

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS E. PENN and U.S. POSTAL SERVICE,
POST OFFICE, Winston-Salem, N.C.

*Docket No. 95-2772; Submitted on the Record;
Issued July 13, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to his federal employment.

On June 17, 1993 appellant, then a 46-year-old letter carrier, filed a notice of occupational disease and claim for compensation alleging that his post-traumatic stress syndrome was aggravated in the course of his federal employment by supervisor harassment.¹ Appellant stated that he became aware of his illness in 1984 and that it was caused or aggravated by his employment on February 5, 1993. Appellant stopped work on February 22, 1993 and did not return.

Dr. Thomas W. Littlejohn, appellant's treating physician and a Board-certified family practitioner, examined appellant on February 8, February 15 and March 3, 1993. He recorded symptoms of flashbacks to Vietnam, and anxiousness. He diagnosed post-traumatic stress syndrome, depression, and a borderline personality. He stated that appellant should not return to work. On April 15, 1993 Dr. Littlejohn indicated that appellant told him he could not handle the pressure of work.

On May 6, 1993 Dr. Robert W. Gibson, a Board-certified psychiatrist, diagnosed post-traumatic stress disorder, chronic; depression, major type, nonpsychotic, probably secondary to first diagnosis; and probable schizotypal personality traits. Dr. Gibson stated that appellant told him he was watched at work and that this reminded him of Vietnam. He indicated that appellant's emotional instability made any employment a high risk towards aggravating his post-traumatic stress syndrome.

¹ Appellant also filed a notice of occupational disease and claim for compensation on June 26, 1984 for post-traumatic stress syndrome. The Office of Workers' Compensation Programs closed the claim on January 21, 1985 upon appellant's failure to identify specific work factors which aggravated his preexisting condition.

On May 28, 1993 Dr. Littlejohn stated that he treated appellant for depression and post-traumatic stress syndrome. He indicated that appellant's condition was probably long-standing, but that it was aggravated by his work at the employing establishment.

On June 1, 1993 Dr. Wayne A. Sotile, a clinical psychologist, stated that appellant perceived an adversarial environment at his work which aggravated his symptoms. Dr. Sotile diagnosed post-traumatic stress syndrome which made appellant aggravated by perceived adversarial relationships, highly volatile, and depressed. Dr. Sotile noted that appellant was under constant pressure and that appellant described a very authoritarian managerial approach at the employing establishment which had the potential to make appellant volatile. He indicated that appellant should not return to work.

On June 22, 1993 appellant's union steward, Stephen G. Lawson, indicated that the employing establishment harassed appellant by repeatedly telling him how much mail to deliver in how much time.

On June 22, 1993 Dr. David A. Yoon, a family practitioner, noted appellant's treatment for post-traumatic stress syndrome. He stated that he was not certain if appellant could handle interaction with coworkers and others in the hierarchy. He stated that appellant's problems would be lifelong.

Appellant stated that his flashbacks began in 1968 and became regular. He stated that he withdrew and subsequently sought treatment with at a Veterans Administration hospital where he was placed on medication. Appellant reported feeling better in 1976 and that he was hired by the employing establishment in 1980. He stated, however, that his employment was like Vietnam in that supervisors constantly used threats, yelled, and hid on his routes saying he did or did not do certain things. Appellant indicated that supervisors stated he was not carrying enough mail and told him how to do his job. He stated he became nervous and afraid of himself. Appellant reported that management "rode" him in front of other carriers and that coworkers began to laugh about his flashbacks. He stated that he was told he was not dependable by a supervisor in regards to obtaining an overtime assignment lent and that this precipitated a flashback and a violent attack by him on the supervisor. This caused him to miss work for a year. He stated that during that time he remembered how the employing establishment degraded him and forced him to deliver large volumes of mail within an eight-hour day. Appellant stated that the employing establishment told him to return to work and that they would work with him. He indicated that on his return things went well until new supervisors arrived. Appellant reported that the threats and name calling started anew and that they curtailed his mail and forced him to carry it all in one day. He stated they harassed him over small things like taking too long a lunch or being in the wrong place at the wrong time. Appellant stated that he could not take it anymore and began missing work and reexperiencing flashbacks and the accompanying feelings.

In a letter dated July 1, 1993, appellant's supervisor, Timothy D. Shaw, indicated that he discussed job performance with appellant in the same way it was discussed with other employees. The supervisor attached numerous office records dating from May 1984 through February 1993 documenting discussions with appellant. These records indicated that appellant's absences cost him a periodic pay increase, that the employing establishment placed appellant on restricted sick leave and required medical documentation to support sick leave requests, and that

appellant was declared absent without authorized leave when he left his job without cause. They also indicated that appellant's supervisors discussed inadequate job performance with appellant including his inadequate casing of mail, his delay in delivery, his use of unauthorized overtime, his inadherence to prescribed mail routes, his tardiness, and his taking of too much time for lunch.

On October 12, 1993 Dr. Sotile stated that appellant had difficulty dealing with the perceived harassment of supervisors and an instinct to destroy such adversarial as he struggled with his post-traumatic stress syndrome.

In a statement dated November 13, 1993, appellant stated that supervisors constantly met him on his route, followed him, and criticized his job performance. He stated that these actions produced flashbacks of Vietnam. Appellant stated that he was also required to case and deliver more mail than he was capable of doing in an eight-hour day. He reported that sometimes his mail was cased for him requiring him to deliver mail. Appellant further stated that he was made nervous when the employing establishment requested a fitness-for-duty examination because it evidenced that they were trying to get him. He stated that he was denied overtime or assistance in completing his tasks and that his flashbacks became more frequent. Appellant also indicated that the employing establishment requested medical documentation to support his sick leave.

In response, appellant's supervisor, Mr. Shaw, stated that it was common practice to case a carrier's mail while he performed his route and to have a carrier case his own mail upon returning from his route. He stated that carriers were commonly supervised on the street and that the supervisor that dealt with appellant was professional and did not embarrass carriers in public.

On December 3, 1993 Dr. Jeffrey S. Janofsky, a Board-certified psychiatrist and neurologist, diagnosed post-traumatic stress disorder due to appellant's military experience in Vietnam and recommended that he not return to his job. He indicated that appellant did not sustain a work-related psychiatric injury and that his condition preexisted his federal employment.

On January 10, 1994 Dr. Alan G. Robertson, a Board-certified psychiatrist, rendered a second opinion evaluation at the Office's request. He noted appellant indicated he was diagnosed with post-traumatic stress syndrome in early 1976 or the early 1980's and that he experienced flashbacks and distress. Dr. Robertson diagnosed post-traumatic stress syndrome and noted symptoms of anger, depression, and irritation. He recorded that appellant told him the employing establishment snoop on him and made him feel like he was back in Vietnam. He indicated that appellant told him that he "went off" on February 5, 1983 when a female supervisor mouthed off to him and that he "went off" when he was told that he was not dependable by another supervisor. Dr. Robertson noted that appellant complained of harassment and "games" played on him by the employing establishment.

On February 21, 1994 Dr. Robertson stated that appellant was diagnosed in November 1983 with post-traumatic stress disorder. He stated that there was no evidence to suggest this condition was causally related to appellant's employment or that appellant's psychiatric problems were related to his employment. Dr. Robertson recommended that appellant not

return to the employing establishment. He repeated this assessment of disability on February 27, 1994.

In a decision dated May 6, 1994, the Office denied the claim because fact of injury was not established. In an accompanying memorandum, the Office found that the claimed event, incident, or exposure occurred at the time and place, and in the manner alleged. The Office then found that the opinion of Dr. Twigg stating that appellant's delayed stress was definitely triggered by the pressure of his work was deficient because it was based on an inaccurate factual background and not supported by medical rationale. The Office discredited the similar opinions of Drs. Littlejohn, Sotile, and Janosfsky based on the same rationale. The Office then indicated that it relied on the evaluation of Dr. Robertson, negating a causal relationship between appellant's condition and his federal employment, because it was based on a complete medical and factual history, and his opinion was supported by medical rationale. The Office further noted that appellant failed to allege a compensable factor of employment because all the incidents alleged were administrative actions.

On May 19, 1994 appellant requested an oral hearing.

On August 1, 1994 Dr. Littlejohn stated that appellant was disabled from depression and post-traumatic stress syndrome. He indicated that his opinion was based on consultations with specialists Drs. Gibson and Sotile, who rendered well-documented opinions.

On December 1, 1994 Dr. Sotile stated that it was rational for appellant to feel threatened at work and that the threats aggravated appellant's psychiatric condition. Dr. Sotile stated that his conclusions were based on reports of coworkers who thought appellant was harassed by supervisors. Specifically, he noted an incident where a supervisor followed appellant around and continuously talked, where appellant was denied annual leave others were granted, and where appellant was detained and still expected to complete his daily assignments.

A hearing was held on December 2, 1994. Appellant stated that he first became aware of the return of his post-traumatic stress syndrome in 1983 when a supervisor told him he was not dependable. He stated that the employing establishment had street spot checks in which employees were given 24 hours notice. Appellant indicated that one time Mr. Shaw and Chris Rogers observed him and that they yelled towards him. He stated that Mr. Shaw examined his mail and told him that it could be finished by 3:00 p.m. and that they yelled at him as he completed his duties. He stated that he subsequently found his bin full of mail to be cased. Appellant indicated that he was observed after confrontations. Appellant testified that they were on his case constantly. Appellant stated that on February 5, 1993 Patricia Manual told him to do his work by a certain period of time and that when he took him longer to complete it she loudly and publicly berated him until he left the building and drove off.

Appellant's coworkers submitted statements on his behalf Larry O. Wilson stated appellant was subject to verbal abuse, discrimination, intimidation, and a combative approach. He stated appellant was often observed and taken to the office constantly. He indicated appellant was verbally abused by supervisors. A coworker with an illegible signature stated that supervisor's vocally expressed dissatisfaction with appellant's work and that one supervisor, Pattie Manual, indicated publicly that appellant would carry the mail right. Stephen C. Lawson,

a coworker, indicated that management made appellant a focal point and constantly harassed him. He stated that appellant was required to do more work than he could do in eight hours, that they delayed his working by calling him into the office, that they denied in annual leave, and required him to attend unnecessary fitness-for-duty examinations. Coworker, David Wade, stated that the supervisors were on appellant's back and that Patricia Manuel often followed him one time continuously talking. He stated appellant had a constant struggle carrying the mail.

Appellant's supervisors contradicted these statements. Charlie Dowell indicated that he informed appellant of leave procedures necessary for him to take two weeks off starting August 27, 1991. On January 5, 1995 Mr. Shaw stated that when appellant requested additional time or assistance with his duties, he told appellant that his mail volume did not warrant such measures. He stated that street observation of appellant revealed that he simply sat in his vehicle after completing his route. He stated that appellant's efficiency was damaged by his failure to follow prescribed procedure. Mr. Shaw further indicated that the employing establishment's leave policy was uniformly applied to all workers and that it was, therefore, fairly applied to appellant. He stated that street spot checks were a part of long-standing policy and that appellant's performance was simply judged inadequate because he consistently took too long to complete his work and did not follow procedures. Mr. Shaw denied yelling at appellant. On January 6, 1995 Patricia F. Manuel, a supervisor, denied raising her voice or following appellant on February 5, 1993. She indicated that she merely noted that appellant took too long to complete his route. Finally, supervisor Chris Rogers stated that appellant was observed doing his normal duties as a matter of employing establishment procedure. He stated that 6 to 7 carriers were observed each day and that if they took more than a 30 minutes to have lunch they were warned. He denied hollering at appellant and stated he was treated the same as the other workers.

In a decision dated March 9, 1995, the Office hearing representative determined that appellant alleged only one compensable factor of appellant, that the employing establishment's October 11, 1991 request that appellant undergo a medical evaluation aggravated his emotional condition causing disability. The hearing representative then found that the Office did not make a proper finding concerning the compensable factors of employment. The hearing representative, therefore, remanded the case to the Office to prepare a statement of accepted facts, which included the compensable factor of employment, and send the case to a Board-certified psychiatrist to render an opinion on whether appellant's condition is causally related to his employment. Following such action, the hearing representative directed that the Office issue another final decision.

The Office then constructed a statement of accepted facts and referred the case to Dr. Bret Burquest, a Board-certified psychiatrist, who diagnosed post-traumatic stress disorder present since appellant's military service. He stated that appellant was offended by the employing establishment's October 11, 1991 request for a psychiatric evaluation because he may not have wanted to be labeled impaired by the post-traumatic stress disorder. Dr. Burquest, however, stated that the request for a psychiatric evaluation did not cause or aggravate the post-traumatic stress disorder. Dr. Burquest attributed the cause to appellant's tour-of-duty in Vietnam.

In a decision dated June 13, 1995, the Office denied appellant's claim because the evidence failed to demonstrate a causal relationship between the injury and the claimed condition or disability. In an accompanying memorandum, the Office found that the injury occurred at the time, place, and in the manner alleged, but that Dr. Burquest opined that appellant's condition was due solely to his experiences in Vietnam rather than the request for a psychiatric evaluation.

The Board finds that the case is not in posture for decision and must be remanded for further evidentiary development.

The Federal Employees' Compensation Act² 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.³ Generally, an employee's emotional reaction to an administrative or personnel matter is not compensable. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage.⁴

Appellant alleged that his condition was also aggravated by too heavy a work load. Appellant's inability to complete his assigned duties also constitutes a part of appellant's regular duties and is a compensable factor of employment. Drs. Littlejohn and Sotile referred to the high pressure nature of appellant's work and suggested that it contributed to appellant's condition. Moreover, appellant's supervisor corroborated the difficulties appellant experienced in completing his assigned tasks.

Because appellant has alleged a compensable factor of employment which are supported by medical evidence, the Board is obligated to further develop the medical evidence.⁵ The case, therefore, must be remanded to the Office for further development of the medical evidence, including the drafting of a new statement of accepted facts for the physician's reference, as related to the established compensable factors of appellant's federal employment distinguished above.

Appellant also alleged numerous administrative and personnel matters which are not compensable. These activities primarily involved instructions by appellant's supervisors on the manner in which his work was to be done, criticism on the quality of his work, and instructions of the taking of sick and annual leave. They also include requiring appellant to attend a fitness-

² 5 U.S.C. §§ 8101-8193.

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Norman A. Harris*, 42 ECAB 923 (1991); *Thomas D. McEuen*, 42 ECAB 566 (1991).

⁵ *See John J. Carlone*, 41 ECAB 354 (1989).

for-duty examination and denying appellant an overtime assignment. Similarly, appellant's allegation that his post-traumatic stress syndrome was aggravated by spot checks conducted by his supervisors monitoring his performance is not generally compensable inasmuch as assessments of an employee's performance is administrative in nature.⁶

Appellant, however, has alleged many instances in which he was harassed in the course of these administrative or personnel matters. Actions by a supervisor that are harassing may be compensable, but mere perceptions or feelings of harassment are not.⁷ To discharge his burden of proof, appellant must establish a factual basis for the claim with probative and reliable evidence.⁸

Appellant generally alleged that his supervisors threatened him, yelled at him, and "rode" him in front of other employees. Appellant also specifically alleged that supervisor Patricia Manuel harassed him on February 5, 1993. Appellant's allegations were supported by several coworkers. On June 22, 1993 appellant's union steward, Stephen G. Lawson, indicated that appellant was repeatedly harassed by supervisors regarding the delivery of mail. Lawson later indicated that management made appellant a focal point of harassment. Coworker Larry O. Wilson indicated that appellant's supervisors subjected him to verbal abuse, discrimination, intimidation, and a combative approach. A coworker with an illegible signature indicated that appellant was publicly derided regarding his duties. Finally, coworker David Wade stated that supervisors were constantly on appellant's back and that they followed appellant around continuously talking at him. Supervisors Timothy Shaw, Charlie Dowell, Patricia F. Manuel, and Chris Rogers each provided statements denying that appellant was harassed in any way and asserting that they merely performed their administrative duties when interacting with appellant.

Because the evidence regarding the alleged harassment is conflicting, the Office, as part of its adjudicatory function, should also make a factual finding regarding whether these incidents of alleged harassment occurred and, therefore, constitute compensable factors of employment.⁹ In the event the Office finds that these additional compensable factors of employment are established, it should also develop the medical evidence to consider whether these factors resulted in an emotional condition.

⁶ *O. Paul Gregg*, 46 ECAB 624 (1995).

⁷ *Marie Boylan*, 45 ECAB 338 (1994).

⁸ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁹ *Elizabeth Pinero*, 46 ECAB 123 (1994).

The decision of the Office of Workers' Compensation Programs dated March 9, 1995 is set aside and the case is remanded for further action in accordance with this decision.

Dated, Washington, D.C.
July 13, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member