

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEVENSON SMITH and U.S. POSTAL SERVICE,
JENNINGS POST OFFICE, St. Louis, Mo.

*Docket No. 97-2481; Submitted on the Record;
Issued June 14, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant established that he sustained an emotional condition in the performance of duty.

The Board has carefully reviewed the record of evidence and finds that appellant failed to meet his burden of proof in establishing that his emotional condition was caused by work factors.

Under the Federal Employees' Compensation Act,¹ 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 factors of his federal employment. To establish that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.²

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.³ There are distinctions regarding the type of work situation giving rise to an emotional condition which will be covered under the Act.

For example, disability resulting from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employing establishment is covered.⁴ However, an employee's emotional reaction to an administrative or personnel

¹ 5 U.S.C. §§ 8101-8193 (1974).

² *Vaile F. Walders*, 46 ECAB 822, 825 (1995).

³ *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁴ *Jose L. Gonzalez-Garced*, 46 ECAB 559, 563 (1995).

matter is generally not covered,⁵ and disabling conditions caused by an employee's fear of termination or frustration from lack of promotion are not compensable. In such cases, the employee's feelings are self-generated in that they are not related to assigned duties.⁶

Nonetheless, if the evidence demonstrates that the employing establishment erred or acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.⁷ However, an employee must support his allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.⁸

The initial question is whether appellant has alleged compensable employment factors as contributing to his condition.⁹ Thus, part of appellant's burden of proof includes the submission of a detailed description of the specific employment factors or incidents which appellant believes caused or adversely affected the condition for which he claims compensation.¹⁰ If appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.¹¹

In this case, appellant, then a 43-year-old mail carrier, filed a notice of traumatic injury on February 23, 1996 after his delivery vehicle had been broken into and bundles of mail were taken on February 1, 1996. Appellant claimed that the incident left him depressed and unable to work.

Appellant was treated by Dr. Scott J. Arbaugh, a Board-certified psychiatrist, who diagnosed major depression following the robbery incident. In his report dated April 24, 1996, responding to the Office of Workers' Compensation Programs' inquiry, Dr. Arbaugh indicated that he could not "with any degree of medical certainty" state that appellant's current mental state was causally related to the February 1, 1996 incident.

On May 9, 1996 the Office denied appellant's claim on the grounds that the evidence failed to demonstrate any causal connection between work factors and his mental condition. Appellant appealed to the Board, which dismissed his appeal on February 6, 1997 on the grounds that he wished to submit new evidence in support of reconsideration.¹²

⁵ *Sharon J. McIntosh*, 47 ECAB 754, 756 (1996).

⁶ *Barbara E. Hamm*, 45 ECAB 843, 850 (1994).

⁷ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

⁸ *Ruthie M. Evans*, 41 ECAB 416, 425 (1990).

⁹ *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

¹⁰ *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

¹¹ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

¹² Docket No. 96-1802, issued on February 6, 1997.

On remand appellant submitted reports dated February 5 and September 23, 1996 from Dr. Arbaugh and office treatment notes as well as medical prescriptions, forms excusing appellant from work and his hospitalization records. On June 26, 1997 the Office denied reconsideration on the grounds that the evidence was insufficient to warrant modification of its prior decision.

The Board finds that the February 1, 1996 incident is a compensable work factor in that the burglary occurred in the performance of duty while appellant was carrying out his assigned duties. Therefore, the Board will consider the medical evidence in relation to the facts.¹³

Appellant admitted that he did not witness the incident -- he was delivering mail at the time away from the vehicle and did not see the perpetrator break the window and remove mail, which included social security checks. He went to a nearby home and called his supervisor who sent the police. Appellant later took his vehicle back to the station and used another vehicle to complete delivery of his route.

According to Dr. Arbaugh's treatment notes and reports, appellant was "quite troubled" by the questions from his supervisor and the postal inspector about what mail had been stolen. Appellant did not want to go back to work and was angry about his job situation. He felt that the employing establishment had no concern for him, that his supervisor was "undermining" him, that he had been assigned to deliver mail in a "bad neighborhood," and that his delivery vehicle was not secure. Appellant stated that the incident left him feeling sick and nervous and asked, "why did this have to happen to me?"

Dr. Arbaugh concluded on February 5, 1996 that appellant did not meet the diagnostic criteria for major depressive disorder "due to the brief time course," but felt that appellant "should not work at this time." By April 1996 Dr. Arbaugh had diagnosed major depressive disorder, opining that appellant related the onset of his depression to the February incident. In his September 23, 1996 letter, Dr. Arbaugh stated that the February 1, 1996 event "was clearly very traumatic" for appellant and that, therefore, it was "more likely than not" that this event precipitated the onset of his depression.

Nowhere in his reports did Dr. Arbaugh discuss the traumatic nature of the February incident. He did not explain how appellant's witnessing of the results of the break-in could be traumatic or cause a three-month disability for work. He was aware of appellant's complaints about the manner in which the postal police and his supervisors handled the situation, but Dr. Arbaugh's opinion is speculative and ambivalent -- he concludes that the incident may have been a precipitating factor.¹⁴ Moreover, he failed to explain his conclusion in terms of what

¹³ See *Donna J. DiBernardo*, 47 ECAB 700, 705 (1996) (remanding the case for the Office to develop the medical evidence after appellant established compensable employment factors relating to initial job training, rotating shifts, overtime work and supervisory harassment).

¹⁴ See *Alberta S. Williamson*, 47 ECAB 569, 574 (1996) (finding that a physician's opinion that "the most likely explanation" for appellant's hepatitis C was her working environment as a nurse was speculative in nature and thus insufficient to establish a causal relationship).

actually happened -- appellant was not confronted by the perpetrator or present when the window was smashed but rather saw only the results upon his return to the scene.

Finally, Dr. Arbaugh's opinion appears to be based on appellant's feeling that the incident caused his mental condition. As the Board has long held, self-generated feelings in reaction to supervisory actions are, absent evidence of error or abuse on the part of the employing establishment, not compensable under the Act.¹⁵ Thus, while appellant may have been unhappy and anxious about the way the employing establishment treated the incident, the medical evidence fails to establish that the incident caused appellant's mental condition.¹⁶

The June 26, 1996 decision of the Office of Workers' Compensation is affirmed.

Dated, Washington, D.C.

June 14, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

¹⁵ *Helen P. Allen*, 47 ECAB 141, 145 (1995).

¹⁶ The Board notes that appellant submitted excerpts from the *Diagnostic and Statistical Manual of Mental Disorders* in support of his claim. While interesting and informative, this information lacks probative value in establishing that appellant's condition was caused by work factors because the article concerns the general application of its principles and concepts rather than addressing the particular circumstances of appellant's claim; see *Nathan L. Harrell*, 41 ECAB 402, 408 (1990), citing *William J. Murray*, 35 ECAB 606, 608 (1984).