U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT BRUCE ALEXANDER and U.S. POSTAL SERVICE, ARCADIA STATION, Phoenix, AZ

Docket No. 00-1708; Submitted on the Record;
Issued January 25, 2002

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT, PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation.

On January 4, 1988 appellant, then a 45-year-old letter carrier, filed a claim for severe anxiety depressive reaction. He contended that his supervisor, Edward Garcia, harassed him to the point that he collapsed and needed medical attention on November 4, 1987. In a subsequent statement, appellant indicated that Mr. Garcia came to the employing establishment in March 1987, preceded by a reputation for management by harassment, intimidation and fear. He related that on his first day, Mr. Garcia loudly and vocally harassed letter carriers who put in requests for overtime or help on their routes, denying most of them, which caused letter carriers to skip lunch and breaks to complete their routes. Appellant noted that Mr. Garcia began singling out carriers for harassment, seeking some area in which to discipline a letter carrier. He stated that his turn came on October 24, 1987 when the shop steward relayed to appellant Mr. Garcia's comment that he observed appellant not working as fast as he could. The shop steward informed appellant that Mr. Garcia had been observing him since October 21, 1987.

Appellant indicated that on October 26, 1987, Mr. Garcia approached him in a hostile and intimidating manner, asked if the shop steward had talked to him and announced a route inspection for October 28, 1987. He indicated that he began delivering his route and, at the first residential stop, noticed a car coming up rapidly behind him, driven by Mr. Garcia, which parked bumper to bumper with appellant's vehicle. Appellant delivered to nine houses and then was called over for a vehicle inspection by Mr. Garcia. He questioned appellant in detail on when he clocked out on the street, and what he had done and where he had gone since leaving to deliver mail. Appellant commented that the questioning was unusual, done in an intimidating manner and possibly violated his right to union representation when questioned. He indicated that he counted his trays of mail in front of Mr. Garcia to show how much mail he had taken out for delivery. Appellant stated that when he returned to the employing establishment, Mr. Garcia threw into his face a form that indicated that appellant was to be commended on safe driving

practices. He indicated that he cased the rest of his mail and then went to his physician for anxiety and chest pain. He noted that his blood pressure was elevated.

On October 27, 1987 appellant indicated that Mr. Martin, another supervisor, checked on him all morning, passing his case approximately 30 times to see if he was working properly and how much mail he had cased. He stated that Mr. Martin, by his repeated observations, was attempting to catch appellant not casing mail at all times and properly. He noted that after the cut off time, when everything was kept for the next day, he received a full coverage of third class mail, which he proceeded to case for delivery so as not to have them for inspection day.

On October 28, 1987 appellant indicated that Mr. Garcia spent the entire morning standing behind appellant, writing constantly. He stated that this was a harassing and intimidating method of inspecting routes. Appellant noted that whenever Mr. Garcia left, he had another supervisor continue to observation. He indicated that when he finished casing the mail, he asked Joseph Crowly, a supervisor, to go out on the street with him. Mr. Crowly stated that no one would go with him. Appellant stated that when no supervisor goes out with a letter carrier for a route inspection, the inspection was invalidated because no street time was recorded. He claimed that the actions of the supervisors were another harassing technique. Appellant related that upon return from his route, Mr. Garcia asked appellant to meet with him. He requested the presence of a shop steward but the request was vehemently denied, which was contrary to the contract. Appellant indicated that he felt intimidated by Mr. Garcia's manner and feared retaliation if he insisted on union representation. Mr. Garcia invited another supervisor into the meeting. The other supervisor stated "I want to see how this is done!," which led appellant to believe that he was about to be an example of how to criticize a letter carrier. Appellant indicated that Mr. Garcia aggressively questioned appellant's use of overtime on a prior occasion, stating that appellant was milking him for overtime because he was talking while casing mail. Mr. Garcia then noted that appellant had cased 4.75 feet of mail per hour. Appellant commented that linear feet was only an estimate of time and could not be used for disciplinary purposes. He noted the estimated standard was four feet an hour. Mr. Garcia commented that in his view 4.75 feet an hour was malingering but was barely acceptable. He pointed out that in the last inspection appellant had delivered the mail in four hours, although appellant noted that his route had changed since then. Appellant reported that Mr. Garcia then told him in a threatening manner that he would hold appellant to case 4.75 feet an hour and deliver his route in 4 hours and, if that did not total 8 hours, he would give appellant work on other routes. Appellant contended that the conversation was a violation of the contract. Appellant indicated that, at the end of the day, he resigned his position as an on-the-job instructor.

Appellant indicated that on November 2, 1997 he submitted a request for overtime or help on his route because the power at the employing establishment had failed the day before, and the letter carriers were instructed to leave mail in their cases because they could not see. He indicated that he had 9.5 feet of letters, 7.5 feet of magazines and all the undelivered mail from the time of the power failure. Appellant noted he received two hours of assistance in casing mail, leaving him with 17 feet of letter mail and 14 feet of magazines which was almost double a normal load. He was instructed to load what he could in his vehicle and informed that the rest of his mail would be brought out to him and he would get assistance to finish the route. Appellant received the mail but did not receive assistance to finish the route. He called Ms. Randolph, a

supervisor, to inform her that he would not finish by 4:00 p.m. She instructed him to finish the route even if he went past 4:00 p.m. Appellant commented that when he reached one section of his route, he found Ms. Randolph and Mr. Garcia had been checking the area on his day off to see how he carried that section of his route.

Appellant indicated that on November 3, 1987, he came to the employing establishment extremely upset. He noted that Mr. Martin again spent the whole morning watching him. Appellant indicated that his chest was tight, with pain in the chest and down the left arm. He related that on November 4, 1987, Mr. Garcia knew that a grievance was being filed against him on behalf of several letter carriers, but appellant was the only carrier involved who was at work that day. Appellant noted that after an hour, he had checked his jeep, pulled his mail, and cased three inches of magazines and almost four feet of mail, which was above standards. He indicated that at 7:10 a.m., Mr. Garcia stood behind him and stated that appellant was in violation of postal regulations in the way he cased the mail. Appellant then summoned appellant to his office. Appellant requested union representative but the request was again denied. He stated that he felt threatened by Mr. Garcia's hostile manner. Mr. Garcia demanded that appellant read a section of the training manual dealing with the movement of the eyes from a letter that had been sorted to the next letter to be sorted. Appellant was then told to sign a training report and warned that if violated the instruction again he would face disciplinary action. He stated that Mr. Garcia threatened to give appellant a full route inspection if he complained to the shop steward about the denial of representation. Mr. Garcia gave him five minutes with the shop steward and timed appellant's meeting with the shop steward. Appellant indicated that, after meeting with his shop steward, he returned to attempting to case his mail. He stated that he was very upset and agitated. The next thing he remembered was being treated by paramedics and being taken to the hospital.

Appellant reported that he had a similar problem in 1981. He indicated that after he returned to work from an illness, he found a large volume of undelivered mail which took him several days to reduce. Appellant indicated that on November 5, 1981, he had to deliver 35 feet of mail without assistance and therefore did not have time to case mail when he returned to the employing establishment that night. He reported that on the next day, the postmaster, Mr. Brewer picked on him to criticize him as an example of problems at the employing establishment and put his face within two inches of appellant's nose and told him he could either bid off his route or resign. Appellant stated that a route inspection done shortly thereafter showed his route was too long but it was not adjusted. He claimed that he was harassed for the next two years by constant observation and repeated route inspections until he left for another employing establishment. Appellant indicated that he was treated for the same symptoms of chest pressure, hypertension and anxiety attacks until he left for a new position.

Appellant submitted numerous statements from coworkers. In a December 17, 1987 statement, Barry Fatland stated that Mr. Garcia had engaged in harassment of letter carriers and had singled out appellant for selective harassment, unannounced street observations and denial of union representation. Mr. Fatland indicated that management's attacks on appellant were having an impact on appellant's emotional well being. He noted that on November 4, 1987 appellant expressed concern that he might have to stop working for a few days because of the effect of the harassment on his health. Mr. Fatland indicated that he saw appellant in Mr. Garcia's office without union representation which he pointed out to a shop steward. A short time later, he

indicated that letter carriers suddenly stopped work and one carrier stated that appellant was having a heart attack.

In an undated statement, Roy Thieme, the shop steward, stated that appellant had an excellent reputation for work at the employing establishment. He commented that appellant was unfairly harassed by Mr. Garcia, creating a problem where one did not exist previously. Mr. Thieme indicated that on October 24, 1987, Mr. Garcia asked him to talk to appellant about "milking" overtime, claiming that appellant cased slowly. He told Mr. Garcia to address appellant directly about the matter at the time of the observation so that appellant could respond and request union representation. Mr. Thieme warned appellant about Mr. Garcia's observations. On October 26, 1987 Mr. Garcia again stated that appellant was casing mail slowly. Mr. Thieme noted that appellant was instructed to case 4.75 feet an hour. He informed Mr. Garcia that a foot per hour requirement was a contract violation. He filed a grievance on behalf of appellant and other letter carriers on the subject on November 4, 1987. Mr. Garcia indicated that Mr. Garcia complained that appellant was casing slowly again on November 4, 1987. Mr. Thieme told him to discuss his perception with appellant. He related that Mr. Garcia then ordered appellant into his office, denied him representation and humiliated him with unfound allegations about slowness in casing mail. He met with appellant afterwards, noting that appellant was upset and felt intimidated. Appellant stated that he felt Mr. Garcia was fabricating reasons to harass appellant and force him to work faster. Mr. Thieme indicated that next he knew, appellant was being taken out of the employing establishment by paramedics.

Several other coworkers indicated that appellant was singled out for harassment by Mr. Garcia. Two coworkers noted Mr. Garcia stood behind appellant while he was casing mail on the date of the route inspection. Several noted that appellant was denied union representation in his meetings with Mr. Garcia. One noted that appellant was required to case 4.7 feet a mail an hour when the standard was 4 feet an hour. Several coworkers reported appellant's collapse after his meeting with Mr. Garcia on November 4, 1987.

In a January 13, 1988 letter, Mr. Garcia claimed that appellant's work habits were not good. He claimed appellant hesitated at times in casing mail and at other times was at his case but not casing mail. Mr. Garcia stated that it appeared that appellant was slowly down deliberately. He indicated that appellant had one mail count, one street observation and one discussion on work performance and commented that such actions did not constitute harassment but normal requirements of the position. Mr. Garcia stated that a unit route review in the spring of 1987 showed appellant cased at the rate of 3.74 feet an hour but cased at 4.66 feet an hour when evaluated. He denied that appellant was harassed. Mr. Garcia claimed that appellant was not entitled to union representation in the meetings he had with appellant because no disciplinary action would be taken.

Mr. Martin, in a January 17, 1987 statement, indicated that appellant's performance had been declining for several months prior to November 4, 1987 but he had not received the type of supervision that he had alleged. He denied that he had ever passed appellant's case 30 times in one morning.

In a series of medical reports, Dr. David S. Burgoyne, a psychiatrist, diagnosed an acute generalized anxiety disorder. He stated that appellant's condition was due to the extreme

surveillance given to his work by Mr. Garcia as well as harassment and intimidation from Mr. Garcia.

In an April 28, 1988 memorandum, Dr. David R. Kessler, a Board-certified psychiatrist and Office consultant, stated that appellant's diagnosis was adjustment disorder with anxious mood. Dr. Kessler indicated that the condition was causally related to appellant's employment, including criticism by his supervisors and undergoing close supervision in October and November 1987.

The Office accepted appellant's claim for adjustment disorder with anxious mood. It authorized leave buy back for the period November 1987 through May 20, 1988 and began payment of temporary total disability compensation effective May 21, 1988.[1]

The Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Thomas Nolte, a Board-certified psychiatrist, for an examination and second opinion. The Office prepared a new statement of accepted facts, indicating that appellant's interaction with Mr. Garcia and other supervisors occurred but were not within appellant's performance of duty. In a September 2, 1995 report, Dr. Nolte diagnosed panic disorder with agoraphobia, recurrent major depressive disorder, irritable bowel syndrome and hypertension. He stated that appellant was having marked difficulty in interacting with other people due to his ongoing panic disorder and agoraphobia. Dr. Nolte commented that appellant was unlikely to return to work with his current treatment. In an October 15, 1995 report, he stated that appellant claimed he had a severe anxiety reaction on November 4, 1987 secondary to work stress. Dr. Nolte commented that appellant had previously experienced panic attacks without succinct phobias. He indicated that as a result of the stress of appellant's job in 1987, he began developing a series of phobias related to his work loss and the employing establishment. Dr. Nolte stated that, as time went on, appellant's phobias became more generalized. He commented that, when phobias become generalized, they could reach the proportion where the person becomes afraid of everything. Dr. Nolte related that untreated phobias could continue through the life of the individual. He stated that, although eight years had passed since the initiation of the phobias without treatment limiting appellant's panic attacks, appellant continued to suffer direct consequences of the phobias of 1987.

In an October 16, 1995 report, Dr. Burgoyne disagreed with Dr. Nolte's description of appellant's treatment. He also disagreed with the diagnosis of agoraphobia, stating that he saw no evidence of agoraphobia in appellant.

The Office requested clarification from Dr. Nolte on the issue of causal relationship. In a June 17, 1999, Dr. Nolte stated that a panic disorder occurs when a small section of the brain, the locus caeruleaus, malfunctions and sends false signals into the rest of the brain. He indicated that the malfunction was dependent on multiple factors including genetic propensity to the disease, previous panic episodes, changes in physiological state, recent illness and general overall stress. Dr. Nolte commented that particular stress instances do not cause panic attacks but tended to interact with physiological influences, lowering the panic threshold. He noted that

[1] Appellant subsequently worked in an auto parts store in 1989 but stopped work in 1991. During this time, he received compensation for a 61 percent loss of wage-earning capacity.

panic attacks could occur hours or a day after an incident. Dr. Nolte stated that there was no way with scientific medical certainty that one could associate a specific incident with the development of a specific panic attack. He indicated that in appellant's case, a combination of his personal physiology and the stress of his job on a general basis seemed to have precipitated the panic attacks with the resultant development of phobias. Dr. Nolte stated that, based on the statement of accepted facts, performance of duties as described in appellant's job description did not necessarily directly cause his panic. He concluded that the events that were listed as accepted facts but not compensable factors apparently led to the overall stress, which combined, with appellant's physiology produced the panic episodes.

The Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Michael Arcuri, a Board-certified psychiatrist, to resolve the conflict in the medical evidence. In an August 4, 1997 report, Dr. Arcuri diagnosed panic disorder without agoraphobia, recurrent major depressive disorder in partial remission and a personality disorder with dependent, avoidant and paranoid traits. He noted that appellant reported development of panic attacks which he related to harassing supervisors dating back to 1981. Dr. Arcuri related that appellant stated there was nothing regarding the work except supervisory harassment that caused his problems. Dr. Arcuri noted that the statement of accepted facts specifically excluded this factor as a compensable factor. He commented that appellant's statement left no work-related factors as the cause of his condition. Dr. Arcuri concluded that appellant had suffered from a panic disorder, with symptoms beginning in 1981. He indicated that appellant also had a major depressive disorder with various levels of severity since 1983. Dr. Arcuri stated that biological and psychological factors had continued the persistence of the panic disorder to the time of his examination. He stated that he did not find in the statement of accepted facts any job-related duty which were a causative factor of the panic disorder. Dr. Arcuri indicated that the events that were not accepted as factual and those which were not compensable were a partial basis for appellant's panic disorder. He concluded that there was no basis for a finding that appellant's panic disorder was caused by his duties as set forth in the statement of accepted facts.

In an August 14, 1997 letter, the Office proposed to terminate appellant's compensation. In a September 8, 1997 letter, appellant objected to the proposed termination. He recounted his encounters with Mr. Garcia which he found stressful and which pushed him to the point of a nervous breakdown. In a September 19, 1997 decision, the Office terminated appellant's compensation on the grounds that there was no longer a causal relationship between any compensable factor of employment and his current medical condition.

Appellant requested a hearing before an Office hearing representative which was conducted on September 23, 1998. At the hearing, his attorney indicated that appellant had worked overtime on 30 out of 49 scheduled days before November 4, 1987. Dr. Burgoyne testified that in the months prior to November 4, 1987 appellant worked in a hostile environment and, as a result, developed a post-traumatic stress disorder. In a January 18, 2000 decision, the Office hearing representative found that the report of Dr. Arcuri represented the weight of medical evidence and established that appellant's current medical condition was not causally related to factors of his employment.

The Board finds that the Office improperly terminated appellant's compensation.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act.[2] Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.[3]

When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.[4] In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.[5]

In this case, Dr. Arcuri concluded that appellant's condition was not caused by his work duties but was partially attributed to factors which the Office indicated had not been accepted as factual or were not compensable factors of employment. The Board finds, however, that Dr. Arcuri's report was based on an inaccurate statement of accepted facts and therefore has limited probative value.

Appellant alleged that his emotional condition was due to harassment by his supervisors. The actions of a supervisor which an employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act. However, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.[6]

Appellant stated that he was verbally abused by Mr. Garcia, noting that Mr. Garcia always spoke to him in an intimidating tone. The statements of several coworkers that

[2] 5 U.S.C. § 8101 *et seq.*

[3] *Lillian Cutler,* 28 ECAB 125 (1976).

[4] *Artice Dotson,* 41 ECAB 754 (1990); *Allen C. Godfrey,* 37 ECAB 334 (1986); *Buck Green,* 37 ECAB 374 (1985); *Peter Sammarco,* 35 ECAB 631 (1984); *Dario G. Gonzalez,* 33 ECAB 119 (1982); *Raymond S. Cordova,* 32 ECAB 1005 (1981); *John Robert Wilson,* 30 ECAB 384 (1979).

[5] *Thomas D. McEuen,* 41 ECAB 387 (1990) *reaff'd on recon.,* 42 ECAB 566 (1991).

[6] *Joan Juanita Greene,* 41 ECAB 760 (1990).

Mr. Garcia adopted such a tone in his interaction with employees, supports appellant's claim of verbal abuse by Mr. Garcia.[7] Verbal abuse, if shown, is a compensable factor of employment.[8] The Office made no determination on whether the evidence submitted by appellant substantiated his claim of verbal abuse. Appellant also contended that his supervisor committed errors in his case by denying his request for union representation in two meetings and in measuring his performance by the linear feet of mail he cased per hour. Mr. Garcia claimed that appellant was not entitled to union representation because no disciplinary action would be taken. However, he admitted that appellant was ordered to read a training manual on the use of eyes in casing mail and then ordered to sign a training statement with the warning that failure to adhere to the training manual in the future would result in disciplinary action. It is therefore apparent that Mr. Garcia was taking an initial step toward invoking disciplinary action against appellant. The incident raises the question whether it was a violation of the contract and therefore error to deny appellant union representation in the November 4, 1987 meeting.

The Office made no effort to determine whether appellant was entitled to union representation at the meetings with Mr. Garcia and whether denial of such representation would be an error. The shop steward stated that measurement of performance by the amount of linear feet cased was a violation of the contract and noted that he filed a grievance on appellant's behalf on that issue on November 4, 1987. Mr. Garcia did not deny that he indicated that appellant was to case at least 4.75 feet an hour. The Office made no determination of whether Mr. Garcia's requirement that appellant case at least 4.75 an hour was in error and abusive as a violation of the union contract. Mr. Garcia and Mr. Martin stated that appellant's performance of casing mail was declining and was below the standard of four feet an hour. They produced some records from March and April 1987 to support their contention. However, appellant and the shop steward stated that appellant was an excellent employee with a high performance standard, casing at a rate of 4.75 feet an hour. The Office did not attempt to determine whether Mr. Garcia or appellant's description of his performance was accurate and therefore whether Mr. Garcia and other supervisors had erred in their claim that appellant's casing of mail had slowed and was below standards. Appellant indicated that on November 3, 1987 he delivered a large amount of mail and needed overtime to complete the route. His representative indicated at the hearing that appellant had worked overtime on many occasions in the weeks prior to November 4, 1987. These factors would be related to the performance of appellant's assigned duties and therefore would be a compensable factor of employment. However, these factors were not specifically discussed in the statement of accepted facts. Appellant noted that on the date of the stipulated route inspection, Mr. Garcia or another supervisor stood behind him the entire time he spent casing mail. Other coworkers reported that they saw Mr. Garcia standing behind appellant on this occasion. Such observations by coworkers would indicate that Mr. Garcia's action in this incident was beyond the normal method used by supervisors and therefore was an effort to harass appellant. Appellant stated that after he was observed casing mail, he was informed that no supervisor would go out with him to observe his delivery of mail, which would invalidate the

[7] Appellant submitted evidence that Mr. Garcia had engaged in harassment, intimidation and abuse of employees in subsequent job assignment. Such evidence is relevant as gives credibility to appellant's contention that Mr. Garcia engaged in harassment of employees such as himself and his actions had resulted in other claims for workers' compensation.

[8] *Janet D. Yates*, 49 ECAB 240 (1997)

route inspection. The Office did not consider whether appellant's supervisors erred in telling appellant that they would conduct a route inspection on October 28, 1987 but only did part of the route inspection and did not complete it in conformance with employing establishment requirements.

Appellant, therefore, submitted evidence, including statements from collaborating witnesses, that he was harassed and abused by his supervisors and that some of the actions of his supervisors were erroneous. The Office did not consider any of this evidence in preparing a new statement of accepted facts nor did it make any effort to clarify the points of factual contention between appellant and his supervisors. Therefore, the statement of accepted facts used by Dr. Nolte and Dr. Arcuri cannot be considered to be accurate. The reports of these physicians, particularly that of Dr. Arcuri, cannot be found to be based on a complete and accurate history of appellant's case. Dr. Arcuri's report therefore has reduced probative value and, under the circumstances of this case, is insufficient to meet the Office's burden of proof in terminating appellant's compensation.

The decision of the Office of Workers' Compensation Programs dated January 18, 2000 is hereby reversed.

Dated, Washington, DC
January 25, 2002

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member