

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ANTHONY EVANS and U.S. POSTAL SERVICE,  
POST OFFICE, Waco, TX

*Docket No. 01-853; Submitted on the Record;  
Issued February 6, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On November 15, 1999 appellant, then a 36-year-old distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on October 29, 1999 he suffered mental stress and a mental breakdown due to the employing establishment withholding his salary check, questioning him about his salary advance and denial of partial request of time.<sup>1</sup>

In a report dated November 30, 1999, Dr. T.A. Payson, an attending physician, indicated that appellant had been hospitalized on October 29, 1999 and that he was currently "unable to return to work."

In a letter dated December 8, 1999, the Office informed appellant that additional medical and factual information was required in support of his claim.

By decision dated January 25, 2000, the Office denied appellant's claim on the basis that he failed to establish that he sustained an injury in the performance of duty. The Office found appellant had failed to establish any compensable factors to support his emotional condition.

Appellant requested reconsideration on February 3, 2000 and submitted leave slips and a state determination awarding unemployment benefits. Appellant contended that the withholding or cashing of his salary check by the employing establishment was illegal and constituted mail theft.

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<sup>1</sup> Appellant was hospitalized from October 29 through November 12, 1999. Appellant returned to work on November 15, 1999, when he was told the employing establishment had cashed his payroll check to repay his salary advance at which time he was readmitted to the hospital.

By decision dated May 3, 2000, the Office denied appellant's request for modification of the denial of his claim.

In a letter dated May 12, 2000, appellant requested reconsideration.

Appellant again requested reconsideration in a letter dated June 2, 2000 and submitted evidence regarding his allegation of forgery and mail theft of his payroll check by the employing establishment and a letter from the state of Texas regarding unemployment benefits.

The Office denied appellant's reconsideration request by merit decision dated June 13, 2000.

By letter dated June 16, 2000, appellant requested written review of the record by a hearing representative and submitted factual evidence regarding his unemployment benefits and medical reports by Dr. Payson for the period October 29, 1999 through May 29, 2000 detailing his psychiatric condition and treatment.

In a May 29, 2000 report, Dr. Payson diagnosed major depression, which caused appellant to be hospitalized several times starting in late October 1999. Regarding the cause of appellant's condition, the physician stated it was his "opinion that work-related factors were at least partly responsible for the severity and duration of his illness."

Dr. Payson in his treatment and discharge reports for the period October 29, 1999 through April 10, 2000 diagnosed major depression with paranoid ideations. In these reports, appellant related to Dr. Payson that the employing establishment was harassing him and that they cashed his check because of a previous overpayment.

On August 17, 2000 the Office denied appellant's request for a hearing on the basis that he had previously requested reconsideration.

Appellant's counsel requested reconsideration by letter dated August 20, 2000 and received on October 25, 2000.

By decision dated November 7, 2000, the Office denied appellant's request for reconsideration.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

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 his 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.<sup>2</sup> On the other hand, the disability is not covered where it results from such factors as an

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>3</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 employment factors.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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 record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>7</sup>

In the present case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegations that the employing establishment wrongly withheld his payroll check, wrongly denied him eight hours of union time to file a grievance and wrongly cashed his payroll check to reimburse the employing establishment for his salary advance, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.<sup>8</sup> Although the handling of disciplinary actions and leave requests are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>9</sup> However, the Board has also found that an administrative or personnel matter will

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<sup>3</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>5</sup> *Dennis J. Balogh*, 52 ECAB \_\_\_\_ (Docket No. 99-1512, issued January 25, 2001); *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>6</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>7</sup> *Id.*

<sup>8</sup> See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

<sup>9</sup> *Id.*

be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>10</sup> Appellant has not submitted sufficient evidence establishing that the employing establishment committed error or abuse in taking disciplinary action against him or in the administrative actions pertaining to his wage withholdings.

As appellant has not established any compensable factors of his federal employment that he implicates in causing or contributing to the development of his emotional condition, appellant has failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.<sup>11</sup>

The Board finds the Office properly determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

Under section 8128(a) of the Act,<sup>12</sup> the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,<sup>13</sup> which provides that a claimant may obtain review of the merits if his written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law;  
or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the OWCP.”

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.<sup>14</sup>

In the instant case, appellant did not submit any evidence with his August 20, 2000 reconsideration request. Thus, the Board finds that appellant did not submit new and relevant evidence, or show that the Office erroneously applied or interpreted a specific point of law, nor did he advance a new and relevant legal argument. Accordingly, the Board finds that he did not

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<sup>10</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>11</sup> As appellant has not submitted the necessary evidence to substantiate a compensable factor of employment, the medical evidence need not be reviewed in this case. See *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

<sup>12</sup> 5 U.S.C. § 8128(a).

<sup>13</sup> 20 C.F.R. § 10.606(b) (1999).

<sup>14</sup> 20 C.F.R. § 10.608(b).

meet any of the requirements of 20 C.F.R. § 10.606(b)(2) and, therefore, the Office properly denied the requests for reconsideration without merit review of the claim.

The November 7, June 13 and May 3, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.<sup>15</sup>

Dated, Washington, DC  
February 6, 2002

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>15</sup> With appellant's request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).