

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WAYNE HERBST and U.S. POSTAL SERVICE,
POST OFFICE, Park Falls, WI

*Docket No. 00-1375; Submitted on the Record;
Issued February 21, 2001*

DECISION and ORDER

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

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty on November 14, 1995.

On October 28, 1998 appellant, then a 58-year-old letter carrier filed a claim for an occupational disease alleging that he suffered from emotional distress after physicians employed by the employing establishment diagnosed him with a psychiatric condition and determined him unfit for duty. Appellant explained that, during a November 14, 1995 meeting with Denise DeBeukelar, his supervisor, she informed him that Drs. Walter Davidson and Andrew Seter had diagnosed him with a psychiatric condition, after conducting a fitness-for-duty examination under the direction of the employing establishment. Ms. DeBeukelar reportedly provided appellant with the results of the examination and informed him that his condition rendered him unfit for duty.¹ Appellant took administrative leave from June 5, 1995 to January 29, 1996, when he was terminated.

In a letter dated December 2, 1998, the Office of Workers' Compensation Programs requested that appellant submit additional information, including a detailed description of the employment-related conditions or incidents believed to have contributed to his illness. The Office afforded appellant 30 days to respond, however, no further information was submitted.

By decision dated April 12, 1999, the Office denied appellant's claim, finding that he failed to establish that he sustained an injury on November 14, 1995, as required by the Federal Employees' Compensation Act. The Office noted that a letter dated December 2, 1999 advised appellant that additional information was necessary to support his emotional condition claim, however, no additional evidence was received. The Office, therefore, found that appellant failed to demonstrate an injury within the meaning of the Act.

¹ The medical results of the fitness examination in which appellant referred in his occupational disease claim were not submitted.

The record reflects that appellant did not receive the April 12, 1999 decision, postmarked April 13, 1999. The decision was returned to the Office with a notation by the postal service that it had been received without an address.

Appellant submitted a letter dated May 29, 1999 to the Office, containing additional information in response to the December 2, 1998 request. Appellant stated that his emotional distress did not arise from his assigned duties, overtime or stress from work. He argued that Dr. Davison and Dr. Seter determined that he was unfit for duty without specifying any basis for their decisions and that it was their false and baseless claim that caused him emotional distress and missed work.

In response to the new evidence, the Office conducted a merit review of the April 12, 1999 decision. Upon review, the Office denied modification of the April 12, 1999 decision, denying appellant's claim. The Office found that the factor identified by appellant as the cause of his emotional condition, namely an "unfit-for-duty" determination was not considered a compensable factor of employment.

On appeal appellant argues that he suffered an emotional distress "because of the lies and fabrications from the physicians." Appellant stated that he made numerous requests to the employing establishment and physicians for medical information and other justification for determining him unfit for work, however, no information was received.

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty on November 14, 1995.

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 Act.² 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.³

To establish appellant's claim that he has sustained an emotional condition in the performance of duty, appellant 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 factor is causally related to his emotional condition.⁴ Rationalized

² 5 U.S.C. §§ 8101-8193.

³ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.⁵

The initial question is whether appellant has alleged compensable employment factors as contributing to his condition.⁶ Thus, part of appellant's burden of proof includes the submission of a detailed description of the specific employment factors or incidents which appellant believes caused or adversely affected the condition for which he claims compensation.⁷ If appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.⁸

Appellant attributed his emotional condition to a medical determination made by Drs. Davidson and Seter, which rendered him unfit for duty. He alleged that it was their false and baseless determination; that he suffered from a psychiatric condition, which led to his emotional distress. Appellant has not alleged that any working conditions or incidents which caused or contributed to his condition. In fact, appellant stated in his May 29, 1999 letter to the Office that his condition did not arise from his assigned duties, overtime or stress from work.

The Board finds, under the circumstances of this case, that appellant has not shown how his emotional condition arose in and out of the performance of duty. The factor which appellant identified the determination made by the employing establishment's physicians regarding his fitness for work, is not a compensable factor of employment. In this case, appellant has failed to establish error or abuse on the part of the employing establishment's physicians in the performance of their examination. Rather, appellant's allegations pertain to the conclusion reached by the physicians, who found him not fit for duty which formed the basis for his discharge from work. The Board finds that those administrative actions have not been established as abusive or in error. As appellant has not substantiated any compensable employment factors, the Office properly denied his claim.

⁵ See *Martha L. Watson*, 46 ECAB 407 (1995); *Donna Faye Cardwell supra* note 4.

⁶ *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

⁷ *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

⁸ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

The decisions of the Office of Workers' Compensation Programs dated October 27 and April 12, 1999 are hereby affirmed.

Dated, Washington, DC
February 21, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member