

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LARRY R. HARRELSON and U.S. POSTAL SERVICE,  
POST OFFICE, Springfield, OH

*Docket No. 00-1730; Submitted on the Record;  
Issued April 3, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

On August 5, 1998 appellant, then a 51-year-old clerk scheme examiner, filed a traumatic injury claim (Form CA-1) alleging that on that date he experienced extreme mental stress when his supervisor approached him and told him that his safety was in danger because a fellow employee was highly agitated. His claim was accompanied by medical and factual evidence.

In a letter dated August 28, 1998, the Office of Workers' Compensation Programs advised the employing establishment to submit evidence regarding appellant's claim. By letter of the same date, the Office advised appellant that the evidence submitted was insufficient to establish his claim. The Office further advised him to submit additional factual and medical evidence supportive of his claim.<sup>1</sup>

In response, the employing establishment and appellant submitted factual evidence.

By decision dated February 18, 1999, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition in the performance of duty. In a March 5, 1999 letter, he requested an oral hearing before an Office representative.

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<sup>1</sup> In its August 28, 1998 letter, the Office advised appellant that it would handle his claim as an occupational disease claim rather than as a traumatic injury claim since the claimed stressors occurred over more than one work shift.

In a February 17, 2000 decision, the hearing representative affirmed the Office's decision.

Workers' compensation law does not apply 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 the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.<sup>2</sup>

Perceptions and feelings alone are not compensable. Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment.<sup>3</sup> To establish his claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.<sup>4</sup>

Appellant alleged that on August 5, 1998, his supervisor, Charles E. Hawkins, Sr., told him that his life was in danger by Dennis Turley, a coworker. In a September 16, 1998 narrative statement, appellant noted that there had been prior conflicts between himself and Mr. Turley. Appellant related that Mr. Hawkins told him that Mr. Turley was not asked to leave the employing establishment premises because he might come back with a gun and Mr. Hawkins did not want to be there. He further testified that he was becoming more and more agitated. Appellant stated he then left and immediately saw a doctor for his nerves. He described a confrontation between himself and Mr. Turley regarding his comment about Mr. Turley's shoes that occurred when they were first employed at the employing establishment. Appellant also noted that Mr. Turley was offended by the comment and thereafter Mr. Turley was both verbally and physically abusive towards him.

Mr. Hawkins denied appellant's allegations, noting: "I told [appellant] that [his] life was not in danger at least 20 times. I did not walk up to him and say your life is in danger." In an

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<sup>2</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>4</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

accident report, Mr. Hawkins provided that on August 4, 1998 Mr. Turley told him that appellant was making gestures and sounds at him and that he did not like it.<sup>5</sup> Mr. Hawkins stated that he confronted appellant, who denied doing anything. He further stated that appellant and David J. Corcoran, an employing establishment steward, went on break and when they returned, appellant requested a meeting with him. Mr. Hawkins stated that he told appellant he was busy and on the next night appellant again requested a meeting which took place that night. Mr. Hawkins related that Mr. Corcoran told him that appellant's life was in danger and that he disagreed. In an undated narrative statement, Mr. Hawkins reiterated Mr. Turley's allegations, appellant's denial of the allegations and Mr. Corcoran's concern for appellant's safety. Mr. Hawkins stated that he did not approach appellant about his safety in an August 14, 1998 narrative statement. He stated that he approached appellant about making gestures at Mr. Turley and that he should stop. Mr. Hawkins noted that appellant wanted a steward, but before the steward arrived, appellant stated that he and Mr. Turley had run-ins in the past. He denied that appellant needed to take necessary precautions to protect himself.

In support of appellant's allegation, the record reveals an August 9, 1998 witness statement from Mr. Corcoran. In this statement, Mr. Corcoran indicated that during a meeting on August 5, 1998 between 1:00 a.m. and 3:00 a.m., Mr. Hawkins volunteered information regarding Mr. Turley's state of mind as it related to his intentions and hostile feelings towards appellant. He stated that Mr. Hawkins expressed his sincere concern about appellant's health, safety and well being. Mr. Corcoran also stated that Mr. Hawkins was adamant that appellant take any necessary precautions to protect himself from harm. In an October 1, 1998 statement, he stated that during the meeting on August 5, 1998, Mr. Hawkins noted Mr. Turley's violent behavior and his involvement in Mr. Turley's previous removal from the workplace for approximately three months due to this behavior. Mr. Corcoran also noted Mr. Hawkins' statement that he was on the top of Mr. Turley's list and that if Mr. Turley was disciplined, he would "shoot the place up." He stated that Mr. Hawkins told him that he would make sure he was on leave that day. Mr. Corcoran noted Mr. Hawkins' statement that on August 4, 1998 Mr. Turley was so upset with appellant that he almost placed him on emergency suspension.

A September 20, 1998 narrative statement from Catherine L. Bitner, an employing establishment clerk, indicated that she was present during the meeting between appellant, Mr. Hawkins and Mr. Corcoran on August 5, 1998. She stated that Mr. Hawkins stated that Mr. Turley told him he had a deep hatred for appellant, which manifested itself in his behavior towards others. Ms. Bitner noted that Mr. Hawkins stated that nobody wanted to discipline Mr. Turley because he could come back and start shooting people. She further noted Mr. Hawkins' statement that he hoped he was on leave when they talked to Mr. Turley. Ms. Bitner also noted that Mr. Hawkins felt that appellant had a right to fear Mr. Turley. She provided incidents of violence between appellant and Mr. Turley and between Mr. Turley and other employing establishment employees.

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<sup>5</sup> The record reveals a September 3, 1998 statement from Mr. Turley indicating that on August 4, 1998, appellant walked past him and cursed him in a low tone so that no one else could hear him. He stated at that time appellant called him a "son of a b----." Mr. Turley noted that appellant had been doing this for the past 12 to 13 years. He stated that he complained to management because no one should have to put up with this.

The Board finds that the August 5, 1998 incident constitutes a compensable factor of employment. Although there is some discrepancy as to the nature and extent of the conversation between appellant and Mr. Hawkins, the evidence firmly establishes that the conversation took place in the course of employment. The corroborating statements from Mr. Corcoran and Ms. Bitner substantiate appellant's allegation that Mr. Hawkins told him that his safety was in danger by Mr. Turley on August 5, 1998. However, appellant's burden of proof is not discharged by the fact that he has merely identified an employment factor, which may give rise to a compensable disability under the Act. He also has the burden of submitting sufficient rationalized, probative medical evidence to support his allegation that he sustained a specific injury due to the accepted incident, which occurred on August 5, 1998.<sup>6</sup>

The Board finds that appellant failed to submit medical evidence sufficient to establish that he sustained a specific injury causally related to the accepted incident which occurred on August 5, 1998. The record reveals an August 5, 1998 emergency treatment report from Dr. Randall Labaki, an osteopath, providing a history of the August 5, 1998 employment incident and appellant's medical treatment, his findings on physical examination and appellant's future medical treatment. Dr. Labaki diagnosed acute anxiety. Although he noted the August 5, 1998 employment incident, Dr. Labaki failed to specifically address whether appellant's emotional condition was caused by this employment incident.

The record also reveals an August 26, 1998 medical report from Dr. James M. Pomputius, a Board-certified psychiatrist, noting that appellant was suffering the effects of a serious adjustment reaction and was fearful of returning to work. He indicated that due to appellant's symptoms and conditions that created them, he was releasing appellant from work during the period August 7 through September 21, 1998. Dr. Pomputius did not specifically address whether appellant's condition was caused by the August 5, 1998 employment incident.

In a September 21, 1998 medical report, Dr. H. Owen Ward, Jr., a clinical psychologist, indicated that appellant was ready to return to work on September 22, 1998, but that he was withholding this release until the employing establishment provided an environment where appellant would be protected from the alleged abuse of his coworker. He did not specifically address whether the August 5, 1998 employment incident caused appellant's emotional condition.

In his September 22 and 30, 1998 medical reports, Dr. Ward provided a history of the August 5, 1998 employment incident and history of appellant's prior emotional condition and other conditions. He also provided appellant's symptoms, his findings on mental examination and a diagnosis of adjustment disorder with mixed emotional features. Dr. Ward opined that appellant's current emotional condition was directly related to a current stressor and that in the past he responded to a rapid recovery once the stressor was removed. He did not provide specifically identify the stressor that caused appellant's emotional condition and he failed to provide any medical rationale to support his opinion of causal relation.

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<sup>6</sup> *Chester R. Henderson*, 42 ECAB 352 (1991); *Elaine Pendleton*, 40 ECAB 1143 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

Inasmuch as appellant has failed to submit rationalized medical evidence establishing that his emotional condition was caused by the August 5, 1998 employment incident, he has failed to satisfy his burden of proof.

The February 17, 2000 decision of the Office of Workers' Compensation Programs' hearing representative is hereby affirmed.

Dated, Washington, DC  
April 3, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member