

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALI MESCHI and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, City of Industry, CA

*Docket No. 01-515; Submitted on the Record;
Issued November 9, 2001*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an emotional condition while in the performance of duty, causally related to compensable factors of his federal employment.

The Board has given careful consideration to the issue involved, the contentions of the parties on appeal and the entire case record. The Board finds that the September 19, 2000 decision of the Office of Workers' Compensation Programs' hearing representative is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.

On appeal appellant, through his representative, argues that the alleged ethnic-related discrimination and harassment were established by the medical reports presenting appellant's version of the facts, and that the hearing representative's denial of subpoenas for four hostile witnesses denied appellant his right to a fair hearing, as he could not cross-examine these witnesses.

The Board finds, however, that medical evidence such as that submitted by appellant is not probative of factual issues in establishing a fact-of-injury claim,¹ and that factual evidence establishing and corroborating any specific incidents of harassment or discrimination was not forthcoming. The Board further finds that the requested subpoenas were not required as any testimony that they could have offered could have been obtained through written statements.²

¹ See, e.g., *Claudia L. Yantis*, 48 ECAB 495 (1997); (to determine whether a claimant sustained an emotional injury in the performance of duty, she must first submit sufficient evidence to establish that she actually experienced the employment incident(s) of harassment as alleged, and only thereafter will medical evidence establishing that a personal injury occurred be considered.)

² See 20 C.F.R. § 10.619 which states: Subpoenas are issued for witnesses only where oral testimony is the best way to ascertain the facts. Issuance is within the discretion of the hearing representative.

The decision of the Office of Workers' Compensation Programs dated September 19, 2000 is hereby affirmed.

Dated, Washington, DC
November 9, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member