

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MAURO S. MARQUEZ and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, CA

Docket No. 03-44; Submitted on the Record;
Issued March 4, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

This is the second appeal in the present case. In the prior appeal, the Board issued a decision and order¹ on May 3, 2002 which set aside the March 14, 2001 decision of the Office of Workers' Compensation Programs denying appellant's claim that he sustained an employment-related emotional or stress-related condition.² The Board determined that appellant had established a compensation employment factor with respect to working overtime.³ The Board indicated that because the Office had previously found no compensable employment factors, it did not analyze or develop the medical evidence. The Board remanded the case to the Office for this purpose, to be followed by an appropriate decision regarding appellant's claim. The facts and circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

On remand the Office evaluated the medical evidence with respect to appellant's claim that he sustained an emotional or stress-related condition due to employment factors. By decision dated July 12, 2002, the Office denied appellant's claim on the grounds that appellant did not submit sufficient medical evidence to establish that he sustained an emotional or stress-related condition due to accepted employment factors.

¹ Docket No. 01-1317.

² In February 2000 appellant, then a 55-year-old mail carrier, filed a claim alleging that he sustained hypertension, chest and back pains, post-traumatic stress syndrome and depression as a result of a number of employment incidents and condition. The Office denied appellant's claim on the grounds that he did not establish any compensable employment factors.

³ Appellant indicated that he worked at least ten hours per day for four or five days per week. The Board further found that the Office had properly determined that appellant did not establish various other claimed employment factors, including those relating to harassment, discrimination and administrative matters.

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

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.⁴ 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.⁵

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 employment factors.⁶ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁷

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, 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.⁸ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁹

In the present case, appellant claimed that he sustained employment-related emotional and stress-related conditions due to various incidents and conditions at work. He established a compensable employment factor with respect to his performance of overtime work. The Board finds, however, that appellant did not submit sufficient medical evidence to establish that he sustained an emotional or stress-related condition due to the accepted employment factor.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁷ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁸ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁹ *Id.*

In a report dated March 15, 1999, Dr. James P. Howard, an attending clinical psychologist, diagnosed post-traumatic stress disorder due to various traumas, including the deaths of his parents and the death of a coworker in an accident. However, the deaths of appellant's parents and his coworker would not be considered employment factors. With respect to the death of appellant's coworker, both the Office and the Board determined that the death of his coworker did not occur in the course of his employment and did not constitute an employment factor.¹⁰ In his report, Dr. Howard further indicated that appellant reported disliking his supervisor and his mail delivery route and that he feared losing his job. The Office and the Board also determined that appellant's conflicts with his supervisor, his dislike of certain administrative decisions made by supervisors and his fear of losing his job did not constitute compensable employment factors.¹¹ Moreover, Dr. Howard did not provide any opinion that these incidents or conditions caused or aggravated appellant's medical condition.

In a form report dated February 8, 2000, Dr. Peter Barglow, an attending Board-certified psychiatrist, diagnosed post-traumatic stress disorder with depression. He checked a "yes" box indicating that appellant's condition was employment related and added the notation, "symptoms increase with work." However, Dr. Barglow did not provide an opinion that appellant sustained an emotional or stress-related condition due to any specific employment factor. The Board has held that the fact that a condition manifests itself or worsens during a period of employment¹² or that work activities produce symptoms revelatory of an underlying condition¹³ does not raise an inference of causal relationship between a claimed condition and employment factors. Dr. Barglow did not provide any clear indication that appellant's condition was due to the accepted employment factor, his overtime work.¹⁴ The record contains numerous other reports regarding the treatment of appellant's emotional and stress-related conditions, but none of them contains an opinion that he sustained such conditions due to an employment factor.¹⁵

¹⁰ It was noted that appellant gave vague and varying accounts of the death of his coworker. For example, in a report dated June 29, 1999, Dr. Robert Burr, an attending Board-certified psychiatrist, diagnosed post-traumatic stress disorder and indicated that appellant was upset about a coworker at the employing establishment who was in a serious vehicular accident and died of cancer about six months later. In an October 1, 1999 report, it was reported that appellant indicated the coworker died six months after the accident due to injuries sustained in the accident.

¹¹ See *supra* notes 4 and 5 and accompanying text.

¹² *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹³ *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

¹⁴ Moreover, he did not provide any findings on examination or diagnostic testing to support his diagnosis of appellant's condition.

¹⁵ It should be noted that a number of these reports related appellant's condition to nonwork factors such as his wartime experiences, the death of a friend in an airplane accident and the death of his parents. Some of the reports indicated that appellant had less stress after stopping work, but none of them indicates that established work factors caused his condition.

The July 12, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
March 4, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member