U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL E. WITTKOPP and U.S. POSTAL SERVICE,
POST OFFICE, Bellmawr, NJ

Docket No. 99-1697; Submitted on the Record;
Issued May 25, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained an emotional condition while in the performance of his duties.

The essential facts of this case are not in dispute. On October 12, 1995 appellant, then a 45-year-old postal clerk, filed a claim asserting that his bipolar disorder and depression were a result of his federal employment. Early in 1983 he performed various artistic functions on behalf of the employing establishment while in the performance of his federal duties. From March 1984 through January 1985 appellant was required to prepare a mural. He intended the mural to last a long time but was not permitted to finish it. The employing establishment placed a Christmas tree in front of it. After six years the employing establishment painted the mural over. It is accepted as factual that, during appellant's work on the mural, management asked him on an almost daily basis, "When are you going to get this finished?" and "We want this finished." Appellant was given direct orders to finish the job. It is further accepted that at least one coworker remarked to the effect that "While you were out having fun, we were doing all this work."[1]

On November 6, 1995 Dr. Kenneth Goldberg, a licensed psychologist, reported that when the employing establishment "commissioned" appellant to create a mural, it created an untenable situation:

> "[Appellant's] artistic sensibilities were greatly offended by his employer's production demands and a decision to place a Christmas tree in front of his work. Eventually, his entire creation was painted over and destroyed. Further, the expectation that he complete this assignment thwarted him from applying for a more artistic job in the postal service.

[1] It was not accepted that a coworker sabotaged appellant's work by throwing away first-class mail and then accusing him of the offense.

> "While no commissioned artist can demand appreciation for his work, the decision to capitalize on his artistic talents out of his job tile created an absolute no-win situation for [appellant]. His means of livelihood was dependent on his remaining in a situation where his creative production was rejected."

Dr. Goldberg reported with a high degree of psychological certainty that this original injury was the initial source of appellant's current problems.

On February 25, 1998 Dr. Goldberg reported that appellant reacted to the assignment as an artist, personally invested in his work and sensitive to interference and criticism. "He became extremely upset by pressures to speed the work along and perceived the placement of a Christmas tree in front of his wall as an infringement of his pallet. He felt a final blow when the mural, created to last for years, was painted over." He reported that appellant had suffered an injury to his self-esteem.

In a decision dated January 6, 1998, a hearing representative of the Office of Workers' Compensation Programs found that the only incident that was compensable in the case was the preparation of the mural for which appellant received almost daily pressure. Although the statements or inquiries made by management with regard to when he was going to finish were not found to be erroneous or abusive, the hearing representative found that they clearly evinced pressure or a deadline under which appellant was operating. As such, appellant was deemed to have experienced this pressure while in the performance of his duties. The findings of the hearing representative in this regard are in accordance with the facts and the law, which are well presented in the January 6, 1998 decision.[2] The hearing representative found, however, that, although appellant had clearly identified a compensable factor of employment, he failed to submit a reasoned medical opinion on causal relationship from a physician with knowledge of such employment factor.

In a decision dated January 5, 1999, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. The Office found that the medical evidence submitted was of no probative value in establishing appellant's claim because it stressed the treatment that the mural received, which was not compensable.

The Board finds that the medical evidence is insufficient to establish that appellant sustained an emotional condition while in the performance of duty.

An employee seeking benefits under the Act[3] has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a

[2] The Federal Employees' Compensation Act does not cover every injury or illness that is somehow related to one's employment. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. The disability is not compensable, however, when 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. *Lillian Cutler*, 28 ECAB 125 at 129, 131 (1976).

[3] 5 U.S.C. §§ 8101-8193.

specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.[4]

The Office found that the statements or inquiries made by management with regard to when appellant was going to finish the mural evinced pressure or a deadline under which appellant was operating. The Office accepted this pressure as a compensable factor of employment. The question for determination, therefore, is whether this pressure caused an injury.

Causal relationship is a medical issue,[5] 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 rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[6] must be one of reasonable medical certainty,[7] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[8]

To support his claim, appellant submitted reports from his attending psychologist, Dr. Goldberg. While these reports are supportive of appellant's claim, the Board finds that they are not sufficiently well reasoned to establish the element of causal relationship. He has not focused specifically on how, from a psychological point of view, the pressure that appellant faced from management to complete the mural caused or at least contributed to the diagnosed condition. Instead, Dr. Goldberg has addressed how appellant's artistic sensibilities were offended by the pressure to finish and by the noncompensable decisions by management to place a Christmas tree in front of the mural and eventually to paint the mural over. It remains unclear from Dr. Goldberg's reports whether the pressure to finish the mural was sufficient in itself to cause or contribute to appellant's diagnosed condition or how he can determine this some 10 years after the fact. It also remains unclear whether he can determine at this point in time that appellant's condition was not caused solely by management's treatment of the mural, which is again not compensable.

Because the medical opinion evidence is insufficient to establish that appellant's diagnosed condition is causally related to the accepted factor of employment, appellant has not met his burden of proof.

---

[4] *See generally John J. Carlone*, 41 ECAB 354 (1989); *Abe E. Scott*, 45 ECAB 164 (1993); *see also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15)-.5(a)(16) ("traumatic injury" and "occupational disease or illness" defined).

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

[6] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[7] *See Morris Scanlon*, 11 ECAB 384-85 (1960).

[8] *See William E. Enright*, 31 ECAB 426, 430 (1980).

The January 5, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 25, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member