

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD J. HILINSKI and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

*Docket No. 00-378; Submitted on the Record;
Issued February 13, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant sustained an emotional condition in the performance of duty.

On July 24, 1997 appellant, then a 50-year-old manager of consumer affairs and claims, filed an occupational disease claim alleging that in April 1997 he became aware that stress at work resulted in his having an anxiety disorder, panic disorder without agoraphobia, adjustment disorder with mixed anxiety and depressed mood and acute disturbances. Appellant stopped working on May 6, 1997. Appellant eventually resumed working in a nonsupervisory position.

By letter dated November 1997, appellant explained that from 1971 to 1992, he had worked for the employing establishment as a financial analyst. In the middle of 1992, there was "reorganization/downsizing," which resulted in the closing of the regional office where appellant worked. At management's recommendation, appellant obtained a job as the manager of consumer affairs. In his new job, appellant initially supervised approximately six people but then the claims office was also put under his charge and he supervised four more people. Appellant also felt that he was not given real authority over the claims office as another supervisor supervised the claims office and had authority over him. In time, appellant was also asked to supervise a pilot consumer affairs customer satisfaction program, which expanded and required the preparation of more charts, graphs, presentations and memoranda. Appellant stated that he experienced much stress and frustration due to his shifting responsibilities, additional staff and fragmentation of the administrative hierarchy.

To escape the stress, appellant was granted a six-month detail but when he returned the stress was worse. Appellant stated that from 1992 to 1994, he had to work 20 hours of overtime a week and when the customer care center was incorporated, he had to work 25 hours of overtime. Appellant received another three-month detail but again returned to a very stressful environment.

In April 1997 appellant became upset when his supervisor overrode his decision to deny a customer a refund. Appellant stated that this resulted in his first “full-blown panic attack” at work. On May 6, 1997 an Equal Employment Opportunity (EEO) representative, Lorna Lewis, called appellant into her office and informed appellant that a staff member whom he supervised filed an EEO complaint against him alleging that he showed favoritism. Appellant became upset and experienced shortness of breath, chest pains and dizziness. Appellant went to the medical unit but when he left the medical unit and tried to return to his office, four employing establishment police officers appeared and escorted appellant back to the medical unit and then to his office. Appellant stated that he found “the entire series of events on May 7, 1997 were publicly humiliating, emotionally traumatizing and surreal due to the unnecessary and shocking injustice of it all.”

In an attending physician’s report Form CA-20, dated November 12, 1997, Dr. Roberto Panis diagnosed “stress related finding” and checked the “yes” box that the condition was work related.

In a report dated November 14, 1997, Dr. Bruce L. Fechnay, a clinical psychologist, diagnosed post-traumatic stress disorder, generalized anxiety disorder, panic disorder without agoraphobia. He stated that appellant had work-related stressors and referenced the May 7, 1997 incident. Dr. Fechnay stated that his “GAF” rating was:

“(a) ‘40’ during and shortly thereafter the EEO meeting he had with Lorna on [May 7, 1997]. These traumatic and threatening events resulted in; some temporary impairment in communication and cognitive information processing; and major impairment in several areas, such as an inability to function at work due to the dysfunctional person -- work personnel and environmental fit (*i.e.*, reciprocally-related impairment) in judgement and mood [panic attack on [appellant’s] side of the person-work environment fit].”

He stated that on May 8 and 9, 1997 appellant’s “GAF” was a “45” due to the consequent “severe symptoms” of both years of chronic stress and the features of acute stress disorder syndrome resulting from the May 7, 1997 traumatic events and stressors. Dr. Fechnay stated that these symptoms “severely affected his psychosocial occupational functioning while moderately affecting his social functioning outside of work.” He stated that, as of September 17, 1997, appellant’s symptoms were moderate and his GAF was 60 regarding his psychosocial occupational functioning. Dr. Fechnay stated all of appellant’s psychological disorders were due to chronic work-related stress and “at times” due to work-related traumatic stressors. He recommended that appellant be transferred to another office.

By decision dated January 22, 1998, the Office of Workers’ Compensation Programs denied the claim, stating that the evidence of record failed to demonstrate that the claimed condition was causally related to the occupational exposure by proximate causation precipitation, acceleration or aggravation. The Office found that the record established four incidents occurred in the performance of duty: (1) that in 1992 appellant was required to manage the claims office as well as the consumer affairs department which increased his work load and responsibility although his authority was not increased; (2) in 1992 appellant was additionally required to manage the customer care center which further increased his work load and compelled him to

work 20 hours of overtime from 1992 to 1994; (3) in April 1997 appellant became distressed when his supervisor overturned his decision to deny a customer a refund; and (4) on May 7, 1997 appellant became distressed when he was informed that a staff member filed an EEO complaint against him. The Office found that the May 7, 1997 incident when the police escorted him to the medical unit and thereby humiliated him did not occur. The Office found, however, that the medical evidence of record did not establish that the four work-related incidents which did occur caused appellant's medical condition.

On April 8, 1998 appellant requested an oral hearing before an Office hearing representative which was held on March 22, 1999. At the hearing, appellant's attorney stated that she agreed with the Office's finding that the four incidents the Office described were work related but disagreed that they were not compensable. Appellant reiterated the treatment he received at work which resulted in his stress.

Appellant submitted additional medical evidence which included two reports from his treating physician, Dr. Roy G. Fitzgerald, a Board-certified psychiatrist and neurologist, dated January 20 and March 19, 1999. In his January 20, 1999 report, Dr. Fitzgerald addressed the work incidents appellant claimed had distressed him. He described that there was a reorganization in 1992, that appellant had to accept the position of the manager of consumer affairs and his work hours increased and he had to supervise new staff. Dr. Fitzgerald stated that in the spring of 1997, appellant was additionally required to supervise the claims office which increased the staff he had to supervise and the amount of hours he had to work. At the same time, appellant was not given more authority to manage the claims office. He referred to the April 1997 incident where appellant's decision to deny a customer a refund was overturned and caused appellant a panic attack and anxiety. Dr. Fitzgerald also referred to the May 7, 1997 incident when appellant was informed a staff member had filed an EEO complaint against him and that this incident caused appellant another panic attack with headache, pounding heart, dizziness, shortness of breath the "basic inability to concentrate." Further, he noted that on that day appellant was escorted by four police to the medical unit where his blood pressure measured 200/90.

Dr. Fitzgerald diagnosed major depression with anxiety, but stated that his final diagnosis was chronic and post-traumatic stress disorder, "that is lasting more than six months, including relating to the incident of May 7, 1997 because of the symptoms noted above because of the temporal relationship and the lack of any other explainable cause." He prescribed medication and stated that appellant should not go back to work in a supervisory position.

In his March 19, 1999 report, Dr. Fitzgerald reiterated the specific details of appellant's history of injury. He also stated that his final diagnosis of chronic and post-traumatic stress disorder was "a direct and consequent reaction to the incident of May 7, 1997 because of the symptoms noted above, because of the temporal relationship as well as the generation of the symptoms from the work stresses as related to each of the health care professionals" that appellant sought out for help with his difficulty.

By decision dated July 2, 1999, the Office hearing representative affirmed the Office's January 22, 1998 decision. The Office hearing representative stated, however, that contrary to the Office's finding in its decision it found that on May 7, 1997 the incident of four police

escorting appellant to the medical unit occurred but found it was not compensable because it constituted an administrative function and no evidence was shown that management acted unreasonably in having the police escort appellant.

The Board finds that the case is not in posture for 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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.²

To the extent that disputes and incidents alleged as constituting harassment by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.³ However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.⁴

In the present case, the evidence of record establishes that five incidents occurred at work which distressed him: (1) in 1992 management of the claims office was added to his managerial duties and resulted in an increased work load and supervising more staff although his authority was not increased; (2) his additionally being required to manage the customer care center which further increased the number of staff he had to supervise and his work load and compelled him to work overtime 20 hours a week from 1992 to 1994; (3) in April 1997 appellant became distressed when his supervisor overturned his decision to deny a customer a refund; (4) on May 7, 1997, appellant became distressed when Ms. Lewis informed him that an employee whom he supervised file an EEO complaint against him; and (5) appellant became distressed when four employing establishment police escorted him to the medical unit and back to his office.

Inasmuch as appellant's increased supervisory responsibilities, increased work load, an increase in the amount of overtime, management's overturning a business decision he made and a staff member's filing an EEO complaint against him arose out of his regular or specially assigned duties, they are compensable factors of employment.⁵ It was part of appellant's

¹ 5 U.S.C. §§ 8101-8193.

² *Clara T. Norga*, 46 ECAB 473, 480 (1995); see *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

³ *Clara T. Noga*, *supra* note 2 at 481; *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

⁴ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

⁵ See *James W. Griffin*, 45 ECAB 774, 778 (1994); see *Alfred Arts*, 45 ECAB 530, 543 (1994); see also *Kimber A. Stokke*, 48 ECAB 510-12 (1997).

regularly assigned duties to make decisions regarding the customers and that appellant's distress arose from management's overturning his decision denying a customer a refund was a factor arising from his regularly assigned duties.⁶ Further, it was part of appellant's responsibility to supervise the staff and when a staff member filed an EEO claim against him alleging that he showed favoritism, that was a factor arising from his regularly assigned duties.

Appellant's being escorted by four employing establishment police to the medical unit and then to his office, however, is an administrative function or personnel function and as such, is only compensable if appellant shows that management acted unreasonably or abused its discretion.⁷ In this case, appellant did not present sufficient detail to establish that management acted unreasonably because it is unclear why management assigned the police to him.⁸ Therefore, the incident of his being escorted by four employing establishment police to the medical unit and back to his office is not a compensable factor of employment. Appellant did not show that he was harassed in this regard.⁹

However, appellant's burden of proof is not discharged by the fact that he has identified an employment factor which may give rise to a compensable disability under the Act. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the identified compensable employment factors, in this case appellant's increased workload and overtime hours, increased staff to manage but no concomitant increase in authority, appellant's having a business decision overturned and a staff member's filing an EEO complaint against him.¹⁰

In the present case, Dr. Fechnay's November 14, 1997 in which he alludes to appellant's May 7, 1997 meeting with Ms. Lewis and refers to "traumatic and threatening events" which resulted in some temporary impairment in communication, in cognitive information processing and in appellant's ability to work is too vague and general to meet the necessary causal requirement.¹¹ In his May 8 and May 9, 1997 reports, Dr. Fechnay is also general in stating that the "traumatic events/stressors of May 7, 1997" severely affected appellant's psychosocial occupational functioning.

In his January 20 and March 19, 1999 reports, Dr. Fitzgerald described in detail the four compensable factors regarding appellant's employment. His conclusions in both reports combined are somewhat general but state that appellant's work stresses, his symptoms and the May 7, 1997 incident resulted in his chronic and post-traumatic stress disorder. While Dr. Fitzgerald did not specify which incident he meant on May 7, 1997, whether it was

⁶ See *Alberta Kinloch-Wright*, 48 ECAB 459, 461 (1997).

⁷ See *Alfred Arts*, 45 ECAB 530, 543 (1994).

⁸ Appellant's hearing testimony suggests he might have been disoriented.

⁹ See *Clara T. Norga*, *supra* note 2.

¹⁰ *Clara T. Noga*, *supra* note 2 at 482-83; see *William P. George*, 43 ECAB 1159 (1992).

¹¹ See *Durwood H. Nolin*, 46 ECAB 818, 821 (1995); *Elizabeth W. Esnil*, 46 ECAB 606, 621 (1995).

appellant's being informed that an EEO complaint was filed against him or the escort of the four police, by referring to other stresses at work which contributed to appellant's condition and which he elaborated upon at length in his report, his opinion is supportive that appellant's emotional condition arose out of his employment. Further, no medical evidence of record contradicts his opinion. Dr. Fitzgerald's reports, however, are not sufficient by themselves to establish the requisite causation.

While the claimant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.¹² The Office has an obligation so see that justice is done.¹³ The case will, therefore, be remanded for the Office for development of the medical evidence. Following this and any necessary further development, the Office shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated March 22, 1999 is hereby set aside and the case remanded for further consideration consistent with this opinion.

Dated, Washington, DC
February 13, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹² *Dennis J. Lasanen*, 43 ECAB 549-50 (1992); *Robert A. Redmond*, 40 ECAB 796 (1989).

¹³ *Dennis J. Lasanen*, *supra* note 12 at 550; *William J. Cantrell*, 34 ECAB 1233 (1983).