

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES T. JONES, JR. and U.S. POSTAL SERVICE,
GLENOLDEN POST OFFICE, Glenolden, Pa.

*Docket No. 97-894; Submitted on the Record;
Issued December 18, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he sustained an emotional condition in the performance of duty on or before February 12, 1993 as alleged.

On February 16, 1993 appellant, then a 32-year-old letter carrier, filed a notice alleging that he sustained anxiety and emotional stress due to harassment by management and coworkers, financial pressures, and fear of losing his job. The record indicates that appellant stopped work on February 16, 1993. Mr. James Lynch, an employing establishment superintendent, controverted appellant's claim, citing attendance problems, disciplinary actions and appellant's harassment of a coworker.¹

In a February 12, 1993 disability certificate, Dr. Nelson H. Kohl, an attending internist, held appellant off work due to "anxiety/counseling therapy due to job stress." In a February 19, 1993 note, he diagnosed "major depression" and prescribed medication, opining that appellant could not return to work until his depression improved.²

¹ The employing establishment submitted January 22 and April 16, 1992 investigative memoranda and related documents regarding appellant's conduct in a November 16, 1991 incident in which appellant admitted swearing at Ms. Dawn Renaldi, an acting supervisor. The memorandum noted that appellant had appeared in court on October 15, 1991 and plead guilty to disorderly conduct regarding the incident. Appellant was fined \$100.00 and order to leave Ms. Renaldi alone. Appellant appeared in court again on April 15, 1992 and was found guilty of harassment. The court issued a suspended sentence of 30 days and fined appellant \$150.00. Ms. Renaldi filed a claim for compensation on August 20, 1992 due to harassment by appellant since June 1989. Ms. Renaldi was reassigned to another post office effective August 8, 1992.

² In a February 17, 1993 letter, a psychotherapist whose signature is illegible noted evaluating appellant for established diagnoses of adjustment disorder with paranoid features and that appellant was disabled for work.

Appellant submitted disability certificates from Dr. Neville Kotwal, an attending Board-certified psychiatrist, indicating that appellant was totally disabled for work from February 16 to April 4, 1993 due to diagnosed major depression.

In a March 16, 1993 report, Dr. Perry Berman, a psychiatrist consulting to the employing establishment to whom appellant was referred for a fitness-for-duty examination, related appellant's account of his coworkers leaving disparaging notes on his work case, car and elsewhere. Appellant showed him a typewritten note reading, in part, "[appellant] 'fat-boy' guilty of being a nonperson. Punishment -- one year constant harassment." Appellant also related that his leave requests were not approved and that he was disciplined for tardiness. Dr. Berman noted appellant's harassment of Ms. Renaldi, a coworker, although appellant viewed himself as the victim of harassment by her. He diagnosed a delusional paranoid disorder of the erotomanic type and adjustment disorder with anxiety. Dr. Berman characterized the adjustment disorder with anxiety as "a result of other employees attempts to humiliate him.... [Appellant] brought an item to prove he is harassed." He opined that appellant required treatment for anxiety.

In March 29 and October 23, 1993 letters, the Office advised appellant of the additional medical and factual evidence needed to establish his claim, in particular, a rationalized statement from his attending physician explaining how and why factors of his federal employment would cause the claimed emotional condition.

Dr. Kotwal released appellant to full duty effective April 5, 1993. The record indicates that appellant returned to full-duty work on April 6, 1993.³

By decision dated November 20, 1993, the Office denied appellant's claim on the grounds that fact of injury was not established.⁴

In a January 3, 1995 disability certificate, Dr. Kotwal stated that appellant was disabled for work from December 31, 1994 to January 10, 1995 from "depression/anxiety due to work related/stress."⁵

In a January 10, 1995 note, Dr. Kohl diagnosed "anxiety/depression due to work-related stress," disabling appellant for work from December 30, 1994 to January 3, 1995. He released appellant to full duty as of January 10, 1995.

Appellant requested an oral hearing before a representative of the Office's Branch of Hearings and Review, held December 6, 1995. He testified that his claimed emotional condition

³ An April 6, 1993 report of termination of disability and/or payment (Form CA-3) indicates that appellant used sick leave from February 16 to April 5, 1993.

⁴ Subsequent to the issuance of the November 20, 1993 decision, an October 26, 1993 letter from appellant was associated with the case file. In this letter, appellant stated that he was unable to specify which employment factors allegedly caused his condition and gave the Office permission to communicate with his attorney and physician.

⁵ Appellant submitted documents related to his December 10, 1994 visit to a hospital psychiatric center discussing chest pain. These documents do not mention specific work factors.

was due to harassment by Mr. Lynch, who allegedly stood behind appellant while appellant cased his mail, issued then rescinded disciplinary actions, and followed appellant on his route. Appellant also attributed his condition to an alleged October 31, 1990 incident in which a postmaster allegedly screamed an obscenity at appellant and threatened to fire him. He submitted copies of documents related to disciplinary proceedings.⁶ Appellant also alleged that unknown persons placed embarrassing notes on his time cards and letter case from December 1991 to March 1992. He submitted a copy of a note he allegedly found on his letter case on March 12, 1992, the same note he presented to Dr. Berman. It reads, in its entirety: "ATTENTION ALL GLENOLDEN [the employing establishment] [appellant] 'FAT BOY' has been found guilty of being a nonperson. Anyone found talking or commiserating with the fat loser will also be found guilty of association with an as[***]le. Punishment will be a broken windshield, one year's constant harassment, or both."

By decision dated and finalized January 29, 1996, the hearing representative affirmed the Office's November 20, 1993 decision denying appellant's claim. The hearing representative found that appellant had established as factual and compensable the March 12, 1992 note left on his letter case, but that he submitted insufficient rationalized medical evidence explaining how and why this incident would cause the claimed emotional condition. The hearing representative further found that the May 23, 1991, December 7, 1992 and December 30, 1994 disciplinary letters were administrative matters not in the performance of duty and that the reduction or dismissal of these actions did not establish error or abuse by the employing establishment. The hearing representative also found that appellant had not established his allegations of harassment, as Mr. Lynch observing appellant case mail or while on his route were normal work monitoring functions. The hearing representative noted that appellant's fear of losing his job was not a compensable factor of employment, and that the alleged October 31, 1990 incident wherein a postmaster allegedly yelled an obscenity at appellant was not established as factual.

Appellant disagreed with this decision and in a June 9, 1996 letter, requested reconsideration. He enclosed a June 3, 1996 report from Dr. Pietro Miazzo, an attending psychiatrist, stating that "the circumstances of [appellant's] loss of employment has had a substantial role in precipitating his condition." In a June 7, 1996 report, Mr. Bernard Mazie, a psychologist, opined that the "notes placed in [appellant's] work case and progressing through two job terminations" resulted in "post-traumatic stress syndrome."

By decision dated September 11, 1996, the Office denied modification on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision. The Office found that Dr. Miazzo's and Mr. Mazie's reports were insufficiently rationalized to establish appellant's claim.

⁶ At the hearing, appellant submitted: a May 23, 1991 letter suspending him for 7 days for failing to meet attendance requirements due to unscheduled absences from January 25 to May 22, 1991; a December 7, 1992 letter suspending him for 14 days due to excessive unscheduled absences from July 6 to December 5, 1992; rescinded by December 15, 1992 letter due to procedural improprieties; a December 30, 1994 letter of warning to failure to meet attendance requirements, reduced on February 21, 1995 to a discussion after appellant filed a grievance.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty on or before February 12, 1993 as alleged.

Under workers' compensation law, when an employee experiences an emotional reaction to his or her regular or specially assigned work 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 the scope of coverage of the Federal Employees' Compensation Act.⁷ Disabling conditions resulting from an employee's feeling of job insecurity, such as fear of a reduction-in-force, or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.⁸

To establish appellant's occupational disease claim that he has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her conditions; (2) rationalized medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.⁹

In this case, the Office found that appellant has established the first two elements of the three part test: that the March 12, 1992 incident occurred in which a note was left on his letter case, and that he has psychiatric illnesses. Dr. Berman, a psychiatrist consulting to the employing establishment, in his March 16, 1993 report, attributed appellant's diagnosed adjustment disorder with anxiety to "other employees' attempts to humiliate him," such as the March 12, 1992 typewritten note. Thus, Dr. Berman attributed appellant's diagnosed adjustment disorder with anxiety in part to the March 12, 1992 note, an accepted factor of employment. However, Dr. Berman did not provide sufficient medical rationale explaining a causal relationship between appellant's diagnosed condition and the March 12, 1992 incident.¹⁰

Appellant also submitted several reports from Dr. Kotwal, an attending Board-certified psychiatrist, diagnosing major depression. However, he did not mention specific work factors in his reports, or discuss how and why factors of appellant's federal employment would cause the diagnosed major depression. Dr. Kotwal's reports are therefore insufficient to establish appellant's claim. The Board notes that Dr. Kohl's reports are of diminished probative value as he is an internist and not a psychiatrist.¹¹

⁷ *Lillian Cutler*, 28 ECAB 125 (1976).

⁸ *Raymond S. Cordova*, 32 ECAB 1005 (1981).

⁹ *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

¹⁰ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

¹¹ *See Effie Davenport (James O. Davenport)*, 8 ECAB 136 (1955) (where the Board held that the opinions of physicians who have special training and knowledge in a specialized medical field have greater probative force on

Consequently, appellant has failed to establish that he sustained an emotional condition in the performance of duty as alleged, as he did not submit sufficient rationalized medical evidence setting forth how and why the accepted factors of his federal employment would cause any medical condition.

The decisions of the Office of Workers' Compensation Programs dated September 11, 1996, and dated and finalized January 29, 1996, are hereby affirmed.

Dated, Washington, D.C.
December 18, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

the question of causal relationship of a condition peculiar to the field than the opinions of nonspecialists or others who have no training in the particular field).