

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES H. BOTTS and U.S. POSTAL SERVICE,
V STREET ANNEX, Washington, D.C.

*Docket No. 97-464; Oral Argument Held December 8, 1998;
Issued March 1, 1999*

Appearances: *James Botts, pro se; Paul J. Klingenberg, Esq.,
for the Director, Office of Workers' Compensation Programs.*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition while in the performance of duty.

On November 14, 1994 appellant, then a modified distribution clerk, filed a claim asserting that he sustained an emotional condition on October 26, 1995¹ while in the performance of duty. He described the nature of his injury as stress and explained that he was suspended by the area manager for not stopping his supervisor from releasing the employees due to a fire emergency. On the reverse side of the claim form, Arthur W. Coe, Manager, Customer Service Operations, Area 3, stated that appellant did nothing to prevent the loss of postal revenues by collaborating with his co-supervisor and allowing employees to leave work for no just cause.

Appellant supported his claim with an October 27, 1996 letter he wrote to the inspector in charge. In this letter, appellant detailed the events as they unfolded on October 26, 1995: When he arrived at work that night and parked his vehicle, he heard an alarm in progress. His supervisor, Jan Abrams, who was standing outside the annex together with a few of appellant's coworkers, informed him that the alarm was going off, that the tour superintendent's office had been notified, that the postal police had been notified and that she had arranged to have the area manager, Mr. Coe, paged on a continuing basis.² Ms. Abrams contacted the tour superintendent

¹ Although the claim form appears to indicate the date of injury as October 28, 1996, there is no dispute that the incident in question occurred on October 26, 1995.

² Ms. Abrams filed her own claim for compensation arising out of the same incident; *see Jan Abrams*, 48 ECAB __ (Docket No. 96-1158, issued May 9, 1997).

a second time and was told to contact the Washington, D.C., Police Department, which she did. The D.C. police arrived, entered the building with guns drawn and determined that the alarm was not due to an illegal entry but was in fact a fire alarm. Though they saw no signs of fire, one of the policemen thought he had smelled something. Appellant entered the building, together with Ms. Abrams, so that he could inform the tour superintendent's office of the police findings. They at once smelled something but did not know what it was. Appellant reported to the tour superintendent's office that there was a possible fire emergency in progress. After making their telephone calls, appellant and Ms. Abrams performed their own sweep of the building, silenced the alarm at their end and exited.

Appellant stated that in the opinion of Ms. Abrams the building was not safe because no one from either the postal police or the inspector's office had reported to the scene to give the "all clear" and she could not allow anyone into the building until that happened. When the technicians from maintenance arrived, they entered the building accompanied by the D.C. police and appellant. Appellant again smelled something strange. One of the D.C. police stated that it smelled like burnt wires. When appellant escorted the D.C. police out of the building, he noticed that the employees had gathered around Ms. Abrams, some of them becoming irate, complaining that they had been subjected to intolerable conditions. The unit's safety captain explained to the employees that when an alarm is in progress postal regulations prohibit entering the premises until an "all clear" is given, but that the postal police had not arrived and no one on the scene was authorized to give such a signal. Approximately 10 minutes later, Ms. Abrams had the employees sign a roll and then released the unit.

Ms. Abrams and appellant then secured the building and reported to the tour superintendent's office, where they eventually met with Mr. Coe. Mr. Coe informed them that they had made a "damned piss poor decision," which he repeated three times. After instructing them to write statements, Mr. Coe took appellant into an adjacent office, where he advised appellant that he was being placed on emergency suspension under Article 16-7 and that he had to surrender his postal identification badge and any keys to the property. When appellant asked under what charge he was being suspended, Mr. Coe advised appellant that, even though he was not the acting supervisor that evening, he failed to stop the supervisor from releasing the employees; therefore, appellant was being charged with willful delay of mail. Appellant asked how, as an employee, he was supposed to stop his supervisor from doing her job. He then advised Mr. Coe that Article 16-7 could not be invoked because it applied to failure to follow safety regulations, an employee presenting a threat to self or others, and damage or destruction of postal property, which did not pertain in the present case.

Appellant also supported his claim with a November 29, 1995 report from Melanie B. Ness, a licensed clinical social worker. She advised that appellant was currently suffering from post-traumatic stress disorder as a result of having been suspended from his job for an incident that he felt he handled correctly.

On December 18, 1995 the Office of Workers' Compensation Programs requested that the employing establishment submit additional information, including a comment on appellant's statement from a knowledgeable supervisor and statements from Mr. Coe. The Office requested

that the employing establishment advise in what capacity appellant was working on the night of the incident in question.

Mr. Coe telephoned the Office to advise that appellant was not a supervisor the night of the alleged injury.

In a decision dated January 30, 1996, the Office denied appellant's claim on the grounds that fact of injury was not established. The Office found that there was insufficient evidence in the file regarding whether the claimed event, incident or exposure occurred at the time, place and in the manner alleged. The Office also found that a medical condition resulting from the alleged work incident or exposure was not supported by the evidence.

Appellant requested an oral hearing before an Office hearing representative. Together with additional evidence from Ms. Ness, appellant submitted a February 2, 1996 report from Dr. Ralph Fawcett, a psychiatrist. Dr. Fawcett stated that he had examined appellant and had read his treatment record as written by Ms. Ness. He stated: "I concur with her findings and diagnosis, notably that [appellant's] condition is job related."

Appellant submitted an October 27, 1995 statement from Ms. Abrams. She related substantially the same account of events and stated that she made the decision to release the employees after taking into the consideration various circumstances. Ms. Abrams stated that she followed procedures to the best of her knowledge based on her limited experience as an acting supervisor.

Appellant also submitted an October 27, 1995 memorandum from Mr. Coe to appellant. He notified appellant that he was being placed in an off-duty status effective that day. Mr. Coe also notified appellant as follows: "If, for any reason, this period extends beyond fourteen (14) days, you will be placed in an administrative leave status and paid your normal wages for the period which exceeds fourteen (14) days." Mr. Coe informed appellant that the action was being taken in accordance with Article 16, section 7 of the national agreement: "It has been determined that your retention on duty may result in loss of mail or funds. You corroborated [sic] in terminating a [c]ustomer [s]ervice [o]peration without higher level authorization."

In an October 27, 1995 incident report to the Postmaster, Mr. Coe indicated that the police and maintenance responded to the fire alarm but found no unsafe or threatening condition in the building. He then stated: "Ms. Abrams went on to tell me that she had released the employees from duty. Both Ms. Abrams and [appellant], who also acts as a supervisor in the unit, said that they believed it was the best thing to do under the circumstances." Mr. Coe stated that he expressed his displeasure at their decision to allow 32 employees to simply walk away from their work assignment prior to approval from any ranking postal manager and that he placed both on emergency suspension.

Appellant submitted additional reports from Ms. Ness, who opined that appellant's emotional illnesses were caused by his job. He also submitted a July 11, 1996 report from Dr. Fawcett, who stated: "I am the medical doctor of record on this case and have reviewed the record, as well as treated this patient. I concur with the attached letter from the patient's psychotherapist, Melanie B. Ness."

In an October 27, 1995 statement, Ms. Abrams clarified that she was in fact the acting supervisor at the time of the October 26, 1995 incident, that appellant had resigned from the position of supervisor on October 13, 1995 and that he was acting under instructions that were issued by her.

At the hearing, which was held on July 23, 1996, appellant testified that because he was a veteran he should have started receiving pay 14 days after the suspension began but that nothing was done.

In a decision dated September 4, 1996, finalized September 5, 1996, the Office affirmed the January 30, 1996 rejection of appellant's claim. Noting that an emotional reaction to an administrative decision such as a suspension was not compensable without proof of error or abuse by the employing establishment, the Office found that the record contained no evidence establishing that the suspension was erroneous.

The Board finds that appellant has established a compensable factor of employment.

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.³ An employee's emotional reaction to an administrative or personnel matter is generally not covered. The Board has held, however, that error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.⁴

Appellant attributes his emotional condition to being suspended by Mr. Coe. Generally, such an administrative action falls outside the scope of coverage of workers' compensation; however, the evidence in this case establishes an error in the suspension. In charging appellant with collaborating to terminate a customer service operation without higher level authorization, Mr. Coe mistakenly believed that appellant had supervisory authority. On October 27, 1995, the same day that he issued the written notice of suspension, Mr. Coe prepared an incident report for the Postmaster stating that appellant "also acts as a supervisor in the unit." On November 15, 1995 Mr. Coe wrote on the back of appellant's claim form that appellant had collaborated with his "co-supervisor" to allow employees to leave work for no just cause.

The evidence clearly establishes, however, that appellant was not a supervisor on October 26, 1995. Statements from both appellant and Ms. Abrams indicate that the decision to release the employees was made by Ms. Abrams in her capacity as the acting supervisor, that appellant had resigned from his supervisory position on October 13, 1995 and that he was acting under her instructions. Indeed, when the Office inquired as to what capacity appellant was working on the night in question, Mr. Coe himself telephoned to advise that appellant was not a supervisor that night. Based on this evidence, the Board finds that appellant did not release the employees from work and in fact had no supervisory authority to do so, notwithstanding Mr. Coe's characterization of appellant as having some type of supervisory authority.

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Margreate Lublin*, 44 ECAB 945 (1993).

This error in the administrative action taken by the employing establishment establishes a compensable factor of employment, thereby bringing appellant's claim within the scope of coverage of workers' compensation.

The record also supports a possible second compensable factor of employment. Appellant testified at the July 23, 1996 hearing that he should have started receiving pay 14 days after his suspension began but that nothing was done. The October 27, 1995 notice of suspension supports that appellant should have been placed in an administrative leave status and paid his normal wages for any period of suspension exceeding 14 days. The employing establishment's failure to take such action would establish a second compensable factor of employment, but the Office did not undertake to develop this aspect of the claim. The Board will therefore remand the case for further development of the factual evidence and a finding of whether the employing establishment erred in not paying appellant his normal wages beginning 14 days after the suspension began.

In cases involving emotional conditions,⁵ the Board has held that when the evidence of record establishes a compensable factor of employment, the Office must base its decision on an analysis of the medical evidence.⁶ The medical evidence in this case is generally supportive of a causal relationship between appellant's emotional condition and his employment. Ms. Ness, a licensed clinical social worker, reported that appellant was suffering from post-traumatic stress disorder as a result of having been suspended from his job for an incident that he felt he handled correctly. Although she is not recognized as a physician under 5 U.S.C. § 8101(2), Dr. Fawcett, a psychiatrist and qualified physician, concurred with her findings and diagnosis and her opinion on causal relationship.

Causal relationship is a medical issue,⁷ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established factors of employment. The opinion of the physician must be based on a complete factual and medical background, 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 established factors of employment.⁸

Although Dr. Fawcett has not offered his medical explanation of how the accepted factor or factors of employment caused or contributed to appellant's diagnosed condition, the Board finds that his reports, together with those of Ms. Ness, are sufficiently supportive of appellant's claim that further development of the medical evidence is warranted.⁹ After further developing

⁵ See generally *Lillian Cutler*, *supra* note 3.

⁶ See *Richard J. Dube*, 42 ECAB 916 (1991).

⁷ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁸ See *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ See *John J. Carlone*, 41 ECAB 345, 358 (1989) (finding that the medical evidence was not sufficient to discharge appellant's burden of proof but remanding the case for further development of the medical evidence given

the factual evidence relating to appellant's leave and pay status 14 days after the suspension began, the Office will prepare a proper statement of accepted facts identifying the established compensable factor or factors of employment. The Office will then further develop the medical opinion evidence on the issue of causal relationship. After such further development as may be necessary, the Office will issue an appropriate final decision on appellant's claim.

The September 4, 1996 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.
March 1, 1999

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

the uncontroverted inference of causal relationship raised).