

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRENDA L. PETERSON and U.S. POSTAL SERVICE,
POST OFFICE, Andover, NJ

*Docket No. 99-1712; Submitted on the Record;
Issued October 26, 2000*

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issue is whether appellant established that she sustained an emotional condition in the performance of duty.

On June 17, 1997 appellant, then a 50-year-old rural carrier, filed a notice of occupational disease and claim for compensation, alleging that she suffered from obsessive compulsive disorder (OCD) with depression and hypertension causally related to factors of her federal employment. On the reverse side of the CA-2 form, appellant's supervisor remarked that appellant suffered from an emotional condition at the time she was hired, which had been aggravated by appellant's financial difficulties and not her work environment. Appellant stopped work on September 27, 1997 and has not returned.

In a September 19, 1997 treatment slip, Dr. Edgardo A. Ong, a Board-certified internist, noted that appellant had hypertension aggravated by stress.

In a report dated September 29, 1997, Dr. Karen L. Blend, a chiropractor, noted that appellant had been her patient since September 1996, complaining of stress at work and "personal problems" with her boss. Dr. Blend stated that appellant had shingles, "which can be stress related."

In a September 30, 1997 treatment note, Dr. Ong reported that appellant had "essential hypertension and anxiety reaction." He prescribed medication and advised appellant to reduce mental and emotional stress.

Appellant submitted a copy of an emergency room medical discharge instruction handout dated October 2, 1997, which included a diagnosis of depression.

In support of her claim, appellant submitted copies of selected entries from her personal journal along with a written statement dated October 2, 1997. Appellant alleged the following: (1) that she was improperly denied leave and time on mail counts; (2) that she was threatened with physical harm by a coworker but he was not punished; (3) that she was improperly suspended over the telephone by her supervisor; (4) that she performed “favors” for her supervisor but was not compensated like other coworkers had been in the past, *i.e.*, she did not receive a sweatshirt; (5) that the postmaster called her husband a liar; and (6) that she was harassed by the postmaster with threats of receiving leave without pay, a cut in pay, a transfer to another duty station and withholding of her paycheck. Appellant further stated that the postmaster yelled at her on the work floor.

The record includes a copy of a union grievance form filed by appellant alleging that the employing establishment failed to comply with proper procedure in issuing a suspension insofar as appellant’s supervisor left the message on appellant’s answering machine on September 24, 1997 that she was suspended for the period September 25 to 26, 1997.

In a report dated October 5, 1997, Dr. Martin Freimer, a Board-certified psychiatrist, stated that appellant presented to him after being “in a crisis this last week.” He noted that appellant was extremely anxious and upset because of problems at work. Dr. Freimer also stated that she presented with classic symptoms of OCD.

In an October 14, 1997 report, Dr. Freimer diagnosed that appellant had a severe case of OCD and secondary depression. He stated:

“I can assure you that [OCD] is quite debilitating to someone working in a job like [appellant’s]. Often times such patients have a great deal of obsession to repeat tasks over and over again. An otherwise efficient person can take five or six times as long as someone without this disability. In addition, this disorder is extremely treatable and often responds after four or five months to intensive pharmacotherapy. [OCD] is clearly a brain disorder and has a strong genetic component and is not just a matter of internal weakness or a failure to stand up for oneself. If any one of my patients has this disorder that would interfere with their ability to function as well as I think they would be capable without this disorder, it certainly would be [appellant].”

Dr. Freimer opined that appellant did not need to be hospitalized, although he considered her to be disabled from work until such time as she was able to manage the stress in her life.

In a letter dated October 17, 1997, Laura A. Griffen, the postmaster at appellant’s duty station, advised the Office of Workers’ Compensation Programs that appellant had been suspended on September 23, 1997 for two days for failure to follow instructions and failure to properly perform her duties.¹ Ms. Griffen indicated that appellant was to return to work on September 27, 1997, but that, on September 26, 1997, appellant’s husband called and said that

¹ The record includes a copy of the suspension order dated September 25, 1997, charging appellant with failure to follow instructions and failure to properly perform duties.

appellant was unable to work for the next two weeks on the advise of a physician. Ms. Griffen stated that she requested a doctor's note which was dropped off on September 29, 1997; that Dr. Ong indicated appellant was off work due to hypertension and would return to work on October 4, 1997, that appellant did not return to work on October 4, 1997 and that on October 9, 1997 a note was provided by Dr. Lazzo advising appellant would be off work until October 8, 1997. According to Ms. Griffen, appellant had suffered from hypertension for as long as she had been postmaster. She alleged that appellant had many stressors in her life including a husband out of work and the loss of their home due to financial difficulties. She also alleged that appellant had been under stress because her son was getting married.²

On October 24, 1997 the employing establishment and appellant signed a settlement agreement whereby her suspension was modified to a letter of warning to be retained in her personnel file. Appellant was reimbursed for three days of lost wages.

In a letter dated November 21 1997, the Office advised appellant of the factual and medical evidence required to establish her claim.

In a December 17, 1997 report, Dr. Blend reported that appellant's employer was putting her through a great deal of stress and that appellant was filing a grievance. She stated that from conversations with appellant it was her opinion that the employer had in all medical probability contributed to her emotional disorder.

In another report dated December 17, 1997, Dr. Robeta R. Fallig, a licensed psychologist, indicated that appellant had been referred by Dr. Freimer "for symptoms apparently stemming from a set of workplace-related circumstances." He stated:

"[Appellant] is experiencing severe, debilitating stress brought on by a series of interactions with her most recent employer at the Post Office branch where she is employed. [Appellant] has worked at the Post Office for many years, apparently without incident, and has enjoyed her work, her routes and her customers. Despite a 20-year-old diagnosis of bipolar disorder for which she has been medically treated and a more recent diagnosis of OCD. [Appellant's] continued encounters with her most recent employer, which she describes as emotional badgering, appears to be the main contribution to her most recent emotional condition, which is preventing her from returning to her workplace. [Appellant] reports that her most recent employer has taunted her, acted unfairly toward her on several occasions, inappropriately talked to [her and her daughter], unjustly dismissed her, and has generally created an intolerable work environment for [her] which led to her feelings of overwhelming anxiety and depression."

In a December 18, 1997 report, Dr. Freimer noted that appellant had a long history of OCD, including problems with washing, fears of picking up germs from the newspapers and numerous superstitions. He indicated that appellant had been started on Serotonin, a medication

² The employing establishment also submitted an October 20, 1997 statement alleging that appellant's emotional condition was self-generated and due to numerous family problems.

that would probably take six months to have a full effect. Dr. Freimer stated that in his opinion appellant's OCD was multifactorial, with the precise cause unknown but a significant component being either genetic or immunological. He opined that stress on the job has exacerbated appellant's condition although it would not have been the direct cause. Dr. Freimer further noted, however, that there is "no scientific way to ascertain whether or not the stress directly is producing obsessional symptoms in such patient since, as with many other medical conditions such as diabetes or hypertension, we do not know the exact cause of [OCD]."

In a letter dated December 29, 1997, Ms. Griffen responded to the journal submitted by appellant and denied that appellant's stress-related condition was due to work factors.

In a report dated March 10, 1998, Dr. Freimer indicated that he was in agreement with appellant's psychologist that appellant was not ready to return to work due to "the extreme stress she [is] under and the nature of her long-term disability."

In a decision dated April 21, 1998, the Office denied appellant's claim on the grounds that she failed to establish that she sustained an emotional condition in the performance of duty.

On September 23, 1998 appellant by counsel requested reconsideration and submitted medical records from Dr. Freimer dating from October 1997 to July 1998 and a copy of a December 18, 1997 report.³

In a July 10, 1998 report, Dr. Freimer noted that there had never been any real diagnostic laboratory tests performed on appellant for OCD as such tests were of "little value" in diagnosing that condition. He diagnosed that appellant suffered from both OCD and bipolar affective disorder. Although Dr. Freimer advised that appellant was under no restrictions in her activities, he further noted that she would have difficulty sticking to any task that required judgment and consistency since she is so easily distracted.

In a decision dated January 5, 1999, the Office denied modification following a merit review.

The Board finds that appellant failed to establish that she sustained an emotional condition in the performance of duty.

In an occupational disease claim, an employee has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by factors of the federal employment.⁴ This burden includes the submission of a detailed description of the employment conditions or factors that the employee believes caused or adversely affected the condition for which he or she claims compensation.⁵ This burden also includes the submission of rationalized medical opinion

³ A majority of the progress notes were already of record. The Board notes that the notes monitored appellant's symptoms but they did not specifically address the etiology of appellant's condition or specific work factors.

⁴ See 20 C.F.R. § 10.115 (1999); *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁵ See 20 C.F.R. § 10.116 (1999).

evidence, based upon a complete and accurate factual and medical background of the employee, showing a causal relationship between the condition for which compensation is claimed and the implicated factors or conditions of the federal employment.⁶

The Board notes that the mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of an employment relationship.⁷ Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused or aggravated by employment factors, is sufficient to establish causal relation.⁸ Causal relationship is a medical issue that can be established only by medical evidence.⁹

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 workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but nevertheless are not covered because they are not found to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. On the other hand where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.¹⁰

In the instant case, appellant has failed to establish a compensable factor of employment. Appellant has not demonstrated that she was harassed by the postmaster or any other supervisor. There is no corroborating factual support in the record, such as a witness statement, to support appellant's contention that she worked in a hostile work environment, that the postmaster yelled at her or her husband, or that she was threatened with physical harm by a coworker. As noted above, the issues of appellant's leave, transfers and discipline are administrative matters within the purview of the employing establishment. Although the employing establishment entered into a settlement agreement whereby appellant's reprimand was changed to a letter of warning and her leave was restored, the mere fact that the employing establishment lessened disciplinary action towards appellant does not establish that the employing establishment erred or acted in an abusive manner.¹¹

⁶ See 20 C.F.R. § 10.115(e) (1999); *Ruth C. Borden*, 43 ECAB 146 (1991).

⁷ *Ruth C. Borden*, *supra* note 6; *Paul D. Weiss*, 36 ECAB 720 (1985).

⁸ *Id.*

⁹ *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

¹⁰ *Lillian Cutler*, 28 ECAB 125 (1976).

¹¹ See *Joe Hendricks*, 43 ECAB 850 (1992).

The Board has held that actions of a supervisor which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act, however, for harassment to give rise to a compensable disability or condition under the Act, there must be some evidence that such implicated acts of harassment and discrimination did in fact occur.¹² Mere perceptions of harassment and discrimination are not compensable under the Act. Inasmuch as there is no factual basis for appellant's allegations of harassment by the postmaster, she has failed to carry her burden of proof in this case.

Because the Board finds that appellant has not alleged a compensable factor of employment, it is not necessary to evaluate the medical evidence. Therefore, the Board concludes that the Office properly denied appellant's claim for compensation.

The decisions of the Office of Workers' Compensation Programs dated January 5, 1999 and April 21, 1998 are hereby affirmed.

Dated, Washington, DC
October 26, 2000

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

¹² See *Ruth C. Borden*, *supra* note 6 at 159; *Pamela R. Rice*, 38 ECAB 838, 841 (1987).