

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS GRUNFELDER and U.S. POSTAL SERVICE,
POST OFFICE, Milwaukee, Wis.

*Docket No. 96-1035; Submitted on the Record;
Issued March 26, 1998*

DECISION and ORDER

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

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

On October 7, 1994 appellant, then a 40-year-old letter carrier, filed a claim, alleging that his supervisor caused stress when he threatened appellant with termination "for doing my job." Appellant stopped work that day. In an accompanying statement, appellant's supervisor, Don Kuhns, stated that on October 7, 1994, after handing appellant his payroll check, he instructed appellant regarding the way customer complaints were to be handled and that appellant was not to solicit complaints via customer complaint cards as this was in violation of employing establishment rules. Mr. Kuhns stated that he told appellant that any further violation would result in a request for discipline, and appellant then requested to see his union steward, with whom he then talked. Following a request by the Office of Workers' Compensation Programs, in an undated statement that was received by the Office on November 23, 1994, appellant stated that his "condition to the point of total anxiety" occurred on October 7, 1994 but that other employment factors contributed to his condition, including an incident when he sprayed a dog to protect himself after which he was "drilled" by two supervisors who made him feel that they did not care about his concerns. Appellant also alleged that in September 1994, during a period of station travel, mail was delivered three to four hours late. As he had been on annual leave at the time of notification of late delivery, his customers were not informed and he received complaints regarding late delivery. Appellant then stated that starting times for delivery of mail were changed, and he again received customer complaints regarding delayed delivery. He stated that he was given complaint cards by an employing establishment clerk and handed out approximately eleven of these to postal customers. He stated that he "totally freaked out" when confronted and yelled at by Mr. Kuhns regarding this.

In support of his claim, appellant submitted medical reports from Dr. Harold K. Rickes, an osteopathic physician, who advised that appellant could not work. Appellant also submitted a November 9, 1994 report in which Dr. Rajesh Kumar, a Board-certified psychiatrist, diagnosed adjustment disorder with anxiety due to interpersonal stress with his boss.

By decision dated December 16, 1994, the Office denied the claim finding that appellant had not sustained an injury in the performance of duty. Appellant subsequently requested a hearing and submitted additional evidence including a statement dated February 13, 1995 in which a coworker, Carl S. Zehn, acknowledged that he had given appellant customer complaint cards. In a February 16, 1995 statement, appellant's union steward, Scott A. Falkowski, advised that he did not witness the October 7, 1994 incident but subsequently interviewed employees in the area, none of whom heard the interchange between appellant and Mr. Kuhns. Mr. Falkowski noted that customers were complaining due to a change in delivery times and noted that in a meeting between Mr. Kuhns and him prior to October 7, 1994, Mr. Kuhns told him that if customers had complaints, they should contact him or other supervisors. Mr. Kuhns informed Mr. Falkowski that he had received customer complaint cards from appellant's route, stated that he would talk with appellant if he kept it up which would lead to discipline. Mr. Falkowski informed appellant that Mr. Kuhns would be talking with him. Mr. Falkowski reported that another carrier acknowledged handing out customer complaint cards, noted that two had been returned and that management had not talked with him about this. Appellant also submitted a November 9, 1994 psychiatric assessment in which Dr. Kumar noted a history of being yelled at in front of coworkers. Dr. Kumar diagnosed adjustment disorder with anxiety, paranoid personality disorder, severe psychosocial stressors and alcohol dependence. In reports dated October 27, November 7 and 11, 1994, Dr. Paul West diagnosed anxiety adjustment disorder.

By decision dated April 3, 1995, an Office hearing representative denied appellant's request for a hearing on the grounds that his request had not been timely filed.

On April 24, 1995 appellant requested reconsideration, and in a merit decision dated July 27, 1995, the Office denied modification of the prior decision, finding that the supervisor's discussion with appellant on October 7, 1994 was an administrative function and was therefore not afforded coverage under the Federal Employees' Compensation Act.

On October 5, 1995 appellant again requested reconsideration, contending that management acted abusively because it disregarded signed agreements between employing establishment management and the union. In support of his request, appellant submitted a September 6, 1995 statement from Mr. Falkowski who stated that a union steward should have been present for the discussion between appellant and Mr. Kuhns on October 7, 1994. Appellant also submitted a copy of a union-management agreement that stated:

“[A]nytime management finds it necessary to discuss a problem with an employee regarding: attendance, job performance or attitude, it is required that the steward be involved....

“It is the responsibility of management that anytime there is a need for discussion with an individual that is a precursor to disciplinary action (*i.e.*: attendance, job performance, conduct), a union steward will be present at the discussion.”

By decision dated January 8, 1996, the Office found that the evidence of record was insufficient to modify the prior decision. In the attached memorandum, the Office noted that there was no evidence of record to substantiate that the conversation of October 7, 1994 involved a disciplinary action and it was, therefore, an administrative matter that did not warrant coverage under the Act. The instant appeal follows.

The Board finds that this case is not in posture for decision regarding whether appellant established that he sustained an emotional condition in the performance of duty.

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

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Act. On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.³

In cases involving emotional conditions, the Board has held that, when working conditions are related as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must first make findings of fact regarding which working conditions are deemed compensable factors of employment.⁴ In its decisions dated December 16, 1994, July 25, 1995 and January 8, 1996, the Office addressed the October 7, 1994 incident in which appellant alleged that he was threatened with dismissal and found that it did not constitute a compensable factor of employment. As a general rule, absent a showing of error or abuse, actions of the employing establishment in administrative or personnel matters are not considered compensable factors of employment.⁵ Regarding the October 7, 1994 incident, in this case, however, Mr. Kuhns acknowledged that he issued an oral reprimand to appellant without the presence of a union steward. As appellant submitted a copy of a signed agreement between the employing establishment and appellant's union that a steward would be present at any discussion regarding job performance, the Board finds that appellant substantiated error on the part of the

¹ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

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

³ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁵ *See Margreate Lublin*, 44 ECAB 945 (1993).

employing establishment.⁶ Furthermore, the Office did not address appellant's allegations regarding the dog attack and customer complaints regarding delayed delivery. While appellant's perception that his supervisors were not sympathetic to his being attacked by a dog would not give rise to a compensable factor of employment absent sufficient support that abuse did in fact occur,⁷ the dog attack, *per se*, would be a factor of employment. Likewise, appellant's allegation that customer complaints regarding the delayed delivery of mail contributed to his emotional condition would directly relate to the performance of his regularly scheduled duties. Thus, under the principles set forth in *Cutler*,⁸ appellant has established compensable factors of his federal employment as contributing to an emotional condition. As appellant has established several compensable factors of employment, the case will be remanded to the Office for development regarding whether the medical evidence establishes that he sustained a medical condition as a result of these factors. After such development as the Office deems necessary, it should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated April 3, 1995 is hereby affirmed. The decisions dated January 8, 1996 and July 27, 1995 are hereby set aside and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, D.C.
March 26, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁶ See generally, *Abe E. Scott*, 45 ECAB 164 (1993).

⁷ See *Margreate Lublin supra* note 5.

⁸ *Lillian Cutler, supra* note 3.