

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERRY R. LEE and U.S. POSTAL SERVICE,
POST OFFICE, Manchester, N.H.

*Docket No. 97-1543; Submitted on the Record;
Issued January 21, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On August 9, 1996 appellant, then a 47-year-old customer services supervisor, filed an occupational claim, Form CA-2, alleging that he had an aggravation or exacerbation of chronic nervous disorders due to "situations undergone in [his] position brought to height on Monday Morning [*sic*], July 1, 1996." Appellant stated that he had depression and anxiety as well as a chronic nervous disorder. Appellant stopped working July 5, 1996 and returned to work July 22, 1996 working four hours a day.

Appellant submitted letters dated August 1 and September 26, 1996 describing his problems at work. He stated that on April 8, 1993 he was assigned a supervisory position in an office where the "main stock was a total disaster" in that the safe was totally inadequately stocked for daily business and no orders were on file. Appellant stated that because he had less than three hours of training on a computer system known as IRT, he was compelled to work 10 to 12 hours on several days. He stated that no schedule was posted for employees and that they would just "show up for work and hope there [were] enough employees to work the window and other duties." Appellant stated that there were no files from previous years and many clerk audits were delinquent. He stated that lack of training and the work load itself was not the fault of higher management but the fault of his predecessor who did not adequately perform his duties. Appellant stated that on October 5, 1994 he suffered an anxiety attack due to "huge overage and shortage in relating clerk," apparently meaning a shortage of staff. He also stated that his condition became exacerbated when he had to be removed from an ambulance in 1986 following a serious anxiety attack. Appellant expressed a fear that he might lose his job.

Appellant cited a problem on August 4, 1994 with an irate customer who pounded on his desk, turned off his light and said he would "get [him] or [his] job or both." He stated that he called the police but the customer continued to show up outside his office until the customer

eventually moved to Massachusetts. Appellant also cited a problem he had on June 30, 1994 with an employee who created a disturbance on the workroom floor and whom he was compelled to remove from the workroom in an emergency procedure suspension. He stated that from November 17 through February 21, 1995, the greatest aggravation of his nervous disorders and anxiety problem resulted from one employee who threatened bodily harm to him and two other employees and had said he would use guns.¹ Appellant stated that he immediately contacted the inspection service and was advised to place the employee on emergency suspension effective that day which he did. He stated that “everyone was on edge” the day the employing establishment agreed to permit the employee to return to work on February 21, 1995. Appellant stated that the employee had a history of humiliating and somewhat bullying other employees.

Appellant stated that what “took [him] over the edge” was receiving the Step 2 decision on July 1, 1995 concerning his issuing a letter of warning to the employee, Jack Higgins, for bringing his daughter to work when appellant had specifically advised he could not bring her to work. The decision stated that the letter of warning would be removed after two months. Appellant stated that he felt the decision “attacked his integrity, ability and overall concern for the grievance and zero tolerance program.” He also stated that the then Acting Postmaster, Dean L. Mottard, placed a copy of the decision on his desk and did not discuss it with him or contact him. Appellant stated that he experienced an anxiety attack on Saturday, July 7, 1995, causing him to wreck his car.

The record contains some disability and progress notes demonstrating that appellant suffered from depression and anxiety since August 31, 1993, that he was disabled from July 5 to 19, 1996 due to an acute exacerbation of his chronic anxiety disorder and could work four hours a day from July 22 through 19, 1996.

By letter dated October 22, 1996, the Postmaster, Patricia Hersey, from the employing establishment responded to appellant’s September 20, 1996 letter. Ms. Hersey acknowledged that the employee, Mr. Hart (since deceased), who was disruptive on the workroom floor in June 1994, was a very demanding employee and could be very disruptive at times. She stated that appellant “was indignant” that she gave Mr. Hart any consideration. Ms. Hersey stated that Mr. Hart was suspended for two weeks and returned to work on February 21, 1995 at a different facility. She stated that she had told appellant that if the irate customer he dealt with in August 1994 became out of control, he should call the postal inspection service. She also stated that the customer had mental problems and could not be reasoned with. Ms. Hersey stated that appellant had difficulty conducting audits in a timely fashion. She stated that she agreed with appellant’s action of issuing the letter of warning to the employee for failing to follow instructions. Ms. Hersey noted that appellant was disappointed with the Step 2 decision regarding Mr. Higgins but she stated that she told appellant that she also was disappointed but there was nothing more either one of them could do.

The Board finds that appellant has not established that he sustained an emotional condition causally related to factors of federal employment.

¹ It is not clear whether this is the same employee as in the June 30, 1994 incident as appellant indicates it was a different person and his supervisor indicated it was the same person.

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.² If the Office finds that appellant's allegations are unrelated to the employee's regular- or specially-assigned work duties, they do not fall within the coverage of the Act unless the evidence discloses error or abuse on the part of the employing establishment.³

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the conditions for which he claims compensation were caused or adversely affected by factors of his federal employment.⁴ This burden includes the submission of a detailed description of the employment conditions or factors which appellant believes caused or adversely affected the condition or conditions for which he claims compensation. This burden also includes the submission of rationalized medical opinion evidence, based on a complete factual and medical background of the employee, which shows a causal relationship between the conditions for which compensation is claimed and the implicated employment factors or incidents.⁵

Appellant's allegations as to what caused his emotional condition are not particularly clear, but it appears he is alleging that his emotional condition of depression, anxiety and chronic nervous disorder was aggravated by the stress resulting from dealing with either one or two unruly employees in June 1994 and November 1995, the irate customer in August 1994, not receiving support from management in disciplining Mr. Higgins for bringing his daughter to work, not receiving training on the computer, having to work overtime, working in an office that was run incompetently and a fear of losing his job. To the extent that appellant alleged that not receiving sufficient training on the IRT computer program caused him stress, he has not established a compensable factor of employment. The training of employees is an administrative function and as such appellant did not show that management abused its discretion in not providing him with computer training.⁶ Further, appellant did not corroborate his allegation that he was overworked and therefore he has not established that his working overtime constituted a compensable factor of employment.⁷ To the extent appellant alleged that management did not support him in disciplining Mr. Higgins, this was not corroborated by the evidence particularly

² *Dinna M. Ramirez*, 48 ECAB ____ (Docket No. 94-2062, issued January 17, 1997); see *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

³ *Dinna M. Ramirez*, *supra* note 2; see *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Richard J. Danube*, 42 ECAB 916, 922 (1991).

⁴ *June A. Mesarick*, 41 ECAB 898 (1990); *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁵ *Id.*; see *Walter D. Morehead*, 31 ECAB 188, 194 (1979).

⁶ See *Jose L Gonzalez-Garced*, 46 ECAB 559, 564 (1995); *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁷ See *Frank A. McDowell*, 44 ECAB 522, 526 (1993).

where Ms. Hersey stated that she was also disappointed by the decision but was unable to do anything about it. Further, appellant did not show that management's decision to remove the letter warning was unreasonable. Appellant did not show that the placement of the decision on his desk on July 1, 1995 constituted harassment. To show harassment by a supervisor, appellant must establish a factual basis for his claim by supporting allegations with probative and reliable evidence.⁸ Appellant has not presented the requisite evidence in this instance. The fear of losing one's job is not a compensable factor of employment and therefore appellant's feelings of job insecurity are not compensable.⁹ Further, his dissatisfaction with work environment in that the office was not run competently is also not a compensable factor of employment.¹⁰ Moreover, appellant also did not present corroborating evidence that the office was in fact run poorly.

To the extent appellant alleges that his duties of dealing with an irate customer and the unruly, bullying employee caused him stress, these were part of his regular duties as a supervisor to handle customers and discipline employees.¹¹ In this regard, the Board finds the evidence sufficient to establish a compensable factor related to the performance of his regular duties. However, appellant did not submit rationalized medical evidence explaining how these compensable factors of employment would cause or aggravate his depression, anxiety and nervous disorders. By letter dated September 20, 1996, the Office informed appellant of the medical evidence that was necessary for him to his claim. Appellant did not adequately respond. Appellant has therefore not met his burden of proof to establish that his emotional condition was work related.¹²

⁸ See *Barbara E. Hamm*, 45 ECAB 843, 851 (1994).

⁹ See *Martha L. Watson*, 46 ECAB 407, 417 (1995).

¹⁰ *Id.* at 418; *Frederick D. Richardson*, 45 ECAB 454 (1994).

¹¹ *Lillian Cutler*, 28 ECAB 125 (1976).

¹² See *June A. Mesarcik*, *supra* note 4; *Walter D. Morehead*, *supra* note 5.

The decision of the Office of Workers' Compensation Programs dated March 6, 1997 is hereby affirmed.

Dated, Washington, D.C.
January 21, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member