

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WARREN H. KENNEDY and DEPARTMENT OF DEFENSE, DEFENSE  
COMMISSARY AGENCY, EDWARDS AIR FORCE BASE, Calif.

*Docket Nos. 97-272 & 96-2452; Submitted on the Record;  
Issued September 11, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof in establishing that his emotional condition is causally related to factors of his federal employment.

The Board has duly reviewed the case record and concludes that this claim is not in posture for decision.

On November 3, 1993 appellant, then a 49-year-old meat cutter, filed a notice of traumatic injury and claim for compensation, number A13-1030979, alleging that he injured two fingers on his right hand as a result of using a meat grinding machine that was not working properly. On January 13, 1994 the Office of Workers' Compensation Programs accepted the claim for flexor tendon and digital nerve laceration of the right long finger and laceration of the right ring finger. The Office also accepted that appellant sustained a 28 percent permanent impairment of the right long finger for which appellant was granted a schedule award.

On December 1, 1994 appellant filed a separate claim, number A13-1063324, alleging that he developed an emotional condition causally related to his earlier accepted finger injury. He stated that he felt that his injury was the result of the employing establishment's disregard for his personal safety, and that he became afraid, angry and stressed every time he thought about it, and was thinking and worrying about it more and more until October 8, 1994, when he felt like exploding. Appellant also alleged at length that his supervisor had lied about the circumstances surrounding the accident, had treated him unfairly, had practiced favoritism to his detriment, and was guilty of mismanagement. Appellant stopped work on October 8, 1994 and has not returned.

In support of his December 1, 1994 claim, appellant submitted several medical reports from his treating physician, Dr. Roy B. del Rosario, a Board-certified psychiatrist, who opined that appellant suffered from a marked degree of emotional distress and psychiatric symptoms as a result of his employment injury and was totally disabled therefrom. Appellant also submitted a

March 20, 1995 comprehensive psychological evaluation from Kenneth Lynch, Ph.D., who diagnosed totally disabling dysthymic disorder and post-traumatic stress disorder and stated that while there were many factors which contributed to appellant's condition, the major cause of his stress reaction was the accepted employment-related finger injury.

On April 13, 1995 appellant filed a claim for recurrence of disability on his original claim, number A13-1030979, alleging that he developed an emotional condition causally related to his accepted employment injury. Appellant again submitted medical reports from Drs. del Rosario and Lynch in support of his claim.

On July 25, 1995 after developing the evidence, the Office issued a decision denying appellant's claim for an emotional condition on the grounds that, other than the original accepted injury, appellant had not established any compensable factors of employment, and therefore failed to establish that his emotional condition was causally related to his federal employment. The Office noted, however, that appellant's claim could be considered a claim for a consequential injury and that there was medical evidence in the record to support such a finding, and therefore forwarded the relevant evidence of file to be considered in conjunction with appellant's claim for a recurrence of disability in claim number A13-1030979.

In a decision dated September 22, 1995, the Office denied appellant's claim for recurrence of disability, A13-1030979, on the basis that appellant failed to establish that his emotional condition was a consequence of his accepted employment injury. The Office did not reach the medical evidence of record.

At appellant's request, on June 27, 1996, an oral hearing was held at which appellant testified and submitted additional evidence in support of his claim.

In a decision dated September 13, 1996, the Office hearing representative affirmed the Office's prior decision on the grounds that appellant failed to identify any compensable factors of employment stemming from the original accepted injury and therefore failed to establish that his emotional condition was a consequence of his accepted condition. As the Office hearing representative found that appellant had not established any compensable factors of employment, a necessary prerequisite to establishing a claim, the hearing representative did not reach the medical evidence of record.

In the instant case, appellant sustained an injury, alleging that a meat grinding machine was not working properly and that his emotional condition, diagnosed as post-traumatic stress disorder, was due to the accident. Appellant alleged that his safety was not being protected, that he was at risk in continuing in his job, and that his health and safety meant nothing to his immediate supervisor, who had known that the machine was not functioning correctly. Appellant added that after his finger injury he began to think and worry about this more and more, and developed emotional difficulties including extreme anger, hostility and absolute rage towards his immediate supervisor and his employment. Appellant additionally stated that his emotional state was exacerbated by the fact that he felt that he was the victim of unfair treatment by his immediate supervisor, whom he accused of practicing favoritism and mismanagement.

In *Lillian Cutler*<sup>1</sup>, the Board discussed at length the principles applicable to various circumstances involving disabling emotional reactions by employees to employment factors. There are situations where a disabling emotional reaction has some connection with the employment but nevertheless does not come within coverage of the Federal Employees' Compensation Act because such condition was found not to have arisen out of the employment. For example, disability is not covered where it results from an employee's anxiety about job security, frustration from not being permitted to work in a particular environment or to hold a particular position or the like. Under these circumstances, the resulting emotional reaction is regarded as self-generated and not arising out of the employment and is therefore not compensable under the Act. On the other hand, disability is covered under the Act where it results from an employee's emotional reaction to his regular or specially assigned work duties or to requirements imposed by the employment. In addition, the Board has held that "when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributed to claimant's own intentional conduct."<sup>2</sup>

In this case appellant clearly alleged, in both claims, that his emotional condition began after his accepted physical injury, when he began to ruminate over the cause of the injury and his feeling that the employing establishment had no regard for his personal safety. Appellant additionally alleged that he has been the victim of discriminatory treatment and that this contributed to his emotional condition; however, he did not submit sufficient evidence to support these allegations. However, this does not negate a finding that appellant established that his original accepted employment injury serves, in this case, as a compensable factor of employment. This raises a medical question as to whether appellant's physical injury caused or contributed to his diagnosed emotional condition.

On remand, the Office should combine appellant's files A13-1030979 and A13-1063324 pertaining to his psychiatric claim.<sup>3</sup> The Office should then review the relevant medical evidence of record and determine whether it establishes that appellant has an emotional or psychological condition causally related to his accepted finger injury. Following such further development of the case record as it deems necessary, the Office should issue an appropriate merit decision.

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<sup>1</sup> 28 ECAB 125 (1976).

<sup>2</sup> See *Larson, The Law of Workers' Compensation* §§ 13.00 and 13.11 pertaining to the basic rule regarding consequential injuries; see also *Frank Barone*, 30 ECAB 1119, 1125-26 (1979).

<sup>3</sup> See FECA Bulletin No. 97-10 (issued February 15, 1997).

The September 13, 1996 and July 25, 1995 decisions of the Office of Workers' Compensation Programs are hereby set aside and the case remanded for further action in accordance with this decision.

Dated, Washington, D.C.  
September 11, 1998

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member