

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARK K. HULL and U.S. POSTAL SERVICE, POST OFFICE,
PARADISE VALLEY STATION, Las Vegas, NV

*Docket No. 97-2664; Submitted on the Record;
Issued January 10, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

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

On March 31, 1994 appellant, then a 41-year-old special delivery messenger, filed an occupational disease claim, alleging that factors of his employment caused neck and back pain and extreme stress.¹ By letters dated April 29 and July 28, 1994, the Office of Workers' Compensation Programs informed him of the type information needed to support his claim. A telephone conference was held on August 23, 1994 between appellant and an Office claims examiner and by decision dated January 20, 1995, the Office denied the claim, finding that appellant failed to establish that he sustained an emotional condition in the performance of duty. Appellant requested a review of the written record.² In a decision dated April 15, 1997, an Office hearing representative found that, while appellant established some compensable factors of employment, the medical evidence of record was insufficient to establish that his condition was causally related to factors of employment. The facts of this case as set forth in the hearing representative's decision are hereby incorporated by reference.

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

To establish that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence

¹ The record indicates that the instant claim, adjudicated by the Office under file number A13-1042130, was developed for stress only. His orthopedic conditions were added to a previously accepted bilateral shoulder condition, adjudicated by the Office under file number A13-953904.

² Appellant initially requested a hearing but withdrew this request and asked for a review of the written record.

establishing that the identified compensable employment factors are causally related to his emotional condition.³ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 specific employment factors identified by appellant.⁴

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.⁵ On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.⁶

In this case, appellant generally alleged that he had a difficult relationship with several supervisors, especially Dennis DeLuca, that he was unfairly blamed for causing a dent in an employing establishment vehicle, that he had difficulties with the employing establishment while off on disability, that he had been put on restrictive leave unfairly, that a supervisor, Sue Roth, had changed his work assignment, that he was bitten by a dog on February 13, 1994, that driving bothered his shoulder condition, that the excessive heat bothered him, that his privacy had been invaded by casual workers who had access to his personnel file and that the entire supervisory setup contributed to his stress level. He also alleged that his accepted employment injury caused increased stress.

In support of his claim, he submitted several statements from coworkers concerning Mr. DeLuca. The employing establishment provided statements from William E. Reed and Mr. DeLuca who contradicted appellant's allegations.

The relevant medical evidence includes a May 18, 1994 report in which Dr. Marina Plon, an internist, noted that appellant suffered from anxiety attacks and advised that his chest discomfort and irritable bowel syndrome were stress related. In a May 24, 1994 report, Dr. James M. Hogan, a family practitioner, diagnosed stress and anxiety reactions. In a June 30, 1994 report, Dr. Juan Carlos Laborati, a psychiatrist, diagnosed major depression, panic disorder and generalized anxiety. He noted that appellant reported a dysfunctional situation at the

³ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

employing establishment. In an August 2, 1994 report, Dr. Laborati noted that appellant presented with extreme reactive stress and focused primarily on difficult interactions with his supervisors. In an April 13, 1995 report, Dr. Laborati noted a history of rotator cuff repairs on both shoulders which resulted in constant pain. He stated:

“Exacerbating this constant pain [were] the incidents at the [employing establishment] with his supervisors that created a[n] irritant to [appellant], bringing about a decline in his emotional well being which he manifested by depression and anxiety. In a pain disorder syndrome, the pain is in one or more of the anatomical sites and is the predominant focus of the clinical presentation and is of sufficient severity to warrant clinical attention.... The pain causes clinically significant distress or impairment in social, occupational or other important areas of functioning. Impaired range [of motion] of both shoulders with pain will most definitely cause a significant distress or impairment while working and carrying a heavy mailbag. This constant pain would have a heavy toll on a patient’s emotional well being and produce anxiety leading to a major depression. This pain coupled with his supervisor’s comments were perceived by [appellant] as a form of harassment which increased his anxiety. (The issue here is not that actual harassment was taking place [but] rather [appellant’s] perception of the way these remarks were delivered to him by his supervisors and causing [him] more mental distress).... Because of [his] perception of the irritants at work and his increased anxiety that developed when he was going to or at work, his pain could be magnified resulting in his inability to work.... It is my medical/psychiatric opinion that [appellant’s] psychological condition has a direct correlation to his physical state and he falls under the category of pain depression syndrome, chronic.”

While appellant alleges many instances of error or abuse on the part of the employing establishment, to establish entitlement to benefits, he must establish a factual basis for his claim by supporting his allegations with probative and reliable evidence.⁷ Where the evidence demonstrates that the employing establishment has neither erred nor acted abusively in administrative or personnel matters, coverage will not be afforded⁸ and when evaluating employing establishment actions, the Board applies a reasonableness standard.⁹ Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the evidence, may constitute a compensable factor of employment.¹⁰ In this case, however, the Board finds the statements provided by appellant’s coworkers of

⁷ *Abe E. Scott*, 45 ECAB 164 (1993).

⁸ *See Sharon R. Bowman*, 45 ECAB 187 (1993).

⁹ *See Frederick D. Richardson*, 45 ECAB 454 (1994).

¹⁰ *Janet D. Yates*, 49 ECAB ____ (Docket No. 95-2859, issued December 19, 1997).

decreased probative value as the comments are general in nature and were not specific regarding dates and events.¹¹

A change in an employee's duty shift may constitute a compensable factor of employment arising in the performance of duty¹² and in this case appellant alleged that, because of the change by Ms. Roth, he could not perform his regularly scheduled job duties. The Board, therefore, finds that this is a compensable factor of employment. The Board further finds that, while the dog bite on February 13, 1994 and driving and working in excessive temperatures are compensable factors of employment as they relate to appellant's regular or specially assigned work duties, the medical evidence regarding these factors is insufficient to establish entitlement as none of the medical reports specifically address these factors.

The Board has held, however, that an emotional condition related to chronic pain and other limitations resulting from an employment injury is covered under the Act.¹³ In this case, the Office has accepted that appellant sustained an employment-related shoulder condition. In an April 13, 1995 report, Dr. Laborati advised that appellant had developed a pain depression syndrome causally related to the employment injury to his shoulders. While this evidence is not sufficient to meet appellant's burden of proof, it raises an uncontroverted inference of causal relationship between appellant's current condition and the accepted employment injury, right shoulder. It is, therefore, sufficient to require further development of the case by the Office.¹⁴

On remand, the Office should further develop the medical evidence by referring appellant and a statement of accepted facts to an appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether appellant's emotional condition is causally related to the accepted employment factor.¹⁵

¹¹ See *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995).

¹² *Elizabeth Pinero*, 46 ECAB 123 (1994).

¹³ See *Clara T. Norga*, 46 ECAB 473 (1995).

¹⁴ See *O. Paul Gregg*, 46 ECAB 624 (1995); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁵ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d)(6) (June 1995) (A claim for an emotional condition must be supported by an opinion from a psychiatrist or clinical psychologist before the condition can be accepted).

The decision of the Office of Workers' Compensation Programs dated April 15, 1997 is hereby set aside and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, D.C.
January 10, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member