U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of THUY RAMACHER and U.S. POSTAL SERVICE,
POST OFFICE, St. Paul, MN

*Docket No. 98-2383; Submitted on the Record;*
*Issued February 10, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained an emotional condition while in the performance of her duties; and (2) whether appellant abandoned her request for a hearing.

On April 13, 1997 appellant, a clerk, filed a claim asserting that her work environment caused her stress and depression. She stated that her job of pushing a button on the towline was humiliating and degrading. She stated that other employees had to clear jams but that no one was assigned the task nor were other employees informed of her restrictions. She stated that other employees viewed her as lazy and resented having to do what they considered to be "her" work. She stated that the other employees shunned her and made obvious their displeasure with hostile looks and dismissive gestures. A small minority helped, but most would not. A few told her she should not be working out of craft. Some asked how they could get such an easy job. While waiting for someone to clear a jam, she stated, an alarm bell and flashing light would go off a few feet over her head. The alarm could go off with distressing frequency and she would have to wait for someone to come. After a few days on the job she began to experience pain in her neck, shoulders, arms and hands. Appellant knew of no witnesses. She added that she began to have severe headaches at work, had little desire to eat, had difficulty sleeping, felt anxious, nervous, stressful and consumed with worry, became emotional and would cry easily both at work and at home. These emotions were most intense at work.

A statement from Phillip A. Richardson, a distribution clerk and union steward, indicated that he noticed some of the looks appellant would get from other employees. He stated that he personally heard rumblings from the employees on the work floor that she should not be working if she could not clear the jams and reset the loop. Mr. Richardson reported that other employees had stated that if an employee cannot do the job they were hired for, they should not be there.

Another employee, union steward, stated that he had seen fellow employees just watch appellant or walk by her while the alarm was going off.

The manager of distribution operations stated that, to the best of his knowledge, none of the problems regarding perceived coldness, hostile looks or dismissive gestures were ever brought to the attention of management.

Appellant's supervisor noted that neither appellant nor Mr. Richardson could identify who was being hostile. The supervisor also noted that appellant was offered ear protection and believed that appellant was wearing some personal hearing protection after a few days' work.

In a report dated November 18, 1996, appellant's neurologist, Dr. Charles F. Ormiston, stated the following:

> "[Appellant's] work situation is currently intolerable. They [have] put her in a situation where she can do the work within the restrictions but emotionally she is a wreck. She sits at a machine where she simply pushes a button which she clearly can do and this goes by until a machine plugs up, when she then has to wait until someone else comes by. This is humiliating to her. The other employees treat her as if she should be able to do this job and sometimes ignore her entirely, making her stand there, humiliated that she can[no]t do the job and increasing the stress level substantially.
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> "There simply has to be a better way to do this and I [have] given her a slip that she [is] not to work until a situation is found that [is] reasonable, both physically and emotionally. I feel strongly that she is not over stating her case and feel that she has a right to be given the opportunity to work a job that she can physically manage and that is not humiliating."

In an August 18, 1997 report, Dr. Robert J. Sevenich, a psychiatrist, stated that appellant had been a patient of his since February 6, 1997. His diagnosis was major depressive disorder, single episode and moderate (with mild psychotic symptoms now resolved). Dr. Sevenich reported as follows:

> "It is my opinion with reasonable medical certainty that [appellant's] depressive symptoms are related to her level of stress as well as physical pain. These are exacerbated by her current work situation and the stress that she perceives in her treatment at work. She also has worsening mood symptoms when her physical pain has been exacerbated. As with many people who suffer from a major depressive disorder, environmental factors have a large influence on the disease course as well as the response to treatment. I believe that [appellant's] current stresses relating to her work situation are contributing to her mental illness. The 'cause' of mental illness is likely a combination of biological factors as well as situational stressors. There is no way to test or prove the 'cause' of her underlying mental health disability. There must be reliance on clinical impression and clinical evidence."

In a decision dated September 27, 1997, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that appellant had failed to establish a compensable factor of employment.

On October 22, 1997 appellant requested an oral hearing before an Office hearing representative. On May 23, 1998 the Office notified appellant of the date, time and location of the scheduled June 25, 1998 hearing.

In a decision dated July 9, 1998, the Office hearing representative found that appellant had abandoned her request for a hearing. She found that appellant did not appear for the hearing on June 25, 1998, did not present a written request for postponement either 3 days prior to or 10 days after the hearing, showing good cause.

The Board finds that appellant has not established that she sustained an emotional condition while in the performance of her duties.

The Federal Employees' Compensation Act[1] ("Act") provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of performance."[3] "Arising in the course of employment" relates to the elements of time, place and work activity. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in her employer's business, at a place where she may reasonably be expected to be in connection with her employment and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto. This alone is not sufficient to establish entitlement to compensation. The employee must also establish an injury "arising out of the employment." To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration.[4]

As the Board noted in *Lillian Cutler*,[5] however, workers' compensation law does not cover each and every illness that is somehow related to the employment. When an employee experiences emotional stress in carrying out her employment duties, or has fear and anxiety regarding her ability to carry out her duties and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability resulted from her emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of her work. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of

[1] 5 U.S.C. §§ 8101-8193.

[2] *Id*. at § 8102(a).

[3] This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

[4] *See Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

[5] 28 ECAB 125 (1976).

employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.

Appellant attributes her emotional condition in large part to humiliation and degradation she perceives feels in performing a job that she states requires little more than pushing a button. As noted above, such frustration from not being permitted to work in a particular environment is not compensable. Her feelings of being under utilized pertain to dissatisfaction with her limited-duty position. The Board has held that dissatisfaction with the type of work assigned does not come within coverage of Act.[6]

Appellant also attributed her emotional condition to the treatment she receives from coworkers. She alleged resentment, shunning, hostile looks and dismissive gestures but did not provide any specific allegations identifying any individual coworker. Mr. Richardson, a distribution clerk and union steward, stated that he noticed some of the looks appellant would get from other employees and that he personally heard "rumblings" from some employees. Another coworker stated that he had seen fellow employees just watch appellant or walk by her while the alarm was going off. This evidence is deficient as it also fails to identify the individuals or dates involved. It does not quote any statement made to appellant or sufficiently describe any action directed toward her. The Board finds that appellant's allegations of resentment, shunning, hostile looks and dismissive gestures are not supported by sufficient probative evidence to establish a compensable factor of employment.

Appellant also attributes her emotional condition to having to sit under a sounding alarm and flashing light. The record discloses some disagreement on the length of time appellant was required to endure the alarm, but there is no dispute that appellant had to remain seated under the alarm when it sounded and the jam was cleared. As the record establishes appellant's exposure to this condition at work arises in the performance of her regular duties, the Board finds that she has established a compensable factor of employment.

The medical opinion evidence submitted to support appellant's claim, however, fails to relate appellant's emotional condition to the sounding alarm and flashing light. Dr. Ormiston, the attending neurologist, related that appellant pushed a button until the machine jammed, then she had to wait until someone else came by to clear the jam. He related appellant's perception of how other employees treated her. As the Board has found, these are not compensable factors of employment. Dr. Sevenich, a psychiatrist, only vaguely referred to appellant's "work situation" and the stress she perceived in her treatment at work. He noted "environmental factors" and "situational stressors" but made no mention of the fact that appellant, at times, sat under a sounding alarm and flashing light. The medical opinion evidence submitted to support her claim fails to establish that this factor caused or contributed to her diagnosed condition.

[6] *See Purvis Nettles*, 44 ECAB 623 (1993).

Causal relationship is a medical issue,[7] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's opinion on whether there is a causal relationship between the claimant's diagnosed condition and the implicated factor of employment. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factor identified by the claimant.[8] As the medical opinion evidence fails to establish a causal relationship between appellant's major depressive disorder and her exposure to the sounding alarm and flashing light, the Board will affirm the denial of her claim.

The Board also finds that appellant abandoned her request for a hearing before an Office hearing representative.

Section 10.137 of Title 20 of the Code of Federal Regulations sets forth the criteria for abandonment:

> "A scheduled hearing may be postponed or cancelled at the option of the Office, or upon written request of the claimant if the request is received by the Office at least three days prior to the scheduled date of the hearing and good cause for the postponement is shown. The unexcused failure of a claimant to appear at a hearing or late notice may result in assessment of costs against such claimant."
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> "A claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date set for the hearing that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing."[9]

The record shows that the Office properly notified appellant of the scheduled hearing. The notice, dated May 23, 1998, bore appellant's correct mailing address. It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual.[10] This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.[11] The appearance of a properly

[7] *Mary J. Briggs*, 37 ECAB 578 (1986).

[8] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[9] 20 C.F.R. §§ 10.137(a), 10.137(c).

[10] *George F. Gidicsin*, 36 ECAB 175 (1984) (when the Office sends a letter of notice to a claimant, it must be presumed, absent any other evidence, that the claimant received the notice).

[11] *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

addressed copy in the case record, together with the mailing custom or practice of the Office itself, will raise the presumption that the original was received by the addressee.[12] The record before the Board contains no evidence rebutting the presumption in this case.[13]

Appellant did not request postponement or cancellation at least three days prior to the scheduled date of the hearing, June 25, 1998. Neither did she request within 10 days after June 25, 1998 that another hearing be scheduled. Appellant's failure to make such requests, along with her failure to appear at the scheduled hearing, constitutes abandonment under federal regulations of her request for a hearing and the Board finds that the Office properly so determined.

The July 9, 1998 and September 27, 1997 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
February 10, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[12] *See Larry L. Hill*, 42 ECAB 596 (1991); *see generally* Annotation, *Proof of Mailing by Evidence of Business or Office Custom*, 45 A.L.R. 4th 476, 481 (1986).

[13] The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).