United States Department of Labor
Employees' Compensation Appeals Board

CHARLES W. NORTON, Appellant	)	
and	)	**Docket No. 04-1215**
	)	**Issued: October 7, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Newport, VT, Employer	)	

Appearances:
Charles W. Norton, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge

JURISDICTION

On April 2, 2004 appellant filed a timely appeal from an April 3, 2003 Office of Workers' Compensation Programs' decision terminating his compensation and denying a claim based on an emotional condition. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office met its burden to terminate compensation benefits; and (2) whether appellant sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On October 17, 1989 appellant, a 39-year-old letter carrier, injured his lower back while bending over to pick up a tub of flat mail. He filed a claim for benefits on October 20, 1989, which the Office accepted for lumbar strain. The Office commenced payment for temporary total disability compensation. In August 1993, appellant became co-owner and operator of the Norton Dozing and Excavation business.

In order to determine appellant's current condition, the Office referred appellant for a second opinion examination with Dr. Jacques M. Archambault, a Board-certified orthopedic surgeon. In a report dated February 6, 2002, Dr. Archambault, after reviewing the medical records and the statement of accepted facts and stating findings on examination, found that there were no objective findings, except for appellant's subjective complaints of chronic pain, to connect his current medical condition to his October 1988 work injury. He stated:

> "The condition of [appellant] is mostly a post-traumatic stress disorder or syndrome, with a pain in his back. He shows mostly subjective findings at this time, except by review of the chart, where there is sign of congenital spinal stenosis and facet arthropathy at L4-5 that was fine in 1989, so [it] is unrelated to the incident, since this was too early to have so much change of the facets after a short time of lifting objects. This is mostly degenerative change, a natural history of arthritis, and the congenital speaks for itself. It is a congenital spinal stenosis by the record and report by the radiologist."

Dr. Archambault further stated that appellant's post-traumatic stress syndrome was a preexisting condition which dated back to his military service in Vietnam. He advised that appellant was capable of doing some work, but limited and modified, although after 12 years he did not think he could ever return to any gainful employment with the employing establishment. Dr. Archambault also stated that appellant apparently had another chronic condition, a right knee condition, for which he had filed a separate claim.

In a supplemental report dated April 19, 2002, Dr. Archambault stated that appellant had continuing chronic low back pain, but he advised that appellant had reached maximum medical improvement on approximately May 6, 1991. He explained that, although appellant still had some pain, he sought no further treatment after returning to work on May 6, 1991. In a supplemental report dated October 3, 2002, Dr. Archambault stated that "I do state clearly ... that [appellant's] back strain has resolved and the back [condition] is related to congenital changes as were mentioned." In a work capacity evaluation dated October 4, 2002, Dr. Archambault indicated that appellant could work an eight-hour day with restrictions.

On December 30, 2002 the Office issued a notice of proposed termination. The Office found that Dr. Archambault's opinion finding that appellant's work-related injury had resolved and that he could return to work with restrictions represented the weight of the medical evidence. The Office gave appellant 30 days to submit additional medical evidence or legal argument to contest the proposed termination.

In an undated written statement, received by the Office on January 31, 2003, appellant stated that his work-related back condition had not resolved and that Dr. Archambault only took 20 minutes to examine him and did not review the medical records. He further alleged that his back pain was made worse because of the way he had to stand due to a knee injury, and that, if his knee problem had been corrected, he might never have developed a back condition. In addition, appellant asserted that he had been pursuing a claim for post-traumatic stress disorder prior to and after his back injury. Appellant submitted reports dated January 17, 2000 and January 20, 2003 from Dr. Gail Barton, Board-certified in psychiatry and neurology, in addition to a May 24, 2000 functional capacity evaluation and report from Ben McCormick, a physical therapist.

In her January 17, 2000 report, Dr. Barton stated that appellant developed a post-traumatic stress disorder condition while serving with the Marine Corps in Vietnam in 1969 when he was hit in the helmet by a bullet which ricocheted around inside his helmet and caused a fractured skull and concussion. She advised that appellant experienced symptoms of sleeplessness, nightmares, flashbacks, aversion to triggers, alienation, distrust of authority and survivor guilt. Dr. Barton related that appellant told her he went to work at the employing establishment after his discharge from the Marines, where he experienced persistent and intense harassment by the postmaster and occasionally his coworkers. She asserted that the coworkers would jump back every time they entered the room in a mock display of fear that he would "go postal" on them; that his postmaster acted in an antagonistic manner toward him because he was a veteran; that his postmaster tried to get appellant fired without good cause; that his postmaster tried to have his relatives hired in his place; that his postmaster singled him out to be closely monitored whether he reported for work on time, whether he was in complete uniform, and whether his work payments were balanced; that his postmaster started a rumor that his war wounds were "secondary to an angry prostitute's grenade; that he was subjected to comments regarding his Vietnam service such as "no one asked you to go," or "I'd be afraid to be near someone who'd killed somebody else."

In addition, Dr. Barton related that appellant claimed that in 1995, six years after he last worked for the employing establishment, postal inspectors raided his home. Appellant alleged that the inspectors burst into his home claiming he was a felon and a cheat, threatened his family, and searched his entire home. They threw items out of his desk, his cupboard, bureaus and took away personal papers, stamp collections, bank statements, and his wife's business records. Dr. Barton stated that appellant developed post-traumatic stress disorder symptoms stemming from this event, triggers for intense rage whenever he sees an employing establishment truck or logo, feelings that he is being followed or watched whenever he sees a strange vehicle. As a result of this traumatic event, appellant began to believe that the employing establishment had been observing him and his family's activities for a year prior to the unannounced intrusion. According to Dr. Barton, after this episode, appellant's wife began to drink and abandoned her family responsibilities and her business, which resulted in their marriage breaking up and in severe damage to her business. In short, appellant told Ms. Barton that in 1995 the employing establishment committed an unprovoked assault on his home which diminished the quality of his life and worsened his post-traumatic stress disorder condition.

In her January 20, 2003 report, Dr. Barton related that appellant continued to experience symptoms from post-traumatic stress disorder. She essentially reiterated her previous findings and conclusions, and stated that appellant had not returned for any follow-up treatment on his back, as Dr. Archambault stated, because he was told that he should wait until he could no longer walk before anything further was done to treat his back and because he no longer trusts the employing establishment since the 1995 postal inspector search of his home.

By decision dated April 3, 2003, the Office found that appellant had no continuing disability or impairment causally related to the October 17, 1989 employment injury, finding that Dr. Archambault's opinion represented the weight of the medical evidence. In addition, the Office denied appellant's claim for an emotional condition on the basis that he failed to establish any compensable factor of employment and thus fact of injury was not established.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.[1] After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[2]

ANALYSIS -- ISSUE 1

In this case, the Office based its decision to terminate appellant's compensation on the reports of Dr. Archambault, the Office referral physician, who stated that appellant had no objective findings causally related to his October 1989 work injury. He noted that appellant had subjective complaints of chronic low back pain, but advised that, based on his medical records, these were caused by congenital spinal stenosis and facet arthropathy at L4-5 which constituted degenerative change and a natural history of arthritis. Therefore, this subjective low back pain was unrelated to the October 1989 employment injury. Dr. Archambault stated that, although appellant still complained of continuing chronic low back pain, he reached maximum medical improvement in May 1991. He concluded in his October 3, 2002 report that appellant's back strain has resolved and reiterated that his current back condition was related to the congenital changes mentioned in his February 6, 2002 report. In addition, Dr. Archambault indicated in his October 4, 2002 work capacity evaluation that appellant could work an eight-hour day with restrictions. The Office relied on Dr. Archambault's opinion in its April 3, 2003 termination decision, finding that appellant had no residuals stemming from his October 1989 work injury and that he had no continuing disability for work resulting from the accepted employment injury.

The Board finds that the Office properly found that Dr. Archambault's opinion represented the weight of the medical evidence and negated a causal relationship between appellant's current condition and his October 1989 employment injury.[3] Dr. Archambault found that he no longer had any residuals from the employment injury and his report is sufficiently probative, rationalized and based upon a proper factual background. The Office therefore properly relied on the opinion of Dr. Archambault in its April 3, 2003 termination decision.[4]

LEGAL PRECEDENT -- ISSUE 2

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged

[1] *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

[2] *Id.*

[3] Appellant mentions in his undated written statement, received by the Office on January 31, 2003, that he developed a knee condition which exacerbated his low back condition. However, appellant has never filed a claim based on this condition, and the Office never accepted or considered a condition based on appellant's knee.

[4] The Board notes that the May 24, 2000 report from a physical therapist does not constitute medical evidence pursuant to 5 U.S.C. § 8101(2).

to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.[5] There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.[6]

The first issue to be addressed is whether appellant has cited factors of employment that contributed to her alleged emotional condition or disability.

Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act.[7] On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.[8]

ANALYSIS -- ISSUE 2

The Board finds that appellant has failed to submit sufficient evidence to establish his allegations that his supervisor engaged in a pattern of harassment toward him. These included appellant's allegations contained in Dr. Barton's January 17, 2000 report that he was subjected to persistent and intense harassment by his postmaster and occasionally his coworkers; his coworkers would jump back every time they entered the room in a mock display of fear that he would "go postal" on them; that his postmaster acted in an antagonistic manner toward him because he was a veteran; that he tried to get appellant fired without good cause; that his postmaster tried to have his relatives hired in his place; that his postmaster singled him out to be closely monitored whether he reported for work on time, whether he was complete uniform, and whether his work payments were balanced; that his postmaster started a rumor that his war wounds were "secondary to an angry prostitute's grenade; that he was subjected to comments regarding his Vietnam service such as "no one asked you to go," or "I'd be afraid to be near someone who'd killed somebody else." Appellant has alleged, in general terms, that his postmaster and coworkers harassed him, but has not provided the evidence to support his allegations that he was harassed mistreated, or treated in a discriminatory manner by management.[9]

[5] *See Debbie J. Hobbs*, 43 ECAB 135 (1991).

[6] *See Ruth C. Borden*, 43 ECAB 146 (1991).

[7] *Lillian Cutler*, 28 ECAB 125 (1976).

[8] *Id.*

[9] *See Joel Parker, Sr.*, 43 ECAB 220 (1991) (the Board held that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

With regard to the alleged raid on his home by postal inspectors in 1995, appellant has provided no corroboration to support his assertion that this incident actually occurred. Further, the alleged incident, as related to Dr. Barton, took place in 1995, when appellant was no longer working for the employing establishment, and even if true did not occur while appellant was in the performance of duty.

Accordingly, the record indicates that the Office reviewed appellant's allegations of harassment, abuse and mistreatment, which allegedly occurred over several years, and found that they were not substantiated or corroborated.[10] To that end, appellant failed to establish that his supervisor harassed, threatened or verbally abused appellant during the periods and dates she alleged these episodes to have occurred. The Board therefore finds that the Office properly found that the episodes of harassment cited by appellant did not factually occur as alleged by appellant, as he failed to provide any corroborating evidence for her allegations. As such, appellant's allegations constitute mere perceptions or generally stated assertions of dissatisfaction with a certain superior at work which do not support her claim for an emotional disability.[11] For this reason, the Office properly determined that these incidents constituted mere perceptions of appellant and were not factually established.[12]

The Board notes that, since appellant has not established a compensable work factor, the medical evidence will not be considered.[13]

CONCLUSION

The Board finds that the Office met its burden to terminate appellant's compensation benefits. The Board finds that appellant met his burden to establish that he sustained an emotional condition in the performance of duty.

[10] *Merriett J. Kauffmann*, 45 ECAB 696 (1994).

[11] *See Debbie J. Hobbs, supra* note 1.

[12] There is no indication in the record that appellant ever filed a Form CA-2 claim for an emotional condition. Nevertheless, as appellant asserted in his undated written statement, received by the Office on January 31, 2003, that his preexisting post-traumatic stress disorder condition was aggravated by factors of his employment, and the Office considered his allegation in its April 3, 2003 decision, the Board has considered the issue herein.

[13] *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the April 3, 2003 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: October 7, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board