

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANGELO RICCIARDI and U.S. POSTAL SERVICE,
POST OFFICE, Summit, N.J.

*Docket No. 96-1258; Submitted on the Record;
Issued April 27, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing; and (2) whether appellant established that he sustained an emotional condition in the performance of duty, as alleged.

On May 11, 1995 appellant, then a 48-year-old letter carrier, filed a claim for an occupational disease alleging that he sustained stress, anxiety and panic disorder from daily mental and verbal abuse, while he was working. He submitted notes of the alleged incidents of abuse and medical reports. In notes dated from December 6, 1993 to June 7, 1995, appellant chronicled the nature of his problem, describing incidents at work, his physical condition and medical treatment he received. Appellant cites examples of his supervisors monitoring his work. On December 13, 1993 Mr. Allocco [presumably his supervisor] was angry at him for not finishing his route, although appellant told him he was not feeling well.

On January 12, 1994 appellant stated that the postmaster was standing in or close to his booth, just standing saying nothing and that this was very bothersome to him. On January 28, 1994 appellant stated he slipped while en route and, due to pain in his back and leg, was unable to finish his route. He notified the employing establishment and was told to return to the office. Upon his return, appellant stated that the postmaster "was very much upset," slammed on a cage, and mumbled that he was very lucky not to be in the same foxhole with him in a time of war, that he was very undependable and that some day it would be payback time and it was about time the union was notified. Appellant also stated that he was admonished for being late and people [presumably his supervisors] were walking with him again. Appellant admitted that he said he was going to be late because he had to fill out an accident report. In an undated entry, he was told to see a doctor to see if he was fit for work even though he was working. On July 6, 1994 appellant repeatedly requested help from Mr. Coviello, apparently one of his supervisors, until Mr. Coviello finally came over "upset and mad" and told him to break down his route. On July 8, 1994 appellant stated that Mr. Coviello became upset with him when he said he could not

report for work; Mr. Coviello claimed there was nothing wrong with appellant and a day's work would do him good.

In another incident, sometime in January 1995, Mr. Allocco gave appellant three additional trays of mail, and when he asked appellant why he did not touch the other mail, appellant said it was because he did not have enough time. On January 27, 1995 appellant noted that Mr. Allocco was standing watching him. On that same day, appellant found magazines all over the floor and when he called Mr. Oliver [apparently another supervisor] to ask him to "see this mess in an upset tone," Mr. Oliver said that he had no time and appellant should fix the problem himself. On January 30, 1995 appellant stated that he had an argument with Mr. Oliver about Form 3996 regarding the time he would return from his route. On February 15, 1995 appellant stated that he was approached by Mr. Allocco as to why he needed road help every day, and that, later that day, Mr. Coviello approached him while he was on route and told him he was going to segment him for a couple of hours; subsequently, appellant's mail was out of order, appellant told Mr. Coviello, and Mr. Coviello segmented his route. On June 6, 1995 appellant indicated that in the morning he filled out the Form 3996, asking for 50 units of road help and a Mr. Oliver went "wild screaming the reason was that I was told to pull down late." Appellant stated that he tried to find why he was refused help and found out later that his office leaving time had been changed.

By letter dated June 14, 1995, the Office requested that appellant submit additional information to support his claim including a detailed description of the aspects of his employment which caused his condition. The Office instructed appellant to submit his documentation through his employing agency. Appellant submitted the notes he had previously submitted with a few additions to the Office. By letter dated July 3, 1995, appellant stated that the postmaster found it necessary to shout at him, in order to make his point and that he was constantly screamed at regarding his job duties. He stated he was good at his job and took pride in his work, but his health had been affected by the postmaster, in that he experienced stress and anxiety manifested by rapid heart rate, shaking and a cold sweat. Appellant also submitted medical reports addressing causation from a hospital's crisis intervention program dated November 9, 1994, from Dr. A. Ronald Sorvino, a Board-certified psychiatrist and neurologist, dated January 12, 1994 and from Dr. Anthony F. Coppola, a Board-certified family practitioner, dated February 14, 1995. The November 9, 1994 hospital notes stated that appellant related episodes of dizziness, tingling in his legs and fears of fainting or dying to treatment by his supervisor who criticized and berated him. In his January 12, 1994 report, Dr. Sorvino stated that appellant had two panic attacks, the second one while working and apparently felt that he was under stress at work. In his February 14, 1995 report, Dr. Coppola diagnosed severe anxiety reaction precipitated by anxiety and stress and stated that appellant's condition was aggravated by the situation and stress at work. In a report dated March 27, 1995, Dr. Sidney A. Haber, a Board-certified psychiatrist and neurologist, diagnosed mild to moderate panic disorder which appellant associated with pressure to finish his route before quitting time.

By decision dated November 7, 1995, the Office denied the claim, stating that the evidence of record failed to establish that an injury was sustained, as alleged.

By letter dated December 7, 1995, appellant requested an oral hearing before an Office hearing representative. The postmark date on the envelope was December 9, 1995.

By decision dated February 7, 1996, the Office's Branch of Hearings and Review denied appellant's request for a hearing, stating that appellant's letter requesting a hearing was postmarked December 9, 1995, more than 30 days after the Office issued the November 7, 1995 decision and that, therefore, appellant's request was untimely. The Branch informed appellant that he could request reconsideration by the Office and submit additional evidence.

The Board finds that the Office properly denied appellant's request for a hearing.

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that "a claimant ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."¹ Section 10.131 of the Office's federal regulations implementing this section of the Act, provides that a claimant shall be afforded the choice of an oral hearing or a review of the written record by a representative of the Secretary.² Thus, a claimant has a choice of requesting an oral hearing or a review of the written record pursuant to section 8124(b)(1) of the Act and its implementing regulation.

Section 10.131(a) of the Office's regulations³ provides in pertinent part that "a claimant is not entitled to an oral hearing, if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request...."

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances, where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.⁴ Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act, which provided the right to a hearing,⁵ when the request is made after the 30-day period for requesting a hearing⁶ and when the request is for a second hearing on the same issue.⁷

In the present case, appellant's December 7, 1995 hearing request, which was postmarked December 9, 1995, was made more than 30 days after the date of issuance of the Office's

¹ 5 U.S.C. § 8124(b)(1).

² 20 C.F.R. § 10.131.

³ 20 C.F.R. § 10.131(a).

⁴ *Henry Moreno*, 39 ECAB 475, 482 (1988).

⁵ *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

⁶ *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

⁷ *Frederick Richardson*, 45 ECAB 454, 466 (1994); *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

November 7, 1995 decision and therefore, the Branch was correct in stating in that decision that appellant was not entitled to a hearing. The Branch exercised its discretionary powers in denying appellant's request for a hearing and in so doing, did not act improperly.

The Board finds that appellant has failed to establish that he sustained an emotional condition in the performance of duty.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations, where an injury or an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the conditions, for which he claims compensation were caused or adversely affected by factors of his federal employment.⁸ This burden includes the submission of a detailed description of the employment conditions or factors which appellant believes caused or adversely affected the condition or conditions, for which he claims compensation. This burden also includes the submission of rationalized medical opinion evidence, based on a complete factual and medical background of the employee, which shows a causal relationship between the conditions for which compensation is claimed and the implicated employment factors or incidents.⁹ An alleged employment-related emotional condition is compensable, when an employee experiences an emotional reaction to his or her regular or special 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.¹⁰ Perceptions and feelings alone are not compensable.¹¹ If the Board finds that appellant's allegations are unrelated to the employee's regular or specially-assigned work duties, they do not fall with the coverage of the Act unless the evidence discloses error or abuse on the part of the employing establishment.¹²

Regarding appellant's assertions that Mr. Allocco, presumably his supervisor, was standing by him watching him, or Mr. Coviello, presumably another supervisor, accompanied him on his route, the Board has held that the monitoring of work by a supervisor is an administrative function and is not compensable unless the employer erred or acted abusively. Appellant has not demonstrated that his supervisors' behavior was unreasonable. Appellant has not presented evidence to support that these incidents happened, as alleged.

Regarding appellant's assertions that he had disputes with his supervisors regarding his hours of duty and leave time, the Board has held that the use of leave and procedures relating thereto are administrative and personnel matters that are not directly related to an employee's

⁸ *June A. Mesarick*, 41 ECAB 898, 907 (1990); *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁹ *June A. Mesarick*, *supra* note 8 at 908 (1990); *see Walter D. Morehead*, 31 ECAB 188, 194 (1979).

¹⁰ *Donna Faye Cardwell*, 41 ECAB 730 (1990); *Lillian Cutler*, 28 ECAB 125 (1976).

¹¹ *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹² *Dinna M. Ramirez*, 48 ECAB ____ (Docket No. 94-2062); *see Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

regular or specially-assigned duties.¹³ Appellant has not shown that his supervisors erred or acted abusively in discussing these matters with him. Further, appellant has not presented evidence to corroborate the occurrence of these incidents.

To the extent appellant's supervisors gave him extra work or denied him assistance in performing his job and appellant's description of these events is not particularly clear, such actions could pertain to the nature of appellant's work and could constitute compensable factors. However, appellant has not presented evidence to corroborate that they actually happened.¹⁴ Therefore, they do not constitute compensable factors of employment. Appellant's notes seem to indicate that his supervisors' changing his route was upsetting to him. This could constitute a compensable factor if the change itself affected his ability to perform his work but again, appellant provided no evidence to corroborate his supervisors' actions and did not provide details explaining why the change in his shift was upsetting. He, therefore, has not established that these shifts in his route constituted compensable factors of employment.¹⁵

Moreover, appellant's assertion that he was made to submit to a fitness-for-duty examination, when he was performing his work constitutes an administrative function and as such constitutes a compensable factor only if appellant shows error or abuse by the employing establishment, which appellant has not shown.¹⁶ In general, a claim based on verbal altercation or difficult relationships with a supervisor must be supported by evidence of record.¹⁷ Although appellant described incidents where his supervisors got angry with him and spoke unkindly to him, *i.e.*, when the postmaster allegedly told him he was undependable and he would not be caught in a foxhole with him, appellant has presented no evidence to corroborate these incidents. The Office noted in its decision, that appellant did not submit evidence of his alleged abuse to the employing establishment for their comments. In the present case, appellant has failed to establish a factual basis for his claim as he has presented no independent, corroborating evidence of the incidents he alleged occurred in his notes dated from December 6, 1993 to June 7, 1995.¹⁸ Absent such evidence, appellant cannot establish his claim.¹⁹

As for the medical evidence, the reports from the hospital crisis intervention program dated November 9, 1994, from Dr. Sorvino dated January 12, 1994, from Dr. Coppola dated February 14, 1995 and from Dr. Haber dated March 27, 1995, do not explain how specific incidents or factors of appellant's employment caused appellant's diagnosed condition. The Board has held that an opinion on causal relation which is not supported by medical rationale has

¹³ *Martin L. Watson*, 46 ECAB 407, 418 (1995).

¹⁴ *See Alice M. Washington*, 46 ECAB 382, 389 (1994).

¹⁵ *See Elizabeth Pinero*, 46 ECAB 123, 132 (1994); *Peggy R. Lee*, 46 ECAB 527, 534 (1995).

¹⁶ *See id.*

¹⁷ *Diane C. Bernard*, 45 ECAB 223, 228 (1993).

¹⁸ *Sharon R. Bowman*, 45 ECAB 187, 195 (1993); *Ruthie M. Evans*, *supra* note 11 at 425-26.

¹⁹ *Id.*

little probative value and is insufficient to establish causal relationship.²⁰ The Office provided appellant with the opportunity to submit the requisite evidence to establish his claim, but appellant was not responsive to this request. Appellant has, therefore, failed to establish that he sustained an emotional condition in the performance of duty, as alleged.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated February 7, 1996 and November 7, 1995 are hereby affirmed.

Dated, Washington, D.C.
April 27, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

²⁰ *Ruthie M. Evans, supra* note 11 at 425-26.