

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHESTER S. STORY and U.S. POSTAL SERVICE,
POST OFFICE, Jacksonville, FL

*Docket No. 00-798; Submitted on the Record;
Issued February 8, 2001*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly rescinded its acceptance of appellant's claim for an emotional condition.

The Office accepted that on April 20, 1981 appellant, then a 56-year-old letter carrier, was observed parked in an unauthorized lunch area in the vicinity of his mother's apartment and was given a letter of warning concerning the extension of his lunch break.

On May 29, 1981 a step 1 grievance hearing was held, at which appellant claimed that he experienced onset of his emotional conditions. The grievance was denied.

The Office accepted that appellant also had several anxiety attacks from May 29 through July 13, 1991 and that each anxiety attack occurred during or after a discussion of his performance or work habits by his supervisor.

The Office also accepted that a new floor plan for the downtown office upset appellant.

The Office initially denied appellant's claim in 1982, finding that his disability was not causally related to factors of his employment. Appellant appealed twice to the Board and ultimately on February 23, 1984 the Board remanded the case for further development.¹ The facts and circumstances of the case are fully set out in the Board's decision and are hereby incorporated by reference.

The Office accepted appellant's claim for depressive disorder, anxiety disorder and avoidant personality disorder on February 22, 1985 on the basis of a medical report from Dr. Jack Rotstein, a Board-certified psychiatrist, who supported causal relation with appellant's employment and an analysis of that report by an Office medical adviser. In a January 28, 1985 report, the Office medical adviser opined that these conditions were related to appellant's

¹ Docket No. 83-387 (issued April 14, 1983); Docket No. 84-194 (issued February 23, 1984).

employment in that he was unable to deal with the people or the job and that he could not return to his former position.²

In 1999 the Office reopened appellant's case for further review on its merits and, applying the legal principles articulated by the Board since 1985 regarding the requirement that the Office make a determination of whether a claimant experienced his or her emotional condition due to compensable factors of their employment, issued a September 8, 1999 notice of proposed rescission of acceptance of appellant's claim on the grounds that he had not implicated a compensable factor of employment in the onset of his emotional difficulties. The Office found that appellant's reaction to receiving a letter of warning was not compensable as disciplinary actions are personnel matters and do not constitute a compensable factor arising out of and in the course of his employment duties. The Office found that appellant's reaction to being monitored and followed was not compensable as it was an administrative and supervisory function and not part of appellant's regular or specially assigned duties and that absent evidence of error or abuse, it was not a compensation factor. The Office found that appellant's reaction to the new floor plan was not compensable as working in a particular environment did not arise out of and in the course of his employment duties. Finally, the Office found that appellant's frustration in not being promoted despite his high test scores was not compensable in that frustration from not being permitted to hold a particular position did not arise out of and in the course of his employment duties and, therefore, was not compensable under the Federal Employees' Compensation Act. The Office advised appellant that he had 30 days within which to submit additional evidence or argument to support that he developed his emotional conditions due to compensable factors of his employment.

Appellant responded by letter dated September 22, 1999, arguing that he was not asked to sign a waiver saying that he would be responsible for any detrimental effect upon himself due to his feelings of inadequacy, caused by his regular or specially assigned duties and that, therefore, his disability came within the coverage of the Act.

By decision dated October 28, 1999, the Office finalized the proposed rescission finding that none of the employment factors implicated in the causation of appellant's emotional condition were compensable factors under the Act.

The Board finds that the Office met its burden of proof to rescind acceptance of appellant's claim for an employment-related emotional condition.

The Board has upheld the Office's authority to reopen a claim at any time on its own motion under section 8128(a) of the Act and, where supported by the evidence, set aside or modify a prior decision and issue a new decision.³ The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be

² The factors appellant alleged as causing his stress included: being followed on his route, which he considered to be harassment; receiving a letter of warning; the letter of warning being upheld at a grievance hearing; having his supervisor counting his mail to monitor his performance, which he also considered to be harassment and dissatisfaction with management who denied him a promotion despite his high test scores.

³ *Eli Jacobs*, 32 ECAB 1147 (1981).

set aside in the manner provided by the compensation statute.⁴ It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation.⁵ This holds true where, as here, the Office later decides that it has erroneously accepted a claim for compensation. To justify rescission of acceptance the Office must establish that its prior acceptance was erroneous based on new or different evidence or through new legal argument and/or rationale.⁶

In the present case, the Office accepted that appellant sustained the emotional conditions, depressive disorder, anxiety disorder and avoidant personality disorder, causally related to his federal employment. The Office initially rejected appellant's claim for compensation in 1982 finding that his disability was not causally related to factors of his employment. The claim was subsequently accepted on February 22, 1985 based on the medical report obtained from Dr. Rotstein and analyzed by the Office medical adviser. The record on appeal reveals that the Office's February 22, 1985 decision focused on the medical evidence and not on the issue of whether the employment incidents implicated by appellant arose in the performance of duty. Following the acceptance of appellant's claim, in 1999 the claims examiner extensively reviewed appellant's contentions concerning his employment, discipline he received and his allegations of harassment and determined that, with respect to the evolution of the case law, appellant's emotional conditions did not arise in the performance of duty.

The claims examiner noted that the Board has explained that to establish that appellant sustained an emotional condition in the performance of duty, he must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized 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.⁷

The claims examiner noted that, since appellant's claim had been accepted, the Board had further clarified the elements necessary to establish an emotional stress claim, indicating that 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 concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition that will be covered under the Act. Generally speaking, when an employee experiences an emotional reaction to his or her regular or specially assigned employment duties or to a requirement

⁴ *Shelby J. Rycroft*, 44 ECAB 795 (1993). Compare *Lorna R. Strong*, 45 ECAB 470 (1994).

⁵ See *Frank J. Mela, Jr.*, 41 ECAB 115 (1989); *Harold S. McGough*, 36 ECAB 332 (1984).

⁶ See *Laura H. Hoexter (Nicholas P. Hoexter)*, 44 ECAB 987 (1993); *Alphonso Walker*, 42 ECAB 129 (1990), *petit. for recon. denied*, 42 ECAB 659 (1991); *Roseanna Brennan*, 41 ECAB 92 (1989), *petit. for recon. denied*, 41 ECAB 371 (1990).

⁷ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

imposed by his employment or has fear or anxiety regarding his or her ability to carry out assigned duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.⁸ Conversely, if the employee's emotional reaction stems from employment matters which are not related to his or her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment and does not come within the coverage of the Act.⁹

The claims examiner noted that noncompensable factors of employment included administrative and personnel actions, which are matters not considered to be "in the performance of duty,"¹⁰ disciplinary actions, absent evidence of error or abuse,¹¹ actions of an administrative agency reviewing or investigating charges or administrative or personnel actions,¹² and unsupported allegations of harassment or harassing behavior.¹³

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.¹⁴ When a claimant fails to implicate a compensable factor of employment the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.¹⁵ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.¹⁶ If the evidence fails to establish that any compensable factor of employment is implicated in the development of the claimant's emotional condition, then the medical evidence of record need not be considered.

In this case, upon reopening of appellant's case the Office found that none of appellant's alleged factors of employment implicated in the causation of his condition were compensable

⁸ *Donna Faye Cardwell*, *supra* note 7, *see also Lillian Cutler*, 28 ECAB 125 (1976).

⁹ *Id.*

¹⁰ *See Joseph Dedonato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

¹¹ *See David G. Joseph*, 47 ECAB 490 (1996).

¹² *Blondell Blassingame*, 48 ECAB 130 (1996).

¹³ *Id.*; *see also David G. Joseph supra* note 11; *Helen Casillas*, 46 ECAB 1044 (1995).

¹⁴ *See Barbara Bush*, 38 ECAB 710 (1987).

¹⁵ *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹⁶ *See Gregory J. Meisenberg*, 44 ECAB 527 (1993).

factors of employment under the Act, such that its original acceptance of appellant's case was erroneous.

The Board agrees with that assessment and notes, regarding appellant's alleged stressors, that in *Joseph* it explained that without evidence submitted of error or abuse disciplinary actions or letters as in this case are merely administrative actions and are not part of appellant's regular or specially assigned duties.¹⁷

In *Blassingame* it explained that the actions of an administrative agency or body in reviewing and investigating charges and/or administrative actions or determinations and in rendering decisions do not relate to appellant's assigned duties and that, therefore, any reaction to such proceedings is not compensable under the Act.¹⁸

In *Michael Ewanichak*¹⁹ the Board explained that monitoring a mail route or an employee's performance of his assigned letter carrier duties is an administrative function of the employer and is not a compensable factor unless there is affirmative evidence that the employer erred or acted abusively in the matter. Appellant has presented no such evidence in this case.

In *O. Paul Gregg*²⁰ the Board explained that, regarding appellant's stress reaction to the new floor plan, a claimant's emotional reaction to employment reorganization or to changes in procedures and operations do not relate to the specific requirements of the employee's regular or specially assigned duties and, therefore, do not arise in the performance of duty. Such a reaction relates to the desire to work in a particular environment, which is not a compensable factor under the Act.²¹

The Board has also found that monitoring a mail route or an employee's work floor performance is an administrative function of the employer and is not a compensable factor unless there is affirmative evidence that the employer erred or acted abusively in the matter.²² Appellant has presented no such evidence in this case.

Finally, the Board has explained that an employee's dissatisfaction with perceived poor or improper management or with the management's failure to promote him constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is, therefore, not compensable under the Act.²³

¹⁷ See *supra* note 11.

¹⁸ See *supra* note 12.

¹⁹ 48 ECAB 364 (1997).

²⁰ 46 ECAB 624 (1995).

²¹ *Clara T. Norga*, 46 ECAB 473 (1995).

²² See *supra* note 19.

²³ See *Donna J. DiBernardo*, 47 ECAB 700 (1996); *Michael Thomas Plante*, 44 ECAB 510 (1993).

As the factors appellant articulated in his original claim have all been demonstrated, upon reevaluation under the law as it has developed, to be noncompensable factors not arising out of and in the course of the performance of his regular or specially assigned duties, he has failed to implicate a compensable factor of employment in the causation of his emotional conditions, such that the Office's rescission of its prior acceptance is proper and correct.

Accordingly, the decision of the Office of Workers' Compensation Programs dated October 28, 1999 is hereby affirmed.

Dated, Washington, DC
February 8, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member