWCP denied the claim for compensation finding appellant had not attributed her condition to employment incidents that occurred in the performance of duty.

On February 13, 2010 appellant requested reconsideration. She alleged that the claimed incidents occurred in the performance of her duties. Appellant noted that the purchasing of stamps and use of her credit card was an employment factor and was permitted under employer regulations. She alleged that the audit, receiving a letter of demand for the transaction fees, her proposed letter of warning, the preliminary disciplinary investigation and appeal under the Debt Collection Act were all employment factors. Appellant reiterated that she believed the audit was a fishing expedition as the audit did not focus on current records but rather, it focused on records dating back four to five months and financial records from a previous office. She confirmed the case number for her discrimination complaint and noted that she was currently awaiting a hearing. Appellant asserted that she was targeted by the employer and questioned why OWCP did not seek statements from employees or other postmasters who engaged in the same transactions with businesses but were not subjected to actions by the employer. She referred to three postmasters by name. Appellant feared for her job and pension as the employer embellished the transactions between her and the businesses to suit the charges against her. She alleged that she was advised that she would be fined and demoted. Appellant argued that the employer's issuing a demand letter was clearly error and an abuse and unreasonable. She noted findings from the administrative law judge and stated that she was found not responsible for the debt because the employer did not show that she violated any postal regulations. Appellant noted that OWCP was not in a position to interpret the administrative law judge's findings. She

alleged that the employing establishment attempted to coerce her into dropping her appeal and paying the debt as a condition to reduce disciplinary action. Furthermore, appellant asserted that her reputation was destroyed. She also refuted employing establishment claims that her actions inflated sales in her location while decreasing sales in other locations. Appellant noted that she provided faster service and the local businesses were free to choose where to purchase stamps.

OWCP received a copy of an order from the Equal Employment Opportunity (EEO) Commission directing the employing establishment to produce the complaint file, a hearing request form from the National EEO investigative services, and a June 23, 2009 no agreement letter advising that appellant and the employer were unable to resolve their EEO dispute through mediation.

By decision dated March 22, 2010, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every illness that is somehow related to an employee's employment. There are situations where an injury or 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 regular or specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. 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 frustration from not being permitted to work in a particular environment or to hold a particular position.²

An employee has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition, for which he claims compensation was caused or adversely affected by employment factors.³ 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.⁴

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 the physician when providing an opinion on causal relationship and, which working conditions are not deemed factors of employment and may not be considered.⁵ 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 the

² See *Lillian Cutler*, 28 ECAB 126 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

matter establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.⁶

ANALYSIS -- ISSUE 1

The Board must thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleges that her regular or specially assigned duties as a postmaster included the purchasing and selling of stamps to businesses outside her postal area, and paying for the stamps with her own personal credit card. While selling stamps is part of her regular duties, there is no evidence supporting that purchasing stamps with her personal credit card and reselling them to local businesses is part of her regular or specially assigned duties. In any event, she does not allege that selling these stamps in the normal course of her work caused her emotional condition. Instead, appellant asserts that her condition arose due to the employer's investigatory and disciplinary actions that it undertook after it learned that she was reselling stamps. Thus, as appellant had not attributed her claimed condition to her regular or specially assigned duties, she has not established a compensable work factor under *Cutler*.⁷

Appellant's allegations regarding the employing establishment's investigation and disciplinary actions relate to administrative and personnel actions. In *Thomas D. McEuen*,⁸ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁹

Appellant's allegations that the employing establishment targeted her by auditing her at the end of March 2009, issuing a demand letter seeking repayment of \$740.06 in transaction fees related to her personal stamp purchasing and reselling activities, and issuing a letter of warning related to administrative or personnel matters, unrelated to the employee's regular or specially

⁶ *Id.*

⁷ *See supra* note 2.

⁸ *See* 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁹ *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

assigned work duties and do not fall within the coverage of the Act.¹⁰ Investigations are also an administrative function of the employer.¹¹

The employing establishment explained that appellant's actions of purchasing stamps using her own credit card and then reselling the stamps to businesses outside the area covered by her employing establishment adversely affected the business operations of neighboring post offices. Ms. Snyder indicated that appellant suggested that her employing establishment would go out of business if they did not support her post office and referenced a local story in which a retiree purchased large quantities of stamps to prevent the post office from being shut down. She explained that this artificially inflated sales for appellant's work location and affected her pay rates. Ms. Snyder noted that appellant was given a predisciplinary interview and ultimately she was given a proposed letter of warning instead of a suspension. Although, the administrative law judge found that the debt incurred by the employer from credit card transaction fees was not recoverable, the Board does not find the actions of the employing establishment in pursuing this matter amounted to error or abuse. In this instance, appellant's allegations do not show that the employing establishment retaliated or acted improperly in this matter. As noted, the employer explained its business concerns regarding appellant's activities, it interviewed appellant and gave her a letter of warning. While appellant asserted that three other postmasters engaged in similar practices and were not subjected to the same treatment, she did not submit any statements from these persons supporting her assertions that the employer acted unreasonably toward her in its administrative capacity. Although a demand was made for the transaction fees, the record reflects that the administrative judge denied collection of these. The administrative law judge did not make a finding suggesting employer abuse but instead found that, under the governing authority, the employer did not sufficiently establish a link between appellant's purchase and resale of stamps and transaction fees charged by the bank. Appellant has not established a compensable employment factor with respect to these administrative matters.

To the extent that appellant is alleging that the employing establishment targeted or harassed her to make an example of her under the ruse of auditing her with respect to the sale of stamps by using her personal credit card, or because she was president of the local postmaster association, or because she refused the advances of the auditor, these could constitute employment factors.¹² 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.¹³ In the present case, there is no evidence that appellant was subjected to harassment or discrimination or targeted because of her status as the president of the local postmaster association or because she refused an auditor's advances. Appellant did not submit sufficient evidence to support her allegations to establish that she was harassed or discriminated against by

¹⁰ 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).

¹¹ See *J.C.*, 58 ECAB 594 (2007).

¹² *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹³ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

her supervisors.¹⁴ While she asserted that other postmasters engaged in similar practices and did not receive similar treatment, she did not provide statements from them or other evidence that would tend to support that she was disparately treated.

Appellant also noted that she filed an EEO complaint and advised that a hearing is pending. Grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.¹⁵ While there is an ongoing EEO process related to the audit, there are no findings from the EEO process supporting appellant's allegations. Consequently, appellant has not established a compensable employment factor with respect to her claims harassment and discrimination.

Appellant also alleged that she feared losing her job and her pension. The Board has held that disability is not compensable when it relates to the fear of losing one's job or job insecurity.¹⁶ Appellant has not met her burden of proof in establishing a compensable factor of employment in this regard.

As appellant has not established a compensable employment factor, it is not necessary to address the medical evidence.¹⁷

CONCLUSION

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

¹⁴ 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).

¹⁵ *C.S.*, 58 ECAB 137 (2006); *T.G.*, 58 ECAB 189 (2006).

¹⁶ *Supra* note 2. See *Purvis Nettles*, 44 ECAB 623, 628 (1993).

¹⁷ *Garry M. Carlo*, 47 ECAB 299 (1996). See *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 22, 2010 is affirmed.

Issued: June 22, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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