

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES J. DOHERTY and U.S. POSTAL SERVICE,
POST OFFICE, Fresno, CA

*Docket No. 98-2521; Submitted on the Record;
Issued May 15, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty; and (2) whether appellant is entitled to continuation of pay.

On June 30, 1997 appellant, then a 36-year-old clerk, filed a traumatic injury claim, alleging that on June 28, 1997 he became stressed when he was threatened by a coworker, Dirk Palsgraff, and became fearful for his well being. He had stopped work on June 29, 1997. Appellant's supervisor indicated that Mr. Palsgraff left the employing establishment at 10:00 a.m. on June 28, 1997 and did not return. By letter dated June 29, 1997, the Office of Workers' Compensation Programs informed appellant of the type evidence needed to support his claim and, following further development, by decision dated September 5, 1997, denied the claim, finding that appellant failed to establish that his emotional condition was sustained in the performance of duty. In a second decision issued that day, the Office found that appellant was not entitled to continuation of pay because his claimed disability was the result of an occupational disease. On October 3, 1997 appellant requested a hearing that was held on February 24, 1998.

At the hearing, appellant testified that Mr. Palsgraff had threatened him on numerous occasions in the past and that supervisors were not responsive to his complaints. He described several incidents in which Mr. Palsgraff glared at him and threatened him and described an incident in July 1997 when Mr. Palsgraff returned to the employing establishment and threatened appellant. Appellant stated he was afraid because Mr. Palsgraff still had an entry badge and could return to the employing establishment. Richard Galleagos, a union steward, testified regarding employing establishment policies toward violence in the workplace. Tim Sager and John Westbrook, coworkers, testified regarding Mr. Palsgraff's threatening behavior toward appellant.

In a decision dated May 18, 1998 and finalized May 19, 1998, an Office hearing representative affirmed the prior decision, finding that there was no evidence of record that Mr. Palsgraff's threats or staring involved work duties and, as such, appellant's emotional reaction was not employment related. The instant appeal follows.

The employing establishment submitted a statement in which Faye Robinson, an acting supervisor, reported that on June 28, 1997 Mr. Palsgraff was upset because he would not be rehired and had gone home ill. She noted that appellant came into the supervisor's office "yelling about Mr. Palsgraff looking at him" and was told that Mr. Palsgraff would not be returning to the employing establishment after which he stomped out of the office. Ms. Robinson noted that on June 29, 1997 she was informed that appellant had requested leave due to stress but had come to work and was told he could not return until cleared by a doctor.

Jean Smith, an acting supervisor, provided a statement that on June 28, 1997 it became apparent that Mr. Palsgraff was upset. After talking with Ms. Robinson, he went home sick. She agreed that appellant later was "screaming and ranting" about Mr. Palsgraff. Ms. Smith reported that on June 29, 1997 appellant telephoned requesting administrative leave which she denied. He stated he was stressed and was told he needed a doctor's statement but showed up for work and was told he could not return until cleared by a doctor. She reported that on June 30, 1997 appellant brought in a doctor's statement advising that he could not work until July 5, 1997.

The medical evidence includes a form report dated June 30, 1997 from Dr. Michael W. Dayton, a Board-certified family practitioner, who diagnosed "an acute stress reaction due to work[-]related situation." He advised that appellant could return to work "when situation resolved" and also stated on the form report that appellant could return to work on July 5, 1997.

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

To establish his claim 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 establishing that the identified compensable employment factors are causally related to his emotional condition.¹ Workers' compensation law is not applicable to each and every injury or illness that is somehow related to 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.² On the other hand, there are situations when an injury has some connection with the

¹ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² 5 U.S.C. §§ 8101-8193.

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.³

The medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. Rationalized medical evidence is medical evidence that 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 the claimant.⁴

The Board has recognized the compensability of physical threats and verbal aggression in certain circumstances,⁵ and in this case, appellant has submitted sufficient evidence to indicate that Mr. Palsgraff acted in a threatening manner toward him. The Board finds, however, that, while appellant established a compensable employment factor, he did not meet his burden of proof to establish that his emotional condition was work related because he did not submit rationalized medical evidence explaining how this factor of employment caused or aggravated his emotional condition. By letter dated July 29, 1997, the Office informed him of the type of medical evidence necessary to establish his claim which was to include a comprehensive medical report from his physician which was to cite the specific work factors or incidents and explain how these contributed to his condition. The only medical evidence submitted consists of a form report from Dr. Dayton who briefly stated that stress at work caused appellant's condition. The report, however, does not contain an opinion relating appellant's condition to specific work factors.⁶

Furthermore, as appellant has not established that he sustained a traumatic employment injury, he is not entitled to continuation of pay.⁷

³ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *See Charles E. Burke*, 47 ECAB 185 (1995).

⁵ *See Anna C. Leanza*, 48 ECAB 115 (1996).

⁶ *See Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ 5 U.S.C. § 8118.

The decision of the Office of Workers' Compensation Programs dated May 18, 1998 and finalized May 19, 1998 regarding whether appellant established fact of injury is hereby affirmed as modified. The decision of the Office dated September 5, 1997 regarding entitlement to continuation of pay is hereby affirmed.

Dated, Washington, D.C.
May 15, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member