United States Department of Labor
Employees' Compensation Appeals Board

HEDIE APODACA, Appellant	)	
and	)	**Docket No. 04-495**
U.S. POSTAL SERVICE, POST OFFICE, Las Cruces, NM, Employer	)	**Issued: May 3, 2004**

Appearances:
Gordon Reiselt, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On December 16, 2003 appellant filed an appeal of the Office Workers' Compensation Programs' merit decisions dated December 19, 2002 and October 3, 2003 denying her claim for an emotional condition. 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 met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On June 7, 2002 appellant, then a 46-year-old city letter carrier, filed an occupational disease claim alleging that she sustained major depressive disorder, panic disorder, post-traumatic stress disorder and suicidal thoughts with psychotic features due to factors of her federal employment. She also noted that she had hepatitis C. Appellant attributed her condition

to a hostile work environment, overwork, lack of communication, unrealistic deadlines and harassment and discrimination. She stopped work on February 6, 2001 and did not return.[1]

In a report dated May 3, 2002, Dr. Harold E. Alexander, a Board-certified psychiatrist and appellant's attending physician, noted that appellant could return to work with a limit on the number of hours she worked and in a position without strict deadlines. He noted:

> "This is where [appellant] ran into great difficulty in the past. She was given a postal route that was very difficult to complete within the defined limits of time that she could work per day and, therefore, she was always feeling severe pressure to rush to get her assigned route completed within the time limit she had to work."

The record contains an office visit note from Dr. Alexander dated May 3, 2000, received by the Office on June 24, 2002, restricting appellant to no more than eight hours of work a day.

In a report dated March 23, 2001, received by the Office on June 24, 2002, Dr. Alexander diagnosed recurrent major depressive disorder, panic disorder and chronic and severe post-traumatic stress disorder. He related that appellant initially returned to work at the employing establishment part time in September 1999 and full time in February 2000. Appellant began having difficulties when she began working a route that she believed "was too large to complete in the time that she was allotted." He noted that she was hospitalized from February 6 to March 5, 2001. Dr. Alexander further found that appellant had "a perception that her supervisors at work do not like her" and felt "singled out and harassed" because she had problems timely completing her route.

In a report dated April 2, 2001, received by the Office on June 24, 2002, Elaine S. LeVine Ph.D., a clinical psychologist, diagnosed chronic depression and the "residual effects of a severe post-traumatic stress disorder." Dr. LeVine related that she and Dr. Alexander "felt [appellant] had made significant progress and was ready to work when she returned to the [employing establishment] on July 28, 1999." She related:

> "[Appellant] began to experience difficulties when she was assigned to deliver mail on a walking route. From early on she discussed with me the problems of completing the job in the time allotted."

Dr. LeVine noted that appellant requested assistance on her route. She concluded that management at the employing establishment handled appellant's work problems and accidents on the job in a manner which "greatly exacerbated [appellant's] underlying condition."

[1] The record contains an Office notation indicating that appellant had filed a prior stress claim, assigned File Number A16-2014385, which was denied on May 15, 2001.

In a statement dated July 22, 2002, Steve Manning, a supervisor, noted that appellant had medical restrictions such that she could not work more than 8 hours per day and 40 hours per week. Mr. Manning stated:

> "During the time I supervised here, [appellant] was given assistance when needed in order to comply with her medical restriction of working only eight hours a day. On occasions the assistance that was asked for was given to [appellant] in the morning before she left out on her route, but then in the afternoon she would call the office and request additional assistance after the day had been planned. [Appellant] would be instructed to bring back the mail that she could not get delivered and another employee would deliver the mail."

Mr. Manning also noted that appellant requested a route inspection due to the length of her route. He stated, "The inspection showed that it was 54 minutes over 8 hours and [it] was adjusted to 8 hours a day."

In response to the Office's request for information, appellant submitted a statement on August 20, 2002. She related that she did not have adequate supplies to complete her work and was ordered to work overtime in violation of her physician's restrictions. Appellant noted that with active Hepatitis C working eight hours was "a long-enough day for me." In a separate statement received on the same date, appellant indicated that, on February 6, 2001, after Mr. Manning denied her request for a claim form, she went to the hospital by ambulance and was admitted for one month for treatment.

Appellant submitted numerous statements from coworkers and her union representatives. In an undated statement, Juan I. Avalos, a coworker, described Mr. Hardin's treatment of appellant at work. In another undated statement, a coworker of appellant related that management watched her case mail and constantly changed her travel route.[2] In a statement dated September 20, 2001, Ralf Rivas, a union representative, generally asserted that appellant was harassed. He further noted that she was able to complete her work duties. In a statement dated July 26, 2002, Jackie Petrosky, a union representative, related that at times appellant "was ordered to work overtime to complete her assignment even though prior to leaving the office she informed her supervisor, Steve Hardin, that she could not be back within the eight hours because of heavy mail volume or late arrival of mail." In a statement dated July 30, 2002, Cindy Brooks, a coworker, related that appellant's route was the longest of all the routes at the workstation. In a statement dated August 15, 2002, Janice Snow, a coworker, indicated that Mr. Hardin repeatedly changed appellant's travel route.

Appellant submitted a July 10, 2000 letter she wrote to the manager of the employing establishment. She began working on city route 12 (C-12) in November 1999, when she returned to work from a medical absence. Appellant related that she continually requested a

[2] The name of the coworker is not legible.

route assessment but was told to complete the route in eight hours. She further indicated that management harassed her when she asked for help on her route. Appellant stated:

> "I thought at first maybe I could do more to satisfy management and this only led me to skip my break periods, shorten my lunch to less than thirty minutes and work in a frenzied manner to try and get the route done in eight hours in order to appease management."

Appellant tried to improve her time and the quantity of mail delivered but management continued to respond with "the unrealistic demand to finish the route in eight hours," noted that she had a medical restriction against working more than eight hours. Appellant related that on July 7, 2000 her supervisor asked her if she needed assistance and she stated that she believed one hour of assistance was sufficient. However, appellant stated that she encountered unexpected problems. She noted that she told her supervisor that she was not sure whether she could complete her route in eight hours and he told her to call later if she needed assistance. When she called for assistance, her supervisor told her to complete her route. Appellant related that she skipped breaks and rushed to deliver the mail within eight hours but was unsuccessful after she spilled a tray of mail. When she returned the mail to the employing establishment a manager later threatened her with termination.

By letter dated November 25, 2002, an official with the employing establishment related that appellant was not harassed but was asked to perform the duties of her position.

In a decision dated December 19, 2002, the Office denied appellant's claim on the grounds that she did not establish an emotional condition in the performance of duty. The Office found that appellant had not established any compensable employment factors.

On July 2, 2003 appellant, through her attorney, requested reconsideration of her claim, contending that she skipped breaks and shortened her lunch period to try to complete her route within the time allotted. Counsel noted that when appellant's route was evaluated on July 22, 2002 it was found to be 54 minutes in excess of 8 hours. Her attorney also contended that appellant was required to work in excess of eight hours against her medical restrictions as evidenced by her pay stubs for the period May 6, 2000 through January 26, 2001.

He further argued that the employing establishment unreasonably monitored her activities.

Appellant submitted pay stubs from May 6, 2000 through January 26, 2001 in support of her contention that she was forced to work overtime in violation of her medical restrictions. She submitted a report dated June 26, 2003 from Dr. Alexander, who diagnosed a schizoaffective disorder, post-traumatic stress disorder and a panic disorder. He noted that on May 2, 2000 he restricted appellant to working eight hours a day. Dr. Alexander opined that appellant's "preexisting psychiatric illness and emotional condition was significantly aggravated and exacerbated by the severe stress that she experienced trying to work the carrier route for the [employing establishment]."

In a memorandum dated August 6, 2003, Sue Jacobi, a nurse at the employing establishment, responded to appellant's contentions. She indicated that the medical evidence

restricting appellant's work to eight hours a day was unclear and that the route count which was ultimately completed was "based on the employee who is performing the route." Ms. Jacobi further indicated that the pay stubs showing that appellant worked overtime were "misleading" because scheduling the day was difficult and management had to rely on information from the carriers.

By decision dated October 3, 2003, the Office denied modification of the December 19, 2002 decision.

LEGAL PRECEDENT

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[3] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction in force or her frustration from not being permitted to work in a particular environment or to hold a particular position.[4]

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.[5] This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[6]

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.[7] If a claimant does implicate a factor of employment, the Office 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

[3] 5 U.S.C. §§ 8101-8193.

[4] *See Roger Williams*, 52 ECAB 468 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

[5] *Claudia L. Yantis*, 48 ECAB 495 (1997).

[6] *Roger Williams*, *supra* note 4.

[7] *Dennis J. Balogh*, 52 ECAB 232 (2001).

record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[8]

ANALYSIS

Appellant generally alleged that her supervisors harassed and discriminated against her because she requested help completing her route. Actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act.[9] However, for harassment to give rise to a compensable factor of employment there must be evidence that the harassment did, in fact, occur.[10] Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement, the claimant must establish a factual basis for the claim by supporting her allegations with probative and reliable evidence.[11] Appellant submitted a witness statement from Mr. Avalos, a coworker, who generally described a supervisor's treatment of appellant and a statement from a union representative, Mr. Rivas, who stated that management harassed appellant. However, these statements lack a specific discussion of appellant's allegations or the specific instances witnessed that could constitute harassment or discrimination. Thus, appellant has failed to establish a compensable factor of employment with respect to the claimed harassment and discrimination.

With regard to appellant's allegations that supervisors at the employing establishment unreasonably monitored her work, the Board finds that this allegation pertains to administrative or personnel matters unrelated to the employee's regular or specially assigned work duties and do not fall within coverage of the Act.[12] Although the monitoring of work activities is generally related to the employment, it is an administrative function of the employer and not duties of the employee.[13] However, the Board has found that an administrative or personnel matter may be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment.[14] Additionally, mere perceptions of error or abuse are not sufficient to establish entitlement to compensation. In order to discharge her burden of proof, appellant must first establish a factual basis for her claim by supporting her allegations with probative and reliable evidence.[15] In this case, appellant has submitted no evidence substantiating her allegations that her supervisor acted unreasonably in monitoring her work or route. Although

[8] *Id.*

[9] *Ernest J. Malagrida*, 51 ECAB 287 (2000).

[10] *Helen P. Allen*, 47 ECAB 141 (1995).

[11] *Sherman Howard*, 51 ECAB 387 (2000).

[12] *Daryl R. Davis*, 45 ECAB 907 (1994).

[13] *Id*.

[14] *Robert W. Johns*, 51 ECAB 137 (1999).

[15] *Robert Knoke*, 51 ECAB 319 (2000).

appellant submitted a statement from a coworker who indicated that management watched appellant case mail, this statement does not establish that observing appellant while she performed her duties was done in an abusive or erroneous manner by her supervisors.

Appellant alleged that she had to "work in a frenzied manner" to try to get her route done within the time allotted. She stated that she skipped breaks and reduced her lunch period in order to complete her work assignments.[16] Appellant submitted evidence showing that her assigned mail route had to be adjusted because it was 54 minutes over 8 hours. She also submitted time sheets showing that she did, at times, work more than eight hours day. Appellant's supervisor at the employing establishment, however, maintained that he provided appellant assistance as requested and that problems arose when she called and asked for more assistance "after the day had been planned." The supervisor also related that at those times he would instruct appellant to return undelivered mail to the employing establishment. This evidence is sufficient to establish that she experienced stress and anxiety in trying to complete her regular work duties within the time allotted. The Board has held that emotional reactions to situations in which an employee is trying to meet her position requirements are compensable.[17] Appellant's employment duties required her to deliver her assigned route with an anticipated time of completion of eight hours. Under *Cutler*, where a claimed disability results from an employee's reaction to her regular or specially assigned duties or to an imposed employment requirement, the disability comes within the coverage of the Act.[18] Therefore, appellant has established a compensable factor under the Act.

Appellant has established a compensable factor of employment with respect to stress experienced in the performance of her duties of a letter carrier. However, her burden of proof is not discharged by the fact that she has established an employment factor which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is casually related to the accepted compensable employment factor.[19]

In support of her claim, appellant submitted a report dated May 3, 2002 from Dr. Alexander, a Board-certified psychiatrist and her attending physician, who diagnosed major depression, panic disorder and post-traumatic stress disorder and attributed her problems to her "feeling severe pressure to rush to get her assigned route completed within the time limit she had to work." In a report dated May 23, 2001, he diagnosed recurrent major depressive disorder, panic disorder and post-traumatic stress disorder. Dr. Alexander noted that appellant began to experience difficulties at work when she began on a route that she believed "was too large to complete in the time that she was allotted."

[16] *Robert W. Wisenberger*, 47 ECAB 406 (1996).

[17] *Trudy A. Scott*, 52 ECAB 309 (2001).

[18] *See also Robert Bartlett*, 51 ECAB 664 (2000); *Ernest St. Pierre*, 51 ECAB 623 (2000).

[19] *See Dennis J. Balogh*, *supra* note 7.

In a report dated April 2, 2001, a clinical psychologist, Dr. LeVine, diagnosed chronic depression and residual severe post-traumatic stress disorder. She noted that appellant had difficulties "when she was assigned to deliver mail on a walking route. From early on she discussed with me the problems of completing the job in the time allotted."

The Board finds that although Drs. Alexander and LeVine do not provide sufficient medical rationale explaining how attempting to meet her job requirements of delivering mail on a route resulted in her emotional condition or a diagnosis of post-traumatic stress disorder their reports are generally supportive of appellant's claim and raise an uncontroverted inference of causal relationship sufficient to require further development by the Office.[20] The case will be remanded to the Office for preparation of a statement of accepted facts and further development of the medical evidence. After such further development as the Office deems necessary, it shall issue an appropriate decision on appellant's entitlement to benefits.

CONCLUSION

The Board finds that the case is not in posture for a decision.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 3, 2003 and December 19, 2002 are set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: May 3, 2004
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[20] *John J. Carlone*, 41 ECAB 354 (1989).