

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GORDON WILSON and U.S. POSTAL SERVICE,
POST OFFICE, Lansing, MI

Docket No. 01-52; Submitted on the Record;
Issued September 14, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established a causal relationship between the claimed emotional condition and the accepted factors of his federal employment.

On May 19, 1999 appellant, then a 47-year-old label clerk filed an occupational disease claim alleging that on or about April 26, 1999 he developed a stress condition while performing his federal duties.¹ He did not work from April 26 through May 18, 1999. Appellant returned to regular duties on May 19, 1999.

In support of his claim, appellant submitted a narrative statement describing the factors of employment, which he believed, caused his stress condition. He alleged that his work-related stress resulted from extra work and pressure placed on him by management during the Office installation of a tray management system (TMS). Appellant asserted that he was arbitrarily assigned additional duties with specific timeframes, in addition to his regular duties, which caused his work to become overwhelming. He further asserted that the directives issued by management were sometimes vague and confusing regarding implementation of the new system, such as: "you are the label clerk, you figure it out" and that he suffered stress and aggravation because of lack of advanced planning. Appellant alleged that he often times followed instructions given by supervisor Dorothy Monroe, which she would later change and that when he would perform a directive given by management related to the system, he would be verbally assaulted and humiliated by Ms. Monroe. He further alleged that upper management arbitrarily changed his pay location and leave supervisor when he attempted to submit his medical documentation for work-related stress. Appellant also alleged that management failed to properly submit his 3971 form, which he submitted in order to take leave without pay. He

¹ The Board notes that appellant had a prior history of depression and had filed two previous claims with the Office of Workers' Compensation Programs for injuries sustained on November 13, 1996 and December 31, 1997 (claim numbers 09-0422541 and 09-0436638), which were accepted for a concussion and minor injury respectively.

indicated that as a consequence, he was forced to use his annual leave, which he had been saving for an annual vacation.

Appellant also submitted a medical report dated May 10, 1999 from Jeffrey Brenner, physician assistant to Dr. Susan Courtnage, a Board-certified internist whose signature block appeared on the report. Mr. Brenner stated: "It is my opinion that the patient's depression and agitation secondary to stress was caused or aggravated by his employment."

In letters dated June 8, 1999, the Office advised appellant and the employing establishment that additional information was needed in order to make a determination on the claim.

Appellant submitted additional statements regarding his work environment and overtime worked to complete job duties, and the effect these factors had on his mental health. He also submitted two reports from Dr. Courtnage dated June 21 and 25, 1999. In the June 21, 1999 attending physician's report, Dr. Courtnage diagnosed appellant's condition as reactive anxiety and depression and stated that the depression was secondary to stress. In her June 25, 1999 report, Dr. Courtnage indicated that appellant first sought treatment on April 26, 1999 with her partner, Mr. Brenner, with whom she had discussed appellant's physical, psychological and emotional histories. Appellant had related to Mr. Brenner the same history; that unreasonable work volumes and performance expectations caused him to feel overwhelmed and agitated. She indicated that Mr. Brenner felt that appellant needed a break away from his work-related stress and she opined that appellant's stress was principally related to this condition.

The employing establishment submitted documentation including appellant's job description, information related to the activation of the TMS appellant and the employing establishment regarding duties involving mailing labels and the effect the new system will have on previous labeling procedures,

Upon review of the evidence, the Office made a finding of fact regarding the events and circumstances implicated in the claim, which constituted compensable factors of employment. The Office determined that the meeting of timeframes and the performing of additional work because of the new TMS were said to have arisen in and out of the course of appellant's regular day to day activities and were compensable factors of employment. The Office further determined that any frustration appellant experienced and reaction in having to relabel the carousel several times, as well as, the unforeseen variables in the new system were said to have arisen in and out of the course of his employment. Further, the Office found that the working of required overtime also arose in and out of the course of appellant's employment and was a compensable factor of his employment.

The Office thereafter referred appellant, along with a statement of accepted facts outlining factors of employment found to be within the scope of the performance of duty, to Dr. Jacob Zvirbulis, a Board-certified psychiatrist to determine if appellant sustained a work-related emotional condition. In his report dated November 12, 1999, Dr. Zvirbulis reported that appellant felt overwhelmed due to what he considered impossible work volumes and expectations. He stated that appellant found his work boring and felt that it was difficult to get promoted. Dr. Zvirbulis further related that appellant felt his expectations changed frequently,

that he had not always been given adequate direction, and nevertheless was criticized for poor work. He stated that appellant experienced headaches, difficulty sleeping, agitation and depression and was put on sick leave by his family physician from April 26 to May 2, 1999. Dr. Zvirbulis listed in the diagnosis section of his report that, following his interview with appellant, he determined that appellant had an occupational problem on Axis I and had no specific diagnosis on Axis II. He indicated that appellant could work without restrictions and stated that if appellant was discontent with his work situation, he was capable on a psychiatric basis of seeking other employment or pursuing his complaints through appropriate administrative channels.

By decision dated November 22, 1999, the Office denied appellant's claim on the grounds that the evidence of record failed to establish a causal relationship between the claimed emotional condition and factors of his federal employment. The Office found that the evidence did not contain a well-reasoned explanation of how appellant's emotional condition was related to compensable employment factors and that Dr. Zvirbulis determined that appellant's feelings of anger and anxiety were attributed factors outside the scope of employment.

In a letter postmarked December 13, 1999, appellant disagreed with the Office decision and requested an oral hearing.

Upon preliminary review, on August 20, 2000, an Office hearing representative determined that the case was not in posture for a hearing, set aside the November 22, 1999 decision and remanded the case back to the Office for further development. The Office hearing representative found that Dr. Zvirbulis' report was deficient in that he failed to give a diagnosis, failed to address whether appellant was disabled as a result of employment factors in April 1999 and failed to address whether employment factors caused or aggravated appellant's condition. Therefore, the Office requested an amplifying report from the physician addressing these issues.

On remand, the Office requested that Dr. Zvirbulis submit an amplifying report in accordance with the August 20, 2000 hearing representative decision. In the new report dated June 12, 2000, Dr. Zvirbulis stated:

"As regards a specific psychiatric diagnosis, these are listed on page 6 of my previous report and include currently recognized diagnostic descriptions ... as published by the American Psychiatric Association.... If there were other diagnostic criteria you require to be utilized I would be happy to review them and provide further comments. "As to whether [appellant] was disabled as a result of the accepted factors of his federal employment in April 1999, I provided the opinion that the examinee could work from a psychiatric standpoint without restrictions as of October 25, 1999.... I have no way of determining whether [appellant] was disabled from the time period of April 26 through May 18, 1999 ... an assessment of his earlier condition would require a historical review based on his complete psychiatric medical record and this was not requested at the time he was seen in October 25, 1999. If this is felt to be necessary I would be happy to review records from the time period in question and provide ... my opinion.

"In a similar fashion, I am not able to provide ... an opinion as to whether [appellant] continues to suffer from any residuals from an employment-related emotional condition since I have not seen [appellant] during the past seven months."

On August 25, 2000 the Office denied appellant's claim on the grounds that the evidence of record failed to demonstrate a causal relationship between the claimed emotional condition and the accepted factors of appellant's federal employment. The Office noted that it obtained an amplifying report from Dr. Zvirbulis on remand of the case, and determined that he had not changed his original opinion that appellant did not suffer from an emotional reaction because of accepted work factors. The Office noted that appellant was angry because of events that were not compensable factors of his employment; namely, the boredom he felt about his work; expectations which frequently changed and were difficult to understand, and criticism of his work performance. The Office therefore found that a causal relationship between the claimed emotional condition and the accepted factors of appellant's employment had not been established.

The Board finds that this case is not in posture for a decision regarding whether appellant established that he sustained an emotional condition causally related to accepted factors of employment.

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 related to his emotional condition.² Workers' compensation law is not applicable to each and every injury or illness that is somehow related to 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 Act. 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.³

In the instant case, the Office accepted that appellant established that his requirement to meet timeframes and perform additional work because of the new TMS arose in and out of the course of his regular day to day activities and were compensable factors of employment. The Office further accepted that any frustration appellant experienced and reaction in having to relabel the carousel several times were compensable, as well as, the unforeseen variables in the new system which it found arose in and out of the course of his employment. Further, the Office

² *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

accepted that appellant being required to work overtime arose in and out of the course of appellant's employment and was a compensable factor of his employment.

Appellant also alleged that management failed to provide appropriate training or provide appellant with clear instructions on how to perform assigned tasks in order to meet timelines. He further alleged that Ms. Monroe who oversaw his work on the new system demanded to know when TMS duties would be completed, while his regular supervisors would also demand to know when his regular duties would be completed. Appellant also alleged that Supervisor Monroe would request that appellant perform duties outside of his TMS job description and that when he requested assistance, he usually only received help when the task was nearly completed. He further alleged that on occasion, he would be given additional assignments that were to be completed in the same day. Appellant also alleged that on one occasion, management failed to properly plan and stock the required TMS labels for use in advance, which contributed to his stress condition.

The stress which appellant alleged developed as a result of the work situations described above amounts to appellant's reaction to an additional work assignment, which necessitated a change of work schedule and duties. The Board has held that disabling conditions resulting from an employee's desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.⁴

Appellant also alleged that on one occasion he was approached by Ms. Monroe who questioned whether appellant felt that too much pressure was being placed on him regarding implementation of the new system. Appellant alleged that when he told her yes, she offended him when she stated, "Well, you should have thought of that in July (1998) when I told you about it." The Board finds that appellant has not submitted sufficient evidence to establish that Ms. Monroe's remark constituted verbal harassment.

Appellant further alleged that management changed his pay location and supervisor without notification and failed to submit his application for leave without pay, which resulted in loss of annual leave. The Board finds that these allegations relate to administrative or personnel matters unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.⁵ Although these are generally related to the employment, they are administrative functions of the employer and not duties of the employee.⁶ While the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment, in determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁷ In this case, appellant has not

⁴ *David G. Joseph*, 47 ECAB 490 (1996); *Martin Standel*, 47 ECAB 1306 (1996); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *Lillian Cutler*, *supra* note 3.

⁵ See *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

⁶ *Id.*

⁷ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

established that the Office erred or acted abusively. Thus, he has not established that these are compensable employment factors under the Act.

However, as appellant has established compensable factors of employment, the Board will consider the medical evidence of record. In support of his claim, appellant submitted reports by Dr. Courtnage and Mr. Brenner, her physician assistant, who diagnosed appellant's condition as reactive anxiety and depression secondary to stress in the work environment. The Board notes that the report of a physician's assistant has no probative value because a physician assistant is not a physician under the Federal Employees' Compensation Act and is not competent to render a medical opinion.⁸ In a June 25, 1999 report, Dr. Courtnage related appellant's history and indicated that appellant's stress at work was principally related to his diagnosed condition. Although this report is not sufficient to meet appellant's burden of proof, it gives some support to his claim.

The Office subsequently referred appellant for a second opinion examination with Dr. Zvirbulis; however, the physician's report was deficient in that he failed to give a diagnosis; failed to address whether appellant was disabled as a result of employment factors in April 1999 and failed to address whether employment factors caused or aggravated appellant's condition. Consequently, the Office obtained a supplemental report from Dr. Zvirbulis in compliance with a remand order; however, the Board finds that the additional report submitted by the physician remains deficient on the issues of this case. Dr. Zvirbulis indicated that he described appellant's diagnosis in accordance with psychiatric guidelines; however, the diagnosis first reported simply indicated that appellant had an occupational problem on Axis I and no specific diagnosis on Axis II. Dr. Zvirbulis failed to provide any clarifying information regarding appellant's diagnosed condition necessary to determine whether appellant developed an emotional condition in the performance of duty. On the two remaining issues, Dr. Zvirbulis never indicated whether employment factors caused or aggravated appellant's condition and he stated that he had not conducted a complete review of appellant's psychiatric medical record to determine whether he was disabled in April 1999. Notwithstanding these deficiencies, the Office failed to request further information prior to issuing a denial on the claim.

Therefore, on remand the Office should refer appellant, along with his complete psychiatric medical record and a statement of accepted facts for appropriate evaluation by a medical specialist. After this and such other development as the Office deems necessary, the Office should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated August 25, 2000 is set aside and the case is remanded for further proceedings consistent with this decision. The April 12, 2000 decision, which set aside the November 22, 1999 decision, is affirmed.

Dated, Washington, DC
September 14, 2001

⁸ See 5 U.S.C. § 8101(2).

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member