

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES L. MACKIEWICZ and U.S. POSTAL SERVICE,
INTERNATIONAL SERVICE CENTER, Miami, FL

*Docket No. 03-862; Submitted on the Record;
Issued August 7, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained an emotional condition; and (2) whether he has met his burden of proof in establishing that his cellulitis is causally related to his accepted employment exposure.

Appellant, a 53-year-old manual clerk, filed a notice of traumatic injury on October 17, 2001 alleging that on October 15, 2001 he was exposed to a "foreign dirt matter" falling from an envelope on to his clothes and skin. He alleged that he developed a red rash on both legs from his ankles and continuing five inches up his legs. A witness stated that an ivory powder with a strong odor fell from a letter that appellant handled. Appellant's attending physician, Dr. Joel Savitz, an osteopath, stated on October 19, 1991 that appellant had acute anxiety due to a possible dangerous substance exposure. He also diagnosed cellulitis.

The Office of Workers' Compensation Programs requested additional medical and factual information by letter dated November 9, 2001. The employing establishment responded and stated that the Inspector General's office contacted the letter's sender. He reported that the contents were garden soil.

Appellant did not respond to the Office's requested for additional information. By decision dated January 4, 2002, the Office accepted that he was exposed to garden soil in the performance of duty, but denied his claim finding that he failed to submit the necessary medical evidence to establish a causal relationship between his accepted exposure and his diagnosed condition of cellulitis. Appellant requested an oral hearing on January 15, 2002. By decision dated January 27, 2003, the hearing representative reviewed both the physical and emotional aspects of appellant's claim and concluded that he had not established that his suspected exposure to a dangerous substance was a compensable factor of his employment and further found that appellant had not submitted sufficient medical evidence to establish a causal relationship between his diagnosed medical condition of cellulitis and his exposure to garden soil.

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained an emotional condition.

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 concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or to a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.¹

In this case, appellant stated that he was exposed to "foreign dirt matter" on October 15, 2001 on his claim form. He submitted a witness' statement that appellant was exposed to "ivory powder" with a strong odor which came from a letter. Appellant reported the situation of a letter with suspicious "brown stuff" to his supervisor, Lisa Alderman on October 15, 2001. Ms. Alderman had appellant wash his hands, isolated him and the letter and informed the inspector general's office. The inspector contacted the sender who stated that the letter contained garden soil. The letter and its contents were discarded. The employing establishment did not test the garden soil; however, on November 6, 2001 the employing establishment issued a press release claiming that the Miami International Service Center had been tested and cleared of any anthrax exposure.

At his oral hearing on August 27, 2002, appellant expanded his claim to include an emotional condition. He stated that he was not directed to wash and that he returned to work without washing in violation of the employing establishment's safety rules regarding potential anthrax exposure. Appellant stated that he was nervous and scared because he did not know what fell on him. He alleged that the employing establishment should have tested the substance prior to disposing of it. Appellant noted that the next day he had a red rash on his legs which he had not previously experienced.

Appellant has alleged three employment factors as a result of his October 15, 2001 exposure to an unknown substance. He alleged that his supervisor, Ms. Alderman failed to follow the appropriate procedures in investigating the situation in accordance with the employing establishment's mandatory safety talk on anthrax. Investigations are considered to be administrative duties of the employing establishment that do not involve an employee's regular or specially assigned duties and are therefore, not considered to be an employment factor.² As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may

¹ *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

² *Garry M. Carlo*, 47 ECAB 299, 304 (1996).

afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.³

In this case, appellant has not submitted any evidence that the employing establishment erred in the methods used to carry out the investigation of the substance. The employing establishment indicated that appellant's supervisor isolated appellant as well as the letter and instructed appellant to wash his hands. She then contacted the inspector's office and the inspector was able to contact the sender. The sender offered a plausible explanation for the substance contained in the letter noting that he was sending garden soil to a friend in the Philippines. The Board finds that the employment establishment followed the procedures which state that the remainder of the steps listed in the mandatory safety talk on anthrax need not be followed once the substance was identified. There was no need for a call to the health unit, for an interview by the federal authorities, for invocation of the emergency action plan, nor for calls to the security office and county health department. Appellant did not submit any evidence that the employing establishment was required to take further steps to investigate the substance or to insure appellant's safety once the sender had identified the contents. As there is no evidence that the employing establishment committed error or abuse in the investigation of the suspicious letter, appellant has not substantiated that the method of investigation is a compensable factor of employment.

Appellant further alleged that he continued to believe that he was exposed to a dangerous substance after the employing establishment informed him that the substance was garden dirt and that he continued to experience fear and anxiety as a result of this belief. The Board finds that appellant's continued doubts regarding the identity of the substance are self-generated and result from his frustration in not being permitted to work in an environment which was free of any possible contamination and, therefore, considered desirable.⁴ As noted previously, appellant's supervisor and the postal inspector were satisfied that the substance had been properly identified, and appellant did not offer any factual basis for his continued fear. Furthermore, appellant did not undergo testing to establish whether or not he had been exposed to anthrax. Therefore, appellant has not established that his continued fear of anthrax exposure is a compensable employment factor.

Appellant has established that he was exposed to a suspicious "ivory powder" with a strong odor or "brown stuff" in the performance of duty on October 15, 2001. For a period of time, from the discovery of the substance until the notification from the postal inspector confirming that the substance was garden soil, appellant could have reasonably believed that he was exposed to anthrax. The Board finds that this period of uncertainty regarding the nature and extent of his employment-related exposure to a suspicious substance constitutes a compensable factor of employment.

In the present case, appellant has only identified a compensable factor of employment with respect to limited exposure to a suspicious substance. However, his burden of proof is not discharged by the fact that he has established an employment factor which may give rise to a

³ *Martha L. Watson*, 46 ECAB 407 (1995).

⁴ *John Polito*, 50 ECAB 347, 350 (1999).

compensable disability under the Act. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional condition or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.⁵

In support of his claim for an emotional condition, appellant submitted a report dated October 19, 2001 from Dr. Savitz, an osteopath, which stated that appellant was unable to work because of acute anxiety as a result of a possible anthrax exposure. He further diagnosed bilateral cellulitis on appellant's legs. Dr. Savitz stated that appellant's oncologist prescribed a 10-day course of antibiotics as a precautionary measure. His report is insufficient to meet appellant's burden of proof in establishing that he developed an emotional condition as a result of his accepted employment-related exposure. Dr. Savitz noted appellant's anxiety but did not specify whether this anxiety was related to the initial exposure to the unknown substance which the Board found that appellant could reasonably believe was anthrax or whether the anxiety was due to appellant's continuing concerns regarding his exposure. Without a clear and detailed medical report attributing appellant's emotional condition to his accepted employment factor, appellant has failed to meet his burden of proof and the Office properly denied his claim.

On August 21, 2002 Dr. Savitz stated that after the exposure appellant suffered from acute anxiety as a result of possible anthrax exposure. He noted that although the employing establishment stated that the substance was not anthrax, appellant did not receive proof. Dr. Savitz stated, "[u]nderstandably, [appellant] became anxious. After all numerous postal employees had recently fallen victim to anthrax poisoning." He concluded that appellant had every reason to believe that he had been exposed to anthrax or some other toxic substance. This report does not address the accepted employment factor. Dr. Savitz does not focus on the issue of whether appellant's immediate fear that he was exposed to anthrax was sufficient to result in his diagnosed anxiety. Instead he notes that appellant did not believe that the employing establishment had sufficient proof to establish that his exposure was not toxic. As Dr. Savitz did not attribute appellant's emotional condition to the accepted employment factor, his report is not sufficient to meet appellant's burden of proof.

The Board further finds that appellant has not met his burden of proof in establishing that his diagnosed condition of cellulitis is causally related to his accepted employment exposure to garden soil.

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury."⁶ These are the essential elements of each and every compensation

⁵ See *William P. George*, 43 ECAB 1159, 1168 (1992).

⁶ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁸ In this case, the Office accepted that appellant was exposed to garden soil on October 15, 2001.

The second component is whether the employment incident caused a personal injury and that generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁹

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹⁰

In support of his claim, appellant submitted two reports from Dr. Savitz, an osteopath. On October 19, 2001 he diagnosed bilateral cellulitis on both legs. This report is insufficient to meet appellant's burden of proof as Dr. Savitz noted that appellant had a possible anthrax exposure in the performance of duty, an inaccurate history of injury. He also failed to provide an opinion on the causal relationship between appellant's current condition of cellulitis and his employment.

Dr. Savitz completed a report on August 21, 2002 and again noted that appellant believed that he had been exposed to anthrax. He stated, "[w]hether or not it was anthrax or another substance, the contact seemed to be the cause of the cellulitis that was not previously present. This led me to conclude that this condition was directly related to his employment." Although Dr. Savitz supports a causal relationship between appellant's diagnosed condition of cellulitis and his exposure to garden soil, he fails to offer any medical rationale in support of his opinion. The Board has held that the mere manifestation of a condition during a period of employment

⁷ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁸ *Elaine Pendleton*, *supra* note 1.

⁹ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

¹⁰ *James Mack*, 43 ECAB 321 (1991).

does not raise an inference that there is a causal relationship between the condition and the employment. Neither the fact that the condition became apparent during a period of employment nor the belief that the employment caused or aggravated a condition is sufficient to establish causal relationship.¹¹ As Dr. Savitz does not offer any further reasoning in support of his opinion, other than the temporal relationship between appellant's exposure and his development of cellulitis, his report is insufficient to meet appellant's burden of proof.

Appellant submitted medical records from his treatment at the emergency room on October 17, 2001. These records provided a history of exposure to a "dust-like dirt." These notes diagnosed cellulitis and abscess of the leg. The notes do not provide an opinion on the causal relationship between appellant's diagnosed condition and his employment exposure. Without an opinion on causal relationship, these notes are insufficient to meet appellant's burden of proof.

The January 27, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 7, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹¹ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).