

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of OSCAR A. ARGUELLO and U.S. POSTAL SERVICE,  
POST OFFICE, Hialeah, FL

*Docket No. 03-509; Submitted on the Record;  
Issued June 4, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty causally related to factors of employment.

The case is on appeal to the Board for the second time.<sup>1</sup> In the first appeal, the Board found that contrary to the Office of Workers' Compensation Programs' finding, appellant established a compensable factor of employment and remanded the case for the Office to address the medical evidence. The Board found that management harassed appellant on March 12, 1996 for unprofessional estimate of the mail, failure to adhere to line of travel, extended lunch and unprofessional conduct. The Board referred to the Equal Employment Opportunity (EEO) Step 2 decision dated May 1, 1996 which stated that appellant encountered harassment and received poor instructions. The Board therefore set aside the Office's February 21, 2001 decision and remanded the case to the Office for further development regarding whether the March 12, 1996 harassment resulted in any condition for which appellant would be entitled to medical benefits or any periods of disability. The Board instructed the Office, after further development that it deemed necessary, to issue a *de novo* decision.

On remand, appellant submitted a medical report from his treating physician, Dr. Julio C. Machado, a psychiatrist, dated June 28, 2002. In his report, Dr. Machado stated that he had been treating appellant for six years and that, based on his treatment and a review of appellant's chart, he believed that the "event on April 9, 1996 must have affected [appellant] greatly, based on other subsequent situations that have arisen at the place of employment, and that the event affected him to the point of requiring time off and an increase intensity of psychotherapy and changes in pharmacotherapy so as to help him reestablish his previous level of functioning." He also stated that no other stressor had been identified in the past six years and appellant had no prior history of emotional problems or treatment except what he began to experience in 1995.

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<sup>1</sup> Docket No. 01-1445 (issued March 26, 2002). The facts and history surrounding the prior appeal are set forth in the initial decision and are hereby incorporated by reference.

Dr. Machado stated that some of the symptoms appellant exhibited when he first saw him were an “affective/anxiety nature with prominent sadness, tearfulness, reduced energy with daytime sleepiness.” He stated that appellant’s symptoms also included “feeling ill with butterflies in the stomach, chest discomfort, knot in throat” and rectal spasms. Dr. Machado found that appellant was “experiencing ideas of reference feeling people were talking about him which led to other conflicts.” He diagnosed major depression and generalized anxiety disorder and treated appellant for these conditions with medication and psychotherapies. Dr. Machado stated that appellant’s treatment in general had improved and he had periods of stability which seemed “to get comprised whenever stressors at work arise.” He stated:

“[I]n October 1987 he started to work for the [employing establishment] and beg[an] to experience emotional problems around 1995. I believe that his condition cannot be pinpointed to one particular incident but is more the sum of several incidents throughout [the] time of employment.

“This intermittent exposure to these incidents at work have eroded his self-esteem, have given rise to heightened defense mechanisms and paranoid ideas and led to prominent somatization of his anxiety.”

By decision dated July 19, 2002, the Office denied appellant’s claim, stating that the medical evidence of record did not establish that appellant’s psychiatric condition was related to the one incident that had been accepted as occurring in the performance of duty.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty causally related to factors of employment.

Where an employee alleges harassment and cites to specific incidents and the employer denies that harassment occurred, the Office or some other appropriate fact finder must make a determination as to the truth of the allegations.<sup>2</sup> The issue is not whether the claimant has established harassment or discrimination under standards applied by the EEO. Rather the issue is whether the claimant under the Federal Employees’ Compensation Act has submitted evidence sufficient to establish an injury arising in the performance of duty.<sup>3</sup> To establish entitlement to benefits, the claimant must establish a factual basis for the claim by supporting allegations with probative and reliable evidence.<sup>4</sup>

However, appellant’s burden of proof is not discharged by the fact that he has identified an employment factor which may give rise to a 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 or psychiatric disorder and that such disorder is causally related to the identified compensable employment factor, in this case, management’s harassing him on March 12, 1996 for his unprofessional estimate of the

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<sup>2</sup> *Michael Ewanichak*, 48 ECAB 364, 366 (1997); *Gregory J. Meisenburg*, 44 ECAB 527 (1993).

<sup>3</sup> *See Martha L. Cook*, 47 ECAB 226, 231 (1995).

<sup>4</sup> *Barbara E. Hamm*, 45 ECAB 843, 851 (1994).

mail, failure to adhere to line of travel, extended lunch and unprofessional conduct.<sup>5</sup> The Board has also held that if a factor of employment contributes in part to appellant's medical condition or disability, regardless of the significance of the contribution, appellant has established the requisite causation.<sup>6</sup>

In this case, in its prior decision, the Board found that there was a compensable factor based on management's harassment of appellant on March 12, 1996 for his unprofessional estimate of the mail, failure to adhere to a line of travel, extended lunch and unprofessional conduct. In his June 28, 2002 report, Dr. Machado stated that he could not attribute appellant's emotional condition to one particular incident but his condition was more the sum of several incidents through the time of employment. He also stated that appellant felt people were talking about him which led to other conflicts. Dr. Machado stated that the intermittent exposure to several incidents at work eroded appellant's self-esteem, heightened his defense mechanisms and paranoid ideas and led to prominent somatization of his anxiety. The Board, however, only accepted one incident as a compensable factor of employment. Appellant was not successful in establishing any other allegations as factual. Therefore, since Dr. Machado's opinion does not relate appellant's emotional condition to the specific compensable factor occurring on March 12, 1996, and provides no explanation of how that compensable factor caused appellant's condition, his opinion is not well rationalized and fails to establish that appellant's emotional condition is work related.<sup>7</sup> Appellant has therefore failed to establish that he sustained an emotional condition in the performance of duty.

The July 19, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
June 4, 2003

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>5</sup> *Clara T. Norga*, 46 ECAB 473 (1995); *see William P. George*, 43 ECAB 1159 (1992).

<sup>6</sup> *See Rudy C. Sixta*, 44 ECAB 727, 731 (1993).

<sup>7</sup> *See Samuel Senkow*, 50 ECAB 370, 377 (1999).