

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**J.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Baltimore, MD, Employer**

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**Docket No. 10-117  
Issued: August 5, 2010**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 16, 2009 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated May 15, 2009 which denied appellant's claim. He also appealed a September 30, 2009 decision finding that he abandoned his request for a hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

**ISSUES**

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained an emotional condition in the performance of duty; and (2) whether the Office properly determined that he abandoned his request for a hearing.

**FACTUAL HISTORY**

On March 30, 2009 appellant, then a 56-year-old manager of customer service, filed a traumatic injury claim alleging that on March 27, 2009 he experienced anxiety, insomnia and

depression as a result of his job. He noted that he became stressed out, overburdened, not stable and “ready to go off.” Appellant stopped work on March 30, 2009.

In a letter dated April 2, 2009, the employing establishment controverted the claim asserting that the claim was not established and that it was for an occupational disease instead of a traumatic injury. On April 2, 2009 John Cordell, manager of operations, indicated that appellant’s medical condition was not work related. He noted that medical documentation made no mention that appellant’s stress was work related. Mr. Cordell further noted that appellant volunteered to work at a higher level detail position with more responsibility and this detail recently ended and he was returned to his original duty station which was a smaller station. He noted that appellant recently married and this may be the reason for his stress, anxiety and insomnia.

Appellant submitted a certificate of health care provider prepared by Dr. Kiumance Kashi, a Board-certified internist, who treated him on December 16, 2008 and March 27, 2009. Dr. Kashi noted that appellant’s condition commenced on March 15, 2009 and diagnosed generalized anxiety disorder, sleep disorder, chronic insomnia and depression. He advised that appellant would need time off for treatment from March 27 to September 27, 2009. Dr. Kashi noted appellant’s condition caused flare-ups which would prevent him from performing his job and opined that it was medically necessary for him to be absent from his job.

In a letter dated April 16, 2009, the Office advised appellant that the evidence was not sufficient to establish that, he experienced an incident or employment factor alleged to cause injury. It noted that appellant did not describe how the claimed injury occurred. The Office requested that he submit additional information, including a detailed description of the employment factors or incidents, which he believed had contributed to his claimed illness and a comprehensive medical report from his treating physician, which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed emotional condition.

Appellant submitted an undated duty status report from Dr. Kashi who noted that he had no injury, but experienced traumatic stress. Dr. Kashi recommended appellant resume work, full time, regular duty on September 20, 2009. He noted that appellant had difficulty with a previous manager which was stress related.

In a decision dated May 15, 2009, the Office denied appellant’s claim on the grounds that the record did not contain factual evidence describing work activities that appellant believed caused or contributed to his emotional condition.

On May 29, 2009 appellant requested an oral hearing. On July 23, 2009 the Office advised appellant that his telephonic hearing would be held September 8, 2009 at 11:30 a.m., Eastern Time. It instructed him to call the provided toll free number a few minutes before the hearing time and enter the pass code to gain access to the conference call. The Office mailed the July 23, 2009 letter to appellant’s address of record.

By decision dated September 30, 2009, the Office found that appellant had abandoned his request for a hearing. It determined that he received a written notice of the hearing 30 days

before the scheduled hearing, but did not appear and did not explain his absence either before or after the scheduled hearing.

### **LEGAL PRECEDENT -- ISSUE 1**

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.<sup>1</sup> To establish appellant's claim that she sustained an emotional condition in the performance of duty, she must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>2</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,<sup>3</sup> the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.<sup>4</sup> 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 under the Act.<sup>5</sup> When an employee experiences emotional stress in carrying out her employment duties and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of an in the course of employment. This is true when the employee's disability results from her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of her work.<sup>6</sup> 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 under the Act. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand the disability is not covered where 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.<sup>7</sup>

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<sup>1</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>2</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>3</sup> 28 ECAB 125 (1976).

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> See *Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

<sup>6</sup> *Lillian Cutler*, *supra* note 3.

<sup>7</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, *supra* note 3.

## **ANALYSIS -- ISSUE 1**

Appellant's claim form generally alleged that he was overburdened and forced to work beyond his tolerance. He indicated that he experienced anxiety, insomnia and depression and was stressed out, overburdened, not stable and ready to go off.

On April 16, 2009 the Office requested appellant submit factual evidence, including a detailed description of the employment factors or incidents that he believed contributed to his claimed illness. Appellant did not provide any additional factual information or discuss specific incidents with respect to his claim. Consequently, the Board finds that appellant did not attribute his claimed condition to any specific regular or specially assigned work duties under *Cutler*.

Regarding his assertion that he was forced to work beyond his tolerance, the Board notes that assignment of duties beyond an employee's work tolerance limitations can be a compensable factor of employment.<sup>8</sup> However, appellant has not provided any specific evidence establishing that the employing establishment assigned him duties beyond his limitations. On April 2, 2009 appellant's manager, Mr. Cordell indicated that appellant volunteered to work at a higher level detail position with more responsibility and this detail recently ended. As noted, appellant provided no further factual information supporting that he was required to work beyond any work tolerance limitations and the record does not otherwise contain probative evidence supporting appellant's assertions that he was overworked or overburdened. Therefore, the Board finds that appellant general allegation of being overburdened and forced to work beyond his tolerance is not established is not a compensable factor of employment.<sup>9</sup>

Accordingly, the Board finds that appellant has not submitted sufficient factual evidence identifying and establishing employment factors or incidents alleged to have caused or contributed to his claimed emotional condition. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.<sup>10</sup>

## **LEGAL PRECEDENT -- ISSUE 2**

The statutory right to a hearing under 5 U.S.C. § 8124(b)(1) follows the initial final merit decision of the Office. Section 8124(b) provides as follows: Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary [of Labor] under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on her claim, before a representative of the Secretary.

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<sup>8</sup> See *Kim Nguyen*, 53 ECAB 127 (2001).

<sup>9</sup> See *C.F.*, 60 ECAB \_\_\_\_ (Docket No. 08-1102, issued October 10, 2008) (perceptions and feelings alone are not compensable; to establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence).

<sup>10</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

With respect to abandonment of hearing requests, Chapter 2.1601.6(e) of the Office's procedure manual provides in relevant part:

“(1) A hearing can be considered abandoned only under very limited circumstances. All three of the following conditions must be present: the claimant has not requested a postponement, the claimant has failed to appear at a scheduled hearing and the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. Under these circumstances, [the Branch of Hearings and Review] will issue a formal decision finding that the claimant has abandoned his or her request for a hearing and return the case to the [district] Office.”<sup>11</sup>

### **ANALYSIS -- ISSUE 2**

By decision dated May 15, 2009, the Office denied appellant's emotional condition claim. Appellant timely requested an oral hearing. In a July 23, 2009 letter, the Office notified him that a telephonic hearing was scheduled for September 8, 2009 at 11:30 a.m. Eastern Time. It instructed appellant to telephone a toll free number and enter a provided pass code to connect with the hearing representative. Appellant did not telephone at the appointed time. He did not request a postponement of the hearing or explain his failure to appear at the hearing within 10 days of the scheduled hearing date of September 8, 2009.<sup>12</sup> The Board, therefore, finds that he abandoned his request for a hearing.

On appeal appellant notes that he was still in the process of moving and he misplaced the paperwork. That argument, however, submitted with his appeal on October 16, 2009 will begin the 10-day period after the scheduled hearing, fails to justify his abandonment.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof in establishing that he developed an emotional condition in the performance of duty. The Board further finds that he abandoned his request for an oral hearing.

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<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999); *see also G.J.*, 58 ECAB 651 (2007).

<sup>12</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 30 and May 15, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 5, 2010  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board