

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

M.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Richmond, CA, Employer**

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**Docket No. 06-2112
Issued: February 28, 2007**

Appearances:
James Wright, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 18, 2006 appellant filed a timely appeal of a June 19, 2006 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established an emotional condition causally related to compensable work factors.

FACTUAL HISTORY

On May 27, 2005 appellant filed a traumatic injury claim (Form CA-1) alleging that she sustained stress as a result of her federal employment. She submitted a narrative statement on June 7, 2005 alleging that since a new station manager arrived he had been "on my case a lot." Appellant reported that on May 13, 2005 she met with the station manager and was told that her route was an 8-hour route and that it should take her 10 hours to perform her job. She stated that she explained that her route was a long route, but was told that the problem was not the route but

that she was the problem. According to appellant, the station manager indicated “I have to fix you first.” She alleged that after she left his office she was upset and could not concentrate.

In a statement received on June 7, 2005, an employing establishment supervisor, Mr. Dunn, stated that appellant’s route was “counted” on May 12, 2005 because she complained that the route was too long. Mr. Ross stated that the paperwork showed that no matter when appellant left the office, she would return at the same time. The record contains an investigative memorandum dated June 28, 2005 indicating that appellant was under surveillance by postal inspectors from June 13 to 16, 2005.

By decision dated August 30, 2005, the Office denied the claim for compensation. The Office found that appellant had not established any compensable work factors.

Appellant requested a hearing before an Office hearing representative, which was held on April 12, 2006. The evidence of record submitted included a notice of removal dated July 19, 2005 for violation of medical restrictions and failure to follow instructions. Appellant filed an Equal Employment Opportunity (EEO) complaint for harassment and discrimination based on race, age, national origin, disabilities and retaliation for a prior EEO complaint. By settlement agreement, the complaint was resolved; the agreement stated that the notice of removal was rescinded. The agreement stated that the parties agree to treat each other with dignity and respect in accordance with employing establishment policy.

At the April 12, 2006 hearing appellant alleged that she was subject to continued harassment and a hostile work environment. She stated that she had been working eight hours and using two hours overtime to complete her route, but Mr. Ross told her that she needed to perform the route in eight hours, or she would get a letter of warning. Appellant indicated that she had to rush from one stop to another to get the route completed and that she met with Mr. Ross on May 13, 2005. According to appellant, her requests for overtime were not approved while others were approved.

In a statement dated May 8, 2006, Mr. Ross stated that he had questioned appellant approximately five times regarding the performance of her route, but she was defensive and hostile. He stated that, although appellant complained that the route was too long, he performed an analysis of the route and found that the problem was appellant’s inability to leave the office on time. With respect to the office mail count, Mr. Ross stated that on that day the route had an above average amount of mail, but appellant left the office earlier than at any time in over a year and yet returned at the same time as usual. He noted that an October 2005 study showed that the street time should be 5 hours and 16 minutes. Mr. Ross also stated that he could not try to fix anyone, that he just assessed the facts and offered recommendations.

By decision dated June 19, 2006, the hearing representative affirmed the August 30, 2005 decision. The hearing representative found that appellant had not established any compensable work factors.

LEGAL PRECEDENT

To establish a claim that she sustained an emotional condition in the performance of duty, appellant 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

The Board has held that 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 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. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of her work or her fear and anxiety regarding her ability to carry out her work duties.²

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 reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.³ It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.⁴ An administrative or personnel matter may be a factor of employment only where the evidence discloses error or abuse by the employing establishment.⁵ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁶

The Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors, 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.⁷ As a rule, allegations alone by a claimant are

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

² *Ronald J. Jablanski*, 56 ECAB ____ (Docket No. 05-482, issued July 13, 2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

³ *Id.*

⁴ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

⁵ *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁶ *Anna C. Leanza*, 48 ECAB 115 (1996).

⁷ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

insufficient to establish a factual basis for an emotional condition claim; the claim must be supported by probative evidence.⁸

ANALYSIS

At the time of the filing of the claim, appellant's primary allegation was stress after a May 13, 2005 meeting with a supervisor, Mr. Ross, regarding her performance. Appellant alleged that Mr. Ross questioned her about the time it took to complete her route and indicated that it should be completed in eight hours. Mr. Ross did not discuss in detail the May 13, 2005 meeting, but his statement does not dispute that he questioned appellant and felt that she should be able to complete the route in a timely manner. The May 13, 2005 incident is an administrative matter involving a supervisor discussing an employee's performance. There is no evidence in the record that the supervisor was erroneous or abusive in his actions. Mr. Ross indicated that he explained to appellant why he believed the route was not overly long. The record does not establish a compensable work factor with respect to the May 13, 2005 incident.

Appellant had noted briefly in her initial statement that she was working 10 hours a day, six days a week. To the extent that she was raising the issue of overwork, she did not submit supporting evidence.⁹ As noted above, it was the employing establishment's position that the route was not overly long. Appellant also suggested that she had to run between stops to try and complete the route in 8 hours, although it is not clear when or how often this occurred, since she alleged that she generally worked 10-hour days. Her statements appear to indicate that the source of stress was her supervisor's requirement that she perform the route in eight hours and the denial of some requests for overtime, rather than the actual performance of her work duties.¹⁰ With regard to denial of leave, no evidence of error or abuse was presented.

The record contains a notice of removal dated July 19, 2005, with a settlement agreement rescinding the removal notice. The settlement agreement does not establish error or abuse by the employing establishment. There is no admission or acknowledgment of error by the employing establishment, and the mere fact that an administrative action is later modified or rescinded does not, in and of itself, establish error or abuse.¹¹ The Board finds no evidence to substantiate a compensable work factor with respect to an administrative action in this case.

At the hearing appellant raised general allegations of harassment and a hostile work environment. As noted above, an EEO complaint was settled, and no probative evidence was presented regarding an allegation of harassment, hostile work environment or retaliation.

⁸ See *Charles E. McAndrews*, 55 ECAB 711 (2004.)

⁹ Overwork may be a compensable factor if it is substantiated by probative evidence. See *Bobbie D. Daly*, 53 ECAB 691 (2002).

¹⁰ See, e.g., *Cyndia R. Harrill*, 55 ECAB 522 (2004) (appellant made a general reference to heavy workload, but it was not the work that allegedly caused stress, rather it was her supervisor's criticisms of her performance).

¹¹ See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Richard J. Dube*, 42 ECAB 916 (1991) (reduction of a disciplinary letter to an official discussion did not constitute abusive or erroneous action by the employing establishment).

The Board accordingly finds that appellant has not alleged and substantiated a compensable work factor as contributing to an emotional condition. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.¹²

CONCLUSION

Appellant did not establish a compensable work factor as contributing to an emotional or physical injury and therefore the Office properly denied the claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 19, 2006 is affirmed.

Issued: February 28, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

¹² See *Margaret S. Krzycki*, *supra* note 7.