

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VERNA CHAPPELL and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Lindale, TX

*Docket No. 97-1290; Submitted on the Record;
Issued February 9, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof to establish that she sustained an emotional condition while in the performance of duty.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained an emotional condition while in the performance of duty.

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 illness has some connection with the employment, but nevertheless does not come within the coverage of the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.¹

Perceptions and feelings alone are not compensable. Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.² To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Pamela R. Rice*, 38 ECAB 838 (1987).

opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.³

In this case, appellant has alleged that her emotional condition was caused by the threat from her supervisors, Ann Cleghorn and Donald Holland to “pull her” from the employing establishment due to labor problems. The record contains evidence corroborating appellant’s allegations of labor problems. In a 1995 narrative statement, Ms. Cleghorn indicated that appellant did not operate effectively as Postmaster, and that there were many problems with the community and employees. She further indicated that there were customer complaints regarding the delivery of mail. In a December 13, 1996 narrative statement, Ms. Cleghorn noted that, when appellant was reassigned to the employing establishment, the community demanded a town hall meeting with appellant’s current supervisor, Edie Wyatt and Ted Faulkner, manager of human resources. She further noted that over one hundred people attended this meeting to voice their objections to appellant’s return as Postmaster. A February 13, 1996 decision of an administrative judge of the Equal Employment Opportunity Commission regarding appellant’s discrimination complaint filed against the employing establishment indicated that appellant had labor problems at the employing establishment.

Appellant also alleged that her emotional condition was caused by an incident involving herself and a customer who requested a \$2,000.00 refund. She stated that Ms. Cleghorn instructed her to give a customer a refund in the amount of \$2,000.00. Appellant also stated that she asked Ms. Cleghorn to authorize the refund in writing, but that she declined to do so. Although Ms. Cleghorn has denied that she instructed appellant to give the customer a refund, there is no evidence of record establishing that the incident involving appellant and her customer did not occur. Such incident occurred while in the performance of duty and therefore is a compensable factor.

The Board finds that the above allegations are established as having occurred by evidence present in the case record, and by their nature, they arise out of and in the course of appellant’s assigned duties, thus, they constitute compensable factors of her employment. However, appellant’s burden of proof is not discharged by the fact that she has established employment factors which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.⁴

In the present case, the medical evidence of record is insufficient to establish appellant’s burden. Appellant submitted a November 4, 1994 medical report of Dr. G. Peter Foon, revealing her employment, medical and family histories, and his findings on clinical examination. Dr. Foon opined that appellant suffered from secondary depression as a result of a work situation. He noted that appellant feared being transferred by the employing establishment which involved a lot of travel. Dr. Foon’s medical report is insufficient to establish appellant’s

³ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *William P. George*, 43 ECAB 1159, 1168 (1992).

burden because the factors he identified involving appellant's fear of transfer to another assignment⁵ and her commute⁶ do not constitute compensable employment factors under the Act.

Appellant also submitted a November 21, 1994 medical report of Dr. Tynus McNeel, a Board-certified psychiatrist, indicating a history of her emotional condition, incidents involving her reassignment to a lower position and personality conflicts she had with people at the employing establishment. Dr. McNeel also indicated his findings on mental examination. He diagnosed adult adjustment disorder with mixed disturbance of emotions, primarily anger and resentment. The factor identified by Dr. McNeel regarding appellant's reassignment⁷ does not constitute a compensable employment factor under the Act. Further, Dr. McNeel failed to specifically identify the conflicts appellant had with the employing establishment.

The record reveals a May 24, 1995 disability certificate from Dr. James R. Harris, a Board-certified orthopedic surgeon, revealing that appellant was unable to perform any work for two weeks. Dr. Harris reiterated his findings in a June 16, 1995 disability certificate. The record further reveals a June 14, 1995 disability certificate of Dr. Wendell P. Hand, Jr., an osteopath, indicating that appellant was seen in the office for acute severe depression and that she was unable to work at that time. Dr. Harris' disability certificates are insufficient to establish appellant's burden because they failed to indicate a diagnosis and to discuss whether or how the diagnosed condition was caused by factors of appellant's employment.⁸ Dr. Hand's disability certificate is also insufficient to establish appellant's burden because it failed to explain how or why appellant's condition was caused by factors of her employment.⁹

Appellant submitted a June 12, 1995 medical report of Dr. Barry Rath, a licensed psychologist, providing a history of appellant's family background. He noted that appellant was met with hostility and nonsupport from the employing establishment and that appellant sustained an injury on May 17, 1995 while working at the employing establishment. Dr. Rath noted his findings on psychological examination and opined that appellant appeared to be experiencing acute emotional distress as a result of her difficulties with the employing establishment. He failed to specifically identify the difficulties appellant had with the employing establishment or to provide any medical rationale in support of his opinion.

Further, appellant submitted an August 16, 1995 report of Carolyn Eubanks, who has a masters degree in education. Ms. Eubanks noted that appellant had acute emotional distress precipitated by work-related problems. She also noted a history of appellant's social and medical background. Ms. Eubanks opined that appellant had adjustment disorder with mixed anxiety and depressed mood. Additionally, appellant submitted a March 21, 1995 report of Jerold L. Voss, an employing assistance program counselor, indicating appellant's progress in counseling sessions. Ms. Eubanks and Mr. Voss are not considered to be a "physician" as

⁵ *Goldie K. Behymer*, 45 ECAB 508, 511 (1994); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁶ *Adele Garafolo*, 43 ECAB 169 (1991).

⁷ *Goldie K. Behymer*, *supra* note 5; *Thomas D. McEuen*, *supra* note 5.

⁸ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

⁹ *Id.*

defined under the Act and, therefore, their opinions cannot be considered as competent medical evidence.¹⁰

Additionally, appellant submitted Dr. Hand's September 7, 1995 medical report revealing that she was seen in August 1994 and diagnosed with severe depression, anxiety and an adjustment disorder which was a direct result of stress due to incidents he noted that involved hostile and antagonistic subordinates and nonsupportive superiors. In an April 22, 1996 medical report, Dr. Hand noted appellant's work history and incidents involving the method in which appellant allowed the mail carriers to deliver their mail and the incident involving the refund to a customer. He opined that appellant had an adjustment disorder as a result of her daily work duties. Dr. Hand's medical reports are insufficient to establish appellant's burden because they failed to provide any medical rationale explaining how or why appellant's conditions were caused by these factors of her employment.

Inasmuch as the medical evidence of record is devoid of any rationalized medical evidence establishing that appellant developed an emotional condition due to accepted factors of her federal employment, she has failed to meet her burden of proof to establish her claim.

The January 21, 1997 decision of the Office of Workers' Compensation Programs' hearing representative is hereby affirmed as modified.

Dated, Washington, D.C.
February 9, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

¹⁰ See 5 U.S.C. 8101(2).