

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

N.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Atlanta, GA, Employer**

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**Docket No. 10-2017
Issued: August 8, 2011**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 3, 2010 appellant filed a timely appeal from a June 28, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained an emotional condition in the performance of his federal employment.

FACTUAL HISTORY

Appellant, a 47-year-old letter carrier, filed a Form CA-1 claim for benefits alleging that he sustained an emotional condition on October 7, 2009. He stated that he developed depression

¹ 5 U.S.C. § 8101 *et seq.*

after he witnessed a child being struck and killed by a school bus while driving his delivery vehicle on September 15, 2009.

In a September 24, 2009 treatment note, Dr. Narendra K. Nagareddy, Board-certified in psychiatry and neurology, stated that appellant needed to remain off work from September 24 to October 23, 2009.

Appellant submitted a copy of a September 18, 2009 police report in which he stated that he witnessed the September 15, 2009 accident and provided details of the event. He asserted that he was driving his vehicle, making deliveries on his regular route when he observed that a school bus had stopped at a stop sign in front of him. Appellant stated that when the children began to exit the bus he saw it begin to move and subsequently noticed a child under the front tire. He blew his horn and yelled out the window for the driver to stop. Appellant then saw the child under the back tire. He and another motorist “got” the bus driver to roll the bus off the child. Appellant then made an emergency 911 call.

By letter dated October 28, 2009, the Office advised appellant that he needed to submit additional medical and factual information in support of his claim. The letter stated that he had 30 days to submit the requested information to the Office.

By decision dated December 1, 2009, the Office denied appellant’s claim. It found that appellant submitted evidence supporting that the claimed event occurred on September 15, 2009 due to a motor vehicle accident in which a child was crushed by a school bus. The Office found, however, that he did not provide medical evidence demonstrating that he sustained a diagnosed depression condition caused by the accepted work incident.

In a statement dated December 1, 2009, appellant indicated that he tried to return to his usual duties as a letter carrier following the September 15, 2009 incident but was constantly distracted by flashbacks of the incident. He stated that he also experienced multiple mental breakdowns. Appellant sought counseling at the workplace the following day.

In a report dated December 1, 2009, Dr. Nagareddy stated that he examined appellant on September 24, 2009, at which time he had complaints of severe anxiety, sleep disturbances, frequent flash backs, marked irritability, lack of concentration and being easily startled by noise since the September 15, 2009 bus accident. He reviewed the history of injury and related that appellant was initially in a state of shock, then became unable to relax, felt very tense and experienced frequent flash backs of the incident. Appellant also experienced guilt over his inability to stop the accident. Dr. Nagareddy indicated that appellant was unable to leave his house due to severe anxiety. He advised appellant to stay off work until the end of January 2010 and referred him for psychological counseling. Dr. Nagareddy stated that appellant underwent a severe psychological trauma during the September 15, 2009 work incident, given that he witnessed a child being run over by a bus and felt helpless to stop the situation. He diagnosed severe, acute post-traumatic stress disorder (PTSD) resulting from the incident.

By letter dated December 21, 2009, appellant requested a hearing, which was held on March 23, 2010.

By decision dated June 28, 2010, an Office hearing representative affirmed the December 21, 2009 decision. He found that, although appellant did witness the incident, he was not directly involved. The Office hearing representative found that appellant's inability to perform his duties was not caused by a work-related injury; therefore coverage could not be extended.

LEGAL PRECEDENT

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition, and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.²

The first issue to be addressed is whether appellant has cited compensable factors of employment that contributed to his alleged emotional condition or disability. 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 within the coverage of the Act.³ In *Lillian Cutler*,⁴ the Board explained that, where an employee experiences emotional stress in carrying out the employment duties, or has fear and anxiety regarding his ability to carry out such duties, and the medical evidence establishes that the disability resulted from his or her reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of the employment, and would therefore come within the coverage of the Act.

In applying the "course of employment" test,⁵ the Board has stated that an injury is compensable if it occurs: (1) at a time when the employee may reasonably be said to be engaged in his or her master's business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto. This test is similar to the positional risk doctrine discussed by *Larson*,⁶ which provides that "an injury arises out of the employment if it would not have occurred but for the fact that the conditions and obligations of the employment placed claimant in the position where he was injured." As further discussed by *Larson*, this theory supports compensation in situations where the only connection of the employment with the injury is that the obligations placed the employee in the particular place at the particular time when he was injured by some neutral force, meaning by "neutral" neither personal to the claimant nor distinctly associated with the employment.

² See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

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

⁴ *Id.*

⁵ *Larry J. Thomas*, 44 ECAB 291 (1992).

⁶ *Larson, The Law of Workers' Compensation* § 6.50 (rev. 1990).

The Board has also held that, if the employment has placed the employee where emergency circumstances exist, generally, the scope of the employee's employment is impliedly extended to include the performance of any act designed to save life or property.⁷

ANALYSIS

The Board finds that this case is not in posture for decision.

Appellant alleged that he sustained stress in the performance of his duties as a letter carrier on September 15, 2009 as a result of witnessing a school bus strike a child and as a result of attempting to rescue the child. He stated that he experienced severe trauma and was unable to perform his regular duties because he began to experience flashbacks from the incident. Appellant submitted medical evidence from Dr. Nagareddy diagnosing post-traumatic stress disorder from this incident.

While the Office did accept that appellant witnessed the tragic incident, the hearing representative concluded that appellant was "not directly involved" in the accident and therefore appellant did not sustain a work-related injury.

Applying the "course of employment" test, the Board finds that appellant witnessing a child being run over by a school bus, while delivering his route, did occur at a time when appellant was engaged in his employer's business, at a place where he could reasonably be expected to be, and while he was fulfilling the duties of his employment. The facts of this case establish not only that appellant witnessed the accident, but that when confronted with this emergency circumstance appellant attempted to stop the bus driver from running over the child with the rear wheel, by honking and waving his arms, and that he assisted in instructing the bus driver to roll the bus off the child. The requirement that appellant deliver the mail placed appellant at the scene where he was confronted with this emergency circumstance. Although appellant's injury may have been caused by a neutral force, since appellant was placed on his route by the requirements of his employment, any emotional condition resulting from this incident would be compensable.

In addition, Dr. Nagareddy indicated in his December 1, 2009 report that appellant developed a severe case of PTSD based on his reaction to the September 15, 2009 accident and placed him on total disability for several months. He also referred appellant for counseling to ameliorate his emotional condition. The Board finds that Dr. Nagareddy's December 1, 2009 report alone is not sufficiently detailed and rationalized to establish causal relationship. Although he touches upon it, he does not give a sufficient rational analysis of the causal relationship of the event to the claimed injury. Nonetheless, the Board finds that his report does raise an inference of causal relationship between appellant's emotional condition and his accepted employment factor to require further development of the medical evidence, as he attributes the development of appellant's condition to the accepted incident. Appellant therefore has established a *prima facie* claim for compensation. For this reason, the case will be remanded to the Office for further development of the claim.

⁷ See Kathryn S. Graham Wilburn, 49 ECAB 458 (1998).

CONCLUSION

The Board finds that the case is not in posture for decision with regard to whether appellant sustained an emotional condition causally related to factors of his employment. After such development as it deems necessary, the Office shall issue a *de novo* decision.

ORDER

IT IS HEREBY ORDERED THAT the June 28, 2010 decision is set aside. The case is remanded to the Office for further action consistent with this decision of the Board.

Issued: August 8, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board