

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

CARLOS ROSADO, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Tampa, FL, Employer**

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**Docket No. 04-1289
Issued: September 20, 2004**

Appearances:
Vivian Perez, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On April 6, 2004 appellant filed an appeal of a merit decision of the Office of Workers' Compensation Programs dated March 26, 2004 which rejected his claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has established that he developed an emotional condition in the performance of duty, causally related to compensable factors of his federal employment.

FACTUAL HISTORY

On November 27, 2002 appellant, then a 50-year-old letter carrier, filed an occupational disease claim alleging that he was being followed while he was delivering mail. Appellant alleged that his "being followed" caused him to develop an emotional condition. He indicated that he was filing a claim after he was found, in a fitness-for-duty examination, to be not fit for

duty. Appellant had told his supervisor that he was being followed by some of his neighbors and the police, and his supervisor had directed him to report for a fitness-for-duty examination.

Appellant underwent a fitness-for-duty examination on September 25, 2002 with a clinical psychologist, Dr. Irving B. Weiner. In a report dated September 26, 2002, Dr. Weiner noted as an indication for examination, that, according to appellant's supervisor, he had been threatening to get a gun and kill everyone plus himself. Dr. Weiner interviewed and tested appellant and determined, however, that he did not indicate any suicidal tendencies or potential for harming others. Dr. Weiner determined that appellant was having some minor traffic problems and accidents because he was distracted while driving, looking around for people who might be following him, and consequently not paying sufficient attention to his driving. He noted that appellant had been manifesting his problem for about five years, and claimed that it started when a neighbor made sexual advances towards his wife, and was confronted by appellant.

Subsequent to that, appellant claimed that his neighbors and members of his extended family had been spying on him, taking pictures of him and keeping track of his activities. Appellant claimed that they were bugging his telephone, following him on the street as he was delivering mail, making notes of his activities, and boxing in his vehicle on the street. Appellant claimed that this neighborhood group was powerful and could enlist a large number of people to take turns following him and keeping track of his activities and participate in watching him. He claimed that he did not believe that the employing establishment or the police were involved in this spying on him, as he called the police and they told him that there was nothing they could do without some evidence. Appellant claimed that they were trying to get him to sell his house and move away.

Appellant's wife claimed that her husband was not crazy.

Dr. Weiner noted that appellant was experiencing situational distress and feelings of powerlessness. He noted that appellant was in stress overload in the form of situational anxiety, was prone to nervousness, irritability and distractibility, and diagnostically resembled a person with a cyclothymic condition.

Also on September 25, 2002 appellant was placed on administrative leave in writing, which followed up what he had been verbally instructed on September 21, 2002. He was instructed not to return to the employing establishment premises unless so advised.

In a November 25, 2002 neuropsychiatric examination, Dr. Walter E. Afield, a Board-certified psychiatrist, noted that, beginning about five years earlier, after a dispute with a neighbor, appellant started noticing people driving by his house, taking pictures of him and his wife, following him at work, taking pictures of him at work, taking notes and looking at him. He claimed that he was being followed and harassed, and felt that his life was in danger. Dr. Afield diagnosed asthma, hypertension and paranoid schizophrenia, in partial remission. He opined that appellant was delusional, was disabled and was not fit for duty.

In a letter dated December 31, 2002, the Office advised appellant that the material submitted was not sufficient to establish his claim and it requested further information on the employment factors implicated in the causation of his emotional condition.

In response appellant submitted further reports from Dr. Afield which further discussed his neurobehavioral assessment. No causal relationship of appellant's condition with his employment was noted.

On January 31, 2003 the Office received an attending physician's report from Dr. Afield which diagnosed appellant as a paranoid schizophrenic and indicated that he was permanently psychiatrically disabled.

By decision dated March 25, 2003, the Office rejected appellant's claim finding that he failed to establish fact of injury. The Office employed a fact of injury analysis and found that the evidence submitted was insufficient to establish that an event occurred as alleged.

On April 21, 2003 appellant requested an oral hearing before an Office hearing representative.

A hearing was held on December 30, 2003 at which appellant testified.

In support of his hearing testimony, appellant submitted a September 26, 2002 psychiatric examination report from Dr. Anthony J. Reading, a Board-certified psychiatrist, who noted that appellant believed that his neighbor had organized a whole series of people to spy on him and harass him by following him on his route and taking notes of what he was doing. Appellant claimed that people followed him everywhere, took notes of all he did, bugged his house, recorded everything he said, placed cameras on his windows to photograph him and had cars watching him at his home. Dr. Reading diagnosed delusional disorder, persecutory type, and he opined that appellant was not fit to return to work at that time. Dr. Reading noted "No" to the question of whether appellant suffered from a mental disorder causally related to or aggravated by his employment.

Also submitted was an October 4, 2002 letter from the employing establishment medical director which indicated that appellant was temporarily not fit for duty.

By decision dated March 26, 2004, the hearing representative affirmed the March 25, 2003 decision finding that appellant had not established fact of injury, finding that he had not submitted sufficient evidence to establish a factual basis for his allegations. The hearing representative erroneously stated that appellant had claimed that his emotional condition was caused by employment factors when no such claim was ever made, and was, in fact, contradicted by appellant's own admission that no employment factors or personnel were implicated in causing his condition. Appellant stated that when he was found not fit for duty, that was why he filed his claim since he could no longer work. No causal connection with his employment was ever made or alleged, as appellant claimed that it was his neighbors who followed him, took notes and photographed him, and watched him through his windows.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.¹

To establish his claim that he has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized 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 Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.³

Generally speaking, when an employee experiences an emotional reaction to his regular or specially assigned employment duties or to a requirement imposed by his employment or has fear or anxiety regarding his ability to carry out his duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.⁴ Conversely, if the employee's emotional reaction stems from employment matters which are not related to his regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment, and does not come within the coverage of the Act.⁵ Noncompensable factors of employment include administrative and personnel actions, which are matters not to be considered "in the performance of duty."⁶

When working conditions are alleged as factors in causing disability, the Office, as part of its 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

¹ *Elaine Pendleton*, 40 ECAB 1143 (1989).

² *See Victor J. Woodhams*, 41 ECAB 345 (1989).

³ *Id.*

⁴ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁵ *Id.*

⁶ *See Joseph Dedenato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

providing an opinion on causal relationship, and which working conditions are not deemed factors of employment and may not be considered.⁷ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁸ When the matter asserted is a compensable factor of employment, and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.⁹ If the evidence fails to establish that any compensable factor of employment is implicated in the development of the claimant's emotional condition, then the medical evidence of record need not be considered.¹⁰

ANALYSIS

In this case appellant implicated no factors of his federal employment in the development of his condition. He admitted that he only filed a claim when he was found to be unable to continue to work, due to his emotional condition, as a sort of unemployment insurance. No employment-related factors were identified or alleged in the causation or aggravation of appellant's emotional condition. Appellant did not attribute the development of his emotional condition to being followed by, or being under surveillance by, employing establishment personnel. Appellant attributed the development of his emotional condition to being followed and spied upon by his neighbors. He alleged that his feelings of being followed, watched, photographed, and having notes taken by these neighbors, caused his emotional upset. As these neighbors had nothing to do with the employing establishment, there is no work connection identified from appellant's allegations.

As there were no factors even vaguely related to his employment that were implicated or even mentioned in the causation of his condition, the Office should have made findings of such. Being followed and spied on by his neighbors is not related to working for the employing establishment in any way, shape or form. As no compensable factors of employment were identified or implicated, the medical evidence need not be addressed.

CONCLUSION

Appellant has not met his burden of proof to establish that he developed an emotional condition, causally related to compensable factors of his employment.

⁷ See *Barbara Bush*, 38 ECAB 710 (1987).

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

⁹ See *Gregory J. Meisenberg*, 44 ECAB 527 (1993).

¹⁰ See *Donna Faye Cardwell*, *supra* note 4; see also *Lillian Cutler*, 28 ECAB 125 (1976).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 26, 2004 is hereby affirmed.

Issued: September 20, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member