

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES R. McPHAIL and U.S. POSTAL SERVICE,
POST OFFICE, Freeport, TX

*Docket No. 99-1763; Submitted on the Record;
Issued December 4, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that he sustained an emotional condition causally related to compensable work factors; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration without merit review of the claim.

The case has been before the Board on prior appeals. In a September 15, 1994 decision, the Board found that appellant did not meet his burden of proof to establish an emotional or physical injury causally related to compensable work factors.¹ In a June 9, 1998 decision, the Board found that appellant had submitted relevant evidence pertaining to his request for reconsideration and remanded the case for decision on the merits of the claim.² By decision dated November 12, 1998, the Office again determined that appellant had not met his burden of proof to establish an injury in the performance of duty. In a decision dated February 24, 1999, the Office denied appellant's request for reconsideration on the grounds that the evidence was insufficient to warrant merit review of the claim. Appellant filed an appeal on April 14, 1999.³

¹ Docket No. 93-1560.

² Docket No. 96-1103.

³ By order dated May 31, 2000, the Board remanded the case for reconstruction of the case record and an appropriate decision. The Office issued a decision denying merit review on October 19, 2000. By order dated April 27, 2001, the Board remanded the case for a decision on the merits, Docket No. 01-323. The Office issued a merit decision dated May 24, 2001. Appellant again requested an appeal, Docket as 01-1628. By order dated July 27, 2001, the Board found that the orders dated May 31, 2000 and April 27, 2001 were void *ab initio*; the case file relevant to Docket No. 99-1763 had been intermingled with another case file, and the Board had retained jurisdiction over the appeal docketed as 99-1763 since the April 14, 1999 filing. The appeals docketed as 01-323 and 01-1628 were dismissed. The Office decisions dated October 19, 2000 and May 24, 2001, issued while the Board had jurisdiction over the case, are null and void. See *Douglas E. Billings*, 41 ECAB 880, 895 (1990).

The Board finds that appellant has not established an emotional or physical injury causally related to compensable work factors.

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.⁴ To establish his claim that he 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.⁵

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 workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁶

As the Board noted in its September 15, 1994 decision, appellant alleged that he sustained an emotional condition, with accompanying chest pains, breathing problems and high blood pressure, as a result of his federal employment. The work factors that allegedly contributed to his condition were primarily related to administrative and personnel decisions of the employing establishment, such as such as denial of transfers and, on January 10, 1992, notification that he was being relocated. Appellant also alleged harassment and reprisal for his wife's filing of an Equal Employment Opportunity complaint.

With his September 1, 1995 request for reconsideration, appellant discussed in detail his claim, providing notes he had taken on specific incidents, and providing documents, such as performance evaluations. The Board is unable, however, to find probative evidence that establishes error or abuse by the employing establishment in a specific administrative action. In addition, the record fails to contain evidence of harassment or retaliation by the employing establishment. Although appellant filed complaints of discrimination and reprisal, there are no findings of harassment, discrimination, or reprisal, witness statements, or other probative and reliable evidence to support appellant's claim. The evidence from the employing establishment, including supervisor's and coworker's statements, do not support appellant's allegations.

⁴ *Pamela R. Rice*, 38 ECAB 838 (1987).

⁵ *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁶ *Lillian Cutler*, 28 ECAB 125 (1976).

In his September 1, 1995 request for reconsideration, appellant identifies “stressors from subordinates” and then lists incidents involving specific coworkers, including disciplinary actions that appellant had taken as a supervisor. Appellant had previously noted incidents with coworkers, but had indicated that he was upset by the lack of support he received from the employing establishment for proposed disciplinary actions against the coworkers. If appellant is alleging that the performance of specific assigned job duties contributed to an emotional condition, he must identify the job duties and clearly explain how he believes they contributed to an emotional condition.⁷ Moreover, there must be probative medical evidence containing a medical opinion on causal relationship between an emotional condition and the performance of the identified job duties.

The Board finds that appellant has not alleged and substantiated a compensable work factor, and therefore the Board will not address the medical evidence.⁸

The Board further finds that the Office properly denied appellant’s request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁹ the Office’s regulations provides that a claimant may obtain review of the merits of the claim by (1) showing that the Office erroneously applied or interpreted a specific point of law, or (2) advancing a relevant legal argument not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.¹⁰ Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.¹¹

In the December 7, 1998 request for reconsideration, appellant restated his allegations of error by the employing establishment, without providing new and relevant evidence on this issue. The Board finds that appellant did not meet any of the requirements of section 10.606(b)(2), and therefore the Office properly denied the request without merit review of the claim.

⁷ As the Board also noted in its September 15, 1994 decision, a claim based on overwork must be supported by the evidence of record.

⁸ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁹ 5 U.S.C. § 8128(a) (providing that “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.”)

¹⁰ 20 C.F.R. § 10.606(b)(2).

¹¹ 20 C.F.R. § 10.608(b); see also *Norman W. Hanson*, 45 ECAB 430 (1994).

The decisions of the Office of Workers' Compensation Programs dated February 24, 1999 and November 12, 1998 are affirmed.

Dated, Washington, DC
December 4, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member