

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD L. MARCH-NIGHMAN and U.S. POSTAL SERVICE,
POST OFFICE, Painesville, OH

*Docket No. 02-2371; Submitted on the Record;
Issued April 22, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant's post-traumatic stress disorder and heart condition were sustained while in the performance of duty.

Appellant, then a 50-year-old mail carrier, filed an occupational disease claim on November 27, 2000, alleging that his post-traumatic stress disorder and heart conditions were exacerbated by job stress. Appellant stopped work on November 21, 2000 and submitted November 22, 2000 letters from Dr. David S. Liebling, a Board-certified psychiatrist who treated appellant for post-traumatic stress disorder, coronary artery disease and a past myocardial infarction. Dr. Liebling stated that the stressful nature of working under both time and output pressure exacerbated appellant's psychiatric and physical condition and necessitated disability retirement.

Appellant also submitted an emergency room form that he had been treated for a dog bite on his right thigh on May 22, 2000. On February 8, 2001 the Office of Workers' Compensation Programs asked appellant for additional factual information and medical evidence supporting his claim.

Appellant responded with a March 7, 2001 statement listing events and conditions that he felt were greater than the acceptable stress of working. These included a work-related injury in September 1998 when the employing establishment terminated and then reinstated him; surgery on his left leg in October 1992; and a meeting on July 14, 1993 when missing paperwork concerning other work-related surgery was discovered after nine months. Appellant also described a change in assignment in July 1997, which required a walking mail route and discipline in October 1997 for taking too long a lunch break a notice of termination was reduced to a letter of warning. He noted the time pressure of appellant's delivery route, which had no room for comfort breaks, the denial of a transfer in July 1999 and the dog bite in May 2000 when the employing establishment refused to reveal the rabies status of the dog.

Appellant alleged that his employment worsened his post-traumatic stress disorder and caused two myocardial infarctions, nerve damage to his right arm, tennis elbow, osteoarthritis of the spine, Reynaud's syndrome and degenerative joint disease. He stated that prior to his massive heart attack on February 28, 1999 he was working 10 or more hours a day delivering mail and had the longest and most overburdened route.

On July 3, 2001 the Office denied appellant's claim on the grounds that he had failed to establish any compensable work factors. The Office found that appellant had provided no evidence regarding any of the work incidents he alleged as contributing to his heart condition, congestive heart failure and post-traumatic stress disorder. The Office noted that some of the conditions appellant listed should be pursued under the previous claims he had filed.¹

Appellant requested a hearing, which was scheduled for April 25, 2002. However, appellant did not appear. His representative stated, in a May 12, 2002 letter, that appellant had been in an accident when his battery blew up as he tried to start his car on the day of the hearing.² The letter asked that the hearing be rescheduled. The hearing representative stated on May 22, 2002 that the hearing would not be rescheduled pursuant to section 10.622³ and that appellant had 15 days to submit any further information or evidence.

On August 5, 2002 the hearing representative denied appellant's claim after a review of the written record. The hearing representative found that appellant failed to submit any corroborative evidence to support as factual his allegations of work factors contributing to his disabling conditions.

The Board finds that appellant has failed to establish that his emotional condition was sustained while in the performance of duty.

In an emotional condition claim, appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the mental condition, for which he claims compensation was caused or adversely affected by factors of his federal employment. To establish that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.⁴

¹ These included: a lumbosacral strain on February 4, 1986; a dog bite on October 16, 1986; a left knee strain on June 15, 1988; a dislocated right knee on September 20, 1988; and a twisted left knee on November 26, 1992.

² Appellant was not hospitalized. See 20 C.F.R. § 10.622(c).

³ 20 C.F.R. § 10.622(b). This regulation provides that scheduling is at the sole discretion of the hearing representative and is not reviewable. Once scheduled, the hearing will not be reset at the claimant's request for any reason except those listed in subsection (c) unless the hearing representative cannot reschedule on the same docket. Otherwise, no further opportunity for a hearing will be provided and the hearing will take the form of a review of the written record.

⁴ *Wanda G. Bailey*, 45 ECAB 835 (1994); *Kathleen D. Walker*, 42 ECAB 603, 608-09 (1991).

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.⁵ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the coverage of the Federal Employees' Compensation Act.⁶ These injuries occur in the course of the employment but nevertheless are not covered because they are found not to have arisen out of the employment.⁷

Disability that results from an employee's frustration over not working in a particular environment, holding a particular position, or securing a promotion is not covered. On the other hand, disability due to an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by management or the work itself is covered the Act.⁸

In emotional condition cases, the Office must make findings of fact regarding, which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁹ Therefore, the initial question is whether appellant has alleged compensable factors of employment that are substantiated by the record.¹⁰

A claimant must substantiate such allegations by submitting a detailed description of specific employment factors or incidents that he believes caused or adversely affected his condition.¹¹ Personal perceptions and feelings alone are not compensable under the Act.¹²

In this case, the Office found that appellant failed to establish any compensable factors of employment. Appellant alleged that his February 28, 1999 heart attack resulted from the stress and anxiety generated by a heavy workload and supervisory inspection that month. However, appellant submitted no evidence, such as time sheets or pay stubs, showing that he was overworked.¹³ Appellant alleged that his rate of delivery was "too fast," but he provided no factual information supporting this allegation.

⁵ *Samuel Senkow*, 50 ECAB 370, 373 (1999).

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Frank B. Gwozdz*, 50 ECAB 434, 436 (1999).

⁸ *Marie Boylan*, 45 ECAB 338 (1994); *Lillian Cutler*, 28 ECAB 125 (1976).

⁹ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992);

¹⁰ *Donald E. Ewals*, 45 ECAB 111 (1993).

¹¹ *Peggy Ann Lightfoot*, 48 ECAB 490, 493 (1997); *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991).

¹² *Earl D. Smith*, 48 ECAB 615, 650 (1997).

¹³ See *Sherry L. McFall*, 51 ECAB 436, 439 (2000) (finding that appellant submitted no evidence to establish factually that she was overworked or given inappropriate deadlines).

Appellant stated that he was forced to accept a delivery position because of the bumping of his seniority rights but nothing in the record establishes this allegation as factual. His allegations regarding discipline in October 1997 and denial of a transfer in July 1999 are similarly unproven and there is no evidence that the employing establishment erred or abused its authority in either matter.¹⁴

Appellant's reference to the employing establishment's handling of the May 2000 dog bite incident is unclear and appellant provided no statement from the union steward who allegedly was present during a conversation with appellant's supervisor. Inasmuch as appellant provided no detailed explanation of his allegations and failed to submit any corroborating evidence, the Board finds that he has failed to establish a compensable factor of employment.¹⁵

The August 5, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 22, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁴ See *William Karl Hansen*, 49 ECAB 140, 144 (1997) (finding that appellant's frustration with the policies and procedures of management do not constitute compensable work factors absent a showing of error or abuse).

¹⁵ See *Dinna M. Ramirez*, 48 ECAB 308, 314 (1997) (finding that appellant failed to meet her burden of proof to establish a compensable factor of employment).