

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EUGENE A. URBAN and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

*Docket No. 98-1603; Submitted on the Record;
Issued September 26, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

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

In this case, appellant, then a 44-year-old postmaster, filed a notice of occupational disease on December 8, 1992 alleging that his anxiety disorder was caused by stressful working conditions. Appellant stopped work on November 16, 1993 when he was involuntarily removed from his position by Neil Heller, his immediate supervisor, and placed on indefinite detail.

By decision dated July 15, 1994, the Office of Workers' Compensation Programs denied the claim on the grounds that the evidence was insufficient to establish that appellant's psychiatric condition had arisen in the performance of duty. The Office found that appellant's emotional reaction to his meetings with Mr. Heller and various incidents relating to his management of the Langhorne Post Office were not factors of employment for compensation purposes. The Office found that the medical evidence of record supported that appellant's condition developed due to his desire to succeed and from not being allowed to work where he wanted or in the manner he wanted.

By decision dated July 14, 1995, an Office hearing representative remanded the case to the Office finding that appellant had established several factors of employment arising out of his regular or specially assigned duties. The Office was to revise the statement of accepted facts and refer appellant for a psychiatric evaluation and the issuance of a *de novo* decision.

By decision dated December 15, 1995, the Office denied appellant's claim for compensation on the basis that the weight of the medical evidence was represented by the opinion of Dr. Jon Bjornson, a Board-certified psychiatrist and Office referral physician, that appellant's emotional condition was self-generated as he was not allowed to work where he wanted or in the manner he wanted.

In a decision dated February 11, 1997, an Office hearing representative affirmed the December 15, 1995 decision finding that Dr. Bjornson properly confined his opinion within the parameters of the statement of accepted facts in concluding that appellant's emotional condition and disability were not causally related to compensable factors of his employment. By decision dated March 26, 1998, the Office denied appellant's request for modification based on a merit review of the claim.

The Board has carefully reviewed the record evidence and finds that there is a conflict in medical opinion.

Under the Federal Employees' Compensation Act,¹ 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 his 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 emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.²

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.³ 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.⁴ However, an employee's emotional reaction to an administrative or personnel matter is generally not covered⁵ 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.⁶

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.⁷ However, an

¹ 5 U.S.C. §§ 8101-8193.

² *Vaile F. Walders*, 46 ECAB 822, 825 (1995).

³ *Lillian Cutler*, 28 ECAB 125, 129 (1976).

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

⁵ *Sharon J. McIntosh*, 47 ECAB 754, 756 (1996).

⁶ *Barbara E. Hamm*, 45 ECAB 843, 850 (1994).

⁷ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

employee must support his allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.⁸

The Board notes that the Office made findings in this case with respect to several factors of employment it found which occurred in the performance of duty and incidents it found were not established as occurring as alleged or which were outside the scope of coverage under the Act.⁹ With respect to appellant's allegation that his long hours of work contributed to his condition, the Board notes that a heavy work load may be a compensable factor of employment.¹⁰ The Office properly found that appellant worked long hours in his position as postmaster and therefore established compensable factor of overpayment.

With respect to appellant's allegation that there were death threats written on the Langhorne Post Office rest room walls on May 18 and 19, 1993, the evidence of record supports the Office's finding that the occurrence of these incidents was verified. Accordingly, appellant's reaction to them can be considered to be in the performance of duty. The investigation into such threats is an administrative matter¹¹ and, absent a showing of error or abuse, appellant's reaction to the Postal Inspection Service's response is not compensable. The Office properly found that there was no evidence to support appellant's allegation that the Postal Inspection Service did not take proper action concerning the death threats.

Appellant has alleged that he suffered stress as a result of negative interactions with his supervisor, Mr. Heller. As a general rule, the exercise of supervisory discretion in an administrative capacity relates to the supervisor's performance of duties, not appellant's performance of duties and is therefore not compensable.¹² Nonetheless, error or abuse by an employing establishment supervisor in an administrative or personnel matter, or evidence that the supervisor acted unreasonably in the administration of a personnel matter, may afford coverage. Inasmuch as witness statements verified appellant's account of Mr. Heller's yelling at him, shaking his finger or hand in appellant's face, and rubbing appellant's bald spot, the Office properly found these events constitute compensable factors of employment. Appellant also alleged that it was stressful dealing with Mr. Heller's orders and Mr. Heller's removal of him from the job of postmaster. These contentions, however, are not substantiated and, thus, cannot be considered compensable. Although appellant asserted that Mr. Heller lacked authority to order him in regards to such situations as discipline, Hempstead Agreement or in his removal from his position as postmaster, the record does not establish error or abuse, and thus, these administrative/personnel functions may not be considered compensable.

⁸ *Ruthie M. Evans*, 41 ECAB 416, 425 (1990).

⁹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statements of Accepted Facts*, Chapter 2.809.13(b) (June 1995), which provides that the claims examiner must distinguish between those workplace activities and circumstances that are factors of employment and those which are outside the scope of employment for purposes of compensation.

¹⁰ *Frank A. McDowell*, 44 ECAB 522 (1993).

¹¹ *Anne L. Livermore*, 46 ECAB 425 (1995).

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

There is also no probative evidence to establish appellant's allegation that, in October 1991, he was given an unrealistic goal of obtaining improvement at the Langhorne Post Office within three months. Thus, this allegation is not a compensable factor of employment.

In its July 14, 1995 decision, the Office hearing representative further noted that appellant asserted several employment factors at the hearing which he alleged also caused him stress. These were summarized as having the responsibility of officiating at and answering two grievances; a problem with the sale and use of narcotics by employees and having to manage employees with records of violence and deviant sexual activity; responsibility for health and safety within the Langhorne Post Office a roof which leaked and took two years to fix; responsibility for the Langhorne Post Office budget and difficulty working with in an inadequate budget. The hearing representative found that, although these activities directly related to appellant's job requirements, these events were not compensable. The Board finds, however, that, under the holding in *Cutler*,¹³ these factors relate to appellant's regular and specially assigned duties as a postmaster. As such, appellant has established that he had to officiate over two grievances, had to supervise problem employees with records; was responsible for health and safety implementation; and for working within the allotted budget. These are compensable factors of appellant's employment.

The Board finds that there is a conflict in the medical opinion evidence that arose between Dr. Bjornson, a Board-certified psychiatrist and an Office referral physician, and Dr. Jay Stuart Bonovitz, a Board-certified psychiatrist, who treated appellant. Section 8123(a) of the Act provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.¹⁴

In a September 22, 1995 medical report, Dr. Bjornson reviewed the August 2, 1995 statement of accepted facts, appellant's file and interviewed appellant. A diagnosis of adjustment disorder with mixed anxiety and depressed mood was provided, and appellant was medically fit to return to work. Dr. Bjornson stated that the major factor relative to appellant's not returning to work was his dispute with Mr. Heller. He stated that there appeared to be an issue of pride and lack of humility on both sides of this dispute. Dr. Bjornson stated that, while appellant did have some obsessive compulsive personality traits, these were not so significant to warrant a diagnosis. He stated that appellant had to learn some flexibility. Dr. Bjornson stated that appellant's anxiety appeared to be self-engendered due to job dissatisfaction and disappointment. In an undated addendum to his September 22, 1995 report, Dr. Bjornson stated that the basis of his findings were the facts as outlined in the statement of accepted facts and the records forwarded to him by the Office. His conclusions were stated as follows: Appellant was and is capable of employment. The items in the statement of accepted facts which were stressful, did not cause disability by reason of the fact appellant continued to work. These included the May 18 and 19, 1993 death threats and appellant's working of long hours. The items listed under "not considered to have arisen from the performance of his duties during the

¹³ *Supra* note 3.

¹⁴ 5 U.S.C. § 8123(a); *see also Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

course of employment” were mentioned by appellant as justification for his contention that he should have been transferred to a job of similar or corresponding prestige and responsibility. Dr. Bjornson noted that regardless of whether these factors arose from the performance of appellant’s duties, they were discounted by appellant’s contention that he should have been maintained at or returned to his job as the Langhorne Postmaster and could have continued to perform that job. Dr. Bjornson opined that the only factor which required discussion from a medical/psychiatric standpoint was whether appellant was stressed by “Mr. Heller’s yelling at the claimant, shaking his finger or hand in the claimant’s face, and rubbing the claimant’s bald spot.” Dr. Bjornson opined that these factors, were not significant as the real stress was due to appellant’s reassignment. He noted that appellant “clearly stated to me that he saw the only resolution to his psychological discomfort as reinstatement to the Langhorne Postmaster job. The stress was real or implied demotion that accompanied reassignment.” Dr. Bjornson stated that this “subjective” stress and, as it was not accounted for in the statement of accepted facts, it did not apply.

In a subsequent report of January 13, 1998, Dr. Bonovitz noted that appellant was currently working as the postmaster at the Langhorne office. He stated that the major symptoms of panic attacks and agoraphobia, severe depression, and post-traumatic anxiety symptoms emerged at points of major stress, such as the death threats, and not when he was removed from his job. Dr. Bonovitz opined that the accepted facts caused appellant’s problems and resulted in both the need for treatment and his temporary inability to work. Dr. Bonovitz states that the long hours of work were a significant contributor to appellant’s stress and a major cause of symptoms of generalized anxiety and panic attacks. The death threats were directly connected to the emergence of appellant’s post-traumatic stress symptoms which worsened his illness in a major way. Mr. Heller’s repeated behavior of yelling at appellant, shaking his finger or hand in appellant’s face, and rubbing appellant’s bald spot was a central factor in worsening appellant’s symptoms of anxiety and depression. The removal from his position was regarded as the last straw and not the principle cause of appellant’s difficulties. Dr. Bonovitz stated:

“Two series of events were primarily responsible for [appellant’s] decompensation which required interruption of his employment. The first was a repeated series of humiliating and belittling interactions with his immediate supervisor, Mr. Heller. It was particularly painful to him that he was criticized openly in front of subordinate managers, the workers that he was leading and union officers. To be yelled at in public and threatened verbally and by physical gestures also took a heavy toll on him as did the intermittent humiliating ‘assaults’ (drum beating). The second major trauma occurred with the discovery of death threats against his life by more than one person. This led to a marked increase in traumatic anxiety symptoms with the new onset of hyper-alertness at work along with exaggerated startle response and frequent nightmares of being killed.”

The Board finds that these reports are sufficient to create a conflict in medical opinion as to whether appellant’s emotional condition is causally related to factors of his federal employment. On remand, the Office should prepare a new statement of accepted facts and refer it, together with appellant and the case record, to a Board-certified specialist in the appropriate

field of medicine, to resolve the conflict pursuant to section 8123(a) of the Act. Following this and such further development as the Office deems necessary, a *de novo* decision should be issued on whether appellant's emotional condition is causally related to his federal employment.

The March 26, 1998 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
September 26, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member