

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

B.R., Appellant)	
)	
and)	Docket No. 10-432
)	Issued: September 2, 2010
U.S. POSTAL SERVICE, POST OFFICE,)	
Nashua, MT, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 7, 2009 appellant filed a timely appeal from a November 5, 2009 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 sustained an emotional condition on August 14, 2009 in the performance of duty.

FACTUAL HISTORY

On September 21, 2009 appellant, a 56-year-old postal service and sales associate, filed a traumatic injury claim (Form CA-1) in which she alleged that, on August 14, 2009, she sustained "severe anxiety with depressive symptoms [and] break-thru bleeding" after a confrontation with the officer in charge. Appellant's supervisor noted that union officials and "fellow employees" reported to her that appellant was "creating an uncomfortable work environment for employees and customers."

The employing establishment submitted an incident report, dated September 10, 2009, signed by supervisor Karen Hook, in which she describes the August 14, 2009 incident. Ms. Hook wrote:

“On Friday, August 14, 2009 I was informed by the Retail [Supervisor] and the [American Postal Workers Union] [representative] that [appellant] was causing disruption on the workroom floor because she was returning to [part-time flexible] status to avoid an excessing to the S. Maine Plant. [Appellant] was making demeaning remarks and was upsetting the workforce. [She] in the past had voiced her displeasure with the excessing process with fellow employees and with customers at the retail counter. I asked [appellant] to come in to my office. I asked her what was going on and for an explanation as to what she was doing. She became very sarcastic and insubordinate. At this time I asked her to leave the building because she was creating a hostile work environment and not to return until she heard from me. She retrieved her pocketbook, logged off her POS unit, and punched out. I explained to her more than once that she was creating a hostile work environment and that was the reason she was being told to leave the building. She proceeded to her car and left postal property. I called [appellant] on Monday[,] August 17, 2009, for her to come and see me on Tuesday[,] August 18, 2009, she informed me she would not be coming in as she was going to be out sick. I requested medical documentation, she confirmed she would provide it. I have not received it as of September 11, 2009.”

By letter dated September 21, 2009, the employing establishment controverted appellant’s claim, citing the lack of evidence substantiating her claim as well as the statement from Ms. Hook. It asserted that her behavior was the result of anger at the administrative decision to excess her along with other employees.

By letter dated September 25, 2009, the Office informed appellant that she had not submitted sufficient evidence to establish her claim. Appellant was requested to provide additional factual and medical evidence in support of her claim, including additional description of her alleged injury and witness statements.

Appellant submitted a note signed by an advanced practice registered nurse, a surgical report bearing an illegible signature, and a report and a note signed by licensed clinical mental health counselors.

Appellant also submitted a report (Form CA-20) signed by Dr. Joseph Pepe, a Board-certified internist, on September 30, 2009 who diagnosed anxiety and depression. By checkmark, Dr. Pepe stated that these conditions were caused by appellant’s employment.

On October 27, 2009 appellant submitted a photocopy of the Office’s September 25, 2009 letter requesting further information, again noting that her history of injury was “confrontation with OIC in his office.” Below the request for witness statements she wrote in the names of three individuals, but did not attach any witness statements.

By decision dated November 5, 2009, the Office denied the claim because the evidence of record did not demonstrate that compensable employment factors caused a medically-diagnosed condition.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of proof to establish the essential elements of his claim by the weight of the evidence,² including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.³ As part of her burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁴ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁵

Workers' compensation law is not applicable 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. When the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act.⁶ On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers compensation because it is not considered to have arisen in the course of the employment.⁷

Administrative and personnel matters, although generally related to the employee's employment are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.⁸ However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.⁹ In determining whether the employing establishment has erred or acted abusively, the Board will

¹ 5 U.S.C. §§ 8101-8193.

² *J.P.*, 59 ECAB ____ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

³ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

⁵ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

⁶ *Supra* note 1; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *Gregorio E. Conde*, 52 ECA 410 (2001).

⁸ *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 556 (1991).

⁹ *See William H. Fortner*, 49 ECAB 324 (1998).

examine the factual evidence of record to determine whether the employing establishment acted reasonably.¹⁰

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.¹¹ If a claimant does implicate a factor of employment, it 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.¹²

ANALYSIS

Appellant did not contend that she experienced anxiety and depression in carrying out her employment duties as a postal service and sales associate. Rather, she attributed her condition to a confrontation with the officer in charge. Therefore the Board must determine whether the identified incident qualifies as a compensable employment factor falling within coverage of the Act.

While appellant alleged that her emotional condition was due to a confrontation with her OIC on August 14, 2009, the Board finds that she has not established a compensable factor of employment.

Appellant made the general allegation of a confrontation with her OIC, however, she did not provide any detail to establish that this confrontation. An administrative or personnel matter will be considered a compensable employment factor only where the evidence discloses error or abuse by the employing establishment.¹³ Appellant's supervisor has explained that she received reports from the retail supervisor and a union representative on August 14, 2009 that appellant was causing a disruption on the workroom floor. Appellant was called into the supervisor's office and asked her version of events and according to the supervisor she responded with sarcastic and insubordinate comments. She was then asked to leave the employing establishment because she was creating a hostile environment.

Although asked by the Office for further evidence to substantiate her claim, appellant never responded with statements from witnesses of the event or even with further detail regarding her own allegation. For appellant to prevail on her claim, she must support her

¹⁰ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹¹ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹² *Id.*

¹³ *T.G.*, 58 ECAB 189 (2006); *C.S.*, 58 ECAB 137 (2006); *Helen Marotte (Walter E. Marotte)*, 36 ECAB 670, 672 (1985) (where the Board held that disciplinary actions brought against an employee by the employing establishment did not constitute a reaction to assigned work duties where the action was initiated due to the employee's own misconduct

allegations with probative and reliable evidence. Because she provided no evidence demonstrating error or abuse by the employing establishment, this incident does not qualify as a compensable employment factor for purposes of the Act.

As appellant failed to establish any compensable factors of employment, the Office properly denied her claim, without evaluation of the medical evidence of record.¹⁴

CONCLUSION

The Board finds that appellant has not established that she sustained an emotional condition on August 14, 2009, in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the November 5, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 2, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁴ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Hasty P. Foreman*, 54 ECAB 427 (2003).