

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

R.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Baltimore, MD, Employer**

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**Docket No. 14-1043
Issued: December 12, 2014**

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 1, 2014 appellant, through her attorney, filed a timely appeal from a December 12, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her emotional condition claim. 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.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 6, 2012 appellant, then a 50-year-old letter carrier, filed an occupational disease claim alleging that she sustained a headache, depression, and stress due to factors of her federal employment. She stopped work on March 26, 2012.

In an undated statement accompanying the claim, John Cox, a manager, asserted that appellant's stress was "of her own making." He maintained that she had been assigned to three different routes while he was manager and that the station had received 26 complaints from customers that she had misdelivered mail. One of her routes had not been formally assessed and had added stops so one hour was taken off the route. A route assessment conducted on February 1, 2012 showed that the route was "14 minutes over the adjusted street time." Mr. Cox related that on March 12, 2012 appellant backed up along a one-way driveway in violation of rules and struck a private vehicle.

In a statement received April 10, 2012, Derwin Sullivan, a supervisor, noted that customers complained about deliveries on each of appellant's routes. He had attempted corrective action. Appellant's current route was believed overburdened by an hour and so she received one half to one hour of assistance.²

On April 14, 2012 the employing establishment controverted the claim. It asserted that appellant's stress was self-generated due to mistakes made in delivery and other events.

In a report dated April 17, 2012, Dr. James B. Meredith, a clinical psychologist, found that appellant was disabled due to depression and anxiety arising from her employment.

In a psychological report dated May 22, 2012, Dr. Meredith diagnosed adjustment disorder with anxiety and depression.³ He indicated that appellant was "obsessively worried about her job and her inability to satisfy her supervisors. Appellant reports recent severe headaches and crying episodes." Dr. Meredith stated, "To a fair degree of medical certainty, her current psychological symptoms are causally associated to her current job. At this time, appellant continues to be unable to return to work."

On June 1, 2012 Fred Banks, a coworker and shop steward assistant, asserted that Mr. Cox rushed appellant even though she had "an overburdened route."⁴ He alleged that Mr. Cox singled out carriers for harassment and accused appellant of not timely delivering a letter.

² Mr. Sullivan stated, "On March 12, 2012 [appellant] had a backing accident hitting a privately own[ed] vehicle in the [employing establishment] one way parking lot causing damage [to] this vehicle."

³ In a report dated May 21, 2012, Dr. David Eisenberg, a Board-certified internist, related that appellant was experiencing stress and anxiety at work for the past year and a half. He indicated that he had referred her to a psychiatrist for treatment.

⁴ Appellant also submitted witness statements from friends and family. On May 29, 2012 Thomas Hamilton, a coworker, related that management criticized her work. In a statement received June 11, 2012, a coworker related that in early March 2012 appellant told her that she was experiencing stress because her route was more than eight hours and she was "trying to rush doing the route" which resulted in a headache.

In statements dated June 2, 2012, appellant related that she initially noticed that she was having headaches each day. She maintained that she was singled out for harassment by her supervisor. Appellant related that Mr. Cox was making her March 12, 2012 fender bender into a more significant incident that was warranted. She also challenged his allegation that her stress was self-generated. Appellant indicated that she felt rushed and made mistakes because she could not keep up with the pace. She informed Mr. Cox that her route was “overwhelming.” Appellant rushed every day to leave the office and then rushed to get back. After she reported a knee injury, she experienced harassment until she contacted a congressman. Appellant’s vehicle was vandalized in October 2009. She was assigned a new route in September 2011 that was overburdened by 1 hour and 20 minutes. Mr. Cox gave appellant an hour off her route but she was a half hour late every day. In March 2012, he blamed her when a customer did not receive a certified letter.

By decision dated October 5, 2012, OWCP denied appellant’s emotional condition claim based on its finding that she had not established an injury in the performance of duty. It found that she had not established any compensable factors of employment.

In a statement dated August 23, 2013, appellant described her work duties. She related that in September 2011 her route changed and that her total addresses increased to 1,000 “which made it impossible to deliver all 7,350 pieces of mail and parcels on the route within an eight hour period. On average after that route change, I had to work 9.5 to 10 hours to deliver increased volume of mail.” Appellant indicated that in March and April 2012 the employing establishment reduced her workload due to her knee problems. She received reprimands for any mistake. Appellant related that her health declined “under this staggering workload and efficiency demands.” On December 7, 2012 she had surgery to correct achalasia of the esophagus and a hiatal hernia.

On September 20, 2012 appellant received treatment in the emergency room for vomiting blood. In a September 22, 2012 report, a physician noted that she reported a history of taking more migraine medication than usual due to stress. A discharge summary dated September 29, 2012 indicates that appellant underwent endotracheal intubation for achalasia. In a report dated May 6, 2013, a physician noted that appellant underwent surgery in December 2012 for achalasia.

On September 20, 2013 appellant, through her attorney, requested reconsideration. Counsel argued that her reaction to attempting to meet the duties of her position was compensable. He contended that appellant’s route change in September 2011 was overwhelming and caused stress due to the additional workload. Counsel alleged that her health deteriorated due to “staggering workload and efficiency demands.” He discussed appellant’s hospitalization in September and December 2010 for esophagus problems and contended that stress and the inability to take time to eat worsened her condition. Counsel noted that she had other medical conditions, including left knee osteoarthritis and migraines. He asserted that from April to September 2012 appellant “tried to work through and with the pain in her knee, esophagus, and stomach.”

On October 24, 2013 OWCP prepared a statement of accepted facts. It identified the fact that appellant’s route changed in September 2011, that she found it overwhelming, that the

number of her addresses and volume of mail increased, and she could not complete her route within eight hours as compensable work factors. OWCP further provided as a compensable factor of employment that the employing establishment reduced appellant's route in March 2012 due to her bilateral knee osteoarthritis but she still had to work one to two hours overtime for three or four evenings each week to complete her route. It found that appellant had not established that Mr. Cox treated her unfairly.

On October 24, 2013 OWCP requested that Dr. Meredith review the statement of accepted facts and provide a detailed report addressing whether appellant sustained an emotional condition due to the identified compensable work factors.

On October 31, 2013 OWCP referred appellant to Dr. Christiane Tellefsen, a Board-certified psychiatrist, for a second opinion examination.⁵

In a report dated December 2, 2013, Dr. Tellefsen noted that appellant related that she developed knee osteoarthritis which she attributed to her work for the employing establishment. Appellant received treatment for her knee condition in 2010. Dr. Tellefsen discussed appellant's history of gastrointestinal issues resulting in a hospitalization in September 2012 and esophageal surgery in December 2012. She related that appellant informed her that Mr. Cox initially flirted with her and then harassed her after she told him to stop his inappropriate behavior. Dr. Tellefsen noted that appellant related that she was given a demanding route due to her lack of seniority which she had trouble finishing on time because of her problems with her knees. She received suspensions for using sick leave too frequently. Appellant's route increased from 800 mailboxes to 1,000 mailboxes and she received disciplinary action for taking too much time to deliver mail. She also received a suspension when her telephone died and she could not call to report that she would be late. Mr. Cox did not like to authorize overtime because it reduced his bonuses.

Dr. Tellefsen diagnosed an adjustment disorder with anxiety, psychological factors affecting a physical condition and achalasia. She found that appellant attributed many physical symptoms to stress beginning in 2011 and believed that her supervisor had sexually harassed her and then retaliated against her when she discouraged his actions. Dr. Tellefsen stated:

“[Appellant's] condition was exacerbated by her worsening physical health, with an accelerating arthritis in her knees and the development of gastrointestinal problem, which was ultimately diagnosed as achalasia. This condition was unlikely related to any type of stress; however, as this condition developed her ability to tolerate stress likely diminished. Likewise, [appellant's] ability to care for herself and identify the problem as being solely gastrointestinal was undoubtedly clouded by her ongoing distress from the situation with her manager. It was also not clear to me whether the NSAID's [nonsteroid anti-inflammatory

⁵ In a report of telephone call dated November 4, 2013, appellant related that she believed that her work-related stress caused a bleeding ulcer and migraines. By letter dated November 4, 2013, OWCP requested that she submit a report from an attending physician addressing the cause of her migraines and ulcers and explaining the relationship of these diagnosed conditions to her employment.

drugs] she took for some unknown time period for her knee pain in some way contributed to the gastrointestinal problem.”

Dr. Tellefsen related that the statement of accepted facts (SOAF) conflicted with appellant’s version of events regarding her work situation. She stated:

“The SOAF, however, states that [appellant] was *not* treated unfairly by Mr. Cox. Thus, it becomes difficult to interpret this situation. If, indeed, [appellant] was harassed and retaliated against by Mr. Cox, then clearly her psychiatric symptoms of anxiety, anger, headaches, poor sleep, and other stress complaints would be consistent with an [a]djustment [d]isorder stemming directly from this work stress. On the other hand, if there was no harassment or retaliation by her manager, then it is not clear where her symptoms came from, other than her physical health condition. Appellant did not describe any other life situations or stresses outside of work.” (Emphasis in the original.)

“[Appellant’s] symptoms are fully consistent with an [a]djustment [d]isorder, whether she was adjusting to the work stress from a harassing boss or the work stress from her worsening physical condition leading to deteriorating work performance, and thus negative attention from her boss. Given that the SOAF states she did not suffer harassment at work, I have to default to the latter explanation. What I then also do not know, is whether her deteriorating knees are an accepted workers’ comp[ensation] condition. If they are, then conceivably [appellant’s] work stress would be a complication of the arthritis.”

Dr. Tellefsen attributed appellant’s adjustment disorder with anxiety to her “deteriorating physical condition and work performance from arthritis and achalasia” and concluded that “without other evidence to the contrary, her psychiatric condition was not directly caused by her work.”

By decision dated December 12, 2013, OWCP denied appellant’s claim on the grounds that she had not established that she sustained an emotional condition due to the accepted work factor.

On appeal, counsel argues that Dr. Tellefsen did not consider whether her work duties aggravated her condition. He also contends that the statement of accepted facts did not adequately describe her workload. Counsel maintains that OWCP did not consider whether work factors aggravated a physical condition. He also alleges that Mr. Cox erred in informing appellant that he would not file her occupational disease claim.

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 regular or specially assigned duties or to a requirement imposed by the

employment, the disability comes within the coverage of FECA.⁶ 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.⁷

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.⁸ 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, it must base its decision on an analysis of the medical evidence.⁹

Causal relationship is a medical issue, and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the claimant,¹¹ must be one of reasonable medical certainty¹² explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹³

In *Beth P. Chaput*,¹⁴ the Board set aside and remanded the case to OWCP stating, "it is not necessary to provide a significant contribution of factors of employment to a condition for the purpose of establishing causal relationship. If the medical evidence revealed that [a work factor] contributed in any way to [the employee's] condition, such condition would be considered employment related for the purpose of compensation benefits under [FECA]."¹⁵

⁶ *Supra* note 1; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁸ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁹ *Id.*

¹⁰ *John J. Montoya*, 54 ECAB 306 (2003).

¹¹ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

¹² *Supra* note 10.

¹³ *Judy C. Rogers*, 54 ECAB 693 (2003).

¹⁴ 37 ECAB 158 (1985).

¹⁵ *See also Glenn C. Chasteen*, 42 ECAB 493 (1991); *Arnold Gustafson*, 41 ECAB 131 (1989).

ANALYSIS

OWCP accepted as compensable work factors that after a September 2011 route change appellant had to deliver more mail to more addresses and that she could not complete her route in eight hours. It further accepted that while the employing establishment reduced appellant's route in March 2012 because of her knee condition, she still had to work overtime several evenings a week to finish her route. The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable.¹⁶ Further, the employing establishment confirmed that appellant's route was overburdened. Consequently, OWCP properly found that as a compensable work factor that she experienced stress in the performance of her regularly assigned work duties.

OWCP found that appellant had not alleged as a compensable work factor that she experienced harassment and discriminated by Mr. Cox. If disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from the employee's performance of her regular duties, these could constitute employment factors.¹⁷ The evidence, however, must establish that the incidents of harassment and discrimination occurred as alleged.¹⁸ In a June 1, 2012 statements, Mr. Banks generally alleged that Mr. Cox harassed carriers and questioned appellant about an untimely delivered certified letter. He did not, however, provide specific instances of harassment by Mr. Cox. Appellant has submitted no evidence corroborating her allegation that Mr. Cox unfairly blamed her for misdelivered mail or singled her out for harassment. Thus, she has not established harassment or discrimination as compensable employment factors.¹⁹

As appellant has established compensable work factors, the issue is whether the medical evidence supports that she sustained an emotional condition resulting from the accepted employment factors. In a report dated April 17, 2012, Dr. Meredith diagnosed depression and anxiety related to appellant's employment. On May 22, 2012 he diagnosed an adjustment disorder with anxiety and depression. Dr. Meredith noted that appellant was concerned about her job and her "inability to satisfy her supervisors." On October 24, 2013 OWCP requested that he review a statement of accepted facts and provide an opinion regarding whether appellant sustained an emotional condition due to the accepted work factors. Dr. Meredith did not, however, respond to the request. Consequently, it referred appellant to Dr. Tellefesen for a second opinion evaluation.²⁰

¹⁶ *Trudy A. Scott*, 52 ECAB 309 (2001).

¹⁷ *Janice I. Moore*, 53 ECAB 777 (2002).

¹⁸ *Id.*

¹⁹ On appeal, appellant alleges that Mr. Cox told her that it was against policy to file an occupational disease claim; however, she has not submitted evidence supporting her assertion.

²⁰ On appeal, counsel argues that the statement of accepted facts did not adequately describe appellant's workload. The Board finds, however, that OWCP properly set forth the workplace activities which constituted compensable employment factors. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statements of Accepted Facts*, Chapter 2.809.5(h) (September 2009).

In a report dated December 2, 2013, Dr. Tellefsen discussed appellant's history of esophageal problems resulting in a hospitalization for September 2012 and esophageal surgery in December 2012. She further noted that appellant had knee osteoarthritis and headaches. Appellant informed her that Mr. Cox harassed her when she requested that he stop flirting with her and suspended her for using sick leave. Her route was difficult and she had trouble finishing it because of difficulties with her knees. Appellant's route increased from 800 to 1,000 mailboxes and Mr. Cox began writing her up because she took too long to finish. Dr. Tellefsen diagnosed an adjustment disorder with anxiety, psychological factors affecting a physical condition and achalasia. She noted that the SOAF did not identify unfair treatment by Mr. Cox as a compensable work factor and thus it appeared that her declining physical health caused her symptoms. Dr. Tellefsen attributed appellant's adjustment disorder either to harassment from her supervisor or stress due to declining work performance as a result of her deteriorating physical condition. She opined that, if appellant's knee condition was employment related, then her stress might be a consequence of her osteoarthritis.

While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.²¹ Once it undertakes to develop the medical evidence further, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.²² Accordingly, the Board finds that the case must be remanded to OWCP. On remand, OWCP should request that Dr. Tellefsen submit a supplemental, clarifying report on the issue of whether appellant sustained an emotional condition as a result of the compensable work factors. Following this and any other development deemed necessary, it shall issue a *de novo* decision.

On appeal, counsel contends that OWCP erred in failing to consider whether appellant's work duties aggravated a physical condition. The issue currently before the Board, however, is whether appellant has established an emotional condition in the performance of duty causally related to factors of her federal employment.

CONCLUSION

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

²¹ *Jimmy A. Hammons*, 51 ECAB 219 (1999).

²² *See Melvin James*, 55 ECAB 406 (2004); *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

ORDER

IT IS HEREBY ORDERED THAT the December 12, 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: December 12, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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