

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of EDWARD I. MUTCHNICK and U.S. POSTAL SERVICE,  
AIRPORT MAIL FACILITY, John F. Kennedy, NY

*Docket No. 98-314; Submitted on the Record;  
Issued April 4, 2000*

---

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty as alleged.

On November 29, 1995 appellant, then a 50-year-old supervisor, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that on November 6, 1995 he first realized that his stress, anxiety and high blood pressure was due to factors of his federal employment. In an attached statement, appellant alleged that his disability was due to the denial of promotions and lateral reassignments and his inability to properly supervise employees on October 14, 1995 and the following Thursday or Friday. Regarding his inability to properly supervise his employees on October 14, 1995, appellant noted that due to heavy rain, his work area was divided into two parts which required his supervision. He requested assistance, which was denied by his supervisor. Appellant noted that on the following Thursday or Friday, hand sorting of mail was required as the mail sorter machine was malfunctioning and he decided to use general purpose mail containers, which had been designed for express mail. These containers slated for the express mail had to be emptied.

On December 28, 1995 appellant filed a claim for a recurrence of disability commencing December 15, 1995 causally related to his November 6, 1995 employment injury.

By decision dated June 24, 1996, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to establish that he sustained an emotion condition in the performance of duty causally related to compensable factors of his employment.

Appellant requested a hearing before an Office hearing representative in a letter dated July 22, 1996, which he later withdrew through his counsel on January 14, 1997.

In a letter dated June 20, 1997, appellant, through counsel, requested reconsideration of his claim and submitted new medical evidence in support of his request. Appellant submitted a copy of an August 26, 1993 memorandum to Mr. Charles Conti regarding the Acting MDO Tour One, an August 27, 1993 memorandum to appellant from his supervisor, an August 28, 1993 letter to appellant's supervisor in response the August 27, 1993 memorandum, his December 15, 1995 recurrence claim, appellant's addendum to Item number 20 in his recurrence claim, a December 15, 1995 report by Dr. Lomangino regarding appellant's treatment that day, letters from four individuals appellant has worked with at the employing establishment; incentive award letters dated March 2, 1989, June 21, 1990 and an April 22, 1997 report, from Dr. Eugene V. Gialanella, an attending Board-certified psychiatrist and a February 3, 1997 report from Dr. Anthony Cipolla, an attending Board-certified internist.

In his February 3, 1997 report, Dr. Cipolla refers to his initial treatment of appellant for his December 15, 1995 recurrence and subsequent treatment. He makes no mention of appellant's original November 5, 1995 injury claim.

In his April 22, 1997 report, Dr. Gialanella stated that he started treating appellant on January 2, 1996 and that he was unable to provide a diagnosis for appellant's condition prior to his examination. He noted that appellant informed him that he stopped work on November 6, 1995 "due to the accumulation of stressful events experienced at his place of employment." On December 15, 1995 Dr. Gialanella noted that appellant stopped work again due to stressful events which appellant identified as "a manpower shortage, improper operation of required machinery and, [appellant] being forced to perform bargaining unit work in violation of two collective bargaining agreements." Dr. Gialanella opined that in retrospect appellant's disability on November 6 and December 15, 1995 was "most likely an acute post-traumatic stress disorder and a developing panic disorder which ensued" which was due to the stress appellant experienced at the time. He also noted that on the prior day, November 4, 1995, appellant's supervisor denied his request for a change of assignment.

By decision dated September 24, 1997, the Office denied appellant's request for further merit review. The Board notes, however, that the memorandum attached to the decision conducted a merit review of the arguments raised by counsel and review of the newly submitted medical evidence. Therefore, the Board will assume merit jurisdiction in this case.

The Board finds that appellant has failed to establish that he sustained an emotional condition in the performance of duty, as alleged.

Under the Federal Employees' Compensation Act,<sup>1</sup> appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of her federal employment. To establish that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an

---

<sup>1</sup> 5 U.S.C. §§ 8101-8193.

emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.<sup>2</sup>

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.<sup>3</sup> There are distinctions regarding the type of work situation giving rise to an emotional condition which will be covered under the Act.

For example, disability resulting from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employing establishment is covered.<sup>4</sup> However, an employee's emotional reaction to an administrative or personnel matter is generally not covered,<sup>5</sup> and disabling conditions caused by an employee's fear of termination or frustration from lack of promotion are not compensable. In such cases, the employee's feelings are self-generated in that they are not related to assigned duties.<sup>6</sup>

Nonetheless, if the evidence demonstrates that the employing establishment erred or acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.<sup>7</sup> However, a claimant must support his allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>8</sup>

The initial question is whether appellant has alleged compensable employment factors as contributing to his condition.<sup>9</sup> Thus, part of appellant's burden of proof includes the submission of a detailed description of the specific employment factors or incidents, which appellant believes caused or adversely affected the condition for which he claims compensation.<sup>10</sup> If appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.<sup>11</sup>

In this case, the Office accepted that appellant was unable to perform his work duties on October 14, 1995, when due to heavy rains the work area was divided into two areas requiring his supervision and the employing establishment's denial of his request for another supervisor

---

<sup>2</sup> *Vaile F. Walders*, 46 ECAB 822, 825 (1995).

<sup>3</sup> *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>4</sup> *Jose L. Gonzalez-Garced*, 46 ECAB 559, 563 (1995).

<sup>5</sup> *Sharon J. McIntosh*, 47 ECAB 754 (1996).

<sup>6</sup> *Barbara E. Hamm*, 45 ECAB 843, 850 (1994).

<sup>7</sup> *Margreate Lublin*, 44 ECAB 945, 956 (1993).

<sup>8</sup> *Ruthie M. Evans*, 41 ECAB 416, 425 (1990).

<sup>9</sup> *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

<sup>10</sup> *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

<sup>11</sup> *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

which resulted in inadequate supervision in the distribution area and the following Thursday or Friday, which involved appellant's decision to use general purpose mail containers to sort mail by hand when the sack sort machine was malfunctioning, as two compensable work factors.<sup>12</sup> The Office did not accept appellant's allegations of administrative error in the denial of promotions. An administrative error was accepted with regard to the plant manager's listing of appellant in a complaint notice.<sup>13</sup> Therefore, the Board will consider the medical evidence.

In a December 15, 1995 report, Dr. Lomangino diagnosed anxiety disorder and that if the history given by appellant was accurate then "causality within work compensation law is established." He noted that appellant stated that he "felt a rapid heart beat and asked to be brought to the medical department" after his supervisor counseled him.

In a February 3, 1997 report, Dr. Gialanella, a Board-certified psychiatrist, noted that he first treated appellant on January 6, 1996 and that appellant stopped work on November 6, 1995 "due to an accumulation of stressful events experienced at his place of employment." He detailed various anxiety attacks that appellant suffered upon his return to work on November 14, 1995. In concluding, Dr. Gialanella noted that he was "not being able to give you an opinion regarding the cause and effect of incidents that happened prior to my seeing [appellant]." He opined that he believed that appellant "was a victim of the circumstances and actually suffered from an acute post-traumatic stress disorder, panic disorder and adjustment disorder with anxious and depressed features."

None of the medical evidence submitted addresses the accepted employment factors in discussing causal relation. Dr. Lomangino's report is conclusory as he notes that if appellant's history was accurate then his disability was employment related without providing any supporting rationale. Similarly, Dr. Gialanella's report is also insufficient as the physician noted that he could not provide an opinion regarding the cause and effect of various incidents prior to his seeing appellant on January 6, 1996. Furthermore, Dr. Gialanella refers to incidents that the Office has not accepted as compensable factors. Consequently, the medical opinion evidence does not establish or support that appellant's disabling emotional condition developed in response to the accepted compensable factors of his employment. Therefore, he has failed to establish his claim.

---

<sup>12</sup> See *Lillian Cutler*, *supra* note 3.

<sup>13</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

The decision of the Office of Workers' Compensation Programs dated September 24, 1997 is hereby affirmed.

Dated, Washington, D.C.  
April 4, 2000

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member