United States Department of Labor
Employees' Compensation Appeals Board

L.C., Appellant	)	
and	)	**Docket No. 06-1289**
	)	**Issued: December 4, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Pennington, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 10, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' January 19, 2006 merit decision denying her emotional condition claim and May 4, 2006 nonmerit decision denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty; and (2) whether the Office properly denied her request for merit review under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On March 31, 2003 appellant, a 45-year-old clerk, filed a traumatic injury claim alleging that she had a nervous breakdown and depression due to verbal threats and from being forced to remain in the postmaster's office. She indicated that the date of injury was March 19, 2003. In the official supervisor's report, Postmaster John Fago controverted appellant's claim. He stated

that he had not seen or spoken to appellant on the date of the alleged injury. Mr. Fago contended that her injuries were self-inflicted, by virtue of the fact that she had taken an overdose of medication.

Appellant submitted a March 6, 2003 statement from Davis Zhon, a coworker. He indicated that on that date he saw appellant crying in the morning and heard her state that she loved her family. In a March 7, 2003 statement, Joann Turner, a coworker, related that, at approximately 9:00 a.m. on March 6, 2003, appellant asked her if she thought appellant was a good worker, a good person or just lazy. Ms. Turner informed the supervisor on duty that appellant had taken a handful of pills and that she planned to take her to the hospital.

By letter dated April 3, 2003, Edgar R. Brown of the employing establishment controverted appellant's claim, contending that the date of appellant's self-inflicted injury was March 6, 2003 rather than March 19, 2003. Appellant was in a nonwork status on March 19, 2003.

In a March 7, 2003 statement, Nancy Eggert, a coworker, indicated that on March 6, 2003 appellant was crying and told another coworker to tell her children that she loved them, "if anything happened to her." After appellant told her that she had taken a handful of pills, Ms. Eggert took her to the hospital. In a March 7, 2003 statement, Eugene Maloney, a coworker, related that appellant cried for an unknown reason for about an hour on the morning of March 6, 2003 and allegedly said, "If something happens to me, tell my children I love them." Thereafter, he saw Ms. Turner drive appellant away from the employing establishment.

In a statement dated March 7, 2003, Mr. Fago indicated that he arrived at work at 6:30 a.m.; gave a service talk at 8:30 a.m.; left the employing establishment at 8:50 a.m.; and returned at approximately 10:15 a.m. At 10:30 a.m. he was told about appellant. In an unsigned, undated statement, a supervisor related that on the morning of March 6, 2003, he saw appellant at 8:15 a.m. and again at 8:40 a.m. At 10:10 a.m., he was informed that appellant had been taken to the hospital at 9:30 a.m. because she had taken some pills. The record contains a September 4, 2002 request for a fitness-for-duty examination; a September 13, 2002 notification of an appointment for a fitness-for-duty examination; a January 21, 2003 memorandum regarding a predisciplinary interview addressing appellant's failure to comply with attendance regulations; and a Step 1 Grievance Summary concerning a January 21, 2003 letter of warning for appellant's failure to follow proper procedure regarding notification of absence.

By letter dated April 17, 2003, the Office notified appellant that the information submitted was insufficient to establish her claim. It advised her to submit a description of employment-related conditions or incidents that she believed contributed to her illness; specific aspects of her employment that she considered detrimental to her health; a description of all practices or incidents affecting her condition; and a medical report describing symptoms, treatment and an explanation as to how the alleged work incidents or exposure contributed to her condition.

The record contains progress notes bearing illegible signatures for the period August 1, 2002 through April 17, 2003. Notes dated August 1, 2002 reflect an assessment of severe stress regarding a racist superior who created a miserable work environment at the employing

establishment. Notes dated April 17, 2003 reflect an assessment of major depression/hospitalization. COP/RTW Case Worksheet dated April 17, 2003 bearing an illegible signature reflects that appellant felt depressed because the Department of Labor would not "believe her." Appellant submitted work excuses dated April 10 and May 1, 2003 from Dr. Razia Matin, a Board-certified psychiatrist, who stated that appellant would be unable to return to work until May 12 and June 17, 2003, respectively. The record contains an April 11, 2003 request for notification of absence for the period April 7 through May 10, 2003 and a May 1, 2003 request for the period May 12 through June 17, 2003. Appellant submitted Dr. Matin's unsigned progress notes from March 17 through May 1, 2003. An October 2, 2002 report of his initial evaluation of appellant provided diagnoses of "major depressive disorder, recurrent, mild" and "job stress, conflict with superior." A March 6, 2003 note from Robert Wood Johnson University Hospital at Hamilton emergency department, bearing an illegible signature, stated that appellant should remain on sick leave for an indefinite period of time, to be determined by her treating psychiatrist. The record also contains March 10, 2003 discharge instructions from Hamilton Behavioral Health Center and a December 17, 2002 request for notification of absence for December 16 and 26, 2002.

In an undated form entitled "Information for Pre-Complaint Counseling," appellant alleged that on March 19, 2003, Mr. Fago called her into his office and "yelled and screamed" at her. She claimed that Mr. Fago's actions caused her to suffer a nervous breakdown, which required hospitalization. Appellant further alleged that the postmaster's action was both discriminatory (due to her Chinese heritage) and retaliatory (due to the filing of her Equal Employment Opportunity (EEO) complaint).

In a May 15, 2003 narrative statement, appellant corrected the information contained in her CA-1 to reflect that March 5, 2003 was the day the alleged incident occurred and that she was taken to the emergency room on March 6, 2003. She noted that her representative had erred when the form was originally completed. Appellant did not file her claim until March 31, 2003, because she had previously submitted evidence of harassment and retaliation by her supervisors in conjunction with a claim filed for a July 31, 2002 incident (Case No. 022027865). Appellant noted that she was hurt and disappointed by the denial of those claims. On March 5, 2003 she was held against her will and treated abusively during a meeting with union representatives and Mr. Fago. Initially, appellant was called into a conference room to meet with the union representative, Elena White and the workplace analyst, Arnie Endick. Ms. White reported instances of abuse on the part of the employing establishment, including refusal of a leave request and implementation of a "minute-by-minute" schedule for appellant. Although appellant allegedly objected to his presence, Mr. Fago was allowed into the room. She alleged that as Mr. Fago proceeded to discredit her, she felt shaky, cold and uncomfortable and had to hold onto Ms. White. She called the union for the first time when Mr. Fago said he did not like Chinese people, in front of coworkers and supervisors. Appellant stated that when supervisor Jorge Colon was brought in, he criticized her. At 3:30 p.m., she finally took a lunch break.

In a May 15, 2003 report, Dr. Guy Nee opined that appellant had suffered from severe depression since August 1, 2002, as a direct result of an intolerable work environment. He stated that she had attempted to commit suicide in March 2003 by overdosing on her antidepressant.

The record contains disability slips dated June 11 and July 19, 2003 from Dr. Valerie Brooks-Klein, a licensed clinical psychologist, who stated that appellant required six and eight weeks respectively in therapy to treat her depression, prior to returning to work.

By letter dated July 17, 2003, the Office asked the employing establishment to respond to appellant's allegations.

In an undated narrative statement, Mr. Fago denied appellant's allegations. Prior to the March 5, 2003 meeting, appellant had been having difficulty completing her assignments, claiming that the workload was "too much" and that she could not remember what she had done from one assignment to the other. In order to aid her in completing her duties, appellant was given a copy of her assignments with approximate completion times. Appellant continued to be unable to perform the duties of the job. After a part-time flexible clerk was assigned to train appellant, she was observed performing all tasks, took her lunch and breaks and had 40 minutes of "down time" at the end of the day. After two days of training, appellant continued to complain that the workload was too much and that she was unable to complete her assignments in the time allotted. On March 5, 2003 Mr. Fago asked Ms. White and Mr. Endick to speak to appellant about her performance and to inquire why she was unable to complete her assignments. When she was brought into the conference room with Mr. Fago, appellant stated that she wanted to leave the room if he remained. Reportedly, Mr. Endick and Ms. White said "it was fine." Appellant was asked why she could not complete her assignments and Mr. Fago said very little. After Mr. Colon was brought in to describe her performance, appellant became upset. An action plan was agreed upon whereby Ms. White would observe appellant and her work assignment. Mr. Fago stated that there were no verbal threats by management, nor was appellant forced to stay in the office. Mr. Fago stated that on March 6, 2003 he arrived at work at 6:45 a.m. and remained in the office until 8:45 a.m., when he left. He indicated that he did not see appellant or speak to her on that date.

The record contains an undated copy of appellant's daily schedule from 8:00 a.m. until 5:30 p.m.

In a letter dated May 8, 2003 to David Saloman, area operations manager for the employing establishment, appellant made numerous allegations of harassment by Mr. Fago over a two-year period. The record contains an undated response from Mr. Fago to appellant's grievance alleging that she was denied the right to request leave without pay following the March 6, 2003 incident. In a May 15, 2003 letter, Mr. Fago denied the allegations contained in appellant's May 8, 2003 letter to Mr. Saloman.

A July 19, 2003 letter from Mr. Fago reflects that appellant withdrew her grievance on August 1, 2003. On March 16, 2003 Mr. Colon stated that he was informed by Mr. Maloney on March 6, 2003 that appellant had taken some pills and had been taken to the hospital by Ms. Turner.

In a September 10, 2003 report, Dr. Brooks-Klein stated that she treated appellant for a "traumatic and hostile situation at work that occurred over a period of time over the past two years. Finally, in March 2003, the situation became even more extreme and was so

devastating that she has not been able to return to work since." She stated that "in my professional opinion, [appellant's] condition is a direct result of the harassment and abuse meted out by the [p]ostmaster at her place of employment."

By decision dated October 9, 2003, the Office denied appellant's claim, finding that she had failed to establish that she had a medical condition caused or aggravated by compensable factors of employment.

On August 17, 2004 appellant, through her representative, requested reconsideration of the October 9, 2003 decision. She submitted an October 23, 2003 disability slip from Dr. Brooks-Klein and disability slips from Dr. Nee dated November 13 and 17, 2003. Appellant provided statements from several coworkers, including an October 30, 2002 statement from Calvin Fowler outlining his duties at the employing establishment. An undated statement from Diane Barnaber indicated that she had never received a minute-by-minute list of duties. In an undated statement bearing an illegible signature it was alleged that appellant's supervisor watched her "every move" on October 9, 2002 and that a conversation with the supervisor caused appellant to cry. Appellant submitted several statements responding to the question, "Did you ever get a list of duties pertaining to your work?" Ms. Eggert stated: "Nothing like the list of duties stating minute by minute what we were suppose to do." Responses bearing illegible signatures reflect that other coworkers had not received such a list of duties.

Appellant submitted an August 5, 2004 report from Dr. Brooks-Klein, who diagnosed post-traumatic stress disorder. Dr. Brooks-Klein opined that appellant was experiencing permanent anxiety due to harassment by Mr. Fago. She stated that the harassment consisted of unrealistic demands made regarding the speed of casing mail, as well as other tasks for over a year. Dr. Brooks-Klein also indicated that Mr. Fago had screamed at appellant in front of two other employees on July 31, 2002. In an undated psychiatric summary report, Dr. Alvaro Arguenta, a treating physician, also diagnosed post-traumatic stress disorder. He opined that appellant was disabled. Indicating that he had originally evaluated appellant on March 4, 2004, Dr. Arguenta stated that appellant had experienced multiple episodes of harassment at work "according to her perceptions."

In a November 19, 2004 decision, the Office modified the October 9, 2003 decision, to find that the evidence did not establish any compensable employment factors. The Office found that appellant's claim that her stress condition was due to the requirements of her job to case a certain amount of mail in a given time was a new employment factor, separate and distinct from those claimed in this case and, therefore, irrelevant.

On May 6, 2005 appellant, through her representative, requested reconsideration, claiming that her stress-related condition was caused by the duties of her job, which required her to do substantial work under stringent time deadlines. In an April 27, 2005 narrative statement, appellant alleged that she was set up to fail, in that she was not given sufficient time to complete her work. Appellant provided her schedule and described the duties she was required to perform by Mr. Fago.

In a June 6, 2004 report, Dr. Arguenta stated that appellant suffered from anxiety and stress, which was produced by harassment at work. He indicated that appellant had gross impairment in cognitive function.

By decision dated January 19, 2006, the Office denied modification of its November 19, 2004 decision, finding that there were no statements in the record contemporaneous to her March 31, 2003 claim that she suffered an emotional reaction to specific employment duties.

On February 2, 2006 appellant, through her representative, again requested reconsideration, contending that the Office failed to consider Dr. Arguenta's June 6, 2004 report.

By decision dated May 4, 2006, the Office denied appellant's request for reconsideration, finding that she had submitted no new relevant evidence to support her claim; had advanced no new legal contentions; and submitted no evidence showing that the Office erroneously applied or interpreted a point of law.

LEGAL PRECEDENT -- ISSUE 1

To establish her claim that she sustained an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.[1]

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 concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to her regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act.[2] The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of appellant's work or her fear and anxiety regarding her ability to carry out her duties.[3] 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 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.[4] Moreover, although administrative and personnel matters are generally related to employment,

[1] *Leslie C. Moore*, 52 ECAB 132 (2000).

[2] 5 U.S.C. §§ 8101-8193.

[3] *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[4] *Id. See also Peter D. Butt, Jr.*, 56 ECAB ___ (Docket No. 04-1255, issued October 13, 2004).

they are functions of the employer and not duties of the employee. Thus, the Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.[5]

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment, which may be considered by a physician when providing an opinion on causal relationship and which are not deemed factors of employment and may not be considered. When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.[6] When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.[7] As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.[8]

Generally, an employee's emotional reaction to administrative or personnel actions taken by the employing establishment is not covered because such matters pertain to procedures and requirements of the employer and are not directly related to the work required of the employee.[9] An administrative or personnel matter will be considered to be an employment factor, however, where the evidence discloses error or abuse on the part of the employing establishment.[10] An employee's frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable.[11] Likewise, an employee's dissatisfaction with perceived poor management is not compensable under the Act.[12]

[5] *See Charles D. Edwards*, 55 ECAB 258 (2000).

[6] *Margaret S. Krzycki*, 43 ECAB 496 (1992).

[7] *See Charles D. Edwards*, *supra* note 5.

[8] *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Arthur F. Hougens*, 42 ECAB 455 (1991); and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence established such allegations).

[9] *Felix Flecha*, 52 ECAB 268 (2001).

[10] *James E. Norris*, 52 ECAB 93 (2000).

[11] *Barbara J. Latham*, 53 ECAB 316 (2002).

[12] *Id.*

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition was caused or adversely affected by her employment.[13] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[14]

ANALYSIS -- ISSUE 1

In her traumatic injury claim, appellant attributed her emotional condition to the actions of her supervisor on March 5, 2003. As noted, workers' compensation law does not cover an emotional reaction to an administrative or personnel action unless the evidence establishes error or abuse on the part of the supervisor.[15]

The Board finds that appellant did not submit sufficient evidence to establish that Mr. Fago or her supervisors committed error or abuse with regard to these administrative matters. Regarding the March 5, 2003 meeting between appellant, union representatives and Mr. Fago, appellant has submitted no evidence to corroborate her allegation that she was held in the postmaster's office against her will. Her allegations alone are insufficient to establish a factual basis for her claim. The record reflects that appellant, union representatives and Mr. Fago met in a conference room on March 5, 2003. Appellant stated that she objected to Mr. Fago's presence and felt shaky, cold and uncomfortable. Mr. Fago indicated that the union representatives assured appellant that "it was fine" and questioned her about her job performance. He stated that there were no verbal threats by management and appellant was not forced to stay in the conference room. The Board finds that it was reasonable for the postmaster to be present in a meeting with union representatives to discuss appellant's job performance. The employing establishment's action with regard to the letter of warning issued to appellant was in keeping with office policy for all employees. Moreover, the action was reasonable under the circumstances, given that the letter was issued after appellant had called in sick the day after Christmas in 2002, following denial of her request for a fourth week of vacation. The supervisor's actions of monitoring appellant and giving her a detailed daily schedule were reasonable, in light of her difficulty in completing the requirements of her job. Mr. Fago stated that the detailed schedule was designed to assist her. Although she has asserted that she was being singled out and that her coworkers were not being monitored, appellant has submitted no evidence that her supervisor committed error or abuse in this regard. While appellant disagreed with the denial of her leave requests, she has not established that such action was administratively erroneous. It was reasonable for the supervisor to deny appellant's request for leave on the day after Christmas, due to operational needs. Similarly, the evidence does not establish error or abuse as to appellant's work and lunch schedule. Appellant alleged that Mr. Fago reprimanded her and, on one occasion, stated that he did not like Chinese people, in front of her coworkers and other supervisors. Appellant submitted no evidence to corroborate

[13] *See Charles D. Edwards, supra* note 5.

[14] *Ronald K. Jablanski*, 56 ECAB ___ (Docket No. 05-482, issued July 13, 2005). *See also Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[15] *See Charles D. Edwards, supra* note 5.

this allegation. Mr. Fago denied her allegation, stating that it was appellant who stated that he did not like Chinese people. Appellant has submitted insufficient evidence in this case that her supervisors committed error or abuse in discharging their supervisory or managerial duties. The Board finds that she has failed to establish a compensable factor of employment with regard to these allegations.

Although appellant indicated that she had filed several grievances and EEO complaints against the employing establishment, appellant submitted no finding or final decision from the EEO Commission to substantiate her allegations. The Board has held that grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.[16]

After appellant filed the traumatic injury claim alleging the March 5, 2003 incident, she also submitted subsequent statements to the record alleging a pattern of harassment by employing establishment officials over a period of years. The record indicates that these harassment allegations are the subject of a different Office claim (Case No. 022027865) and will not be adjudicated as part of this traumatic injury claim.

Subsequent to the filing, development and denial of her traumatic injury claim, on May 6, 2005 appellant alleged that she experienced emotional stress in carrying out her employment duties. Appellant provided a breakdown of her daily schedule and claimed that she was overwhelmed and stressed by the fact that she was unable to complete her duties in the time allotted. These allegations are separate and distinct from the instant traumatic injury claim which alleged a specific incident occurring on March 5, 2003. These allegations may constitute a separate claim for occupational injury, but are not properly raised as part of the traumatic injury claim.[17] In the present case, appellant has not established a compensable employment factor with respect to the March 5, 2003 meeting. As such, the Office properly denied her claim.

LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606 (b) (2), a claimant may obtain a review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office or by submitting relevant and pertinent new evidence not previously considered by the Office.

ANALYSIS -- ISSUE 2

The Office had denied appellant's claim on the grounds that appellant had not established that the alleged incident of March 5, 2003 constituted a compensable factor of employment. Appellant's representative requested reconsideration on February 2, 2006 alleging that the Office had failed to consider Dr. Arguenta's June 6, 2004 report. The argument appellant raised in support of the request for reconsideration was not relevant to the issue of the compensability of

[16] *James E. Norris, supra* note 10.

[17] 20 C.F.R. § 10.6(ee) states that traumatic injury means a condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift.

the March 5, 2003 incident. The Office was, therefore, not required to reopen the case for merit review. The Board finds that the Office did not abuse its discretion by denying merit review on May 4, 2006.

CONCLUSION

The Board finds that appellant has not established that the alleged incident of March 5, 2003 constituted a compensable factor of employment. The Board also finds that the Office did not abuse its discretion by denying merit review on May 4, 2006.

ORDER

IT IS HEREBY ORDERED THAT the May 4 and January 19, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 4, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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