

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARRETT R. TUNNEY and U.S. POSTAL SERVICE,
POST OFFICE, Pensacola, Fla.

*Docket No. 96-1068; Submitted on the Record;
Issued February 13, 1998*

DECISION and ORDER

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

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

On March 24, 1995 appellant, a 46-year-old letter carrier, filed a CA-2 occupational disease claim for employment-related emotional stress and depression, which he stated he first became aware of on July 15, 1980. Appellant subsequently submitted to the Office of Workers' Compensation Programs a March 31, 1995 medical report from Dr. David L. Shaw, Board-certified in internal medicine, psychiatry and neurology. Dr. Shaw stated that he had been treating appellant for various emotional disorders and lower back pain since February 1981. He related a history of epilepsy (with controlled seizures), chronic anxiety, depression, panic attacks, right shoulder dislocation, and obstructive sleep apnea, and indicated that appellant continued to experience these symptoms through his most recent visit of March 16, 1995. Dr. Shaw stated that the shoulder discomfort, anxiety, depression and panic attacks had been long-standing, progressive and aggravated by the on-the-job stress which appellant commented on several times during his course of treatment.¹ Dr. Shaw further stated that "it is my understanding that the stress has been such that he has had difficulty concentrating, has trembled noticeably to others and has become unable to carry out his routine duties." Appellant also submitted signed statements from coworkers indicating that they witnessed him experiencing stress and anxiety at the employing establishment.

By letter dated May 25, 1995, the Office advised appellant that the evidence he submitted was not sufficient to determine whether he was eligible for compensation benefits and that he needed to submit a detailed description of the specific employment-related conditions or incidents he believed contributed to his illness. The Office also asked appellant to submit a comprehensive medical report from his treating physician describing his symptoms and the

¹ Dr. Shaw stated that he had received information supporting this opinion from appellant's wife and two of his coworkers.

medical reasons for his condition and an opinion as to whether factors or incidents, *i.e.*, specific employment factors, at his employing establishment contributed to his condition. The Office sent a similar letter to appellant's employing establishment.

In response to the Office's May 25, 1995 letter, appellant submitted a letter to the Office which the Office received on June 16, 1995. In this letter appellant alleged that he was constantly being watched, harassed, threatened and discriminated against by his supervisors, who were constantly pushing him to work faster and come to work at an earlier time of day. Appellant also claimed that his supervisors questioned him suspiciously whenever he asked for sick leave. Appellant alleged that this constant harassment worsened his illness and increased his stress level and that he had a continual fear that "something" will happen to him at his employing establishment. The employing establishment submitted a statement rebutting appellant's allegations of harassment by his supervisors.

In addition, appellant submitted a June 7, 1995 letter from Dr. Shaw who stated that he had already dictated a relatively detailed letter regarding appellant's course of treatment. Dr. Shaw stated that he was unable to provide specific work factors or incidents, a request which he characterized as "ridiculous." Dr. Shaw reiterated that appellant and his wife had repeatedly expressed through the years that the stress of work had contributed to the symptoms which he had previously outlined.

By letter dated August 19, 1995, the Office advised appellant that it had received his personal statement and the June 7, 1995 letter from Dr. Shaw. The Office stated that "stress at work" was a general term and did not describe with sufficient specificity the factors that were contributing to his claimed emotional condition. The Office further stated that a mere uncorroborated allegation of harassment was not sufficient to warrant compensation for a claimed emotional condition, particularly where the statements were rebutted by the employing establishment. The Office advised appellant that he needed to submit a detailed description of the specific employment-related conditions or incidents which his physician believed contributed to his illness.

On August 24, 1995 the Office submitted a letter to the employing establishment which outlined the allegations of harassment made by appellant and requested an appropriate response from a knowledgeable supervisor.

In response to the Office's August 19, 1995 letter, appellant submitted another letter detailing alleged harassment on the part of his employing establishment, which the Office received on October 2, 1995. Accompanying this letter was a copy of an article from a workers' compensation journal on the subject of stress-related disabilities.

The employing establishment responded to the Office's August 24, 1995 letter with an undated letter containing a detailed, categorical response to appellant's allegations. In this letter, the employing establishment stated that appellant went on sick leave on March 7, 1995 "under suspicious circumstances" and was then out sick for four to five days. The employing establishment stated that after appellant returned from sick leave, he went on vacation for approximately two weeks and ignored instructions to bring documentation supporting his absence on sick leave because his supervisor had reason to believe he was not incapacitated for

work. The employing establishment further stated that appellant returned to work on March 20, 1995 and when he was asked for documentation he became visibly shaken and went on sick leave again. The employing establishment stated that appellant had not returned to work since March 20, 1995.

By decision dated November 8, 1995, the Office found that fact of injury was not established, as the evidence of record did not establish that an injury was sustained in the performance of duty. In an accompanying memorandum to the Director, the claims examiner stated that appellant had submitted statements describing the specific work factors to which he attributed his condition, but had not provided any evidence to substantiate these charges, including statements from witnesses or findings from an appropriate board of inquiry. The claims examiner specifically stated that appellant failed to support his allegations that he experienced constant changes in supervisors and constant changes in mail delivery and procedures and failed to corroborate his allegations that he was subject to erroneous, abusive, or discriminatory actions on the part of the employing establishment, which had categorically rebutted all of appellant's allegations. The claims examiner noted that the employing establishment indicated that appellant had the same supervisor for three years, that appellant seemed to prefer to keep his own company and remain isolated and that he avoided speaking to coworkers. In addition, the claims examiner noted that the employing establishment indicated that no one at the office had been aware that appellant had an emotional disorder until March 1995, when he stated he was having trouble sleeping and was receiving treatment for a sleep disorder.

The claims examiner concluded that appellant failed to submit sufficient evidence to support his account of events and establish that he sustained an emotional condition in the performance of duty. The Office therefore denied appellant compensation for his alleged emotional condition.

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty.

The first issue to be addressed is whether appellant has cited 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.² On the other hand disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.³

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Id.*

Although appellant did cite a factor of employment which may have resulted in a compensable emotional condition; *i.e.*, his alleged harassment and discriminatory treatment by the employing establishment, his burden of proof is not discharged by the fact that he has merely identified an employment factor which may give rise to a compensable disability under the Act. Appellant also has the burden of submitting sufficient evidence to substantiate his allegation that the employing establishment's harassment resulted in an employment-related emotional condition.⁴ In the instant case, appellant's identification of this one employment factor, without corroborating factual evidence, is not sufficient to meet his burden of establishing that he suffered from a compensable emotional condition caused by specific factors of employment.⁵

The Board finds that appellant has failed to support his contention that harassment and verbal abuse from his supervisors resulted in an employment-related emotional condition. Mere perceptions and feelings of harassment or discrimination will not support an award of compensation.⁶ 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.⁷ There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.⁸

In the present case, the claims examiner properly determined that appellant provided no additional factual evidence to support his allegations of harassment and verbal abuse, notwithstanding the requests by the Office in its letters of May 25 and August 19, 1995.⁹

In addition, appellant failed to submit rationalized, probative medical evidence to support his allegation that he sustained a specific injury due to the claimed event. The only medical evidence appellant submitted were the March 31 and June 7, 1995 medical reports from Dr. Shaw, in which Dr. Shaw merely related comments by appellant, his wife and two coworkers that his various emotional disorders were aggravated by on-the-job stress. Dr. Shaw, in fact, specifically stated that being asked to identify specific employment factors causing appellant's emotional stress was "ridiculous." Thus, Dr. Shaw's reports contained no detailed analysis of how employment factors caused any specific condition or disability and no indication of how appellant was affected by or treated for any such emotional condition or disability. Accordingly, appellant has failed to meet his burden of showing that he suffered an emotional condition in the performance of duty.

⁴ See *Chester R. Henderson*, 42 ECAB 352 (1991).

⁵ See *Frank A. McDowell*, 44 ECAB 522 (1992).

⁶ See *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁷ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

⁸ See *Ruth C. Borden*, 43 ECAB 146 (1991).

⁹ Compare *Georgia F. Kennedy*, 35 ECAB 1151 (1984).

The decision of the Office of Workers' Compensation Programs dated November 8, 1995 is affirmed.

Dated, Washington, D.C.
February 13, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member