United States Department of Labor
Employees' Compensation Appeals Board

K.K., Appellant	)	
	)	**Docket No. 11-1374**
and	)	**Issued January 4, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Boston, MA, Employer	)	

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 17, 2011 appellant filed a timely appeal from a December 21, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her traumatic emotional injury claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) 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 sustained a stress-related injury on June 18, 2010 in the performance of duty.

FACTUAL HISTORY

On July 7, 2010 appellant filed a claim alleging that on June 18, 2010 she sustained emotional stress and anxiety when she was arrested for violating a restraining order. She stopped work on June 18, 2010 and did not return.

[1] 5 U.S.C. § 8101 *et seq.*

In an e-mail message dated July 13, 2010, James M. Kenneally, a manager, related that appellant informed him after bidding on a route that a customer on the route had a restraining order against her. The customer was "a male neighbor of [appellant]" who had initially obtained a restraining order against her in October 2008. Mr. Kenneally arranged for another carrier to deliver mail within the boundaries of the restraining order. He stated:

> "On June 18th [2010] I instructed supervisor Jerry Rogers to observe [appellant] on her route because there were many issues when she worked with timeliness, [nondelivery] complaints and customers calling complaining that their mail was often late. [Mr.] Rogers was there to observe in order to possibly make improvements to the route. Both [Mr.] Rogers and [appellant] were told this is not an inspection or training session. I do not believe that Mr. Rogers was aware of a restraining order but instead knew that she could not deliver a couple of houses on [a street] due to a customer issue…. [Mr.] Rogers told me that [appellant] told him about a restraining order when they were already in this little neighborhood and he thought he was helping her get out because they were on a dead end street and had to get by this guy who was out on the street. He further said that he never instructed her on any part of her delivery."

In a statement dated June 18, 2010, Mr. Rogers related that on that date he performed street supervision on appellant. He asserted that she told him that "a man that we observed pacing along the sidewalk in front of us had a 'restraining' order on file that prohibited [her] from being within 15 yards of him or his residence." Mr. Rogers stated:

> "I made eye contact with the man and greeted him. The man returned the greeting. I asked how he was doing and his response was 'I'm good.'
>
> "Shortly thereafter several [police] officers arrived at the scene. After a brief discussion they placed handcuffs on [appellant] and took her into custody."

In a decision dated August 27, 2010, OWCP denied appellant's claim after finding that she did not establish that the alleged work incident occurred as alleged.

In a police report dated June 18, 2010, received by OWCP on August 30, 2010, a police officer described a man's allegation that appellant violated an abuse prevention order by walking by him three times. The police officer related:

> "[Appellant] stated that she is an [employing establishment employee] and was working her route today, and she has been doing the same route for over a year, and has not had a problem. She stated that she was with a postal inspector, [Mr.] Rodgers walking the route today for evaluation purposes. [Appellant] stated that she was aware of the order and that she did walk by the house, but was on the other side of the road, which I observed to still be within the 15 yards. [She] also stated that she usually will cut through yards to avoid contact, but with the evaluation she walked directly down the street."

The police officer arrested appellant for violating the restraining order.

In an affidavit dated August 23, 2010, appellant related that she informed Mr. Rogers that she could not come closer than 15 yards to one of the houses. She stated, "He told me not to worry about it and to stay on his left side." The man who had the restraining order on appellant was outside. Appellant related that Mr. Rogers ordered her to walk past the house three times and that she was "100 [percent] positive of his clear and concise instructions to me." She attributed her emotional condition to him improperly instructing her to violate the restraining order and maintained that her arrest "resulted from his improper instruction/orders."

On September 28, 2010 appellant, through her attorney, requested reconsideration.[2] Counsel asserted that Mr. Rogers ordered appellant to walk by the address that had the restraining order against her. He maintained that Mr. Rogers' June 18, 2010 statement was "evasive" and did not contradict appellant's assertion that he directed her action.

In a December 9, 2010 report of telephone call, Mr. Rogers related that he was unaware of the restraining order. He further denied ordering appellant to walk by the address with the restraining order.

By decision dated December 21, 2010, OWCP modified the August 27, 2010 decision based on its finding that appellant's injury did not occur in the performance of duty. It found that the incident of June 18, 2010 was not caused or related to factors of her employment.

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 FECA.[3] 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.[4]

For an injury to be covered under FECA, the evidence must demonstrate that it occurred in the performance of duty. "In the performance of duty" is interpreted to be the equivalent of "arising out of and in the course of employment." "In the course of employment" deals essentially with the work setting and more particularly, the locale, time and circumstances of the injury or event. "Arising out of the employment" encompasses not only the work setting but also a causal concept, the requirement being that an employment factor caused the injury; it must be

[2] Appellant submitted medical evidence with her reconsideration request.

[3] 5 U.S.C. § 8101 *et seq.*; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

[4] *Gregorio E. Conde*, 52 ECAB 410 (2001).

related to the performance of day-to-day regular duties, to specially assigned duties, or to a requirement imposed by the employer.[5]

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 FECA.[6] 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.[7] 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.[8]

OWCP regulations provide that an employer who has reason to disagree with an aspect of the claimant's report shall submit a statement to OWCP that specifically describes the factual allegation or argument with which it disagrees and provide evidence or argument to support that position.[9] The applicable regulations further provide that the employer may include supporting documents such as witness statements, medical reports or records, or any other relevant information.[10] If the employer does not submit a written explanation to support its disagreement, OWCP may accept the claimant's report of injury as established.[11]

ANALYSIS

Appellant attributed her stress and anxiety to receiving improper instructions from Mr. Rodgers, a supervisor, which resulted in her arrest on June 18, 2010 for violating a restraining order. She asserted that she informed him accompanying her on her route that she was not able to come within 15 yards of one of the houses on her route because of a restraining order. Appellant maintained that Mr. Rogers told her to walk next to him as they passed the house, which violated the restraining order and resulted in her arrest. She has thus alleged error by the employing establishment in an administrative matter. As discussed, an administrative or personnel matter may be a compensable factor of employment where the evidence discloses error or abuse by the employing establishment.[12]

[5] *See* 5 U.S.C. § 8102(a); *George E. Franks*, 52 ECAB 474 (2001).

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

[7] *See William H. Fortner*, 49 ECAB 324 (1998).

[8] *M.D.*, 59 ECAB 211 (2007); *Ruth S. Johnson*, 46 ECAB 237 (1994).

[9] 20 C.F.R. § 10.117(a).

[10] *Id*.

[11] *Id*. at § 10.117(b); *see also Alice F. Harrell*, 53 ECAB 713 (2002).

[12] *See Doretha M. Belnavis*, 57 ECAB 311 (2006).

Mr. Kenneally, a manager, related that he instructed Mr. Rogers on June 18, 2010 to observe appellant on her route. Appellant informed Mr. Rogers of the restraining order while they were walking on her route. Mr. Kenneally related that Mr. Rogers "thought he was helping her get out because they were on a dead end street and had to get by this guy who was out on the street." In a statement dated June 18, 2010, Mr. Rogers related that appellant told him that a man in front of them on the sidewalk had a restraining order against her. He indicated that he greeted the man and that later a police officer arrived and arrested appellant. Mr. Rodgers did not elaborate on what happened between greeting the man who had obtained the restraining order and the arrival of the police or specifically respond to appellant's allegation that he instructed her to walk next to him within the area covered by the restraining order. While he informed OWCP in a telephone call that he had not ordered appellant to walk by the house with the restraining order, he did not provide any further details. As previously noted, Mr. Kenneally maintained that Mr. Rogers thought that he was helping appellant get past the man who had the abuse prevention order. Mr. Rogers, however, did not describe how he assisted appellant passing by the man standing outside his house. OWCP regulations provide that an employer who has reason to disagree with an aspect of the claimant's allegation should submit a statement that specifically describes the factual argument with which it disagrees and provide evidence or argument to support that position.[13] If the employer does not submit a written explanation to support its disagreement, OWCP may accept the claimant's report of injury as established.[14] The case will, consequently be remanded to OWCP to request that the employing establishment submit a detailed statement from Mr. Rogers describing the events of June 18, 2010. Following such further development as OWCP deems necessary, it should issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

[13] 20 C.F.R. § 10.117(a).

[14] *See supra* note 11.

ORDER

IT IS HEREBY ORDERED THAT the December 21, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: January 4, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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