

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILFRED J. MAILHOT and U.S. POSTAL SERVICE, DORCHESTER
AVENUE GENERAL MAIL FACILITY, Boston, MA

*Docket No. 99-1276; Submitted on the Record;
Issued November 13, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty as alleged.

On December 10, 1995 appellant, then a 55-year-old manager of customer service operations, filed a notice of occupational disease alleging that he had sustained "anxiety, stress and depression" in the performance of duty from approximately November 1994 to November 13, 1995. Appellant stopped work on November 13, 1995 and did not return.¹

Appellant attributed his condition to an alleged pattern of harassment by Daniel D. Callahan, manager of post office operations, who became appellant's superior in November 1994. Appellant alleged that Mr. Callahan wanted him to remove a subordinate manager, Mr. Daily, against employing establishment regulations, that Mr. Callahan yelled at him in meetings in May 1995, that he was detailed to the Roxbury branch as a punitive measure that, on May 31, 1995, Mr. Callahan ordered him out of an area managers meeting and to return to Roxbury and on November 13, 1995, was offered a "made up" safety position to force him into retirement. Appellant also attributed his condition to a May 1995 assault by a female postal patron who punched him in the mouth and threatened his life when he intervened in a fight between the patron and a postal clerk. He also asserted that he was greatly distressed by jokes Mr. Callahan and Mr. Marr, a postal inspector, made about the assault on November 13, 1995, saying that there was a "woman out here who wants to punch you in the mouth."

Appellant submitted medical evidence in support of his claim from Dr. Walter H. Caskey, an attending Board-certified internist and Dr. Jeffrey Fortgang, an attending clinical psychologist.

¹ In a January 10, 1996 letter, the Office of Workers' Compensation Programs advised appellant of the type of medical and factual evidence needed to establish his claim.

In January 2 and April 8, 1996 reports, Dr. Caskey stated that, on November 21, 1995, appellant presented in a distraught state, relating that he was assaulted by a postal customer, was “ridiculed by his superiors after this event” and had lost his job on November 13, 1995.² Dr. Caskey diagnosed reactive depression with anxiety noting that appellant was totally disabled and referred him for psychiatric treatment. He found a direct relationship between appellant’s condition and the enumerated employment factors.

In an April 17, 1996 report, Dr. Fortgang noted appellant’s history of treatment beginning in December 1995. He diagnosed “major depression,” “focused on his reactions to the job situation, in particular “a series of events ... initiated by Mr. Callahan”

The employing establishment submitted factual evidence. In a May 9, 1996 statement, Mr. Callahan acknowledged that “meetings would get frustrating and voices would raise” but that appellant was not treated differently than other managers. At one staff meeting, ... [Mr. Callahan] stated that [he] would replace all area managers if the performance indicators did not improve.” He noted that one of appellant’s subordinate managers, Mr. Daily, had a poor office driving safety record and thus was suggested for removal. Mr. Callahan noted that, in May 1995, appellant was “detailed to Roxbury” and “was assaulted by a female customer. Mr. Callahan recalled that, on November 13, 1995, appellant was offered a manager’s position for a six-month term in the safety area as a “higher-level manager was needed to control this area.” Appellant then stated that he was going home sick.

On June 10, 1996 appellant was evaluated by Dr. Alfred Jonas, a psychiatrist and second opinion physician, who opined that appellant’s emotional condition was not causally related to the alleged employment factors. Dr. Jonas related appellant’s description of the May 1995 assault: appellant “intervened in a complaint by a postal customer and the customer punched him in the face and threatened to have him killed. [Appellant] says the customer claimed she had people lined up to get him and called him a “fat white honky mother f**ker You’re dead.” Appellant noted that he “continued to feel apprehensive that he will be further attacked or killed,” by “friends and relatives of the woman who hit him,” and that “some postal employees taunted him about the incident. Dr. Jonas also related appellant’s account of Mr. Callahan yelling at him in meetings, transferring him to Roxbury as a punitive measure and on November 13, 1995 assigning appellant to a “made up” safety job. Dr. Jonas diagnosed “[d]epressive syndrome” with paranoia versus delusional disorder ... versus psychotic disorder,” and “[r]ule out personality disorder.” He concluded that “the syndrome from which [appellant] suffers was not caused by factors of employment” as listed on the statement of accepted facts, but to perceptions generated by “personality features that made him subjectively react to routine employment factors.” Dr. Jonas concluded that appellant was able to work normally as a manager, but required continued psychotherapy and medication.³

² In a January 29, 1996 report, Dr. Caskey noted that appellant was disabled due to depression and anxiety related to stress and harassment at work.

³ In an attached work restriction evaluation, Dr. Jonas noted no work limitations.

The Office denied appellant's claim by June 28, 1996 decision, on the grounds that causal relationship was not established, finding that Dr. Jonas represented the weight of the medical evidence as his report was based on a June 4, 1996 statement of accepted facts prepared by the Office. The Office accepted as factual that appellant was in meetings with Mr. Callahan where voices were raised due to "frustration," that appellant "was assaulted by a customer when he was detailed to the Roxbury office" and that Mr. Marr "did joke about a lady who wanted to punch [appellant] in the mouth." The Office found that appellant had not established harassment or discrimination by Mr. Callahan or that his transfer to Roxbury was punitive.

Appellant disagreed with this decision and, in a December 24, 1996 letter, requested a review of the written record by a representative of the Office's Branch of Hearings and Review,⁴ and submitted a report from Dr. J. Matson Ellis, an attending psychiatrist. By decision dated March 24, 1997 and finalized March 26, 1997, the Office hearing representative affirmed the Office's June 28, 1996 decision, again finding that Dr. Jonas represented the weight of the medical evidence.⁵ Appellant disagreed and requested reconsideration by March 18, 1998 letter. He submitted a March 14, 1998 report from Dr. Ellis.

In the March 14, 1998 report, Dr. Ellis noted treating appellant from August 1996 to January 1997 for depression, anxiety, "persistent dysphoria, poor concentration, social withdrawal and preoccupation with feelings of helplessness and worthlessness," rendering him totally disabled from November 13, 1995 to January 17, 1997. Regarding causal relationship, Dr. Ellis stated that appellant's "condition was the direct result of his feeling harassed and demeaned at his job. The principal precipitant ... involved his assault by a woman customer after he had intervened in an altercation between this customer and a clerk in May 1995." Appellant was upset by the incident and the assault became a "source of derision and humiliation from his superiors. At one point in November 1995, [appellant's] superiors taunted him by joking there was a woman customer waiting to 'punch him in the mouth.' This was the last straw for [appellant], upsetting him so greatly that he was unable to return to work after that day." Dr. Ellis also noted appellant's "sense of increasing uncertainty, intimidation and paralysis" at meetings.

By decision dated June 18, 1998, the Office denied modification of the prior decision on the grounds that the evidence submitted was insufficient to warrant such modification, again finding that Dr. Jonas represented the weight of the medical evidence as he had access to the statement of accepted facts and Dr. Ellis did not.

⁴ Appellant initially requested an oral hearing on July 9, 1996, then withdrew this request and asked instead for a review of the written record.

⁵ The hearing representative found that Mr. Callahan's statement that he would "replace all area managers" if performance did not improve was an administrative action without evidence of error or abuse. The Office further found that Mr. Callahan's remarks concerning the removal of one of appellant's subordinate supervisors, Jim Daley and that personnel and disciplinary actions had to go through the Postmaster, were also administrative actions not considered to be in the performance of duty. The Office concluded that, as Dr. Jonas did not attribute appellant's condition to any of the accepted factors in the statement of accepted facts, the fact that the statement of accepted facts was incorrect did not diminish the probative value of his medical opinion.

Appellant disagreed with this decision and, in a September 14, 1998 letter, requested reconsideration. He submitted a July 9, 1996 investigative memorandum containing a July 1, 1996 interview between Mr. Callahan and the employing establishment's EEO (Equal Employment Opportunity) officers.

In the July 9, 1996 memorandum, Mr. Callahan stated that "[o]ut of exasperation [he] raised [his] voice at area meetings, but this was out of frustration for ... failure to correct poor performance." Regarding appellant's assignment to Roxbury, Mr. Callahan stated that Roxbury was "one of the offices under [appellant's] supervision." Appellant was to provide the manager with "needed training" Mr. Callahan stated that he recalled the May 31, 1995 incident in which he ordered appellant out of an area managers meeting and sent him back to Roxbury and that he was "disappointed" and "angry" with appellant, which he felt "was warranted." Mr. Callahan noted that he did not take "any action to force [appellant] to retire, I only wanted him to improve his performance." Mr. Callahan stated that he "never intentionally intimidated or belittled [appellant]. He was not performing up to my expectations and I was trying to get him to improve. [Appellant's] failure to improve was frustrating." Mr. Callahan explained that appellant was "given the option of a temporary reassignment to safety which he declined. ... I also offered him the Summerville Branch which he declined." Mr. Callahan stated that this was not a demotion, as appellant "would have received the same grade and salary regardless of where he was assigned." Mr. Callahan noted that he was "a demanding manager, but [he treated] all subordinates the same." The employing establishment concluded that the "inquiry failed to reveal" evidence of unlawful age discrimination.

By decision dated December 14, 1998, the Office again denied modification on the grounds that the evidence submitted was insufficient to warrant such modification. The Office noted as factual that on November 13, 1995, a "Postal Inspector joked about a lady who wanted to punch [appellant] in the mouth," referring to the May 1995 assault. The Office found that appellant's "reaction to this is considered to be a factor of employment." The Office further found that appellant submitted contemporaneous medical evidence describing the assault. The Office concluded that there was a "conflict of medical opinion in this case" between Dr. Ellis, for appellant and Dr. Jonas, for the government. However, the Office found that referral to an impartial medical specialist to resolve this conflict was not necessary, as Dr. Jonas' report was entitled to greater weight as he had reviewed the statement of accepted facts.

The Board finds that the case is not in posture for a decision due to a conflict in medical opinion.

The Federal Employees' Compensation Act at 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

The issue is whether appellant has established that he sustained an emotional condition due to accepted factors of his federal employment. Appellant has established as factual that Mr. Callahan yelled at appellant in May 1995 meetings, in particular on May 31, 1995, that appellant was assaulted and threatened by a postal customer in Roxbury in May 1995; and that,

on November 13, 1995, Mr. Callahan and Mr. Marr, a postal inspector, ridiculed appellant by saying that there was a woman “waiting to punch [appellant] in the mouth.”

The conflict of medical opinion is between Dr. Ellis, appellant’s psychiatrist and Dr. Jonas the Office referral psychiatrist, as to whether these accepted employment factors caused or contributed to appellant’s emotional condition.

Dr. Ellis submitted a March 14, 1998 report, explaining that the “principal precipitant” of appellant’s diagnosed depression and anxiety “involved his assault by a woman customer after he had intervened in an altercation between this customer and a clerk in May 1995. ... [I]n November 1995, [appellant’s] superiors taunted him by joking there was a woman customer waiting to punch him in the mouth. This was the last straw for [appellant], upsetting him so greatly that he was unable to return to work after that day.” Thus, Dr. Ellis attributes appellant’s emotional condition to the three accepted employment factors of the May 1995 assault, the November 13, 1995 jokes and Mr. Callahan yelling at appellant in meetings, in particular in May 1995.

Dr. Jonas, in his June 10, 1996 report, related in detail appellant’s description of the May 1995 assault by the postal customer in which she struck appellant in the mouth, swore at him and threatened to have him killed. Dr. Jonas stated that appellant had continued anxiety over this incident and feared for his safety. He also noted that appellant was ridiculed by Mr. Callahan over the assault and that Mr. Callahan yelled at appellant in meetings. However, Dr. Jonas concluded that appellant’s condition was not caused by the three accepted factors as stated, but by features of his personality “that made him subjectively react to routine employment factors.”

The case will be remanded so that the Office may refer appellant, together with the case record and a corrected statement of accepted facts, to an appropriate Board-certified specialist for an examination and a rationalized medical opinion to resolve the medical conflict. Following this and other such development the Office deems necessary, the Office shall issue an appropriate decision in the case.

The decisions of the Office of Workers' Compensation Programs dated December 14 and June 18, 1998 are hereby set aside and the case remanded for further development consistent with this decision and order.

Dated, Washington, DC
November 13, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member