

**United States Department of Labor  
Employees' Compensation Appeals Board**

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D.C., Appellant )  
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and )  
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U.S. POSTAL SERVICE, POST OFFICE, )  
Lake Elsinore, CA, Employer )  

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**Docket No. 06-1213  
Issued: September 18, 2006**

*Appearances:*  
D.C., *pro se*  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

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

**JURISDICTION**

On May 9, 2006 appellant filed a timely appeal from a May 12, 2005 decision of the Office of Workers' Compensation Programs denying her claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty on April 14, 2004.

**FACTUAL HISTORY**

On April 15, 2005 appellant, a 49-year-old mail carrier filed a traumatic injury claim alleging that on April 14, 2004 she sustained an emotional condition due to threats made by Jeff Lucas, a supervisor, against her and her family. She stopped work on April 14, 2004 and has not returned to work.

Appellant submitted a May 14, 2004 report from Dr. Abdul S. Farzin, a treating physician, who opined that she was totally disabled. Dr. Farzin noted that she was “currently under his care for an altercation that occurred while on the job.”

By letter dated May 20, 2004, the Office requested additional information from appellant regarding her claim.

By letter dated May 26, 2004, the employing establishment submitted statements dated April 14, 2004 by Mr. Lucas and Davie Williamson, a supervisor. Mr. Lucas stated that he and Mr. Williamson called appellant in to discuss issuing “a suspension for safety-related issues.” Appellant requested that Abel Buendia, a shop steward, be present. Mr. Buendia informed her that his presence was not needed when the discipline was issued. Mr. Williamson explained the importance of safety and issued the discipline to appellant, who allegedly laughed. Appellant was informed that further safety violations would result in appropriate correction action up to and including removal. Mr. Lucas put her on notice regarding her husband calling his house and hanging up. He reminded appellant that she had been put on notice regarding threats made by her husband against managers when corrective actions were to be taken against her. Mr. Lucas informed her that he had notified the postal investigative service regarding this matter. He stated that, if there were any further threats by her or her husband, the postal investigative service “would be at their door step to interview and possibly arrest.”

Mr. Williamson stated that appellant was called in to discuss her suspension for 14 days due to safety violations. Mr. Lucas told her that safety was very important and she laughed. Mr. Williamson reported that both he and Mr. Lucas had previously been threatened on the telephone and in public by appellant’s husband. Appellant was advised by Mr. Lucas that he had notified the postal investigative service since he had received a telephone call at his home and it would “not stop us from doing our jobs.” At this point she allegedly “became angry and responded he has [not] done anything yet.”

In a May 17, 2004 report, Dr. Alvin M. Yee, a treating physician, diagnosed acute work-related anxiety. He reported that appellant reported an increase of stress and anxiety which improved when she was not at work. Under history of illness, Dr. Yee noted that her original Form CA-1 had been lost by the postmaster and her symptoms “originally began in 1998.” Appellant related that she was constantly harassed and followed by Richard Maromey, the postmaster. She noted her route was changed in August 2003 and that her supervisor followed her with binoculars. Appellant related that she was suspended on April 14, 2004 due to her “reading mail while driving.” In a June 14, 2004 duty status report (Form CA-17), Dr. Yee diagnosed acute work-related anxiety and noted April 14, 2004 as the date of injury.

By decision dated July 2, 2004, the Office denied appellant’s claim on the grounds that she failed to submit any factual evidence regarding the alleged incident(s) or employment factor(s) causing her condition.

In a June 16, 2004 report, David Evans, Ph.D, licensed clinical psychologist, diagnosed stress. He noted that it arose due to harassment and intimidation by appellant’s supervisor on April 14, 2004.

By letter postmarked August 17, 2004, appellant requested an oral hearing on her claim which the Office denied as untimely.

Subsequent to the hearing denial, the Office received evidence including duty status reports dated June 14 and July 16, 2004 and a May 22, 2004 report by Dr. Yee, an August 25, 2004 progress report and August 25, 2004 duty status report by Dr. Aaron Gloskowski, a treating Board-certified osteopathic family practitioner, and a May 14, 2004 report by Dr. Farzin.

In a letter dated February 11, 2005, appellant's representative requested reconsideration and submitted a June 16, 2004 evaluation by Dr. Evans; a December 21, 2004 evaluation by Paul Whitaker, Ph.D, licensed psychologist; a statement by appellant and an April 29, 2004 statement by Mr. Buendia, a coworker. He also forwarded an April 15, 2004 police incident report; a step B decision finding that Mr. Martinez, Mr. Lucas and Mr. Williamson had engaged in sexual harassment; and an April 26, 2004 class action sexual harassment grievance.

Appellant stated that on April 14, 2004 Mr. Williamson and Mr. Lucas were upset about her estimate. She alleged that she was afraid to see Mr. Lucas and Mr. Williamson due to their "continual hostility toward me." She stated that Mr. Lucas told her to inform her husband that his telephone calls were not working. Appellant replied that she did not know what Mr. Lucas was talking about. He then told her that "postal inspectors are coming to your house" and that he had "family members, Italian family members." After returning to her station, appellant informed Mr. Buendia that Mr. Lucas "just threatened me and my family by saying he had family members, Italian members." She filed a police report that Mr. Lucas had threatened her family. The record contains an April 15, 2004 incident report by Officer Guerrero for "disturbance [of] the peace." Appellant was listed as the reporting party and Mr. Lucas as "other."

In an April 29, 2004 statement, Mr. Buendia noted that on April 4, 2004 appellant "was very apprehensive about going into the office to talk to" Mr. Williamson and Mr. Lucas. As he was leaving to deliver mail he ran into her crying. Appellant told him that "her family was just threatened" by Mr. Lucas.

On June 16, 2004 Dr. Evans diagnosed generalized anxiety disorder which he attributed to years of constant abuse at the employing establishment. Appellant stated that her problems began in 1998 when she was verbally abused and under constant watch by Richard Ramirez, postmaster. She obtained a restraining order against Mr. Martinez. Appellant alleged that both Mr. Williamson and Mr. Lucas abused her. On April 14, 2004 she was filing a request for overtime when Mr. Lucas threatened her and her family by stating he had Italian family.

In a December 21, 2004 evaluation, Dr. Whitaker diagnosed generalized anxiety disorder and depressive disorder due to threatening behavior and harassment by appellant's supervisors. He stated this traumatized her and rendered her temporarily incapable of performing her assigned duties." Appellant stated that her problems began in 1998 when she was verbally abused and under constant watch by Mr. Ramirez, postmaster. She obtained a restraining order against Mr. Martinez. Appellant alleged that both Mr. Williamson and Mr. Lucas abused her. She noted that Mr. Lucas threatened her and her family by stating that he had Italian family members and that she filed a police report.

By decision dated May 12, 2005, the Office denied modification of the July 2, 2004 decision.<sup>1</sup> The Office noted that appellant submitted a class action grievance, which included her, based upon sexual harassment and noted the April 14, 2002 incident “did not pertain to my allegation of sexual harassment.”<sup>2</sup>

### **LEGAL PRECEDENT**

To establish that she sustained an emotional condition causally related to factors of her federal employment, an employee must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.<sup>3</sup>

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to one’s employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers’ compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from factors such as 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.<sup>4</sup> Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.<sup>5</sup>

### **ANALYSIS**

Appellant alleged that she sustained an emotional condition following an April 14, 2004 meeting with her supervisors. She alleged a threat by Mr. Lucas that postal inspectors were going to visit her home and that he had Italian family members. The Office found that appellant

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<sup>1</sup> The Board notes that, following the May 12, 2005 decision, the Office received additional evidence. However, the Board may not consider new evidence on appeal. *See* 20 C.F.R. § 501.2(c); *Donald R. Gervasi*, 57 ECAB \_\_\_\_ (Docket No. 05-1622, issued December 21, 2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

<sup>2</sup> The Board notes that, following the May 12, 2005 decision, the Office received additional evidence. However, the Board may not consider new evidence on appeal. *See* 20 C.F.R. § 501.2(c); *Donald R. Gervasi*, 57 ECAB \_\_\_\_ (Docket No. 05-1622, issued December 21, 2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

<sup>3</sup> *See Doretha M. Belnavis*, 57 ECAB \_\_\_\_ (Docket No. 05-1879, issued January 12, 2006); *Kathleen D. Walker*, 42 ECAB 603 (1991). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Robert Breeden*, 57 ECAB \_\_\_\_ (Docket No. 06-734, issued June 16, 2006); *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

<sup>4</sup> *Jeral R. Gray*, 57 ECAB \_\_\_\_ (Docket No. 05-1851, issued June 8, 2006); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> *Andrew Wolfgang-Masters*, 56 ECAB \_\_\_\_ (Docket No. 05-1, issued March 22, 2005). *Ruthie M. Evans*, 41 ECAB 416 (1990).

did not establish a compensable employment factor. The Board must thus, initially review whether the incident constitutes a compensable factor of employment.

The Board finds that the factual evidence does not support appellant's allegation that she was threatened by Mr. Lucas. Appellant alleged that the threat involved Mr. Lucas stating he had "family members, Italian family members." The Board has recognized the compensability of physical threats or verbal abuse in certain circumstances.<sup>6</sup> This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Federal Employees' Compensation Act.<sup>7</sup> The record contains witness statements from Mr. Lucas, Mr. Williamson, appellant and Mr. Buendia. Both Mr. Lucas and Mr. Williamson state that Mr. Lucas warned appellant about her husband calling his home and that Mr. Lucas had notified the postal investigative service. Mr. Lucas stated that, if there were any further threats against him or another employee by appellant or her husband, the postal investigative service "would be at their door step to interview and possibly arrest." Mr. Williamson noted that both he and Mr. Lucas had been threatened on the telephone and in public by appellant's husband. Mr. Lucas informed her that this would "not stop us from doing our jobs." At this point appellant "became angry and responded he has n[o]t done anything yet." Appellant alleged that Mr. Lucas told her that "postal inspectors are coming to your house" and that he had "family members, Italian family members." Mr. Buendia, in his April 29, 2004 statement, noted that on April 4, 2004 appellant told him that her family was threatened by Mr. Lucas. Mr. Lucas allegedly said to appellant that "he had family and they were Italian." The Board finds that the facts of the case, do not reveal that Mr. Lucas made any threats. The statements by Mr. Lucas and Mr. Williamson indicate that appellant was warned about her husband making telephone to supervisors. The police incident report contains no description of the event beyond noting appellant filing a complaint for disturbance of the peace. Moreover, even if Mr. Lucas made the comment that he had Italian family members, this does not rise to the level of verbal abuse or otherwise falls within coverage of the Act.

### CONCLUSION

The Board finds that appellant has not established a compensable employment factor related to her interaction with her supervisor Mr. Lucas on April 14, 2004. She has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.<sup>8</sup>

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<sup>6</sup> *David S. Lee*, 56 ECAB \_\_\_\_ (Docket No. 04-2133, issued June 20, 2005).

<sup>7</sup> *Charles D. Edwards*, 55 ECAB \_\_\_\_ (Docket No. 02-1956, issued January 15, 2004).

<sup>8</sup> As appellant has not established any compensable employment factors, it is not necessary for the Board to review the medical evidence. See *Margaret S. Kryzcki*, 43 ECAB 496 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 12, 2005 is affirmed.

Issued: September 18, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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