

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

---

**N.Y., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Houston, TX, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 12-886  
Issued: March 26, 2015**

*Appearances:*  
*Steven V. Hunt*, for the appellant  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 13, 2012 appellant, through her representative, filed a timely appeal from a February 24, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (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.

---

<sup>1</sup> On December 21, 2012 the Board dismissed the appeal for lack of representative authorization. *Order Dismissing Appeal*, Docket No. 12-886 (issued December 21, 2012). On February 2, 2015 the Board issued an order vacating its dismissal as appellant had submitted a signed authorization designating Mr. Hunt as her representative prior to the Board's issuance of the December 21, 2012 dismissal. *Order Vacating Prior Board Order and Reinstating Appeal*, Docket No. 12-886 (issued February 2, 2015).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On February 11, 2011 appellant, then a 50-year-old modified mail processing clerk, filed an occupational disease claim alleging that she experienced stomach pains, loss of memory, headaches, sleeplessness, dizziness, loss of appetite, panic attacks, and a lack of recovery from a physical injury to her shoulders, neck, and upper extremities due to stress at work. She related that her psychologist attributed her condition to work injuries, violations of her work restrictions, and adverse remarks from management about her work. The employing establishment noted that appellant was already on the periodic rolls under a separate OWCP file number.

By letter dated February 16, 2011, OWCP requested additional information from the employing establishment, including statements from a knowledgeable supervisor on the accuracy of all allegations. In another February 16, 2011 letter, it requested that appellant provide additional factual and medical information.

On March 2, 2011 the employing establishment related that appellant had not worked since June 17, 2010 and that she “was not asked to work overtime, meet any deadlines, quotas, [or] travel intense assignments.” A coordinator for the National Reassessment Program indicated that appellant performed modified duty sitting for eight hours per day in the Postal Automated Redirection System unit, and that the position was not stressful, but rather “quiet, self-paced [and] self-empowered.” She further noted that there were no staffing shortages during the relevant time period.

On March 23, 2011 OWCP received a narrative statement from appellant dated September 30, 2010, signed February 7, 2011, and which had originally been submitted under file number xxxxxx116. Appellant related that she sustained a right shoulder injury in September 2004 and a left shoulder and bilateral elbow injury on August 20, 2007. She began working limited duty after her injuries.<sup>3</sup> Appellant was afraid to take off work because she thought she might lose her job. She stated, “I pushed, lifted and carried mail from one place to another even if it was too heavy, with or without help, because I was going to be suspended if I did not. I did complain and was shouted at by the supervisors, and told that I was already not doing anything, and any less I need[ed] to stay at home.” On one occasion a supervisor told her to finish all the work before she went home even though it was too much for one person. She claimed that the employing establishment assigned appellant to work in the guard shack one evening, even though she did not have proper clothing. Appellant stated, “We (modified job assignment employees on light duty) were labeled, called names and ostracized.” She related, “Over the past two years everything got worse and worse. It seemed like my body refused to take the everyday work against my restrictions, pushing, carrying ostracism by other workers and moving mail all night long.”

By decision dated May 19, 2011, OWCP denied appellant’s emotional condition claim. It found that she had not established any compensable factors of employment.

---

<sup>3</sup> The alleged traumatic physical injuries are not before the Board although they are mentioned in the facts. Appellant filed an occupational disease claim asserting that she suffers from an emotional psychiatric condition. The question before the Board is whether the occupational disease claim is compensable.

On May 24, 2011 appellant requested a review of the written record by an OWCP hearing representative. In a statement dated April 18, 2011, received by OWCP on June 6, 2011, she discussed her history of employment injuries and resulting limitations. Appellant related that her supervisors did not abide by her restrictions. In May 2006 she received discipline for not working safely when a door fell on her shoulder. A coworker confirmed that the accident was not her fault. In 2006 a supervisor instructed appellant to complete an entire all-purpose container of mail by herself before she went home, which violated “[t]ime compliance.” In February 2009 a night supervisor instructed her to perform regular work casing mail in violation of her shoulder restrictions. In March 2009 a night supervisor made appellant and a coworker push an 80-pound hamper with a broken wheel loaded with 100 pounds of mail in violation of her 10-pound restriction. In September 2009 a supervisor told her that she needed to work faster. In April 2010 a supervisor forced appellant to work on a machine that violated her lifting restrictions of no reaching over the shoulder. A coworker threatened her when she went on break and other coworkers cursed her because she was on modified duty.

In a statement dated May 19, 2006, a coworker related that on May 18, 2006 she saw a cage open and fall on appellant’s left shoulder. In another statement dated May 19, 2006, appellant related that the door of an all-purpose container fell on her shoulder.

By decision dated September 22, 2011, an OWCP hearing representative affirmed the May 19, 2011 decision. He found that appellant had not submitted evidence supporting that the employing establishment harassed or discriminated against her or violated her work restrictions.

On December 12, 2011 appellant, through her representative, requested reconsideration. He argued that the employing establishment had not refuted specific allegations as required by 20 C.F.R. § 10.117. The only individual who responded had no personal knowledge of the work environment. Appellant’s representative noted that OWCP had not obtained any evidence to disprove the allegations.

In a statement signed January 9, 2012, a coworker, related that in 2006 a supervisor instructed appellant to finish a container of returned mail before her shift ended. Appellant responded that she had to work “at her own pace” and thus could not finish the mail. After an argument, she stayed and finished the mail “with tears in her eyes due to [the] pain of working faster than normal.” The coworker stated, “In fact, our unit was designed for limited[-]duty employees. However, all of the letter trays with returned mail average[d] 20 [to] 30 [pounds] a tray. We were responsible for lifting the trays to process mail and for pushing the equipment to the line for dispatching mail. No one was assigned to the unit to help with lifting or pushing.”

By decision dated February 24, 2012, OWCP denied modification of tis May 19, 2011 decision.

On appeal appellant’s representative argues that there is sufficient medical evidence in her other claims for physical injuries that would support this claim and those claims should be combined with the current claim. He argues that the employing establishment’s response was insufficient and that appellant worked outside her restrictions.

## 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.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

For harassment or discrimination to give rise to a compensable disability under FECA, 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.<sup>9</sup> A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and Equal Employment Opportunity complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.<sup>10</sup> The issue is whether the claimant has submitted sufficient evidence under FECA to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>11</sup> The primary reason for requiring factual evidence from the claimant in support of her allegations of stress in the workplace is to

---

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

<sup>5</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

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

<sup>7</sup> *See William H. Fortner*, 49 ECAB 324 (1998).

<sup>8</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>9</sup> *See Michael Ewanichak*, 48 ECAB 364 (1997).

<sup>10</sup> *See Charles D. Edwards*, 55 ECAB 258 (2004); *Parley A. Clement*, 48 ECAB 302 (1997).

<sup>11</sup> *See James E. Norris*, 52 ECAB 93 (2000).

establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by OWCP and the Board.<sup>12</sup>

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.<sup>13</sup> 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, OWCP must base its decision on an analysis of the medical evidence.<sup>14</sup>

### ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. OWCP denied her emotional condition claim because she failed to establish any compensable employment factors. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.

Appellant has not attributed her emotional condition to her regular or specially assigned duties under *Cutler*.<sup>15</sup> Instead, she alleged that she sustained stress from supervisors assigning her work outside her restrictions and from harassment and discrimination.

In *Thomas D. McEuen*,<sup>16</sup> the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under FECA would attach if the facts surrounding the administrative or personnel action established error or abuse by employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>17</sup>

---

<sup>12</sup> *Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>13</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>14</sup> *Id.*

<sup>15</sup> See *Lillian Cutler*, *supra* note 4.

<sup>16</sup> See *Thomas D. McEuen*, *supra* note 6.

<sup>17</sup> See *Richard J. Dube*, 42 ECAB 916 (1991).

Appellant asserted that in May 2006 the employing establishment wrongfully disciplined her after a door fell on her shoulder and assigned her to work in a guard shack when she did not have proper clothing. The assignment of work and matters involving discipline are administrative functions of the employer and not a duty of the employee.<sup>18</sup> As discussed, an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.<sup>19</sup> Appellant has not submitted any evidence establishing a factual basis for her allegation that she received discipline after a door fell on her in 2006. Further, she has not provided any evidence of error or abuse by the employing establishment in assigning her to work in the guard shack. Thus, appellant has not established a compensable employment factor.

Appellant additionally alleged that she sustained stress as a result of being assigned work outside her physical restrictions. She related that she worked limited duty following injuries in September 2004 and August 2007. Appellant maintained that in 2006 a supervisor advised her to offload an all-purpose container before she went home, in February 2009 a supervisor made her perform regular mail casing duties, and in March 2009 a supervisor instructed her to push a heavy hamper loaded with mail, all of which she contended violated her work restrictions from prior employment injuries.

Appellant submitted a statement dated January 9, 2012 from a coworker who related that in 2006 a supervisor told appellant to finish a container of mail before her shift ended. She advised the coworker that she had to work at her own pace but eventually stayed and finished the task, allegedly crying because of the pain. The coworker further related that all of the employees in the limited-duty unit lifted trays of mail weighing 20 to 30 pounds without assistance. In a statement dated March 2, 2011, the employing establishment advised that appellant worked sedentary duty, sitting eight hours a day on work that was “self-paced” with no heavy duties.

Being required to work beyond one’s physical limitations may constitute a compensable employment factor if substantiated by probative and reliable evidence.<sup>20</sup> Appellant did not, however, provide any details regarding her modified work duties or her restrictions from her accepted injuries. Accordingly, she has not substantiated that she was forced to work outside her limitations.<sup>21</sup>

Appellant generally maintained that coworkers cursed her, harassed her, and ostracized her because she worked modified employment. Harassment and discrimination by supervisors and coworkers, if established as occurring and arising from the performance of work duties, can

---

<sup>18</sup> *C.E.*, Docket No. 13-1860 (issued January 17, 2014); *Donney T. Drennon-Gala*, 56 ECAB 469 (2005); *Lori A. Facey*, 55 ECAB 217 (2004).

<sup>19</sup> *Id.*

<sup>20</sup> *M.R.*, Docket No. 14-380 (issued August 25, 2014); *Diane C. Bernard*, 45 ECAB 223 (1993); *Lizzie McCray*, 36 ECAB 419 (1985).

<sup>21</sup> *See W.K.*, Docket No. 06-1278 (issued December 26, 2006); *George A. Ross*, 43 ECAB 346 (1991). *Gary E. Kruger*, Docket No. 05-1110 (issued September 30, 2005).

constitute a compensable work factor.<sup>22</sup> A claimant, however, must substantiate allegations of harassment and discrimination with probative and reliable evidence.<sup>23</sup> Appellant did not submit any factual evidence in support of her allegations and thus has not established a compensable work factor.

As appellant failed to establish any compensable factors of employment, she did not meet her burden of proof.<sup>24</sup>

On appeal appellant's representative argues that the current file should be combined with the file for the June 14, 2010 employment injury. The Board notes that, if appellant sustained an emotional condition as a consequence of a physical injury, she can pursue the claim under the other file number.

Appellant's representative also contends that the employing establishment's response was insufficient. The Board finds that there is no reason to combine the files and that it might complicate the future administration of the claim. Appellant has not submitted any evidence detailing her work restrictions or otherwise providing specific information regarding her claim warranting further development.

Appellant's representative also argues that appellant worked with improper and faulty equipment, as evidenced by the door falling on her shoulder in 2006.<sup>25</sup> Appellant has not shown, however, error by the employing establishment in supplying her with work equipment.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not established an emotional condition in the performance of duty.

---

<sup>22</sup> *T.G.*, 58 ECAB 189 (2006); *Doretha M. Belnavis*, 57 ECAB 311 (2006).

<sup>23</sup> *C.W.*, 58 ECAB 137 (2006); *Robert Breeden*, 57 ECAB 622 (2006).

<sup>24</sup> Additionally, the Board notes that appellant did not submit any supporting medical evidence. As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Hasty P. Foreman*, 54 ECAB 427 (2003).

<sup>25</sup> The alleged incident from 2006 in which appellant states she was injured when a piece of equipment struck her left shoulder would be a traumatic, physical injury if established. The question is not before the Board because the claim before the Board is for an alleged psychiatric, emotional condition which appellant describes as an occupational disease.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 24, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 26, 2015  
Washington, DC

Patricia Howard Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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