

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KIM A. COLEMAN and U.S. POSTAL SERVICE,  
POST OFFICE, North Reading, MA

*Docket No. 00-556; Submitted on the Record;  
Issued January 16, 2001*

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DECISION and ORDER

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

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

On November 17, 1998 appellant, then a 39-year-old mailhandler, filed an occupational disease claim alleging that she sustained extreme emotional distress due to factors of her federal employment. She stopped work on February 2, 1997 and did not return.

By decision dated October 8, 1999, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence did not establish she sustained an injury in the performance of duty.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

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 her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>1</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 her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

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 employment factors.<sup>3</sup> This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>4</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, 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>5</sup> If a claimant does implicate a factor of employment, the Office 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, the Office must base its decision on an analysis of the medical evidence.<sup>6</sup>

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant attributed her emotional condition to sexual harassment from her coworkers. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.<sup>7</sup> However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.<sup>8</sup>

Appellant provided a description of the specific comments and actions, which she felt constituted sexual harassment by coworkers. Appellant stated that she repeatedly complained about her coworkers' conduct to three supervisors, Larry Midura, Joseph Fortunato and Phil Fortin, but that they took no action. She further related that she complained to Mr. Fortunato about a coworker, William Haddad, who "passed gas" in their workstation. Appellant stated

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<sup>3</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>4</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>5</sup> *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>6</sup> *Id.*

<sup>7</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>8</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

that, after she complained to her supervisor, Mr. Haddad put his fist in her face in a threatening manner.

The employing establishment controverted appellant's allegation of sexual harassment. In statements dated November 1998, Mr. Midura and Mr. Fortin denied knowledge of the described incidents of harassment and stated that appellant had never complained about harassment to them. In a statement dated November 24, 1998, Mr. Fortunato indicated agreement with appellant's contention that Mr. Haddad put his fist in her face in a threatening manner. He stated that following this incident he separated the two employees. Mr. Fortunato denied knowledge of any of the other incidents described by appellant. The record indicates that investigators with the employing establishment requested information from appellant regarding her allegations of sexual harassment and assault but that she did not respond to the request. In a statement dated May 6, 1999, Mr. Midura related that appellant stopped work on February 28, 1997 and that he later learned that she was attending college full time. Mr. Midura indicated that appellant first alleged that she encountered sexual harassment at the employing establishment on July 29, 1998 at her unemployment hearing.

Regarding appellant's allegation that coworkers subjected her to inappropriate comments and actions of a sexual nature, the Board finds that she has not provided sufficient corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.<sup>9</sup> Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed sexual harassment.

Regarding appellant's allegation that Mr. Haddad placed his fist in her face, the Board has recognized the compensability of physical threats or verbal abuse in certain circumstances.<sup>10</sup> While the altercation between appellant and Mr. Haddad may constitute a compensable factor of employment, the Board notes that appellant's burden of proof is not discharged by the fact that she has alleged an employment factor 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.<sup>11</sup>

In a report dated August 10, 1998, Dr. Mario F. Moretti, a family practitioner, indicated that he treated appellant on October 21, 1991 at which time she related that she was "physically attacked by male coworkers with added sexual verbal harassment. [Appellant] also stated that she had reported these incidents to her supervisors on numerous occasions." Dr. Moretti diagnosed anxiety and colitis, which he found was "causally related to her sexual harassment and her treatment at her work place at the [employing establishment]." He found that appellant was unable to resume her regular employment. While Dr. Moretti generally related appellant's condition to physical attacks and sexual harassment by coworkers, he did not specifically discuss

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<sup>9</sup> See *William P. George*, 43 ECAB 1159, 1167 (1992).

<sup>10</sup> See *Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991).

<sup>11</sup> See *William P. George*, *supra* note 9 at 1168.

the encounter between Mr. Haddad and appellant and thus his opinion is insufficient to establish that she sustained an emotional condition due to Mr. Haddad shaking his fist in her face.<sup>12</sup>

Accordingly, the Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

The decision of the Office of Workers' Compensation Programs dated October 8, 1999 is hereby affirmed.

Dated, Washington, DC  
January 16, 2001

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>12</sup> Further, Office procedures provide that a claim for an emotional condition must be supported by an opinion from a psychiatrist or clinical psychologist before the condition can be accepted. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3d(6) (June 1995).