

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KENNETH R. SKELLEY and U.S. POSTAL SERVICE,  
POST OFFICE, Louisville, OH

*Docket No. 00-2660; Submitted on the Record;  
Issued August 9, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,  
A. PETER KANJORSKI

The issue is whether appellant established that he sustained an emotional condition in the performance of duty.

On January 17, 1998 appellant, then a 54-year-old distribution clerk, filed a notice of occupational disease alleging that he was under stress at work.<sup>1</sup> Appellant was off work from February 20, 1998 until May 30, 1998. He resigned from work effective August 20, 1998.

In a March 4, 1998 letter, the Office of Workers' Compensation Programs advised appellant of the factual and medical evidence required to establish his claim.

In a decision dated August 19, 1998, the Office denied compensation on the grounds that appellant failed to establish that he sustained an emotional condition in the performance of duty.

Appellant filed for reconsideration on three separate occasions and the Office denied modification in each: December 21, 1998, June 14, 1999 and May 24, 2000.

In numerous statements, appellant described his work environment as a letter carrier as becoming increasingly more stressful and physically demanding. The Office acknowledged in a statement of accepted facts dated May 10, 1999 that appellant routinely worked overtime from 1995 to 1997.<sup>2</sup> Appellant was granted a change of position from letter carrier to a clerk position in August 1997. He began training as a window clerk at this time. Appellant passed the scheme

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<sup>1</sup> Appellant filed a previous claim for an emotional condition on March 20, 1995, which was denied by the Office on May 23, 1995.

<sup>2</sup> The Office stated that "[t]he working of overtime and the physical requirements of lifting and carrying mail during this period is said to have arisen in and out of the course of the claimant's employment."

test in October 1997. The Office also accepted that in 1997 appellant was required to learn four or five major job assignments at the same time.<sup>3</sup>

The record indicates that appellant was terminated from his employment in 1989, following a probationary appointment. After voicing his disagreement with the employing establishment's decision, appellant was reinstated and began working in Canton, Ohio. He, however, noted that he actually lived in Louisville, Ohio and repeatedly requested a transfer to the duty station nearest his home. In 1989, appellant obtained his desired transfer and began working under the supervision of A. Brown, the postmaster, whom he described as professional and people-oriented. Several years later, Mr. Brown was removed from his position and placed with new managers, F. Alessandro and G. Dobson. He related that the new managers disliked him, that he was treated disparately, as other employees were not required to be under the same work performance scrutiny. The employing establishment, however, submitted a statement indicating that appellant's performance grade was at a marginal level and that he had to be under greater supervision until such time as his performance level reached an average rating.

Appellant alleged several incidents in his personal life that caused stress including financial difficulties, the care of his adult handicapped son, his own various illnesses, the deaths of loved ones and his wife's diagnosis of inoperable cancer in January 1998.

Appellant submitted a copy of a "Letter of Warning" he received on account of poor attendance. He also submitted documentation that he had to be out of the office for medical treatment and, therefore, was required to use a great deal of medical leave and leave without pay.

In 1998, appellant applied for postal custodian positions but was denied the jobs because of his attendance record.

In a March 13, 1995 report, Dr. Lamberto T. Galang, a family practitioner, indicated that appellant had been under his care for almost one year for treatment of hypertension and symptoms of anxiety neurosis and depression. He noted that appellant was on antidepressants prescribed by a psychiatrist and that he claimed that his symptoms were being precipitated by his job as a postman. Dr. Galang concluded his report by stating that appellant's anxiety and depression are work related.

In a report dated November 25, 1997, Dr. Steven C. Hirsch noted that appellant had a history of coronary heart disease, diabetes, hypertension, high cholesterol, anxiety attacks, depression and a hernia. He related appellant's statement that he was under stress at work but had felt better since he took a leave of absence. Dr. Hirsch stated that he was concerned that the stress of appellant's job or his work duties may have a negative impact on his heart condition.

In a February 20, 1998 report, Dr. Galang advised that appellant was unable to return to work for an indefinite period of time due to dysthymic disorder, hypertension, diabetes and

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<sup>3</sup> Beginning in August 1997, appellant was given four major assignments including "Window Clerk functions; running the CSBCS machine; casing and carrying the other three (3) city routes at the station; and learning all the schemes at their office.

chronic anemia. Dr. Galang stated that appellant's situation was complicated by his wife's health status.

In a September 8, 1998 report, Dr. Galang noted that appellant was hospitalized on December 17, 1997 for treatment of gastrointestinal bleeding and on July 27, 1998 because of "DVT of the lower extremity." He noted that appellant went through a prolonged period of anxiety and depression and had to miss work to take care of his wife.

In a report dated May 7, 1999, Dr. Rajnikant Kothari, a Board-certified psychologist, advised that appellant had been under his care since October 5, 1998. He stated that appellant's major depressive disorder was recurrent and work related.<sup>4</sup>

The Office sent a letter to Dr. Kothari on May 10, 1999, requesting that he provide a rationalized medical opinion addressing the causal relationship between appellant's work factors and his emotional condition. Dr. Kothari, however, did not respond to this request.

Appellant next submitted various treatment notes from Dr. H. Fred Koenig, a Board-certified psychologist. These notes are summarized below.

On June 30, 1999 the history addresses that appellant has had depression since 1997. The history relates that appellant could not deal with the work conditions at the employing establishment and that he says he was "forced to learn five major training assignments which was too stressful and he began to have failed health and missing work. Feared going 'Postal.' Began to see Dr. Reddy in 1985 and was put on medications...."

On July 21, 1999 the history states that appellant worked for over 22 years and resigned in August 1998, under duress. Complaints of depression "due to medical problems -- heart condition, internal bleeding -- the employing establishment harassed him because of his health problems and he resigned, rather than going 'Postal.' I had no sick leave left."

In an August 11, 1999 treatment note, the history relates that appellant suffered from major depression due to his resigning from his job under duress. It was noted that appellant was harassed for taking too much annual and sick leave for personal medical problems. Again it is noted that he was upset about having to learn five major job assignments that no one else was expected to learn. The treatment relates that his stress is directly related to his work at the employing establishment.

In a September 3, 1999 treatment note, appellant's condition showed some improvement. He was noted as being more in control of his temper.

In a September 29, 1999 treatment note, the note states that appellant is depressed and angry at his friend, who betrayed him and his mother-in-law is recovering from a hit and run driver with a broken pelvis, elbow and internal injuries.

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<sup>4</sup> In an October 5, 1998 report, the physician notes that appellant was depressed because he had quit his job and could not get it back.

On November 5, 1999 the treatment record relates that appellant has “nightmares of killing the people who are responsible for his not working at the employing establishment until his retirement. Very angry, but is aware that his present job is what he loves doing.”

In a January 31, 2000 treatment note, appellant was diagnosed with major depression and post-traumatic stress syndrome.

Finally, in a medical report dated February 2, 2000, Dr. Koenig states that appellant’s major depression “was and continues to be due to the stress of his job at the Post Office.”

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his employment. This burden includes the submission of a detailed description of the employment conditions or factors which he believes caused or adversely affected the condition for which he claims compensation.<sup>5</sup> This burden also includes submission of rationalized medical opinion evidence, based upon a complete and accurate factual and medical background of appellant, showing a causal relationship between the condition for which compensation is claimed and the implicated factors or conditions of his federal employment.<sup>6</sup>

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to appellant’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. These injuries occur in the course of employment and have some kind of causal connection with it but nevertheless are not covered because they are not found to have arisen out of employment. Disability is not covered where it results from an employee’s frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the hand, where disability results from an employee’s emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within coverage of the Federal Employees’ Compensation Act.<sup>7</sup>

In this case, appellant alleged, but submitted no factual support to prove that the employing establishment delayed the filing of his workers’ compensation claim. Likewise, although appellant alleged that he had filed several Equal Employment Opportunity (EEO) claims against the employing establishment for discrimination, he provided no EEO documents to substantiate his claim.

Most of appellant’s allegations concern the administrative functions of the employing establishment.<sup>8</sup> He alleged that he was discriminated against because his supervisor monitored

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<sup>5</sup> See generally 20 C.F.R. § 10.115-116 (1999).

<sup>6</sup> See *Ruth C. Borden*, 43 ECAB 146 (1991).

<sup>7</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>8</sup> Appellant previously challenged the fact that the employing establishment placed him on a probationary work basis in 1980 and had him terminated. This issue was addressed in the prior Office decision, but the Board notes

and scrutinized every aspect of his job performance. Assessment of the employee's work performance is a requirement of the supervisor and is considered an administrative or personnel matter. Without evidence that supervisors acted erroneously or abusively, appellant's emotional reaction is self-generated in nature and not a compensable factor of appellant's employment. Inasmuch as the employing establishment began monitoring appellant's work after he received a substandard performance evaluation, the Board finds that there was no error or abuse in the handling of this personnel matter.

Appellant also stated that he was upset by a letter of warning he received for poor attendance and for being denied a job transfer to Akron for a postal custodian position. Because appellant admitted that his leave balances were depleted by several medical problems, the Board concludes that the employing establishment did not act abusively or in error in issuing appellant a letter of warning for poor attendance. His emotional reaction to the letter of warning is self-generated and is not a compensable factor of employment. Similarly, given appellant's poor attendance record, the employing establishment had discretion to refuse to consider his application for a postal custodian position.

Appellant is also not entitled to compensation for his response to the personal stressors of his life. Appellant's difficulties in dealing with his handicapped son, his wife's illness and the deaths of loved ones, are not work related and are, therefore, not compensable.

Notwithstanding, the Board finds that appellant did allege a compensable factor of employment when he attributed his emotional condition to having to work overtime and the stress of being required to learn four different jobs.<sup>9</sup> The only question is whether he carried his burden of proof in establishing a causal relationship between the employment factors and his depression and stress based on the medical evidence of record.

Having reviewed the entirety of the medical record, the Board concludes that appellant's medical evidence is insufficient to carry his burden of proof in establishing that his emotional condition is causally related to the accepted work factors.

Although an employee has identified employment factors, this alone is insufficient to discharge his or her burden of proof. To establish that an emotional condition was sustained in the performance of duty, there must be medical evidence establishing that the employee has an emotional or psychiatric disorder; and rationalized medical evidence establishing that the compensable employment factors are causally related to appellant's emotional condition.<sup>10</sup> The opinion of a physician supporting causal relation must be one of reasonable medical certainty,

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that appellant has shown no error or abuse on behalf of the employer in taking such an action.

<sup>9</sup> The Board has held that the inability to perform one's work duties, due to the amount or type of work assigned, may be compensable. *See generally Lillian Cutler*, 28 ECAB 125 (1978).

<sup>10</sup> *Debbie J. Hobbs*, 43 ECAB 135 (1991).

supported with affirmative evidence, explained by medical rationale and based on a complete and accurate medical and factual background.<sup>11</sup>

In this case, appellant has not submitted a rationalized medical opinion from a physician who attributes his depression or stress disorder to having been overworked or to specific compensable work factors. Dr. Galang opined that appellant's depression was job related, but he offered no rationale whatsoever for his medical conclusion on causal relationship. The hospitalization records and the report from Dr. Kothari merely relate appellant's belief that his emotional condition is due in part to work factors. Dr. Kothari does not specifically offer his own reasoned medical opinion on this issue.<sup>12</sup> In the absence of a rationalized medical opinion to establish causal relationship and to meet appellant's burden of proof, the Board finds that the Office properly denied compensation.

The decision of the Office of Workers' Compensation Programs dated May 24, 2000 is hereby affirmed.

Dated, Washington, DC  
August 9, 2002

Michael J. Walsh  
Chairman

Colleen Duffy Kiko  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>11</sup> *Connie Johns*, 44 ECAB 560 (1993).

<sup>12</sup> The intake records are not relevant since they were prepared by a nurse and not a qualified physician under the Act. *See* 5 U.S.C. § 8102 (2). Moreover, the nurse merely related appellant's description of the cause of his emotional condition.