

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GERALD A. GALLAGHER and U.S. POSTAL SERVICE,  
POST OFFICE, Denver, CO

*Docket No. 00-1698; Submitted on the Record;  
Issued June 5, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant has established a *prima facie* claim.

On December 23, 1999 appellant, then a 36-year-old mailhandler, filed a claim alleging that harassment by management gave rise to his stress condition. John M. Meding provided a statement, which described the events of December 23, 1999. Mr. Meding stated that he attended a due process meeting on December 23, 1999 at 1721 where Rex Frisbee accused appellant of sexually harassing Barry Young, Todd Tetrault and Jewell Jacobson. When appellant asked Mr. Frisbee to explain, he responded that he did not have the time. Appellant was informed that management was going to remove him from his duties. Mr. Meding stated that all of this greatly upset appellant.

In a December 30, 1999 letter, the employing establishment issued a response to appellant's claim. It stated that Mr. Frisbee was conducting a due process meeting with appellant. Due process is an administrative process that management completes because an employee has violated postal regulations, policies or procedures. It noted that appellant had not filed a grievance of the December 23, 1999 meeting and there was no supporting medical documentation or factual accounts of what happened to support appellant's claim.

By letter dated January 7, 2000, the Office of Workers' Compensation Programs informed appellant of his responsibility to provide factual and medical evidence to substantiate his claim. The Office requested that appellant explain what he was claiming, whether a traumatic injury or an occupational illness and to explain exactly what happened. He was asked to submit statements from witnesses, copies of grievances and Equal Employment Opportunity (EEO) complaints filed and a personal statement regarding past psychiatric problems and EEO complaints filed, his personal life issues and the immediate effects of the injury and his actions immediately afterwards. Appellant was also advised that medical evidence containing a diagnosis and the physician's reasoned opinion regarding the relationship between the condition and specific employment duties was required.

In his response, which the Office received on January 31, 2000, appellant answered “yes” to the question of whether he was filing a traumatic injury or an occupational illness claim. He provided additional factual information, but the requested medical evidence was not received.

Appellant stated that the immediate effects of his injury were that he felt anxiety, stress, threatened and could no longer think clearly and that he immediately requested sick leave. He stated that he had requested medical attention through the employing establishment, but was refused medical treatment on two occasions. Appellant denied any recent problems in his personal life and stated that he had no other employment difficulties. He further indicated that he never had any prior emotional problems or treatment. Copies of a grievance surrounding the December 23, 1999 meeting revealed that appellant was being charged with sexual harassment against a fellow coworker and appellant was immediately reassigned until the charges were investigated. Additional grievances to return appellant to his position and issues involving appellant’s emergency placement, filing of his workers’ compensation claim and obtaining medical treatment were also filed. Statements concerning the December 23, 1999 meeting were also submitted.

By letter dated January 18, 2000, the employing establishment reiterated its position that due process meeting was an administrative process used by management to take corrective action against employees and was not compensable under the Federal Employees’ Compensation Act. It further stated that, since appellant has not provided substantial medical documentation to prove that an emotional condition prevailed, the claim should be denied.

By decision dated February 10, 2000, the Office denied appellant’s claim as the evidence submitted failed to establish fact of injury. The Office noted that appellant was advised of the deficiencies in the claim and afforded the opportunity to provide supportive evidence.

The Board has duly reviewed the case record in the present appeal and finds that appellant failed to establish a *prima facie* claim.

An employee seeking benefits under the Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>2</sup> These are essential elements of each compensation claim

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup> As part of this burden, the claimant must present rationalized medical evidence, based upon a specific and accurate history.<sup>4</sup> Rationalized medical evidence is evidence, which relates a work incident to a claimant's condition, with stated reasons of a physician.<sup>5</sup>

In the instant case, appellant did not provide the required factual and medical evidence to establish a *prima facie* claim for compensation.

While appellant submitted a factual statement setting forth allegations pertaining to a meeting with management on December 23, 1999, the record was devoid of any medical evidence relating to his claim that an emotional condition was caused by or aggravated by this meeting. The Office provided appellant with opportunities to cure the deficiencies in the claim, but at the time of the February 10, 2000 decision, he failed to submit any medical evidence pertaining to his claim of injury on December 23, 1999. Appellant, therefore, has failed to meet his burden of proof to establish a *prima facie* claim that he sustained an employment injury as a result of the meeting of December 23, 1999.

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<sup>3</sup> The Office's regulations clarify that a traumatic injury refers to injury caused by a specific event or incident or series of events or incidents occurring within a single workday or shift, whereas an occupational disease refers to injury produced by employment factors which occur or are present over a period longer than a single workday or shift. See 20 C.F.R. §§ 8101 10.5(a)(15), (16).

<sup>4</sup> *Joseph T. Gulla*, 36 ECAB 516 1985.

<sup>5</sup> *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990); *Edgar L. Colley*, 34 ECAB 1691, 1696 (1983).

The decision of the Office of Workers' Compensation Programs dated February 10, 2000 is affirmed.<sup>6</sup>

Dated, Washington, DC  
June 5, 2001

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>6</sup> Appellant filed his appeal with the Board on April 4, 2000. Also on April 4, 2000 appellant requested reconsideration before the Office of the Office's February 10, 2000 decision and submitted additional medical evidence in support of his request. In a decision dated April 19, 2000, the Office found the additional evidence sufficient to support modification of the prior decision, but found that appellant did not sustain an injury within the performance of duty. The Office's April 19, 2000 decision is null and void as both the Board and the Office cannot have jurisdiction over the same issue in the same case. 20 C.F.R. § 501.2(c); *Douglas E. Billings*, 41 ECAB 880 (1990). The Board further notes that the additional evidence submitted by appellant after the Office's February 10, 2000 decision, the last decision issued by the Office prior to appellant's appeal to the Board, represents new evidence which cannot be considered by the Board. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of the final decision before the Board. 20 C.F.R. § 501.2(c).