

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HENRY K. HOHENBERGER and U.S. POSTAL SERVICE,  
SPRINGFIELD BULK MAIL CENTER, Springfield, MA

*Docket No. 03-384; Submitted on the Record;  
Issued April 29, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant met his burden of proof in establishing that he sustained an emotional condition while in the performance of duty.

On June 24, 2001 appellant, then a 55-year-old mailhandler, filed a notice of traumatic injury alleging that on June 13, 2001 he discovered that several doctors reports were not in his file at work, which he stated he had delivered to the medical unit two to three months prior. As a result, he claimed that he suffered chest pains, shortness of breath, anxiety and stress. A letter from appellant's supervisor indicated that on the day in question appellant was called into the supervisor's office to discuss his absences from work. The supervisor informed appellant that he did not have any "F[amily] M[edical] L[eave] A[ct] or active C[ontinuation] o[f] P[ay] claim" and told him that "he did not have a part-time job and was expected to work eight hours." Appellant stated that he had supplied the medical unit with all types of doctor's notes supporting his absences from work and ability to work a limited schedule. He claimed that the supervisor was "stressing him out" and went to the medical unit to review his file. After reviewing his file and discovering that the reports were missing, the medical unit called 911 and appellant was transported to the hospital. Appellant submitted a June 19, 2001 report from Dr. Gary B. Kaskey, a Board-certified psychiatrist and neurologist, indicating that he was being treated for symptoms of depression in the context of fibromyalgia and chemical sensitivities and that he suffered an exacerbation of his symptoms due to "a work[-]related incident on June 13[, 2001]."

By letter dated September 4, 2001, the Office of Workers' Compensation Programs requested that appellant submit additional factual and medical information to support his claim for compensation.

By decision dated January 30, 2002, the Office denied appellant's claim for compensation finding that the evidence was not sufficient to establish that he sustained an injury on June 13, 2001.

Appellant disagreed with the Office's decision and requested an oral hearing, which was held on July 26, 2002. At the hearing appellant indicated that the missing medical reports were necessary to support his use of sick leave and absences from work.

After the oral hearing, appellant also submitted a September 21, 2001 report from his attending physician, Dr. David L. Clinton, Board-certified in internal medicine, who stated that on June 13, 2001 appellant was informed that he could possibly be terminated if he did not have medical documentation to explain his absences. Dr. Clinton stated that this caused immediate and severe anxiety and stress in appellant, which resulted in shortness of breath and chest pain. He noted that the events occurred after an unannounced predisciplinary meeting regarding appellant's frequent absences from work. Dr. Clinton opined: "I feel that his discovery in the medical unit of medical records apparently missing from his folder caused an acute anxiety attack with secondary symptoms, requiring significant medical intervention."

By decision dated October 21, 2002, the Office hearing representative affirmed the previous decision, finding that appellant failed to identify a compensable factor of employment in the performance of his duties.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an emotional condition while in the performance of duty.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the 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 his 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.<sup>1</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee'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 the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the 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 to secure a promotion. On the other hand, where disability results from an employee's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>2</sup>

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<sup>1</sup> *Vaile F. Walders*, 46 ECAB 822 (1995).

<sup>2</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

The initial question presented is whether appellant has substantiated a compensable factor of employment as contributing to his emotional condition;<sup>3</sup> if appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.<sup>4</sup>

In the instant case, on June 13, 2001 appellant was reacting to missing medical reports from his file at work. The Board finds that appellant's reaction to the missing reports falls into the category of administrative or personnel actions, which are generally not covered under the Act. In *Thomas D. McEuen*,<sup>5</sup> the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee.

In this case, appellant's reaction to the missing medical records does not involve his regular or specially assigned work duties and has no direct relation to his position as a mailhandler. The fact that the medical unit keeps medical records and files of their employees is an administrative or personnel function on the part of the employing establishment. The Board noted in *McEuen*, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. There is no evidence in this case to indicate that appellant's supervisor acted abusively during the predisciplinary meeting on June 13, 2001. The supervisor stated in his letter to the Office that his demeanor throughout the meeting was calm and professional. When the supervisor felt that the meeting "was not getting anywhere," he noted that he ended it and appellant went to the medical unit. Even though appellant stated that his supervisor was "stressing him out" during the meeting, appellant did not allege that his supervisor acted abusively during the meeting.

There is also no evidence to indicate that the agency erred or acted abusively with regard to the missing medical records. There is no evidence explaining the disappearance of the medical records or explanation as to why they were not in appellant's file. Appellant also did not blame the agency for the missing records or claim that they acted abusively in any way with regards to his file. He also did not mention any coworkers or supervisors in the medical unit during the time he was looking at his file. Appellant did not allege that any other factors of his employment contributed or caused his emotional condition on June 13, 2001. He has not established a compensable factor of employment and has not demonstrated administrative error or abuse on the part of the agency.

As appellant has failed to establish any compensable factor of his federal employment, the medical evidence need not be considered.<sup>6</sup> For these reasons, appellant has not met his

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<sup>3</sup> *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

<sup>4</sup> *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

<sup>5</sup> 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *see also Lillian Cutler*, 28 ECAB 125 (1976).

<sup>6</sup> *Supra* note 4.

burden of proof in establishing that he sustained an emotional condition while in the performance of duty and the Office properly denied his claim.

The decisions of the Office of Workers' Compensation Programs dated October 21 and January 30, 2002 are hereby affirmed.

Dated, Washington, DC  
April 29, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member