

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILLIAM R. HENSLEY and U.S. POSTAL SERVICE,  
POST OFFICE, Chapmanville, WV

*Docket No. 03-1010; Submitted on the Record;  
Issued June 18, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant established that he sustained an emotional condition in the performance of duty, as alleged.

On March 29, 2002 appellant, then a 40-year-old data conversion operator, filed an occupational claim for anxiety, stating that he changed shifts and the anxiety from driving caused him to miss work. He stated that he became aware that his condition was work related on February 28, 2002. Appellant stopped working on March 23, 2002. He stated that he returned to his original shift and still felt anxious.

In accompanying statements, appellant alleged that he changed to a shift where he "had to face a lot of traffic after dark," which triggered his anxiety. He stated that previously he had worked on a shift with very little traffic. Appellant stated that he had anxiety attacks while driving and while he was at work he was so anxious that he sweated, his heart pounded and he wanted to be alone. He indicated that he continued to be anxious after he switched back to his original shift and stated that he missed two months of work due to this condition which started in late February 2002. Appellant stated that he felt much better at the present time and was taking medication. He stated that he felt that changing shifts contributed to his anxiety and he was "not sure" of overtime work also contributed to it.

In an undated statement, faxed to the Office of Workers' Compensation Programs on October 17, 2002 the employing establishment stated that appellant changed his schedule at his request. When appellant called and informed management that he was having problems with the traffic, management told him that he could return to his original schedule.

A handwritten note dated May 2, 2002 stated that appellant's schedule was changed on or around February 21, 2001 from a late reporting schedule to an early reporting schedule at appellant's request. The note stated that he subsequently requested to return to the late reporting schedule which he did on March 2, 2002.

An attending physician's report dated April 8, 2002 from Dr. Bobby A. Miller, a Board-certified psychiatrist and neurologist, stated that appellant had anxiety aggravated by the shift change and checked the "yes" box that he believed that condition was work related.

By decision dated February 27, 2002, the Office denied the claim, stating that appellant did not establish that his anxiety arose from factors of his employment.

The Board finds that appellant did not sustain an emotional condition in the performance of duty, as alleged.

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>1</sup> 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.<sup>2</sup>

As a general rule, an off-premises injury sustained by an employee having fixed hours and place of work, while the employee is coming to or going from the employer's premises, is not compensable because the injury does not arise out of and in the course of employment, but out of ordinary nonemployment hazards of the journey itself, which are shared by all travelers.<sup>3</sup> Exceptions to this general rule pertain only to those hazards of travel which may fairly be considered a hazard of the employment; for example, where the employment requires the employee to travel on the highways or where the employee is subject to emergency calls, such as a fireman.<sup>4</sup>

In this case, appellant alleged anxiety resulting from heavy traffic in his commute to work when he changed to an earlier shift. The Board has held that an emotional condition sustained in the course of commuting to and from the workplace does not arise out of and in the course of appellant's employment.<sup>5</sup> His commute was not part of his employment duties. Anxiety from heavy traffic during the commute can be characterized as self-generated and arising from the hazards of the journey shared in common by all travelers. Further, the change in shifts was made at appellant's request and management complied with his request to change back to the late shift when appellant informed management that he was having anxiety from the

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Clara T. Norga*, 46 ECAB 473, 480 (1995); see *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>3</sup> *Mary Margaret Grant*, 48 ECAB 696, 703 (1997); *Adele Garafolo*, 43 ECAB 169, 172 (1991).

<sup>4</sup> *Id.*

<sup>5</sup> See *Mary Margaret Grant*, *supra* note 3 at 703; *Adele Garafolo*, *supra* note 3 at 172.

commute. He has, therefore, not established that his emotional condition was sustained within the performance of duty within the meaning of the Act, as alleged.

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

Dated, Washington, DC  
June 18, 2003

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member