

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLARENCE KEATLEY and U.S. POSTAL SERVICE,
SAINT JAMES PARK STATION, San Jose, Calif.

*Docket No. 95-2851; Submitted on the Record;
Issued January 6, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant has any disability after February 5, 1993 causally related to compensable factors of his employment.

On March 1, 1990 appellant, then a 48-year-old supervisor, filed a claim for depression which he related to the pressures of his work and an overload of work. The Office of Workers' Compensation Programs accepted appellant's claim for adjustment disorder with mixed emotional features. In a March 12, 1992 decision, the Office found that the weight of the medical evidence established that appellant was not entitled to compensation after April 21, 1990. In a December 1, 1992 decision, an Office hearing representative found that there existed a conflict in the medical evidence between Dr. Raymond Deicken, a Board-certified psychiatrist and Office referral physician and Dr. William H. Hazle, a psychiatrist and appellant's treating physician, on whether appellant remained disabled due to the effects of the compensable factors of his employment. She therefore set aside the Office's March 12, 1992 decision and remanded the case for referral of appellant to an appropriate impartial medical specialist for an examination and opinion on whether appellant's disability was causally related to compensable factors of his employment. In an April 13, 1993 decision, the Office rejected appellant's claim on the grounds that the weight of the medical evidence established that appellant was able to perform the duties of his employment by February 5, 1993. In a July 13, 1993 decision, the Office denied appellant's request for a hearing as untimely and further found that he could submit additional medical evidence and seek reconsideration. On October 21, 1993 appellant filed a claim for a recurrence of disability. In a January 21, 1994 decision, the Office found that appellant had failed to establish that he had a recurrence of disability causally related to compensable factors of his employment. In a February 15, 1995 decision, a second Office hearing representative found that there was no rationalized medical evidence in support of appellant's contention that his condition after February 5, 1993 was causally related to compensable factors of his employment.

The Board finds that appellant did not have any disability after February 5, 1993 that was causally related to compensable factors of his employment.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. 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 with 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 his frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.¹ When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.² In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.³

Appellant contended that his emotional condition was caused by the stress and work load of his supervisory position. He stated that he had to deal with inadequate staffing of letter carriers, mail routes that were too long to be completed in eight hours, management pressure to reduce the amount of overtime used and obtain statistics of good production. Appellant indicated that by 9:30 a.m. every morning he had to present his supervisor an estimate of the hours, overtime and volume of mail for that day that was to be within one percent of actual figures even though mail was coming into the employing establishment up to 8:00 a.m. These factors cited by appellant were part of his assigned duties and therefore would be considered compensable factors of his employment.

However, appellant was terminated from the employing establishment effective March 30, 1990 after the employing establishment on February 9, 1990 found that appellant had concealed in his locker a large quantity of first class mail, bulk business mail, change of address orders, mail addressed to managers of the employing establishment and notifications of absences by employees. The employing establishment indicated that all of the mail found in appellant's locker required some form of supervisory action before further processing. The investigation of

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

³ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

appellant and his termination for such official misconduct would not be considered a compensable factor of his employment.⁴

Since the evidence of record established that appellant had at least one compensable factor of employment, the issue then becomes whether the medical evidence of record establishes that his disability due to an emotional condition is causally related to that factor of employment. The Office concluded, based on the reports of Dr. Frederick C. Delse, a Board-certified psychiatrist, that the effects of appellant's employment-related compensable factors had ceased by February 5, 1993, the date Dr. Delse examined appellant. In his February 22, 1993 report, Dr. Delse diagnosed recurrent major depression, in remission and passive aggressive personality disorder. He indicated that appellant had a major depressive episode prior to his federal employment so he concluded that appellant's depression and passive aggressive personality disorder were preexisting conditions. Dr. Delse stated that appellant's current psychiatric condition was solely an aggravation and acceleration of preexisting conditions. He commented that the circumstances of appellant's employment may have precipitated some difficulty but indicated that appellant's problem could not be unrelated to the powerful preexisting conditions. Dr. Delse commented that appellant's psychiatric condition did not arise from the circumstances of his employment but was certainly aggravated and accelerated by his employment. He concluded that appellant's psychiatric condition after September 30, 1990 was primarily the result of his preexisting condition and the trauma of being discovered for improper behavior and terminated. Dr. Delse stated that the circumstances of appellant's employment were a minor factor that merely aggravated the conditions which appellant brought with him to the employment, as well as the behaviors which he employed as a result of his long-standing psychiatric problems. He commented that appellant's disability for performing his job with the employing establishment was the unfortunate coming together of a rather strict discipline on the part of senior management at the employing establishment and appellant's abhorrence of such a strict style. Dr. Delse indicated that appellant's subsequent improper behavior was a willful act and not a symptom of illness, but the inevitable consequence of the discovery of the improper behavior was traumatic and resulted in appellant's severe depression and subsequent hospitalization. He commented that by September 30, 1990 appellant's condition was almost wholly the result of the traumatic experience of being discovered and terminated. In a March 29, 1993 report, Dr. Delse, in response to an Office request for clarification of his opinion, stated that the aggravation of appellant's condition due to the factors of employment was temporary. He commented that the most prominent part of the aggravation of appellant's condition was due to misbehavior and loss of employment. Dr. Delse indicated that the temporary aggravation of appellant's condition should resolve by November 1993. He stated that appellant currently was fully able to work. Dr. Delse's reports showed that the compensable factors of appellant's employment had contributed to an aggravation of his preexisting psychiatric condition but that this contribution had ceased by the time he examined appellant on February 5, 1993. He attributed appellant's psychiatric condition to appellant's reaction to being terminated for his actions in hiding mail, which is not considered to be a compensable factor of his employment. The Office therefore had a proper basis for its decision that appellant's disability was no longer related to factors of his employment as of February 5, 1993.

⁴ *Manuel W. Vetti*, 33 ECAB 750 (1982).

Appellant had the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which he seeks compensation was causally related to his employment injury. As part of such burden of proof, rationalized medical evidence showing causal relationship must be submitted.⁵

In submitting his claim for a recurrence of disability, appellant submitted a March 14, 1994 report from Dr. Hazle who stated that, appellant had a history of trauma and wrongful termination from the employing establishment and had given up all hope as a result. He diagnosed post-traumatic stress disorder, major depression and alcohol dependency. Dr. Hazle stated that, regardless of appellant's prior emotional history, he experienced traumatic injury while employed at the employing establishment. He indicated that the traumatic work experience continued to cause significant psychiatric disability. Dr. Hazle's report, however, is based on an inaccurate history and incomplete analysis. Appellant did not show that the termination of his employment was an error or abusive by the employing establishment. The termination of employment therefore cannot be considered a factor of employment. In relating appellant's disability to his traumatic work experience, Dr. Hazle did not distinguish between compensable factors of his employment, such as the assigned duties appellant had to perform and the factors found to be not within the performance of duty, particularly his termination. Dr. Hazle's report therefore does not show that appellant's claimed recurrence of disability after February 5, 1993 was causally related to compensable factors of his employment.

Appellant also submitted a May 24, 1994 report from Dr. George D. Karalis who diagnosed recurrent major depression and post-traumatic stress disorder. He stated that the depression was not in remission because testing showed that appellant had symptoms of depression. Dr. Karalis deferred to Dr. Hazle's opinion that appellant's condition was causally related to factors of his employment. He stated that there was no evidence that any personal, external or other nonindustrial stressor had caused or perpetuated appellant's current psychiatric condition. Dr. Karalis concluded that there was a direct chain of causation between the stressful circumstances of appellant's service at the employing establishment and his current symptomatology. Dr. Karalis' report, however, is flawed in the same fashion as Dr. Hazle's report. Dr. Karalis did not distinguish between appellant's compensable factors of employment and the factors that are not considered to be within his performance of duty. Dr. Karalis' report therefore does not clearly establish that appellant's continuing disability due to his psychiatric condition was causally related to compensable factors of his employment. Appellant, therefore, has not met his burden of proof, by means of probative, rationalized medical evidence, that the recurrence of his disability was causally related to compensable factors of his employment.

⁵ *Dominic M. DeScala*, 37 ECAB 369 (1986).

The decision of the Office of Workers' Compensation Programs dated February 15, 1995 is hereby affirmed.

Dated, Washington, D.C.
January 6, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member