

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

C.R., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Barberton, OH, Employer

)
)
)
)
)
)
)
)
)
)

**Docket No. 10-1942
Issued: May 20, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 21, 2010 appellant filed a timely appeal from a June 22, 2010 decision of the Office of Workers' Compensation Programs that denied her 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 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's attorney asserts that the decision is contrary to fact and law.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On April 1, 2009 appellant, then a 49-year-old letter carrier, filed an occupational disease claim for depression and post-traumatic stress disorder. She alleged that, since being put on restrictions for employment-related carpal tunnel syndrome, she became stressed trying to complete her route on time and was pressured by management and her fellow employees. Appellant first became aware of her illness on November 8, 2007 and its relationship to her employment on approximately January 1, 2008. She stopped work on March 14, 2009.

In letters dated May 4, 2009, the Office informed appellant of the evidence needed to support her claim and asked the employing establishment to respond. The employer controverted the claim and submitted an unsigned statement dated April 20, 2009.

In an undated statement, appellant alleged that on March 13, 2009 she was given nine hours of mail to deliver in eight hours. She stated that this occurred almost daily for the previous two years, but on that day the postmaster told her to shut up and do it. Appellant related that she could not finish her deliveries and, by the end of the day, became sick and was hospitalized in a psychiatric ward. She alleged that the postmaster would follow her on her route and threaten her with suspension if she could not complete it, she had never been treated for anxiety or stress prior to March 13, 2009 when she suffered a nervous breakdown as the result of years of harassment by the postmaster. Appellant submitted a description of modified, full-time letter carrier duties showing that she could work up to 8 hours a day, 5 days a week, for no more than 40 hours a week. A December 17, 2008 grievance settlement advised that a letter of 14-day suspension would stay in her file for 9 months and then be removed. In an April 9, 2009 letter, an Equal Employment Opportunity (EEO) specialist at the employing establishment advised appellant that there was no resolution regarding her claim that she was discriminated against on March 13, 2009.²

On March 14, 2009 a Dr. Deckert advised that appellant was released to return to work on Monday March 23, 2009.³ In a March 24, 2009 treatment note, David Aronson, Ph.D., a clinical psychologist, noted that appellant had recently been hospitalized in a psychiatric unit. He described her report that she was placed on light duty due to carpal tunnel syndrome and did fine until a new supervisor began harassing her. Dr. Aronson diagnosed post-traumatic stress disorder and major depression. On an April 13, 2009 Family and Medical Leave Act application, he advised that appellant could not focus or concentrate and was unable to work through December 31, 2009. On April 28, 2009 Dr. Aronson informed the employing establishment that she was unable to work due to her depression and post-traumatic stress disorder. On May 12, 2009 he advised that appellant was experiencing severe post-traumatic stress disorder and major

² The letter indicates that appellant alleged that she was discriminated against on the basis of sex, age and physical disability when, on March 13, 2009, after denying her request for assistance, management openly chastised her and this caused a physical and mental breakdown. Appellant also initially asserted that her emotional condition was also caused by a December 26, 2008 event at work when a coworker collapsed and later died. She stated that she was the only one there to help him. Appellant later advised that she did not think this event caused her condition. The postmaster also addressed the December 26, 2008 incident.

³ The physician is not further identified.

depression and could not work in any environment. Once appellant's conditions were controlled, she should be reassigned to a less stressful location under a different supervisor.

In an undated statement, appellant maintained that trying to get her job done within her eight-hour restriction caused her condition. She related that she had begged the postmaster to evaluate her route. On July 14, 2009 Dr. Aronson advised that appellant could not return to work before December 31, 2009.

In a July 21, 2009 statement, the postmaster related that, on March 13, 2009, at approximately 7:40 a.m., she approached appellant and instructed her on what mail had to go and what could stay and that appellant should only work eight hours due to her carpal tunnel restrictions. She then went to the next carrier. At approximately 9:15 a.m., the postmaster was sitting at her computer, and heard appellant yell that she was leaving an hour and a half late and would be bringing mail back. She told appellant she had failed to follow her previous instructions to all carriers that they were to notify her when they were ready to pull down so that she could make the determination if they should delay mail, receive assistance, or work overtime. Had she been notified, the postmaster would not have to force other employees to work overtime to carry appellant's mail. In response, appellant yelled that she did not care if someone else had to carry the mail. The postmaster called appellant to her office and told her of her expectations gave instructions. She related that appellant was very angry and left. The postmaster noted that route adjustments had been implemented a few weeks before the March 13, 2009 incident. Prior to the adjustment, appellant's route was short and after the change appellant became upset. She told appellant that changes could not be made for 60 days, at which time the new route would be reassessed. In a separate statement, the postmaster stated that it was her job to walk carriers' routes with them a minimum of once a year to complete street supervision, and that almost daily appellant would ask her to bring her mail out to her, which she did. Until recently, the postmaster had a good relationship with appellant. Appellant had no discipline in her file and the postmaster denied that appellant was harassed or threatened with a suspension.

By letter dated July 23, 2009, in response to a pending EEO claim against the postmaster, the union branch president advised that no carrier at the station had received discipline for expansion of street time. When the routes were changed on March 5, 2009, there were some errors but all the routes were later adjusted. The union branch president stated that appellant complained to him about her new route, and he explained that adjustments could not be made for 60 days. He stated that he was not present during the March 13, 2009 incident, but that he interviewed witnesses and concluded that there was not enough evidence to file a grievance. There was no one to substantiate appellant's EEO claim. The union branch president noted that appellant was not disciplined for the incident and had no discipline in her file.

On August 19, 2009 the Office asked the employer to respond to appellant's allegation that she was given nine hours of mail and was expected to deliver it in eight hours, and to explain what provisions were made to ensure that she worked within her eight-hour restriction. The employing establishment was to further confirm whether appellant was told "shut up and do it" on March 13, 2009 and whether the statement was witnessed, and whether appellant was told not to take a lunch or a break at the direction of management in order to timely complete her route.

On August 24, 2009 the postmaster responded that appellant was given eight hours of work, not nine hours. When she did not deliver all the mail, she would bring the mail back and did not work beyond the eight-hour restriction. The postmaster stated that she never told appellant to “shut up and do it” or to skip breaks or lunch.

By decision dated September 15, 2009, the Office found that appellant had not established a compensable factor of employment and denied the claim.

Appellant timely requested a review of the written record.⁴ In a March 24, 2009 report, Dr. Aronson advised that he was treating appellant for depression and post-traumatic stress disorder and that she could not work due to the severity of the symptoms. He also provided notes dated March 24 to November 3, 2009 describing appellant’s treatment.

In a June 22, 2010 decision, an Office hearing representative found that appellant failed to establish a compensable factor of employment and affirmed the September 15, 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.⁵ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.⁶ 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.⁷

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*,⁸ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Act. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁹ 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

⁴ Appellant, through her attorney, initially requested a hearing.

⁵ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁶ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁷ *Id.*

⁸ 28 ECAB 125 (1976).

⁹ See *Robert W. Johns*, 51 ECAB 137 (1999).

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.¹⁰ Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.¹¹ Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.¹² Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹³

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.¹⁴ 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.¹⁵

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.¹⁶ 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 EEO 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.¹⁷

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of employment factors. By decision dated September 15, 2009, the Office found that she had not established a

¹⁰ *Lillian Cutler*, *supra* note 8.

¹¹ *J.F.*, 59 ECAB 331 (2008).

¹² *M.D.*, 59 ECAB 211 (2007).

¹³ *Roger Williams*, 52 ECAB 468 (2001).

¹⁴ *Charles D. Edwards*, 55 ECAB 258 (2004); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991).

¹⁵ *Kim Nguyen*, 53 ECAB 127 (2001).

¹⁶ *James E. Norris*, 52 ECAB 93 (2000).

¹⁷ *Beverly R. Jones*, 55 ECAB 411 (2004).

compensable factor of employment and denied the claim. The decision was affirmed by an Office hearing representative on June 22, 2010. The Board must, thus, initially review whether the incidents and conditions of employment alleged by appellant to have caused her condition are covered employment factors under the Act.

Appellant attributed her emotional condition to the events of March 13, 2009 and the actions of the postmaster. She asserted that she was given nine hours of mail to deliver in eight hours on March 13, 2009 and was not given any assistance. This, however, is not supported by the record. Both the postmaster and the union president noted that all routes were changed several weeks previously. The postmaster maintained that appellant's route had been light before the change, and that when she complained about her new route, both the postmaster and the union president advised that postal policy provided that nothing could be done for 60 days, and the routes would be reassessed at that time. As noted, workers' compensation law does not cover an emotional reaction to an administrative or personnel action unless the evidence establishes error or abuse on the part of the supervisor.¹⁸ Assigning work is an administrative function of a supervisor. Frustration from not being permitted to work in a particular environment or to hold a particular position is not covered by workers' compensation.¹⁹ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.²⁰ Here the evidence did not establish that appellant was given too much work on March 13, 2009, as alleged. Appellant also experienced stress in trying to accomplish her regular and specially assigned duties. Appellant advised that the constant pressure of trying to get her job done within her eight-hour restriction caused her emotional condition. It is her reaction to the requirements imposed by the employer that provides a basis for compensability. Appellant claimed that stress related to her regular and specially assigned duties caused her emotional condition. Given that these duties were part of her job requirements, the Board finds that she has established a compensable employment factor under *Cutler*.²¹

The postmaster denied appellant's assertion that she told her to shut up and threatened her with suspension. A verbal altercation, when sufficiently detailed by the claimant and supported by the evidence, may constitute a compensable employment factor.²² This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.²³ The union president explained that he could find no one to support appellant's allegation and an EEO specialist explained that there was no resolution regarding appellant's claim that she was discriminated against on March 13, 2009. The Board finds that the evidence of record does not

¹⁸ *Supra* note 14.

¹⁹ *Cynthia R. Harrill*, 55 ECAB 522 (2004).

²⁰ *Lori A. Facey*, 55 ECAB 217 (2004).

²¹ *Beverly R. Jones*, *supra* note 17.

²² *C.S.*, 58 ECAB 137 (2006).

²³ *J.C.*, 58 ECAB 594 (2007).

establish that the postmaster told appellant to shut up on March 13, 2009. Appellant did not establish a factual basis for her allegation of verbal abuse.²⁴

As to appellant's allegation that the postmaster improperly monitored her route, monitoring work is an administrative function of a supervisor. Absent error or abuse, it does not fall within coverage of the Act.²⁵ The postmaster explained that as part of her supervisory duties, she walked with carriers their entire route at least once a year to complete street supervision. Appellant has not submitted sufficient evidence to show that the employing establishment erred in monitoring her route and thus did not establish a compensable employment factor with respect to this administrative matter.²⁶

Regarding her general allegation of harassment by the postmaster, mere perceptions of harassment or discrimination are not compensable under the Act,²⁷ 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,²⁸ and appellant submitted no witness statement or other supportive evidence that she was harassed. As related earlier, both the EEO specialist and the union president found no evidence to support appellant's EEO claim. Appellant submitted no evidence to show a persistent disturbance, torment or persecution, *i.e.*, mistreatment by the postmaster or other members of employing establishment management,²⁹ she did not establish a factual basis for her claim of harassment by probative and reliable evidence.³⁰

As appellant established a compensable factor of employment regarding her reaction to trying to get her regular job duties completed within an eight-hour period, the Office must base its decision on an analysis of the medical evidence. The case will therefore be remanded to the Office to analyze and develop to medical evidence.³¹ After such further development deemed necessary, the Office shall issue an appropriate decision on the merits of this claim.

CONCLUSION

The Board finds that, as appellant established a compensable employment factor.

²⁴ *C.S., supra* note 22.

²⁵ *Lori A. Facey, supra* note 20.

²⁶ *Id.*

²⁷ *James E. Norris, supra* note 16.

²⁸ *Id.*

²⁹ *Beverly R. Jones, supra* note 17.

³⁰ *See Robert Breeden, 57 ECAB 622 (2006).*

³¹ *Tina D. Francis, 56 ECAB 180 (2004).*

ORDER

IT IS HEREBY ORDERED THAT the June 22, 2010 decision of the Office of Workers' Compensation Programs be affirmed in part and set aside, in part. The case is remanded to the Office for proceedings consistent with this opinion of the Board.

Issued: May 20, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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