United States Department of Labor
Employees' Compensation Appeals Board

DONNA M. SCHMIEDEKNECHT, Appellant	)	
and	)	**Docket No. 05-494**
	)	**Issued: September 2, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Muskegon, MI, Employer	)	

Appearances:
Ron Watson, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 21, 2004 appellant filed a timely appeal from the September 13 and December 7, 2004 merit decisions of the Office of Workers' Compensation Programs,[1] which denied her claim that she sustained an emotional condition in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review these merit decisions.

ISSUE

The issue is whether appellant sustained an emotional condition in the performance of duty.

[1] OWCP File No. 092030239.

FACTUAL HISTORY

On February 7, 2003 appellant, then a 49-year-old letter carrier, filed a claim alleging stress as a result of her federal employment.[2] She first realized her condition was caused or aggravated by her employment on January 16, 2003. Appellant stated:

> "[I] cannot meet up to management's expectations. They feel I should be able to do my route in 8 hours, say it is not authorized overtime. Bring mail to me late, and expect me to absorb the time on the street. Deadlines be back before dark and bring back no mail, with extremely heavy volume, day after holiday."

On February 28, 2003 Dr. Virgilio F. Vasquez, a psychiatrist, reported that he was treating appellant for a major depressive disorder, recurrent. He indicated that this condition was caused or aggravated by her employment, stating: "Can't handle workload."

On March 4, 2003 appellant described the employment incidents to which she attributed her condition, as follows:

> "On January [1]5, 2003, Supervisor, Vicky Trejo requested me to keep to 8 hours to avoid overtime. I had no problem that day accomplishing that task as I was given only 2 trays of Computer sorted mail. Management curtailed other trays. The next day I put in a form for street assistance and was denied it. She also came up to me and said that my overtime was not authorized either. She expected me to take the left over volume of curtailed mail from the previous day and absorb it to make an 8-hour day again. By the time, I got back I was 1 hour over. I know I could not hold up under this pressure and had made a doctor's appointment on my break for the next day. Thoughts of what I went through a few years before popped into my mind. … On February 17, I saw Dr. Vasquez regarding my anxiety. He placed me on medical leave for Friday and restricted me to no work overtime more than twice a week. The 18th of January, I had already had approved annual leave, so I returned to work Jan. 21, a day after a holiday. On this date I had a different supervisor, Teresa Miller. I put a help slip in for assistance which she denied me stating there was no help. My route starts at 8:00 AM with a deadline of return to start back by 5:15 in order to avoid darkness for safety reasons given to all carriers in safety talks. It is also a hardship on me because my vision decreases in the darkness. Also, the mail we collect off the route is supposed to be back in by the 6:00 truck that leaves for Grand Rapids. By 10:00, I asked Teresa where my computer-generated mail was because I could not leave late and meet her requirements. Her instructions to me were to deliver all the mail. I never received my computer mail until about an hour later. Nothing was curtailed to help me out. By 3:30, I called in from one of the businesses I deliver to. I had not even taken an afternoon break. I had half the route left to carry. I was told Teresa was on the other line. I waited. Finally, I drove back in because I was in no shape to deliver the mail. I found myself

[2] The record indicates that appellant claimed stress or depression in three other claims (OWCP File Nos. 092032924, 090440428 and 090449529), which are not the subject of this appeal.

crying and thoughts rushing through my head that management was again retaliating against me. I couldn't concentrate on my mail; it took everything out of me just to drive back to the office without getting into an accident. I fear for my safety and my mental health brought on by the pressure from management.

"I believe that the employment-related condition, which contributed to my illness on that day after the holiday, were (sic) no street assistance was given to help me alleviate the pressure off the overburdened day. I wasn't able to start early that day to give extra time to meet the darkness factor. In previous years we were allowed to come in early when the mail would be put on the 1st run of the computer-generated mail, so I could get out on time. This never happened. There is no consistency when the computer-generated mail is brought to you. With the mail running so late that day, why wasn't it curtailed like management is capable of doing when they arrange for you to have an 8-hour day?"

In a decision dated August 8, 2003, the Office denied appellant's claim on the grounds that the incidents to which she attributed her condition either were not established as factual or did not arise in the performance of her duties.

Appellant requested an oral hearing before an Office hearing representative. At the hearing, which was held on June 22, 2004, Ms. Miller, appellant's supervisor, provided testimony. She stated that appellant was medically cleared to work overtime no more than twice a week and was asked to do so on January 21, 2003 because it was a day after a holiday and the mail volume was heavy. Appellant stated that "we were extremely busy" and no help was available. Ms. Miller asked appellant to curtail her mail, to deliver first class and dailies only and to leave her priority parcels if she was running too far behind. She noted that appellant put in for three hours of help, but no help was available as everybody was working overtime. "We have to get this mail out," the supervisor recalled. "There's too much first class mail." Ms. Miller confirmed that appellant did not get her residual mail early that day due to either a late truck or a machine breakdown. She stated that appellant did not have too much mail to deliver by six o'clock because her other mail was curtailed. Appellant testified to her understanding that she was to deliver all the mail.

In a decision dated September 13, 2004, the Office hearing representative affirmed the August 8, 2003 decision on the grounds that she failed to establish a compensable factor of employment. The hearing representative found that appellant did not prove that the employer imposed an unusually heavy workload or unreasonable deadlines. The hearing representative also found that appellant had presented no evidence corroborating either harassment or error or abuse in any administrative or personnel matter.

Appellant requested reconsideration and submitted a grievance form signed on October 31, 2003 together with the second page of a grievance resolution letter.

In a decision dated December 7, 2004, the Office reviewed the merits of appellant's claim and denied modification of the September 13, 2004 decision.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[3] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."[4] "In the course of employment" relates to the elements of time, place and work activity. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in her employer's business, at a place where she may reasonably be expected to be in connection with her employment and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto. The employee must also establish an injury "arising out of the employment." To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration.[5]

When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her duties, and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability resulted from her emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of her work. 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.[6]

Workers' compensation law does not cover an emotional reaction to an administrative or personnel action unless the evidence shows error or abuse on the part of the employing establishment.[7] The Board has held that actions of an employer which the employee characterizes as harassment or discrimination may constitute a factor of employment giving rise to coverage under the Act, but there must be some evidence that harassment or discrimination did in fact occur. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[8] Mere perceptions and feelings of harassment or

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[3] 5 U.S.C. § 8102(a).

[4] This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

[5] *See Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

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

[7] *Thomas D. McEuen*, 42 ECAB 566, 572-73 (1991), *reaff'd on recon.*, 41 ECAB 387 (1990).

[8] *See Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.[9] The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.[10]

ANALYSIS

There is no evidence in this case to establish that appellant's supervisors did anything wrong in denying her requests for street assistance or in the denial of overtime and the processing of her assigned mail on or about the week of January 21, 2003. To the extent that appellant attributes her major depressive disorder to the actions of her supervisors, she has submitted no probative evidence of error or abuse in any administrative or personnel matter. She pursued these matters through the Equal Employment Opportunity Commission and the grievance procedures but did not obtain a decision or finding or admission establishing any wrongdoing. She has not established any compensable factor of employment relating to the actions of her supervisors.

Appellant stated that on January 16, 2003 she was an hour late in making her deliveries because they included the leftover volume of curtailed mail from the prior day and her requests for street assistance and overtime were denied. Ms. Miller confirmed that January 21, 2003, the day after a holiday, was an extremely busy day. Mail volume was heavy, there was too much first-class mail, no help was available, everybody was working overtime, and appellant did not get her residual mail early that day.

Ms. Miller's opinion that appellant did not have too much mail to deliver by six o'clock is not determinative of whether appellant's emotional reaction falls within the coverage of the Act. As the Board explained in *Lillian Cutler*,[11] when an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her duties, and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from her emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of her work. This is the essence of appellant's February 7, 2003 claim for compensation. Appellant attributed her emotional condition to carrying out her employment duties on January 16 and 21, 2003, or attempting to carry them out, and because those duties are sufficiently established by the factual evidence, the Board finds that appellant has met her burden of proof to establish a compensable factor of employment under *Cutler*. She

[9] *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

[10] *Paul Trotman-Hall*, 45 ECAB 229 (1993) (Groom, M.E., concurring).

[11] *Supra* note 6 and accompanying text.

has established that the emotional condition for which she seeks compensation arose in the course of her employment.

Appellant must still establish, however, a causal connection, either by precipitation, aggravation or acceleration, between the accepted compensable factor of employment and her emotional condition. Causal relationship is a medical issue,[12] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established factors of employment. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors established by the record.[13]

The Office did not review the medical evidence in this case because it denied appellant's claim for failing to establish a compensable factor of employment. Given the Board's finding that appellant has established a compensable factor of employment, the issue of causal relationship necessitates a review of the medical evidence submitted. The Board will set aside the Office's September 13 and December 7, 2004 decisions denying compensation and will remand the case to the Office for further development of the medical evidence as may be necessary including a proper statement of accepted facts, and a final decision on her claim for compensation.

CONCLUSION

The Board finds that this case is not in posture for decision. Appellant has established a compensable factor of employment, but the Office has not yet determined whether a causal connection exists between this factor of employment and her diagnosed emotional condition.

[12] *Mary J. Briggs*, 37 ECAB 578 (1986).

[13] *See Victor J. Woodhams*, 41 ECAB 345 (1989).

ORDER

IT IS HEREBY ORDERED THAT the December 7 and September 13, 2004 decisions of the Office of Workers' Compensation Programs are set aside. The case is remanded for further action consistent with this opinion.

Issued: September 2, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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