

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

ROBERT F. SMITH, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Omaha, NB, Employer**

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**Docket No. 03-1456
Issued: December 31, 2003**

Appearances:
Robert F. Smith, pro se
Office of Solicitor, for the Director

Case Submitted on the Record,

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On May 19, 2003 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated April 1, 2003 which denied his claim of an emotional condition. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.¹

ISSUE

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

FACTUAL HISTORY

On September 22, 2001 appellant, then a 57-year-old mail handler, filed a notice of occupational disease alleging that he suffered from daily chest pain and "anxiety-depression caused by pain/work environment." He noted that on April 21, 1998 he was diagnosed with a

¹ The Board is without jurisdiction to review evidence that was not before the Office at the time it issued its final decision. 20 C.F.R. § 501.2(c).

skeletal disorder. Appellant alleged that the repetitive use of his arms at work caused an increase of daily pain, which in turn caused him to suffer from anxiety and depression.² He noted that he had not stopped work and was still performing his same duties.

In a September 22, 2002 statement, appellant explained that he first began experiencing chest pain in 1998 and underwent a series of tests to rule out a heart condition and acid reflux disorder. It was concluded that he had work-related costochondritis with pain on both the right and left side of the chest wall. He related that beginning in January 2000, his chest pain became increasingly worse and he began to experience anxiety attacks and bouts of depression. Appellant was told that his anxiety/depression cycle tended to increase his chest pain. He alleged that he was told by his treating physician to adjust his starting time at work in order to control his chest pain and anxiety. Appellant alleged that he would often work off the clock in the morning or start earlier than his scheduled time in order to accomplish his daily work assignments without chest pain. He indicated that, in November 2000, a Breakthrough Productive Initiative “(BPI)” team conducted an audit of his work station and determined that his starting times for the mail handler position would have to be changed from six hours per day on Mondays, from 2:45 a.m. to 8:45 a.m. and five hours on Tuesday through Saturday, from 3:45 a.m. until 8:45 a.m. Appellant was directed to work within the perimeters of his scheduled hours. He provided medical documentation to the employing establishment to show that he needed to be on a flexible schedule, but his requests for accommodation were ignored. Appellant was told to abide by the BPI starting time or face disciplinary action. He alleged that, after several months of reporting to work on the imposed schedule, he experienced increased chest pain, anxiety and depression. Appellant feared losing his job but went back to reporting to work earlier than scheduled to give himself more time to complete his duties and alleviate his chest pain. He alleged that he was denied a reasonable accommodation of his medical condition because the employing establishment did not consider it to be a disability.

In a letter dated November 20, 2001, the employing establishment provided a statement from appellant’s supervisor, Emil J. Hiykel, which explained the goals of the BPI plan for appellant. The BPI team had observed appellant arriving at work before the first mail truck was at the station and that he helped the driver to unload the truck. The BPI team felt that appellant did not need to arrive so early at work when there was essentially nothing for him to do within his job description. Mr. Hiykel noted that the BPI team scheduled appellant to come in earlier on Monday mornings, since the duty station received mail on Sunday and there would be work for him to do as early as 2:45 a.m. Mr. Hiykel told appellant that a person diagnosed with the condition of costochondritis was not recognized as a person with a “disability” and that he would be subject to disciplinary measures if he continued to report to work earlier than his scheduled times. Mr. Hiykel noted, however, that appellant was given the opportunity to request additional time from his supervisor at the end of each day, if he felt it was necessary to complete his assigned duties.

² The record reflects that appellant filed an occupational disease claim for the condition of bilateral costochondritis (chest wall pain), which was accepted by the Office on August 22, 2000 under case file number 110181500 and October 20, 2000 under case file number 110178126. Appellant submitted copies of medical reports to the Office indicating that he was diagnosed with anxiety and depression due to his employment injury. On September 13, 2001 the Office advised appellant that he needed to file an occupational disease claim if he believed his emotional condition was due to work factors.

The record contains medical reports from Dr. Joseph F. Sheehan, an internist and appellant's treating physician. In reports dated May 9, 2000 and March 26, 2001, he diagnosed anxiety and depression secondary to underlying chest pain from costochondritis. Dr. Sheehan opined that appellant's costochondritis was caused by physical labor on the job.

In a decision dated January 15, 2002, the Office denied compensation on the grounds that appellant failed to establish a compensable factor of employment and, was therefore unable to establish that he sustained an emotional condition in the performance of duty.

Appellant requested a hearing, which was held on January 8, 2003. He testified that he was seeking medical benefits for depression and anxiety due to his accepted work-related chest condition.

In a decision dated April 1, 2003, an Office hearing representative determined that appellant had changed the nature of his claim from one for an emotional condition due to work factors to one for a consequential injury based on his prior accepted costochondritis claim. The Office hearing representative affirmed the Office's January 15, 2002 decision, noting that appellant was "not alleging that development of his stress condition was in any way causally related to factors of his federal employment." The Office hearing representative advised appellant that he could pursue a claim for a consequential injury due to his costochondritis claims.

LEGAL PRECEDENT

Workers' compensation is not applicable to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,³ the Board discussed at length the principles applicable to alleged employment-related emotional conditions and the distinctions as to the type of employment situation giving rise to an emotional condition which will be covered by the Federal Employees' Compensation Act. When an employee experiences an emotional reaction to his or her regular assigned employment duties or to a requirement imposed by the employment or has fear and anxiety regarding his or her ability to carry out his or her duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment and comes within coverage of the Act.⁴ On the other hand, where the disability results from an employee's emotional reaction to employment matters but such matters are not related to the employee's regular or specially assigned work duties or to requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within coverage of the Act.⁵

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors causing a condition or disability, the Office, as part of its

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

⁴ *James E. Norris*, 52 ECAB 93 (1999).

⁵ See *James E. Norris, id.*; *Margaret S. Krzycki*, 43 ECAB 496 (1992).

adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁶ In the present case, the Board must therefore initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

ANALYSIS

In this case, the Office has accepted that appellant sustained bilateral costochondritis or chronic chest pain due to the physical requirements of his job as a mail handler. He submitted medical evidence from his attending physician, Dr. Sheehan, who diagnosed anxiety and depression associated with pain attributable to appellant's costochondritis condition. On September 13, 2001 the Office told appellant that he needed to file an occupational disease claim if he felt that his emotional condition was due to work factors. He filed his claim on September 22, 2002, attributing his emotional condition, in part, to pain from his costochondritis and to actions by the employing establishment in reducing the hours of his shift such that he felt his medical restrictions could not be accommodated.

Generally, actions of the employing establishment in administrative or personnel matters unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act.⁷ The Board finds that appellant's emotional reaction to the assignment of new work hours concerns an administrative function of the employer and, in the absence of error or abuse by the employing establishment, is not compensable.⁸ The Board has carefully reviewed the record and finds no error or abuse on the part of employing establishment personnel in deciding to perform the BPI audit on in its decision to assign appellant a different starting time. The employing establishment did not act unreasonably by explaining to appellant that he would be subjected to disciplinary action if he did not follow his scheduled work hours.⁹ Appellant's fear

⁶ *James E. Norris, supra* note 3.

⁷ *Id.*

⁸ *See Robert W. Johns, 51 ECAB 137 (1999).*

⁹ Disciplinary actions or warnings are administrative functions of the employer and do not involve an employee's regular or specially assigned duties. *See generally, Sherry L. McFall, 51 ECAB 436 (2000).*

of losing his job if he was unable to perform his job duties within the time frame of the new work hours is not compensable, since appellant's anxiety or depression would be considered to be self generated.¹⁰

The Board finds, however, that appellant established a compensable work factor with regard to his employment injury. The Board has held that an emotional condition related to chronic pain and other limitations resulting from an employment injury is covered under the Act.¹¹ Appellant contends that his anxiety and depression arose from pain due to his accepted work injury which increased when he was required to work shorter hours at work. The Board concludes that he has established a compensable work factor. The Board will remand this case for further consideration by the Office as to the medical evidence of record concerning whether appellant established that his emotional condition is causally related to factors of his federal employment.

On remand, Office should combine appellant's prior claims for the condition of costochondritis with the current claim for an emotional condition.¹² The record notes that appellant repeatedly advised the Office that he was seeking compensation for anxiety and depression, which he attributed to pain from his chest wall condition. The issue of consequential injury should be concurrently developed along with the occupational disease claim for an emotional condition¹³. On remand, the Office should undertake such additional development as it deems necessary to ascertain whether appellant established a consequential injury or that his emotional condition was causally related to pain attributable to his employment injury, to be followed by a *de novo* decision.

CONCLUSUION

The Board finds that this case is not in posture for a decision. The case is remanded for further consideration of the evidence relevant to whether appellant sustained an emotional condition in the performance of duty and whether appellant's anxiety and depression are consequential to his accepted employment injury.

¹⁰ See *Gregorio E. Conde*, 52 ECAB 410 (2001) (When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded under the Act since such feelings do not constitute a personal injury in the performance of duty).

¹¹ See *Clara T. Norga*, 46 ECAB 473 (1995) (Employee's scalp abrasion was accepted by the Office as occurring in the performance of duty and she attributed her emotional condition to the pain and fear generated by the injury. The employee established a compensable employment factor).

¹² The Office indicated in a February 15, 2001 letter to appellant that the claims had been doubled under master file number 112005191; however, the Board finds the record to be incomplete with regard to the prior claims for costochondritis.

¹³ Whether or not a separate claim form should have been submitted relating to the consequential aspect of the claim, the evidence is sufficient to constitute a claim for compensation. Technical requirement of pleading are inconsistent with the medical purposes of the Act. See *Wilfred M. Hamilton*, 41 ECAB 524 (1990).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 1, 2003 is vacated and the case is remanded for further consideration consistent with this opinion.

Issued: December 31, 2003
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member