

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT F. CUNNINGHAM and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, OH

*Docket No. 98-1368; Submitted on the Record;
Issued December 29, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty causally related to factors of his federal employment.

On March 3, 1997 appellant, then a 34-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained ulcerations in the duodenum causally related to factors of his federal employment.

By decision dated March 18, 1997, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he did not establish that he sustained an injury in the performance of duty. Appellant requested a hearing, which was held on January 14, 1998. By decision dated March 5, 1998 and finalized March 6, 1998, a hearing representative affirmed the Office's March 18, 1997 decision.

The Board has duly reviewed the case record and finds that appellant has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty causally related to factors of his federal employment.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ On the other hand, the disability is not covered where it results from such

¹ 5 U.S.C. §§ 8101-8193.

factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.²

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.³ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. 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.⁴

Appellant attributed his stress to the assignment of work duties by the employing establishment following his employment-related knee injury.⁵ Appellant related that the employing establishment forced him to return to work too soon after his employment injury and that he had to stand or sit on a high seat to do his work. Appellant further stated that the employing establishment offered him four jobs in a five-month period and transferred his work station.

The employing establishment submitted evidence that it assigned appellant work within the physical limitations set by his physician. The assignment of work is an administrative matter and unless error or abuse in the administration of a personnel matter is shown, coverage will not be afforded.⁶ In the instant case, appellant has not established by the weight of the reliable, probative and substantial evidence that the assignment of work following his employment injury constituted error or abuse in the performance of an administrative function. Thus, he has not established a compensable factor of employment.

Appellant contended that he experienced stress caused by the Office's delay in approving his knee surgery, controversy with the Office regarding authorizing physical therapy, and the Office's delay in paying his medical expenses. Appellant further alleged that a claims examiner with the Office "set him up" by erroneously telling him a second opinion examination regarding his knee injury was canceled. The Board notes, however, that matters involving the processing of compensation claims by the employing establishment or the Office, or actions resulting from

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁴ *Id.*

⁵ The record indicates that appellant sustained an employment-related left knee injury to which the Office assigned File Number A9-400529.

⁶ *James E. Woods*, 45 ECAB 556 (1994).

compensation claims processing and handling, bear no relation to appellant's day-to-day or specially assigned duties and, therefore, are not employment factors under the Act.⁷

Appellant further alleged that the employing establishment harassed and discriminated against him. Actions which the employee characterizes as harassment or discrimination may constitute a factor of employment giving rise to coverage under the Act. However, for discrimination to give rise to a compensable disability, there must be some independent evidence that harassment or discrimination did, in fact, occur.⁸ Mere perceptions alone of harassment or discrimination are not compensable.⁹ Appellant has not submitted any specific, reliable and substantial evidence to substantiate his allegation of harassment by the employing establishment and thus these allegations cannot be considered to be compensable factors of employment

Appellant additionally contended that “[n]ot being able to perform my duties as a carr[ier] has been stressful” due to residuals of his employment injury and caused him to experience depression, stress and ulcers. Appellant further attributed his condition to treatment for his knee injury. As appellant attributes his condition in part to the physical limitations resulting from the employment injury¹⁰ he has cited a compensable factor of employment.

Appellant's burden of proof, however, is not discharged by his identification of a compensable employment factor. To establish his claim for a stress-related condition, appellant must also submit rationalized medical evidence establishing that he has an emotional or stress-related disorder and that such disorder is causally related to the identified compensable employment factor.¹¹

In a report dated February 8, 1997, Dr. Peter H. Greenwalt, a Board-certified gastroenterologist, diagnosed ulcerations in appellant's duodenum and noted that he “perceives marked stress related to working” at night and that “his condition would be better served working at a time which would be less stressful to him.” Dr. Greenwalt opined that some of appellant's symptoms “are likely stress related” and that additional stress “may aggravate his condition.” Dr. Greenwalt's opinion is of limited probative value as he does not relate appellant's condition to a compensable employment factor¹² and as his conclusions regarding the relationship between stress and appellant's condition are speculative in nature.¹³

In a report dated February 20, 1997, Dr. Greenwalt noted that appellant “has been under considerable stress related to rehabilitation from his two major surgeries.” Dr. Greenwalt,

⁷ See *Thomas J. Costello*, 43 ECAB 951 (1992); *George A. Ross*, 43 ECAB 346 (1991).

⁸ *William P. George*, 43 ECAB 1159 (1992).

⁹ *Id.*

¹⁰ *Arnold A. Alley*, 44 ECAB 912 (1993); *Charles J. Jenkins*, 40 ECAB 362 (1988).

¹¹ *William P. George*, *supra* note 8.

¹² See *Elizabeth W. Esnil*, 46 ECAB 606 (1995).

¹³ *William S. Wright*, 45 ECAB 498 (1994).

however, did not discuss the effect of the stress on any diagnosed condition or provide supporting rationale for his statement and thus his opinion is insufficient to meet appellant's burden of proof.

Appellant has not submitted medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, has concluded that the diagnosed condition is causally related to the identified employment factor and supported that conclusion with sound medical reasoning. Thus, appellant has failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty causally related to factors of his federal employment.

The decision of the Office of Workers' Compensation Programs dated March 5, 1998 and finalized March 6, 1998 is hereby affirmed.

Dated, Washington, D.C.
December 29, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member