

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

T.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Charleston, WV, Employer**

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**Docket No. 13-1064
Issued: September 24, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On March 27, 2013 appellant, through her attorney, filed a timely appeal from a January 23, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 an emotional condition in the performance of duty causally related to factors of her federal employment.

FACTUAL HISTORY

On January 23, 2012 appellant, then a 53-year-old postmaster, filed an occupational disease claim alleging that she sustained stress and depression causally related to factors of her federal employment. She attributed her condition to a threatening employee, being robbed at

¹ 5 U.S.C. § 8101 *et seq.*

gunpoint, a former postmaster stalking her and having a customer die in her lobby. Appellant stopped work on December 23, 2011.

In a psychiatric evaluation dated December 28, 2011, Dr. Lois Urick, a Board-certified psychiatrist, noted that appellant related that during her employment she had “experienced quite a number of traumatic and stressful events which have upset her a great deal. She reports that her anxiety about what might happen next is affecting her personally, and also affecting her ability to perform her job efficiently....” Dr. Urick diagnosed an anxiety disorder.

In a January 3, 2012 progress report, Dr. Urick diagnosed anxiety disorder and recurrent major depressive disorder and noted that appellant did “not appear to be doing well at this time at all....” She recommended that she remain off work December 27, 2011 to January 29, 2012. In a January 17, 2012 work restriction evaluation, Dr. Urick advised that appellant was disabled from work due to a lack of stress tolerance, depression and anxiety.

In a statement dated received February 9, 2012, appellant related that she began experiencing problems completing simple tasks about a year and a half ago. She stated, “I became short with my employees; avoided customers, and avoided leaving the office even for lunch.” From June to October 2011, appellant did not have a clerk. She worked without lunch breaks and several Saturdays to perform her own work and her clerk’s tasks. Appellant related that from April 2010 until the present Bill Kelly, a former postmaster, stalked her because she “asked his sister to move her mail box due to a safe hazard.” Mr. Kelly called her at work and followed her at lunch, when she left work and when she performed driver observations. Appellant stated, “I began driving different vehicles to work and parking behind the [employing establishment], he would then call my [manager] and report me off work. I called the inspection service and asked them to please call Mr. Kelly and get the stalking stopped. This did not help; he made statements in town that he was going to get me fired.” Mr. Kelly wrote a newspaper editorial about appellant which the newspaper refused to print. Appellant tried to get a copy but the newspaper refused and stated, “the man was not in his right state of mind just by the contents of the letter.” She related that she was afraid of Mr. Kelly.

Appellant further related that around 2007 one of her customers died in her lobby. She stated, “I called the 911 twice as I watched him turn blue while lying in the lobby.” In 2000 appellant was robbed at gunpoint while working at the window. She related, “I was moved out of state to work at another post office until they apprehended the man because I made a positive identification on the suspect. It took them three weeks to locate the man.” Appellant maintained that in 1998 there was a fire at her post office. She entered the office to get the mail with fireman spraying around her. In 1991 an employee related that he was going to shoot his wife and then return to work and kill all the employees. Inspectors came to investigate and found a holster and gun cleaning kit in his locker but no weapon.

In February 13, 2001 a crime victim’s compensation fund application indicates that appellant was robbed at gunpoint on January 10, 2001.

In an e-mail dated January 27, 2011, appellant informed management that it was “hard to do everything needed in this office and carry mail also.” She stated, “I am averaging 10 hours a

day without a lunch and have worked Holidays to Saturdays. MLK [Martin Luther King] Day, I cased two route and broke down the mail.”

In an e-mail message dated February 3, 2012, David Hamrick, a postmaster, related that from April to August 2010 he was the manager for appellant’s area. Appellant called him repeatedly about Mr. Kelly. Mr. Hamrick stated that he tried to talk with Mr. Kelly about the need for his sister to move her mailbox but he cancelled the meeting. He stated, “Mr. Kelly would also tell me that [appellant] was late for work and not in her office a lot of the time. I know that he was keeping tabs on her and possibly following her around, but I do [not] think there was ever any threat of violence.” Mr. Hamrick confirmed that appellant had spoken with inspectors about the matter and told him that she felt threatened.

On February 9, 2012 the employing establishment asserted that parts of all jobs could be considered stressful. Appellant’s duties as postmaster included “managing employees along with service and financial responsibilities.”

In a statement dated February 13, 2012, J.L. (Mike) Glass, a retired postmaster, related that on January 1, 1999 appellant telephoned him and told him that her work location was on fire. When he arrived there were fire trucks at the scene and smoke coming from the building. Mr. Glass stated that he “entered the building and assisted [appellant] and her [employee] recover all the mail, although some was scorched and some was wet.” They took the mail to another location and made a temporary office for residents to get mail. Mr. Glass stated, “It was a very stressful time, but after all that day and most of the evening, we were at least able to distribute mail to the customers....”

On February 13, 2012 Robin Hendershot, a postmaster who was appellant’s coworker and friend, described changes in her emotional state. She stated:

“She has had a lot of things happen to her at the [employing establishment] that I think have really affected her and finally become too much to handle. One of her favorite customers, Sammy, died in her lobby. She locked herself in her office and called me crying and all torn up asking ‘What do I do?’ To compound this situation she had a clerk off for something like [six] months during this time. She was working to the point where she could not even take a lunch. She missed [doctor’s] appointments during this time because she could not get a day off.

“Then, a former [p]ostmaster, a Mr. Kelley began constantly harassing her. This started from [appellant’s] decision as to where a mailbox needed to be located. Mr. Kelley escalated the situation to the point of following her when she left the [employing establishment] and for all practical purposes stalking her.

“He would call her manager and tell him that she left early or came in late. She got to the point where she did [not] even want to leave the [employing establishment] due to his harassment.”

In a statement dated February 14, 2012, Vicky Parnell, a postmaster, related that when appellant was postmaster several years ago her office was robbed at gunpoint and another office burned down. Appellant also told her about a former postmaster who stalked her.

In a February 13, 2012 statement, Cyndi Smith, an employing establishment employee, asserted that a customer died of a heart attack on December 5, 2006 in the lobby of the employing establishment.

In a form report dated February 15, 2012, Dr. Urick diagnosed major depressive disorder and anxiety disorder and checked “yes” that the condition was caused or aggravated by employment. She related that many work stressors precipitated the condition and worsened symptoms.

In a statement received February 22, 2012, appellant related that in the last year her symptoms increased. She experienced difficulty completing tasks. Appellant transferred to another location to escape Mr. Kelly but in the new office she had to carry mail and work as a postmaster, resulting sometimes in 10- to 12-hour days. When she returned to her usual office her mind wandered and her employees suggested counseling. Appellant stated, “Starting in 2010, I have [had] six different bosses, who each changed the requiring reports to do daily. This would be stressful to any employees.” She worked six days a week from 8:00 to 5:00 without lunch.² Appellant related, “I tried to get help from neighboring offices to loan in a clerk for relief but no one was available. The Appalachia District allows postmasters to take personal time if you have worked long hours but I was unable to take any time because I was the only employee available to work my office. There were several Saturdays that I worked during June 2000 through Oct[ober] 2001.” Appellant became upset and confused after taking her father to Florida and after making it through the December holidays was unable to return to work. She attributed her condition to long work hours, the “history of tragic events” during her career and Mr. Kelly’s actions.

In a report dated June 27, 2012, Dr. Urick discussed appellant’s history of a customer threatening her life in 1987, witnessing a drug transaction delivering mail in the early 1990s, a fire in the building where she was postmaster, being robbed at gunpoint in the early 2000s and having a customer die in front of her in the mid-2000s. He stated:

“During 2010 and 2011, [appellant] was stalked by a former postmaster (the stalking occurred at her place of employment as well as her home). [She] was traumatized by each event, but was able to get through most of them eventually with good social support. However, it appears that around mid-2011 she was experiencing significant difficulty dealing with the stressor of being stalked, and was having emotional problems which affected her ability to perform her job duties; our treatment team believes that these problems were due not simply to the stalking itself, but also to the cumulative effect of her past employment-related traumas.”

Dr. Urick discussed appellant’s symptoms and diagnosed major depressive disorder and anxiety disorder and opined that “her emotional problems are the result of her numerous employment-related traumatic events.”

² The record contains e-mail messages dated 2008 and 2009 between appellant and the employing establishment regarding her work hours in 2008 and 2009.

By decision dated July 31, 2012, OWCP denied appellant's claim after finding that the medical evidence did not establish that she sustained an emotional condition due to the compensable work factor of being robbed at gunpoint.

On August 3, 2012 appellant, through her attorney, requested a telephone hearing before an OWCP hearing representative.

On December 5, 2006 appellant telephoned the Employee Assistance Program (EAP) requesting help with recent trauma, including fire in her work location, being robbed at gunpoint and having that day one of her customers died in the lobby. The counselor noted that she was "crying and unable to speak...."

At the telephone hearing, held on November 2, 2012, appellant related on January 10, 2011 she was robbed at gunpoint while working in the lobby and later had to testify against the robber. She indicated that she had to drive pass that post office all the time, which caused anxiety and panic. Appellant had six different bosses between 2008 and 2011 or 2012 and each had different reporting rules. She had difficulty complying with the rules because of the changes. On December 7, 2006 a customer died in front of appellant. Appellant kept working but always thought about the customer. In 1999 she received a call at 4:00 a.m. that her location was on fire. Appellant went into the burning building to get the first of the month checks for her elderly customers. A former postmaster who retired because of "anger issues" began stalking her in 2010 after she asked his sister to move her mailbox. He would watch her at work and tell her supervisor if she left for anything, such as a doctor's appointment. Appellant drove three different vehicles to avoid the stalking. The stalking lasted more than a year. Appellant took a transfer to get away from the stalking. At the new office, two carriers were hurt so she assisted with the mail as well as performing postmaster duties. Appellant maintained that she was frustrated trying to carry out her duties as she could not get any help was the only person in the office and worked all day at the window without lunch. She had to work on Martin Luther King day and knew the next day she would have no help. Appellant apprised management of the situation. She had difficulty completing her duties and told her boss that if he could find someone to work 10 to 12 hours a day without lunch to please replace her. Appellant was sent back to Richwood, where the stalker was, and found that he had changed vehicles. The stalking continued. In 1987 a coworker threatened to kill all employees. In the 1990s appellant saw an illegal drug deal and was afraid for her safety. Appellant's attorney argued that she was frustrated trying to perform her work duties and that her condition deteriorated until she could not supervise or properly perform her duties.

In a statement dated November 28, 2012, Dawna Greathouse, with the employing establishment, related that managers did not change the rules and that a fire marshal's report and newspaper article did not mention anyone entering the building while still burning.³ She related that the former postmaster retired on regular retirement not due to anger issues and that appellant had an ill father.

³ A January 1, 1999 fire marshal's form report indicated that a building housing a post office and three apartments were destroyed by fire. A short clip from a newspaper article noted that a nightclub and apartments were destroyed in a fire and that the police were guarding the mail that was not destroyed. In a statement dated November 26, 2012, an employing establishment employee related that appellant went to Florida because her father was ill.

In an e-mail dated November 27, 2012, Mr. Hamrick related that Mr. Kelly reported appellant as late for work and followed her. He notified the inspection service at which point, to the best of his knowledge, the former postmaster stopped the harassment. Mr. Hamrick speculated that Mr. Kelly “could not entirely let the [employing establishment] go” as the reason for his actions.

By decision dated January 23, 2013, an OWCP hearing representative affirmed the July 31, 2012 decision as modified to show that appellant had established compensable work factors. She found that appellant had not established as compensable work factors that she witnessed a drug sale, that she was unable to take a lunch break and had to work long hours and that the reporting requirements were constantly changing. The hearing representative found that appellant had established the following compensable work factors: that she was robbed at gunpoint on January 10, 2001; that she called for emergency care when a customer had a seizure and then died in the lobby of the employing establishment on December 5, 2006; that she was called to the scene of a fire at the employing establishment on January 1, 1999 and entered the building to recover the mail; and that Mr. Kelly, a former postmaster and current customer of the employing establishment, repeatedly called appellant’s supervisor in 2010 to report her actions at work and watched her coming and going for reasons related to her work duties. The hearing representative further found, however, that the medical evidence was insufficient to establish that appellant sustained a diagnosed condition causally related to the compensable work factors. She determined that Dr. Urlick appeared unaware that the former postmaster was no longer stalking appellant by the middle of 2011 and did not provide a sufficiently detailed description of each identified work factor.

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 his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁴ 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 or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁵

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.⁶ If a claimant does implicate a factor of

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

⁵ *Gregorio E. Conde*, 52 ECAB 410 (2001).

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

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.⁷

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.⁸ The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.⁹

ANALYSIS

OWCP accepted that appellant established as compensable work factors that on January 1, 1999 she was called to the scene of a fire at the employing establishment and entered the building to recover mail; that she was robbed at gunpoint on January 10, 2001; that on December 5, 2006 she sought medical assistance for a customer who subsequently died in the lobby of the employing establishment; and that Mr. Kelly, a former postmaster and current customer, monitored her movements, called her supervisor and generally engaged in stalking behavior. The Board finds that OWCP properly determined that the above incidents were compensable factors of employment. In a February 13, 2012 statement, Mr. Glass, a retired postmaster, confirmed that on January 1, 1999 appellant telephoned him stating that the employing establishment was on fire. They both entered the building to recover mail. On February 14, 2012 Ms. Parnell, a postmaster, advised that appellant was robbed at gunpoint. The record also indicates that she sought compensation from a crime victim's fund for a robbery at gunpoint on January 10, 2001. Ms. Hendershot, another former postmaster, related that appellant was very upset when a customer died in her lobby. On December 5, 2006 appellant called a counselor with the employing establishment because she was distraught over a customer who had died on that date in her lobby. On February 3, 2012 Mr. Hamrick, a postmaster, advised that Mr. Kelly called him repeatedly about appellant's whereabouts and was "keeping tabs on her and possibly following her around..." He further noted that she had told him that she felt threatened by Mr. Kelly. As the record establishes the factual basis for appellant's contentions and as the above-described incidents occurred in the performance of her work duties, they constituted compensable employment factors.¹⁰

Appellant has further established that she experienced stress in the performance of her regular work duties. She maintained that when she transferred to a new location as postmaster in 2011 she had trouble completing her work duties. Appellant related that two of her clerks were off work so she had to do both their work and her own work. She asked management for assistance. Appellant alleged that she worked long hours without taking a lunch break and had difficulty completing her duties. The record contains a January 27, 2011 e-mail message from

⁷ *Id.*

⁸ *Jimmy A. Hammons*, 51 ECAB 219 (1999).

⁹ 20 C.F.R. § 10.121.

¹⁰ *See Lillian Cutler*, *supra* note 4.

appellant to management stating that she found it difficult to do all the office work and carry mail. She told management that she was averaging 10-hour days and worked on a holiday. The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable.¹¹ Where a claimed disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to an imposed employment requirement, the disability comes within the coverage of FECA.¹² Therefore, appellant has identified an additional compensable employment factor under FECA.

The Board finds that OWCP properly determined that appellant had not factually established that she witnessed a drug sale that her life was threatened in 1987 or that management repeatedly changed her reporting requirements. Appellant has the burden to establish a factual basis for her allegations with reliable and probative evidence.¹³ As she did not submit any evidence supporting that these allegations occurred as alleged, she has not met her burden of proof.

Appellant's burden of proof, however, is not discharged by establishing a compensable factor of employment. She must also submit rationalized medical opinion evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.¹⁴

In support of her claim, appellant submitted a December 28, 2011 report from Dr. Urick, who diagnosed an anxiety disorder and noted that appellant had experienced a number of traumatic events at work. On January 3, 2012 Dr. Urick diagnosed an anxiety disorder and recurrent major depressive disorder and found that she was disabled from employment. In a February 15, 2012 form report, she diagnosed major depressive disorder and anxiety disorder. Dr. Urick checked "yes" that the condition was employment related due to many work stressors. In a narrative report dated June 27, 2012, she reviewed appellant's complete history of witnessing a drug transaction in the early 1990s, a fire in the building where she was the postmaster being robbed at gunpoint in the early 2000s and seeing a customer die in front of her in the mid-2000s. Dr. Urick further discussed the history of a former postmaster stalking appellant in 2010 and 2011. She diagnosed major depressive disorder and anxiety disorder due to "her numerous employment-related traumatic events." Dr. Urick indicated that, although appellant had made progress, she had not fully recovered and still suffers from setbacks which are stressors involved with her employment. She further opined that appellant will need continual medical treatment, including medication and psychotherapy.

The Board finds that, although Dr. Urick did not provide sufficient medical rationale explaining how the compensable work factors resulted in appellant's emotional condition, her reports are generally supportive of appellant's claim and raise an uncontroverted inference of

¹¹ *Trudy A. Scott*, *supra* note 4.

¹² *Robert Bartlett*, 51 ECAB 664 (2000); *Ernest St. Pierre*, 51 ECAB 623 (2000).

¹³ *See Pamela D. Casey*, 57 ECAB 260 (2005) (allegations alone are insufficient to establish a factual basis for an emotional condition claim).

¹⁴ *See Dennis J. Balogh*, *supra* note 6.

causal relationship sufficient to require further development by OWCP.¹⁵ The case, therefore, is remanded to OWCP for preparation of an updated statement of accepted facts and further development of the medical evidence. After such further development deemed necessary, it shall issue an appropriate decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the January 23, 2013 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: September 24, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁵ See *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).