

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STANLEY CASPI and U.S. POSTAL SERVICE,
POST OFFICE, Forest Hills, N.Y.

*Docket No. 97-1205; Submitted on the Record;
Issued June 4, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on March 21, 1995 causally related to his February 5, 1994 employment injury.

On March 4, 1994 appellant, then a 32-year-old letter carrier, filed an occupational disease claim alleging that he sustained an emotional condition and indicated that he first became aware of his condition and its relationship to his employment on February 5, 1994. He attributed his condition to being harassed by his supervisors regarding a knee injury, being pushed by a supervisor, being given conflicting orders by different supervisors, being sent home after he told his supervisors that he could not deliver mail because his knee was hurting and being ordered to stop delivering the mail by a certain time of day although he had not finished delivering all the mail. The Office of Workers' Compensation Programs subsequently accepted, by letter dated February 22, 1995, that appellant sustained an adjustment disorder with anxious mood. The Office advised appellant that his claim had been accepted on August 23, 1994.¹

In a report dated February 24, 1994, Dr. Robert J. Conciatori, a psychiatrist, related that appellant was in good health until a series of incidents at work beginning on February 5, 1994. He related that appellant had injured his knee and he had to modify the manner in which he performed his job in order to accommodate his weakened knee. Dr. Conciatori related that appellant's supervisors, particularly Nick Squigna and Pete Anaya, harassed him because of his injury. He noted that Mr. Anaya's son had been working at the employing establishment but was removed after he threatened appellant and that the senior Mr. Anaya then began to harass appellant. Dr. Conciatori related that appellant's supervisors gave him conflicting orders about how to perform his work, objected to his taking time off for physical therapy and sitting rather than standing while racking mail, and frequently ordered him to leave the premises and clock off whenever he questioned his supervisors or tried to explain his actions. He related that on

¹ The case record reflects that the letter notifying appellant of the Office's acceptance of his claim was never mailed to him.

February 5, 1994 appellant was sitting down, while racking mail, to relieve his painful knee condition, and Mr. Anaya ordered him to rack flats which would require standing. Appellant tried to explain his need to sit but he was told to obey or go home and he experienced a sudden onset of anxiety accompanied by heart palpitations and tremors of his extremities and Mr. Anaya began to taunt him, making the symptoms worse. Appellant was allowed by another supervisor to see his doctor but, upon his return, Mr. Anaya had changed his time card to reflect seven hours of sick leave, rather than the three and one-half hours that he was actually gone, whereupon appellant experienced another wave of anxiety and left work. Dr. Conciatori related that the harassment by Mr. Anaya and Mr. Squigna continued. He stated:

“It is significant to note that [appellant’s] complaints began only after being subject[ed] to various pressures while at work. He has no past psychiatric history and no other stressors.... It is also significant that his first acute attack happened [at work] after a confrontation with his supervisors and continued to be exacerbated by further incidents which have taken place on the job since that time.

“[I]t is my opinion, to a degree of reasonable medical certainty, that the incidents which occurred at the job are causally related to [appellant’s] psychiatric pathology.”

On April 4, 1995 appellant filed a claim for a recurrence of disability alleging that he sustained a recurrence of disability on March 21, 1995 which he attributed to his February 5, 1994 employment injury. He stated that, from the time of his February 5, 1994 employment injury through the day of his alleged recurrence, the harassment by his supervisors had worsened.

In a report dated March 27 and April 23, 1995, Dr. Conciatori stated that he had been treating appellant since his February 1994 employment injury. He stated that appellant was eventually able to return to work but that treatment continued and he was also on medication to control anxiety. Dr. Conciatori stated that the harassment at work that disabled him originally had continued in various forms. He stated that due to recent events at work appellant’s symptoms had worsened and he now suffered from depression in addition to anxiety. He stated that appellant was totally disabled commencing on March 21, 1995.

In a letter dated May 31, 1995, appellant asserted that there had been a change in the nature and extent of his employment injury in that his condition had worsened and included clinical depression and an increase in his anxiety which eventually rendered him totally disabled. He stated that on March 20, 1995 he experienced great anxiety because he had been called into his manager’s office to be informed that a seven-day suspension was being proposed because he was away from his desk on March 13, 1995. He noted that another employee received only a letter of warning for the same offense. Appellant stated that he reported to work on March 21, 1995 in the hope that he would be able to get through this period of stress as he had in the past but while delivering the mail, he had bouts with anxiety, panic attacks, nervousness, heart palpitation, and tearfulness. He stated that the March 20, 1995 incident was just the latest in a long line of events that were designed by management to harass and intimidate him.

In a report dated June 13, 1995, Dr. Conciatori stated that he been asked to comment on specific incidents which caused appellant's condition to become worse on March 21, 1995. He stated that he would supplement his earlier report by detailing specific incidents which caused a worsening of appellant's condition and he noted that appellant was never without symptoms at any time since his February 1994 employment injury. Dr. Conciatori listed the incidents:

"February 6, 1995: Threatened by supervisor when not able to complete assignment. Verbally abused by supervisor.

"February 7, 1995: Harassed by supervisors regarding amount of mail he was to deliver and not allowed to alleviate the anxiety he subsequently suffered from. Forced to take sick time as a result.

"February 8, 1995: Medical documentation for absence of February 7, 1995 marked by a supervisor (K. Thompson) as 'not agreed with diagnosis.' K. Thompson is not an M.D. according to [appellant].

"March 7 [to] 11, 1995: [Appellant] suffers from irritable bowel syndrome, which is related to and directly affected by his psychiatric condition and in my opinion was directly caused by his psychiatric illness to begin with. He was out sick for this condition and was harassed by supervisors upon his return to work.

"March 20, 1995: Was informed that he was being considered for a 7-day suspension for being away from his desk on [March] 13, 1995 for a short time. This event 'was the straw that broke the camel's back' and caused an immediate worsening of his symptoms and made it impossible for him to work any longer. His condition has not improved much since that time. Treatment has been continuous since [February 10], 1994 and the present.... [Appellant] is in my opinion totally disabled from work as of March 21, 1995 due to job stress, exacerbating his underlying stress disorder and causing depression as well."

In a written statement dated June 1995, Mark Sober, a union steward, stated that on several occasions he heard management calling appellant abusive names including "the shittiest carrier in the world" and that it seemed as if management increased the abusive language and harassment instead of backing off. He indicated that jokes had been made about appellant's irritable bowel syndrome. Mr. Sober stated that actions taken by management in regard to appellant were punitive in nature, never corrective, and that he was treated with "disdain, discrimination and abuse."

By decision dated January 18, 1996, the Office denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish that he had sustained a recurrence of disability causally related to the February 5, 1994 employment injury. In its decision, the Office stated that appellant provided insufficient specific details regarding the alleged harassment by his supervisors. The Office also stated that the medical evidence of record did not contain specific factors of employment.

By letter dated July 16, 1996, submitted through his attorney, appellant requested reconsideration of the denial of his claim and submitted additional evidence.

In a report dated March 18, 1996, Dr. Conciatori provided a history of appellant's condition and diagnosed adjustment disorder with mixed disturbance of mood (anxiety and depression, chronic; tension headaches; insomnia). He stated his opinion that appellant's recurrence of disability was brought on by the same stresses and pressures which caused him his employment injury on February 5, 1994. He stated that appellant's recurrence of disability was caused by specific incidents of harassment against appellant between February 18, 1994 and March 24, 1995. Dr. Conciatori stated that after appellant returned to work in early 1994, following one month of treatment, there existed the same pattern of harassment and he was routinely asked to violate postal rules, was given contradictory orders, was personally denigrated in front of coworkers and sometimes the public, and became the subject of ire of postal patrons who blamed him for delays in their mail delivery even though those delays were caused by conflicting orders received by appellant from his supervisors. Dr. Conciatori stated that the following incidents and patterns of mistreatment exacerbated and caused a recurrence of appellant's psychiatric disability:

“(1) Between his return to work in Feb[ruary]/March 1994 and until March 21, 1995 he was instructed by his supervisors to leave behind first class mail. This order was in contraindication to normal postal procedures which states that first class mail is to be delivered every day unless there is an emergency situation. The other carriers were told that as a general rule all first class mail was to be delivered without delay, yet [appellant] was singled out by his supervisor for orders contradicting this general policy. At other times the same supervisors switched gears and ordered him to get all first class mail delivered; however, they imposed a time limit on him, ordering him against leaving the building after 11:00 a.m. Due to the heavy volume of mail on his route he was not able many times to bundle and organize the mail and be out by 11:00 a.m. [The time limits] caused further delays in mail delivery. The pattern of conflicting and contradictory orders, which caused [appellant] to suffer from intense anxiety and stress, occurred on the following dates: February 18, 24, March 4, 30, April 1, 2, 4, 9, May 2, 3, 6, September 22, 28, October 15, November 9, 1994; January 5, 6, 19 and March 13, 1995.

“(2) On January 5, 1995 [appellant] was told ... not to process and deliver 2 trays of first class mail. On January 6, 1995 he was ordered to work with catalogues (third class mail) before working with the first class letters held from the day before. This was in violation of a policy to process first class letters before third class mail. When [appellant] questioned these orders he was reprimanded and told, ‘if you don’t like what we are telling you then grieve it.’

“(3) [Appellant] was consistently berated and denigrated verbally by his supervisors. These outbursts were most frequent on occasions when [appellant] had to ask his supervisors for help in completing his route, because the volume of mail was so great and the route so large that he needed assistance to complete it.

When he asked for such help from his supervisors he would be yelled at, belittled and insulted. They routinely called him 'the shittiest carrier in the world.' On May 11, 1994 a supervisor told him, 'a 6 year old could do a better job than you.' The accumulation of these confrontations took its toll on [appellant] and resulted in an exacerbation of his anxiety and stress symptoms.

“(4) Postal patrons would confront [appellant] on his route demanding to know where their first class letters were. These were the very letters [appellant] was ordered many times to leave behind and to process other types of mail first in violation of postal policy. Unfortunately [appellant] had to bear the brunt of the dissatisfaction of the public, as he was apparently viewed by them as not a representative of the [employing establishment] but the cause of their first class mail being delayed. [Appellant] had to try to explain over and over to these irate patrons that his supervisors had ordered the first class mail be held back. These confrontations with the public caused him to suffer anxiety and stress related symptoms.

“(5) Between February 18, 1994 and March 21, 1995 a constant problem which [appellant] had to attempt to deal with involved a color coding system to keep track of mail. Older mail is supposed to be delivered before newer mail. Color coded cards are used to denote older mail.... Unfortunately the supervisors kept changing the color codes [and] [appellant] could not keep track of the mail.... Many times ... sale[s] catalogues were being delivered long after sales had ended. Again [appellant] had to deal with angry patrons demanding to know why they were getting expired mail. This recurring situation over time also caused him to suffer increased stress and anxiety. When he brought up the color coding problem to the supervisors he was again insulted on his abilities as a carrier.... On February 27, 1995 he was told, 'if you can [not] handle the route, why don't you bid off.'

“(6) As a result of orders to delay first class mail and the problems with color coding, as well as frequent refusals to supply [appellant] with help on the route on a regular basis, one postal patron ... became especially abusive. She not only confronted him verbally in the street ... accusing him of not delivering mail, but began writing numerous letters to the [employing establishment] ... or to politicians in Washington. [Appellant] was frequently shown these letters and between these [letters] and having to face this patron on the street his symptoms of anxiety and insomnia began to increase.... His supervisors would not deal with the patron directly, preferring [appellant] to bear the brunt of her anger, although he had no control over the situation.

“(7) On March 20, 1995 while delivering mail ... the postal patron referred to above came running down the block, yelling at [appellant] loudly and in front of other individuals, embarrassing him and accusing him of not delivering her magazines. He tried to explain that her magazines had not even been given to him to deliver by the supervisor but she refused to accept this, ... continuing to

yell at him while others watched. This last incident was the proverbial ‘straw that broke the camel’s back.’ After this incident [appellant’s] condition, which had been deteriorating over time because of the incidents referred to above, became quite severe resulting in a multitude of symptoms and a complete inability to work....”

* * *

“CAUSATION: [Appellant] had no prior psychiatric history and symptoms.... There is no preexisting condition, no other stressors are known. His level of functioning was high before February 5, 1994 and he reported no difficulties in his personal or professional life prior to February 5, 1994. He functioned well at his job and liked his career in the [employing establishment] until he began to be singled out for harassment and then he began to develop a psychiatric condition which ultimately became disabling. THE DISABILITY RESURFACED ON MARCH 21, 1995 PRECIPITATED BY THE STRESSORS DISCUSSED ABOVE. Therefore, it is my opinion, within a reasonable degree of medical certainty, that [APPELLANT’S] DISABILITY AND PSYCHIATRIC PATHOLOGY ARE CAUSALLY RELATED TO THE INCIDENTS DESCRIBED ABOVE.” (Emphasis in the original.)

By decision dated November 25, 1996, the Office denied modification of its January 18, 1996 decision. In its decision, the Office rejected, as a possible employment factor, appellant’s emotional reaction to events on March 20, 1995. The Office stated that Dr. Conciatori’s March 18, 1996 medical report was of no probative value because he related appellant’s reaction on that date to being yelled at by a patron regarding her mail delivery service whereas appellant stated in a May 31, 1995 statement that on March 20, 1995 he received a letter of suspension which caused him anxiety. The Office addressed only this employment factor in its decision.

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

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.² This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.³

In this case, appellant alleged a recurrence of an employment-related emotional condition. 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

² *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

³ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his 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.⁴ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.⁵

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.⁶ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁷

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.⁸ 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.⁹

In this case, the Office considered only one of the factors alleged by appellant as contributing to his emotional condition, his emotional reaction to events occurring on March 20, 1995. The Office stated that Dr. Conciatori's March 18, 1996 medical report was of no probative value because he related appellant's reaction on that date to being yelled at by a patron regarding her mail delivery service whereas appellant stated in a May 31, 1995 statement that on March 20, 1995 he received a letter of suspension which caused him anxiety. However, the Office did not determine whether the incident on March 20, 1995, when appellant was confronted by a patron concerning the performance of his duties, was a compensable factor of employment. The fact that Dr. Conciatori did not mention the suspension incident of March 20, 1995 does not mean that the incident he did relate, appellant's confrontation with the patron, is not a possible compensable factor of employment.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ See *Thomas D. McEuen*, 41 ECAB 387, 391 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁷ *Effie O. Morris*, 44 ECAB 470, 473 (1993).

⁸ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389 (1992).

⁹ See *Margaret S. Krzycki*, *supra* note 8.

In addition to the March 20, 1995 events, there were other factors of employment which appellant alleged, in his own statements and through the histories given in medical reports, which the Office did not address,¹⁰ such as being given conflicting orders by his supervisors, being told on several occasions to deliver third class mail ahead of first class mail which caused the patrons on his route to become angry at him, being harassed by his supervisors because of his knee condition, being given time limits for the completion of tasks which he was unable to meet due to a heavy work load, being ordered by supervisors to go home on several occasions when he attempted to discuss his work load or knee condition, being ordered to perform work which required standing when he needed to sit down due to his knee condition, having a supervisor change the three and one-half hours of sick leave which appellant used on one date to seven hours, and being verbally abused by supervisors. Because the Office did not consider all the factors alleged by appellant as contributing to his emotional condition, this case must be remanded to the Office for a determination as to whether any of these factors constitutes a compensable factor of employment. On remand, if the Office determines that there are compensable factors of employment, it should then determine whether the medical evidence of record establishes that these factors caused a recurrence of disability.

The decision of the Office of Workers' Compensation Programs dated November 25, 1996 is set aside and the case is remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.

June 4, 1999

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁰ The Board notes that some of these factors were also alleged by appellant in his original claim which was accepted by the Office.