

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EWALD HEMINGWAY and U.S. POSTAL SERVICE,  
POST OFFICE, Stamford, CT

*Docket No. 00-388; Submitted on the Record;  
Issued May 4, 2001*

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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 April 14, 1998 appellant, then a 48-year-old maintenance support clerk, filed a notice of occupational disease, alleging that he suffered from depression and stress due to factors of his federal employment. Appellant stopped work on July 30, 1997 and has not returned.

In a narrative statement, appellant identified work factors he believed had caused or contributed to his emotional condition. He stated that, beginning in March 1997, he became responsible for operating the stockroom when a coworker was transferred out. Appellant alleged that, with the increased work, he became backlogged and increasingly stressed about his inability to complete his job responsibilities. He injured his back on April 10, 1997,<sup>1</sup> while at work and was supposed to perform only light duty after that date, but no light duty was provided to him. Appellant related that he was off work for two months following a back injury on July 30, 1997, during which time his emotional condition was worsened by financial difficulties and problems associated with processing his compensation claim. Appellant alleged that his increased back pain also resulted in depression and despair. As a result of these events, appellant contends that he became suicidal and was referred by his attending orthopedic surgeon for a psychological consultation. He has been under psychiatric treatment since February 1998.

The record indicates that appellant received a seven-day suspension on August 20, 1997 for refusing to follow instructions.

In a statement received by the Office of Workers' Compensation Programs on April 23, 1998 appellant's supervisor, Anthony M. Venezio, noted that appellant was not the only maintenance support clerk on duty or working overtime. He denied that there was a backlog in

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<sup>1</sup> Appellant incorrectly listed the date of injury as March 10, 1997 instead of April 10, 1997.

the stockroom and advised that appellant was able to work at his own pace. Mr. Venezia noted that appellant had been on light duty from April 10 to May 5, 1997 and could have requested additional light duty if necessary. He advised that appellant had been provided safety lifting training on April 21, 1997 and that he was encouraged to seek help in lifting heavy equipment when necessary. It was his opinion that appellant's back injury on July 30, 1997 was the result of appellant performing an unsafe act against the direction of the employing establishment.

In a second narrative statement, appellant elaborated on his duties in the stockroom from February 1997 until August 1997. He alleged that during that period he worked alone and was responsible for completing the tasks normally assigned to one person. Appellant noted that occasionally a truck would deliver supplies and even though he requested help to unload the heavy objects, there was no one available to assist him. He stated that he often had to check the inventory and perform preventative maintenance in other locations and that, during the periods he was away from the stockroom another person would handle his duties. Appellant complained that the other person did not know where many stockroom items were located, such that when he returned to his duty station there was often a backlog of mechanics' requests for parts. He also indicated that on occasion he would be on the phone ordering parts or pricing parts and a delivery would arrive which he was unable to unload and shelf. This resulted in complaints by employees working after him that he did not fulfill his responsibility to put away items during his shift.<sup>2</sup>

In a May 26, 1998 witness statement, a custodian identified as William B. Soltesz stated that appellant worked alone in the stockroom after February 1997.

In a witness statement dated June 3, 1998, Sandra Martinez noted that appellant was working in the stockroom on April 10, 1997 and did not appear to be on light duty at that time.

In a decision dated October 27, 1998, the Office denied appellant's claim on the grounds that he failed to allege that his emotional condition was causally related to compensable factors of his federal employment.

Appellant requested an oral hearing, which was held on April 20, 1999.

In a July 8, 1999 decision, an Office hearing representative affirmed the Office's October 27, 1998 decision.

The Board finds that this case is not in posture for a decision.

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally

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<sup>2</sup> Appellant also alleged that he experienced stress when his supervisor used his postal service credit card to order items without his knowledge.

related to his emotional condition.<sup>3</sup> Rationalized 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. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.<sup>4</sup>

Workers' compensation law is not applicable 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. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.<sup>5</sup> On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.<sup>6</sup> An employee's charges that he or she was harassed or discriminated against is not determinative of whether or not harassment or discrimination occurred.<sup>7</sup> To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>8</sup> Likewise, an employee's frustration over not being able to work in a particular environment, with particular hours of attendance, is not a compensable factor of employment.<sup>9</sup>

Generally, reactions to actions taken in an administrative capacity are not compensable. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter may afford coverage.<sup>10</sup>

In this case, appellant contends that his emotional condition was caused or aggravated by having his government-issued credit card used by his supervisor without his permission and by actions of the employing establishment in suspending him for seven days for unsafe safety practices. These allegations do not relate to appellant's specially assigned job duties and fall into the category of a reaction to administrative functions of the employer. As noted above,

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<sup>3</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> *Joel Parker, Sr.*, 43 ECAB 220 (1991).

<sup>7</sup> *William P. George*, 43 ECAB 1159 (1992).

<sup>8</sup> See *Anthony A. Zarcone*, 44 ECAB 751 (1993); *Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>9</sup> See generally *Vaile F. Walders*, 46 ECAB 822 (1995).

<sup>10</sup> *Frederick D. Richardson*, 45 ECAB 454 (1994); *Abe E. Scott*, 45 ECAB 164 (1993).

administrative actions or personnel matters undertaken by the employing establishment are not covered under the Act.<sup>11</sup> Because there is no evidence of abuse, error, or unreasonable behavior on behalf of appellant's supervisor in his decision to use appellant's government issued credit card to order items for the stockroom or his decision to suspend appellant for seven days for failure to follow directions, the two factors cited by appellant are not compensable.

Appellant, however, also alleges that he was required to perform extra duties when a coworker was transferred out and he became responsible for operating the stockroom. The employing establishment denies that appellant's duties increased, but acknowledges that a coworker was transferred out of the stockroom in February 1997 and that appellant worked alone in that area from February 1997 until July 1997.

The Board has held that conditions related to stress resulting from situations in which an employee is trying to meet his or her position requirements are compensable.<sup>12</sup> In this case, the fact that the stockroom was initially run by two employees and then had to be operated alone by appellant. Appellant described the date he was required to perform including unloading supplies, checking inventory and addressing backlogged requests for parts. The Board, therefore, finds that appellant's increased workload is a condition of his assigned duties and is, therefore, considered a compensable factor of employment.

Appellant alleged that conditions of stress and depression are causally related to his regular and specially assigned duties, the Board will remand this case for consideration of the medical evidence. After further medical development as deemed necessary, the Office shall issue a *de novo* decision as to whether appellant established a causal relationship between her emotional condition and factors of her federal employment.

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<sup>11</sup> *Id.*

<sup>12</sup> *Richard H. Ruth*, 49 ECAB 503 (1998).

Accordingly, the decision of the Office of Workers' Compensation Programs dated July 8, 1999 is hereby vacated and the case is remanded for further consideration.

Dated, Washington, DC  
May 4, 2001

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member