

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EARL W. BLACKBURN and U.S. POSTAL SERVICE,  
NORTH HOUSTON MAIL FACILITY, Houston, TX

*Docket No. 98-1147; Submitted on the Record;  
Issued November 18, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant had any disability after July 23, 1997 causally related to compensable factors of his employment.

On April 4, 1995 appellant, then a 53-year-old mail processing equipment mechanic, filed a claim for stress. In an accompanying statement appellant indicated that in November 1989 he had received a transfer to an employing establishment closer to his home. However, his name was not placed on the promotional seniority list at the new employing establishment even though it was to be a part of the transfer. Appellant stated that he filed a grievance on the matter which was decided in his favor. However, the employing establishment did not comply with the decision on the grievance until October 1994. He also filed a grievance over missing a promotional opportunity. He stated that a report from an official at the employing establishment indicated that at about the time appellant was seeking the promotional opportunity, his records were lost in a transfer from one office to another. Appellant noted that in August 1994 he began having trouble walking due to a knee condition. He stated that he began to use a cane on the employing establishment floor but was instructed not to use a cane at work even though two other employees of the employing establishment were permitted to use canes. Appellant indicated that his request for advanced sick leave was denied on the grounds that he had a poor record of leave usage. He contended that an employee with a similar knee problem had previously been granted advanced sick leave. Appellant noted that he was placed on a light-duty assignment of repairing damaged mail on March 16, 1995 but contended that he was so harassed that on the same day he stopped working due to stress and went to the hospital emergency room. In an August 7, 1995 decision, the Office of Workers' Compensation Programs rejected appellant's claim on the grounds that the evidence of record failed to demonstrate that the claimed injury occurred in the performance of duty.

In an August 20, 1995 letter, appellant requested a hearing before an Office hearing representative, which was conducted on June 5, 1996. In a June 5, 1997 decision, the hearing representative found that appellant had established compensable factors of employment on the

failure of the employing establishment to correct his seniority date until compelled by the grievance decision and the employing establishment's loss of his personnel records which delayed his ability to seek a promotion. The hearing representative found that appellant had established that the employing establishment had informed appellant that medical documentation for his knee condition and work restrictions had not arrived but had not established that the employing establishment used the lack of information to terminate his employment or take punitive action. He also found that the employing establishment had required appellant to return his keys, had denied advance sick leave and had assigned him to work in the damaged mail unit but further found that these matters were administrative actions and, therefore, were not compensable factors of employment. The hearing representative found that appellant had not established that he was denied official time or work time to meet with his representative concerning his grievances. He, therefore, vacated the Office's August 7, 1995 decision and remanded the case for construction of a new statement of accepted facts and further development of the case record, with a decision to be based on the medical evidence of record.

In an October 10, 1997 decision, the Office rejected appellant's claim for the period after July 23, 1997 on the grounds that the medical evidence of record did not support a continuing employment-related disability subsequent to appellant's medical examination of July 23, 1997.

The Board finds that the Office has not met its burden of establishing that appellant's psychological disability ceased effective July 23, 1997.

Once the Office accepts a claim it has the burden of justifying modification or termination of compensation. After it has been determined that an employee has disability causally related to his employment the Office may not terminate compensation without establishing that the disability has ceased or is no longer related to the employment injury.<sup>1</sup>

Subsequent to the decision of the Office hearing representative, the Office referred appellant, together with the new statement of accepted facts and the case record, to Dr. David Krueger, a Board-certified psychiatrist, for an examination and opinion on whether factors of appellant's employment were causally related to his psychological condition. In a July 24, 1997 report, Dr. Krueger indicated that he had examined appellant on July 22, 1993. He stated that appellant had current symptoms of a depressive episode, including depression as a mood and affect, along with biological components of depression, including diminished concentration and attention, decreased libido, lethargy, decreased motivation, anhedonia and terminal insomnia. Dr. Krueger also diagnosed a personality disorder not otherwise specified. He reported that appellant had an onset of symptoms of depression and anxiety related to and initiated by his work setting with no history of depression prior to his employment at the employing establishment. He stated:

"The factors of employment directly caused his [appellant's] current psychiatric condition of depression with related anxiety and eating disorder. This would be classified as a *temporary aggravation*, as all of the reactions are psychological and are not permanent given good psychiatric treatment. He does not have, in my

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<sup>1</sup> *Edwin Lester*, 34 ECAB 1807 (1983).

view, have any evidence of a manic-depressive disease, or the preexisting depression, though his personality disorder does predispose him to certain perceptions and experience of stress as defined above. *The issues which are alleged and evaluated to be a disability are treatable and are not permanent.*

“[Appellant] is adamant about not working in the post office and refuses to work for any government agency. He is also adamant about not returning to work in a structured, paid position. This predisposes him not to attain maximum benefit of psychiatric treatment and to not achieve an autonomy to be able to return to work of his choosing; that is, he has a fixed assessment in his mind of “disability” without motivation to return to gainful employment. His efforts, instead, are focused on the pursuit of the various lawsuits.

“The psychological impairments which [appellant] experiences are real, and are currently limiting, but are classified above as temporary aggravation as they constitute a treatable and resolvable psychiatric illness, given his motivation to do so. When properly treated, there would be no psychiatric impairment or hindrance in personal and work activities.”

The Office requested clarification from Dr. Krueger, on which factors of employment identified in the statement of accepted facts contributed to appellant’s psychological condition. In an undated, handwritten response, he indicated that employing establishment’s delay in reinstating appellant’s seniority status and the loss of his personnel records which delayed his advancement contributed to appellant’s emotional reaction. In an October 8, 1997 letter, the Office requested further clarification of whether appellant’s further refusal to return to work was due to a lack of motivation or to the two identified compensable factors of employment. In response, Dr. Krueger submitted a handwritten annotation of the Office’s October 8, 1997 letter. He indicated that he classified appellant’s condition as a temporary aggravation as it was treatable and resolvable, provided that appellant submitted to treatment with accompanying motivation to get better. Dr. Krueger related that appellant had indicated that this was not the case. He stated that the original cause of appellant’s disability was due to the compensable factors of employment but the current causation was due to his refusal to engage in treatment.

Dr. Krueger related appellant’s depression to the compensable factors of employment set forth in the statement of accepted facts, based on the findings of the Office hearing representative. In this case, Dr. Krueger found that appellant did not have a preexisting depression but stated that the factors of employment caused the depression. To find that appellant’s employment-related disability had ceased effective as of the date of his examination, he would have to find that appellant no longer had a depression or find that his depression was no longer causally related to factors of his employment. Dr. Krueger diagnosed major depression with a personality disorder which he stated was due to appellant’s factor of employment. While he noted that appellant’s current psychiatric condition could be classified as a temporary aggravation, provided that appellant undergo appropriate treatment, he did not specifically find that appellant’s employment-related depression had ceased or was due to a cause other than his federal employment. Despite several attempts at clarification, the reports of Dr. Krueger do not establish that appellant’s condition had ceased or was no longer employment

related. As a result, his reports are insufficient to establish that appellant's psychological condition ceased as of July 23, 1997.

The decision of the Office of Workers' Compensation Programs, dated October 10, 1997, is hereby reversed.

Dated, Washington, D.C.  
November 18, 1999

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member