

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

R.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Osage Beach, MS, Employer**

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**Docket No. 13-1193
Issued: May 29, 2014**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 18, 2013 appellant filed a timely appeal from an October 24, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for an emotional condition. 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 met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On appeal, appellant contends that the medical evidence established that she sustained an emotional condition causally related to factors of her federal employment.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On July 10, 2011 appellant, then a 54-year-old postmaster, filed a claim alleging a recurrence of a June 15, 2010 injury on July 5, 2011.² She returned to work initially as the Officer-in-Charge (OIC) in Olean, a small office with no stress; but on June 6, 2011, she was returned to regular work with no restrictions. Appellant stated that the high stress and long hours of her former assignment caused a recurrence of a sleep disturbance, racing thoughts, insomnia, anxiety, concentration difficulties, inattention while driving and depression. By letter dated September 16, 2011, OWCP informed her to file a new claim.

On September 20, 2011 appellant filed an occupational disease claim alleging that she suffered from acute symptoms of bipolar 2 type disorder caused by work stress. She was previously hospitalized on two occasions with bipolar 2 disorder, recently on June 15 through 22, 2010. Appellant returned to work in a small level 11 office with less stress and, while working in that office, she returned to baseline. She returned to full duty on June 8, 2011 at the employing establishment and after four weeks, the added stress aggravated her bipolar disorder requiring emergency treatment on July 5, 2011 and medical leave.

In support of her claim, appellant discussed her employment history. She noted that she was employed at the employing establishment, which was classified as a level 18 office, since May 2004. Appellant was hospitalized from June 15 to 22, 2010 for acute symptoms of bipolar 2 disorder and her claim was accepted by OWCP.³ She returned to work on August 9, 2010 and on August 15, 2010 she began a temporary assignment at the Olean, Missouri office, which was a smaller, level 11 office. On May 19, 2011 appellant's OIC assignment in Olean was cancelled and she was instructed to return to the employing establishment on June 6, 2011 and was formally transferred back to the postmaster position on June 8, 2011. She alleged that the stress from working in that office caused a recurrence of her acute bipolar 2 disorder symptoms on July 5, 2011 and required her to go out on medical leave on July 6, 2011. Appellant alleged the following work factors: (1) she had to work 50 to 60 hours a week to complete the required work; (2) the employing establishment was understaffed; (3) in June and July 2011, two of her rural route carriers had accidents (one was bitten by a dog and one fell) and that this required extensive paperwork as well as causing her to worry about their well-being; (4) that she dealt with issues with transfer papers for an employee; (5) she worked on address management audit and address changes due to a new major highway bypass; (6) she worked on an employee pay advance that had not cleared; (7) she handled a Walgreen's pick-up plan in a short time period; (8) she worked on a time consuming union request; (9) she dealt with a very irate customer with regard to a missing package on June 29, 2011; (10) she dealt with an issue with a condominium complex and a cluster box which turned into a fight with one man who came into her office daily to complain about the matter; (11) when she did key inventory she noted that keys had been lost and not reported to inspectors and that missing arrow keys were a security issue; (12) discussed

² Although appellant listed the date of the original injury as June 15, 2011, when describing the recurrence she noted that she was hospitalized on June 15, 2010 for a week for suicidal ideation and acute symptoms of bipolar 2 disorder caused by work stress. Accordingly, the June 15, 2011 date listed on her notice of recurrence appears to be a typographical error.

³ OWCP File No. xxxxxx090.

issues with regard to missing stamps; (13) she received a letter on June 24, 2011 that SOX audits would begin and that she was concerned that the employing establishment would be audited because it was a large revenue office; (14) that she was denied bulk mail training; (15) she worked on retail customer experience program which involved extra work; and (16) dealt with three of the six vehicles being out for repairs. On July 5, 2011 the telephone rang nonstop, she was short staffed and a truck was late bringing the mail. Appellant went to see her physician that day and was placed on medical leave.

In support of her claim of stress with regard to missing keys, appellant submitted a page from standard operating procedure manual of the employing establishment, indicating that an accurate inventory of all building keys and signed receipts for all assigned keys must be kept, that inventory reviews must be conducted twice each year (in June and December) and that the inventory must be documented. The procedures noted that arrow keys need to be locked up every day and that management must verify daily that all arrow and metro lock keys are on hand and must be documented on a worksheet. There is also correspondence dated from June 16 through July 1, 2011 evincing that there have been reports of missing arrow keys lately, so the district wanted to see copies of all Form 2022's and asked postmasters to ensure that arrow keys and metro keys are listed on logs.

In an August 9, 2011 report, Dr. Jean A. Gilstrap, a Board-certified psychiatrist, noted that appellant had been under her care since December 2006 for treatment of bipolar 2 disorder type 2. She noted that appellant had been doing well for over a year until her work stress increased dramatically. Dr. Gilstrap noted that factors contributing to appellant's condition included staffing shortages, staff theft that resulted in increased surveillance at the employing establishment and the performance of an audit. Appellant's workload significantly increased and resulted in an episode of severe depression. Dr. Gilstrap noted that appellant's symptoms included depressed/dysphoric mood, mood lability, sleep disturbance and initial insomnia, interval awakening and early morning awakening, racing thoughts, concentration difficulties and periods of agitation. Appellant developed serious suicidal ideation and required inpatient hospitalization from June 15 through 22, 2010. Following her discharge from the hospital, her condition did not improve enough to return to work until July 27, 2010. After some consideration, appellant was placed in a small post office with less demands to accommodate her medical condition. She was allowed to remain in that position until May 2011 and during that time, she did well and was able to manage the stress of work. In June 2011, appellant returned to the postmaster position at the employing establishment and experienced stress due to high volume work and had a recurrence of depressive and anxiety symptoms. Dr. Gilstrap noted that appellant reported increased anxiety and sleep difficulties on June 27, 2011. On July 5, 2011 appellant was seen on an emergency basis for depressive symptoms, with diagnoses of bipolar disorder type 2 depressed. Dr. Gilstrap stated that appellant's symptoms at that time included depressed/fretful mood, severely impaired sleep, disorganized thought processes, inability to start and complete tasks and inability to communicate with staff and customers. She placed appellant on medical leave. Dr. Gilstrap last saw appellant on August 1, 2011, at which time appellant was struggling with depressive symptoms and that she did not release appellant to

work. As she was closing her office, appellant was in the process of establishing care with another psychiatrist. Dr. Gilstrap opined:

“I do not think [appellant’s] medical problem can tolerate the stress involved in working at the [employing establishment] location. This is a very busy, high volume position. From [appellant’s] description, there are problems with turnover in staffing resulting in frequent understaffing. [Appellant] with her [b]ipolar [2] [d]isorder cannot tolerate the demands of this position. She did very well in the Olean office from August 2010 to May 2011. I believe that the duties of the postmaster position at the [employing establishment] are simply too demanding for [appellant’s] stress tolerance with her illness. In my opinion, the exacerbation of her [b]ipolar [2] [d]isorder last summer and again this summer are directly related to the stress of this position.”

Appellant also submitted treatment notes and other reports from Dr. Gilstrap dated from August 1, 2011 to July 14, 2012.

In an August 31, 2011 report, Dr. Agara S. Reddy, a psychiatrist,⁴ noted that appellant was referred to him by Dr. Gilstrap. He diagnosed bipolar 2 disorder, current episode is mixed phase, in good remission. In a September 28, 2011 report, Dr. Reddy noted that appellant’s depression, anxiety and somatic symptoms are still quite bothersome. In an October 19, 2011 report, he noted that her mood and affect were slowly improving, but that she still had significant mood swings ranging from depressed to hypomanic like symptoms that affect significantly her full level of function. In a November 16, 2011 report, Dr. Reddy indicated that appellant’s depression and anxiety continued to improve. In a November 16, 2011 excuse slip, he noted that she had not returned to baseline at that time. In a January 18, 2012 report, Dr. Reddy indicated that appellant’s depression and anxiety and somatic symptoms continue to be increasingly distressing to her. Appellant noted passive suicidal thought without any plans or intent. On February 20 and March 15, 2012 Dr. Reddy advised that she was unable to return to work and had not returned to baseline.

By decision dated March 28, 2012, OWCP denied appellant’s claim. It found that she did not establish any compensable factors of employment.

On April 20, 2012 appellant requested an oral hearing before an OWCP hearing representative. At the telephonic hearing held on August 8, 2012 she testified that she was stressed by the refusal of the employing establishment to assign her to a smaller office. Appellant noted that she was stressed when keys were missing because with the arrow keys one had to notify postal inspectors. The arrow keys are the ones that fit the drop boxes and she would be held accountable for missing keys even though they were not lost on her watch. Appellant also discussed stress involved when bulk mail training was denied, stamps were missing, a SOX audit was threatened, the employing establishment was understaffed and her work on investigating accidents. She noted that, while her son was bipolar and an alcoholic, he did not get in trouble or go to jail until October 2011 which was three to four months after he

⁴ The Board cannot confirm whether Dr. Reddy is Board-certified.

became sick at work. Until that time he was clean and sober and had been doing better; but he stopped taking his medicine in September 2011.

In a September 5, 2012 report, Dr. Reddy noted that appellant was currently under his care. He stated that it was his medical opinion, based upon her review of Dr. Gilstrap's medical records and appellant's current treatment with her, along with appellant's job description, that her illness from July 5, 2011 through January 2012 was caused or was contributed to her by busy work from June to July 2011.

By decision dated October 24, 2012, OWCP's hearing representative found that appellant had established 14 compensable factors of employment. Appellant's claim was denied as the hearing representative found that the medical evidence did not establish that a compensable factor of employment caused or contributed to her psychiatric condition.

LEGAL PRECEDENT

To establish a claim that he or she sustained an emotional or stress-related condition in the performance of duty, an employee must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) medical evidence establishing that he or she has an emotional or stress-related disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the condition. If a claimant implicates a factor of employment, OWCP should determine whether the evidence of record substantiates that factor. Allegations alone are insufficient to establish a factual basis for an emotional condition claim and must be supported with probative and reliable evidence. If a compensable factor of employment is established, OWCP must then base its decision on an analysis of the medical evidence.⁵

Workers' compensation law does not apply to each and every injury or illness that is somehow related to a claimant's employment. In the case of *Lillian Cutler*,⁶ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition under FECA. When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that a disability resulted from this emotional reaction, the disability is generally regarded as due to an injury arising out of and in the course of employment. This holds true when the disability results from an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work. On the other hand, there are disabilities that have some causal connection with the claimant's employment but nonetheless fall outside FECA's coverage because they are found not to have arisen out of employment, such as when a disability results from a fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.⁷

⁵ *G.G.*, Docket No. 13-644 (issued July 19, 2013).

⁶ 28 ECAB 125 (1976).

⁷ *William E. Seare*, 47 ECAB 663 (1996).

Administrative and personnel matters, although generally related to the claimant's employment, are administrative functions of the employing establishment rather than the regular or specially-assigned work duties of the claimant and are not covered under FECA.⁸ However, the Board has held that an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁹

ANALYSIS

At the time of the alleged injury, appellant worked as postmaster at the employing establishment. She had numerous responsibilities with regard to running this busy, level 18 branch of the employing establishment. Appellant alleged that various factors of her employment caused stress and an aggravation of her bipolar disorder. In its October 24, 2012 decision, OWCP accepted that she had established compensable factors of employment with regard to stress caused during her federal employment as follows: (1) the shortage of 300 64-cent stamps; (2) being understaffed and overworked; (3) extra work incurred as a result of having to deal with two rural carriers having accidents in the same week; (4) working in a busy office which included telephone ringing nonstop and many changes of addresses and lost packages; (5) working 50 to 60 hours a week; (6) extra work regarding the transfer of an employee; (7) doing work on an address management audit; (8) doing work on an employee pay advance that had not cleared; (9) doing work with regard to a Walgreens "pick up program" in a short turn-around time; (10) dealing with three of six vehicles being out for repair; (11) dealing with a situation with an angry customer over a piece of missing mail; (12) doing time consuming work on a union request; (13) having to deal with an irate condominium customer; and (14) dealing with an excessively busy day on July 5, 2011. However, the hearing representative found other factors noncompensable. Accordingly, the Board will address these factors prior to discussing the medical evidence.

Appellant listed several factors that were administrative matters and not compensable. She listed as a factor that she was denied a permanent assignment to the Olean branch. Appellant noted that this branch was a level 11 office and that she was fine while she worked at this stressful office. Her position at this office was terminated when the regular postmaster for the Olean office returned and the employing establishment determined that no other position was available within her pay grade and commuting area other than the position at the employing establishment. Disability is not covered where it results from an employee's frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of FECA.¹⁰ Accordingly, appellant's frustration at being transferred from the Olean office is not

⁸ *M.C.*, Docket No. 10-1628 (issued June 8, 2011); *Matilda R. Wyatt*, 52 ECAB 421 (2001).

⁹ *M.D.*, 59 ECAB 211 (2007); *Ruth S. Johnson*, 46 ECAB 237 (1994); *see also Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹⁰ *Lillian Cutler*, *supra* note. 6.

compensable. Furthermore, she alleged that the employing establishment denied her request for bulk mail training. The Board has held that matters related to training by the employing establishment are an administrative matter which is not covered under FECA absent error or abuse by the employing establishment in such a matter.¹¹ Appellant provided no evidence supporting that the employing establishment unreasonably refused to provide appropriate training, so she has not established a compensable factor in this regard.

Appellant claims a psychiatric injury because she received an e-mail on June 24, 2011 that the new SOX audits had begun. She stated that she believed that the chances were good that the employing establishment would be audited and that she was stressed because she was shorthanded all week. The Board has held that fear-of-future injury is not a compensable factor of employment.¹²

The Board finds, however, that appellant has established a compensable factor of employment in the loss of keys. Multiple memoranda as well as the standard operating procedure manual for the employing establishment discuss responsibility for keeping track of keys, note that there had been an increase in the loss of arrow keys and stressed greater diligence in monitoring the keys. Accordingly, appellant has established this additional factor of employment.

As appellant has established 15 compensable factors of federal employment, the next question is whether the medical evidence is sufficient to establish that she suffered an emotional condition causally related to these accepted factors. OWCP determined that she had not established this causal relationship.

The Board finds that this case is not in posture for decision on the issue of whether the medical evidence established that one of the accepted compensable factors of employment caused or aggravated appellant's emotional condition. Dr. Gilstrap treated appellant from December 2006 to August 1, 2011. In reports dated July 14 and August 1, 2011, she indicated that appellant's emotional condition had not returned to baseline and that she was not able to return to work. Dr. Reddy also submitted notes indicating that appellant was not at baseline on November 16, 2011, February 20 or March 15, 2012. However, there is no discussion as to what either Dr. Gilstrap or Dr. Reddy meant by "baseline."

In an August 9, 2011 report, Dr. Gilstrap noted that appellant had been doing well for over a year until her work stress increased dramatically at the employing establishment. She noted that contributing factors included staffing shortages, staff theft resulting in increased surveillance of the office and the performance of an audit, and opined that these issues significantly increased her workload and stress, which resulted in an episode of severe depression. Dr. Gilstrap opined that the exacerbation of appellant's bipolar disorder in summer of 2010 and the summer of 2011 were directly related to the stress of her position. In an undated report received by OWCP on January 25, 2012, she noted that appellant was at baseline in a less

¹¹ See also *C.B.*, Docket No. 11-1457 (issued February 10, 2012); see *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

¹² *A.B.*, Docket No. 13-558 (issued June 19, 2013); *Mary A. Geary*, 43 ECAB 300 (1991).

stressful environment, but indicated that, if she were to return to the more stressful postmaster position at the employing establishment, she anticipated that the stress/responsibilities would result in a recurrence of appellant's depressive symptoms. Dr. Gilstrap recommended that appellant remain at the small office location. She discussed appellant's difficulties at the employing establishment, noting that it was a very busy office with frequent understaffing. Dr. Gilstrap's medical opinion is insufficient to establish causal relationship. Initially, the Board notes that fear of future injury is not a compensable factor of employment. Dr. Gilstrap expressed concern that appellant's return to the busier office could result in an aggravation of her emotional condition. The fear that one might sustain further injury is self-generated and not a compensable factor of employment.¹³ Furthermore, Dr. Gilstrap opined that appellant's significantly increased workload and stress at her employment resulted in an episode of severe depression and an exacerbation of her bipolar disorder. Although she noted staffing shortages, staff theft, increased surveillance of the office and increased workload and stress, she did not discuss these incidents in detail. As appellant alleged an exacerbation of her preexisting bipolar disorder, it is important that she address how the specific compensable factors caused the exacerbation of her condition.

Dr. Reddy opined that appellant's exacerbation of her bipolar disorder was directly related to the stress of the position. He did not discuss the specific factors of employment; he just indicated that based upon his review of her job description and Dr. Gilstrap's treatment notes, appellant's illness from July 5, 2011 through January 2012 was caused or contributed to by her busy work for the employing establishment from June 2011 until July 2011. Dr. Reddy's general statements do not address the specific compensable factors and are therefore insufficient to establish causal relationship.

Proceedings under FECA are not adversarial in nature nor is OWCP a disinterested arbiter. While appellant has the burden to establish entitlement to compensation, it shares responsibility in the development of the evidence to see that justice is done.¹⁴ While the medical reports of Drs. Gilstrap and Reddy do not contain sufficient medical reasoning to discharge appellant's burden of proof, these reports raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by OWCP.¹⁵

On remand, OWCP should refer appellant, the case record and a statement of accepted facts to an appropriate Board-certified specialist for an evaluation and a rationalized medical opinion regarding the cause of appellant's claimed emotional condition. After such further development as OWCP deems necessary, a *de novo* decision shall be issued.

CONCLUSION

The Board finds this case not in posture for decision.

¹³ *Joseph G. Cutrufello*, 46 ECAB 285 (1994); *see also A.B.*, Docket No. 13-558 (issued June 19, 2013).

¹⁴ *William J. Cantrell*, 34 ECAB 1223 (1983).

¹⁵ *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

ORDER

IT IS HEREBY ORDERED THAT the October 24, 2012 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision.

Issued: May 29, 2014
Washington, DC

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

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

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