

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOUIS J. BAGLEY and U.S. POSTAL SERVICE,
POST OFFICE, Fort Dix, NJ

*Docket No. 97-2828; Submitted on the Record;
Issued December 14, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has met his burden of proof to establish that he sustained stress and aggravation of his cardiovascular disorder in the performance of duty causally related to factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion by denying merit review of appellant's claim.

On August 2, 1995 appellant, then a 48-year-old window clerk, filed an occupational disease claim and supporting medical evidence, alleging that working overtime caused hypertension, stress and depression. He stopped work on August 21, 1995 and has not returned. On October 12, 1995 the Office informed him of the type of evidence needed to support his claim, and by decision dated January 26, 1996, found that he failed to establish a compensable employment factor and, therefore, did not establish fact of injury.

Appellant, through counsel, requested a hearing and submitted additional evidence. At the hearing held on July 23, 1996 appellant testified that from 1991 the workload had increased due to a decrease in staffing and, therefore, he had to work overtime, sometimes working 12- to 12½-hour days. He testified that his supervisor gave him a hard time and that working the window alone and long customer lines led to stress. By decision dated March 11, 1997, an Office hearing representative affirmed the prior decision, finding that appellant had not sustained an injury in the performance of duty.

On March 24, 1997 appellant, through counsel, requested reconsideration and submitted additional medical evidence. In a June 18, 1997 decision, the Office denied appellant's request, finding the evidence submitted irrelevant to the issue in this case and, therefore, insufficient to warrant merit review. The instant appeal follows.

The Board finds this case is not in posture for decision.

To establish 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

Regarding appellant's allegation of a difficult relationship with his supervisor, the Board notes that for harassment to give rise to a compensation factor of employment, there must be evidence that the implicated acts did in fact, occur as alleged. Mere perceptions of harassment are not compensation under the Federal Employees' Compensation Act.³ In the instant case, as appellant has not submitted any factual evidence supporting particular instances of harassment, he has not established a compensable employment factor in this regard.

Appellant, however, further alleged that the volume of his work increased beginning in 1991 due to downsizing. To the extent that the employee establishes how changes in employing establishment procedures directly affect the performance of regular or specially assigned duties, a compensable employment factor may arise⁴ and overwork can be a compensable factor of employment if substantiated by the record.⁵ In the instant case, appellant has submitted some evidence in support of his claim of overwork. The Board, therefore, finds that this was sufficiently related to his regularly or specifically assigned duties to constitute a compensable employment factor.⁶

When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁷ As the Office found that appellant did not substantiate a

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

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

³ 5 U.S.C. §§ 8101-8193.

⁴ *See O. Paul Gregg*, 46 ECAB 624 (1995).

⁵ *See Donna J. DiBernardo*, 47 ECAB 700 (1996).

⁶ *See Ezra D. Long*, 46 ECAB 791 (1995).

⁷ *See Elizabeth Pinero*, 46 ECAB 123 (1994).

compensable factor of employment in this case, the Office has not yet conducted a thorough review of the medical record.⁸

As appellant, however, has established a compensable factor of employment, the case must be remanded to the Office for further development. On return of the case the Office should prepare a new statement of accepted facts detailing the accepted compensable employment factor as well as those incidents and conditions at work, which are not accepted as compensable employment factors and refer appellant and the case record to an appropriate medical specialist or specialists to obtain a well-rationalized medical opinion regarding whether the substantiated employment factor of overwork caused any medical condition. Upon completion of such development and any other procedures the Office deems necessary, the Office shall issue a *de novo* decision.

In view of the Board's finding regarding the March 11, 1997 decision of the Office, the issue of whether the Office, in its June 18, 1997 decision, abused its discretion in denying merit review is moot.

The decisions of the Office of Workers' Compensation Programs dated June 18 and March 11, 1997 are hereby vacated and the case remanded to the Office for further proceedings.

Dated, Washington, D.C.
December 14, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁸ The Board notes that appellant submitted a September 23, 1995 report from Dr. James J. Holton, a Board-certified internist, who generally supported causal relationship between work stress and depression. He also submitted a number of reports from Dr. John R. Rushton, who is Board-certified in psychiatry and neurology, and diagnosed post-traumatic stress disorder and depressive disorder and advised that appellant's condition was due to job pressures caused by "abuse by his supervisor and manager."