

**United States Department of Labor
Employees' Compensation Appeals Board**

JEFFREY W. OSBORN, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Indianapolis, IN, Employer**

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**Docket No. 03-1175
Issued: April 9, 2004**

Appearances:
Jeffrey W. Osborn, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On April 7, 2003 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated January 23, 2003. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

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

FACTUAL HISTORY

On September 26, 2001 appellant, then a 27-year-old city carrier, filed a claim for an occupational disease alleging that factors of his federal employment caused an emotional condition. He attributed his emotional condition to pending surgery for a back injury of February 12, 2001¹ and alleged that his back pain as well as indifference by the employing

¹ The employing establishment indicated that appellant had a previously accepted claim, A9-2007156, for a back injury which occurred on February 12, 2001.

establishment and the Office caused his mental breakdown. Appellant first realized that his condition was caused or aggravated by his employment on September 11, 2001.

A September 17, 2001 initial assessment from St. Vincent Hospital and Health Services² indicated that appellant was experiencing severe anxiety, was very angry, and experienced hallucinations in which he was instructed to kill himself or others at work. Appellant was placed in a partial hospitalization program. A September 18, 2001 evaluation by a Dr. Dewey³ was provided, together with a September 21, 2001 attending physician's report and a September 25, 2001 duty status report from Dr. Toner Overley, a Board-certified psychiatrist, who diagnosed major depression caused or aggravated by employment activity. Dr. Overley advised that appellant was in a mental health day treatment program and unable to work.

By letter dated October 12, 2001, the Office advised appellant that it needed a specific description of the incidents to which he attributed his condition and a comprehensive medical report including the physician's explanation regarding how employment incidents contributed to his condition. Also on October 12, 2001, the Office requested that the employing establishment provide comments from a knowledgeable supervisor on the accuracy of appellant's statements.

Dr. Overley continued to submit reports on appellant's condition.

In an undated note, Roger Gorge, supervisor, stated that appellant was advised on numerous occasions to follow his back restrictions. He indicated that appellant carried his restrictions in his pocket and was asked on a daily basis if the assignments given to him were sufficient to meet his restrictions. In an October 31, 2001 statement, Mr. Gorge denied that there were any aspects of appellant's job which could be perceived to be stressful. He stated that appellant received assignments within his physical restrictions; was not scheduled for overtime or any intense assignments; travel was limited to, from, and within his assignments, and appellant was not given any quotas to meet. Mr. Gorge reiterated that he would review with appellant the tentative daily assignments to ensure that appellant could complete his assignment and do so within his restrictions. He stated that, if appellant was unable to complete his assignments due to his restrictions, the assignment was adjusted before appellant left the building. Mr. Gorge further indicated that there were no conflicts between appellant and his coworkers or supervisors and no action was taken on any performance issues.

In an undated statement, Mari Lou Sechman, a manager, stated that the supervisor never placed any restrictions on appellant. She stated that both appellant and the manager would review appellant's restrictions to be sure that they were followed correctly. Ms. Sechman further stated that the supervisor never required appellant to work outside of his physical restrictions. No conflict with either coworkers or management was noted.

In an October 18, 2001 letter, Susan Osborn, appellant's mother, related that appellant had injured his back at work on February 21, 2001, had two herniated discs and was placed on restrictions. She indicated that appellant experienced pain but continued to work after his pain

² The signature of the physician is not legible.

³ Dr. Dewey's credentials are not known.

medicine was no longer effective in August. Ms. Osborn stated that appellant's supervisors pressured him to do the same amount of work as a normal carrier or he would lose his job. She stated that appellant's supervisors did not show that they remembered appellant's restrictions as they asked him to do things which caused additional pain. She related that appellant had his breakdown on September 10, 2001 when his supervisor told him to do a collection route which involved bending and twisting, one of his limitations.

By decision dated December 13, 2001, the Office denied appellant's claim, finding there was no evidence to establish that he sustained an injury while in the performance of duty. The Office found that there were no compensable employment factors, as appellant failed to substantiate that he worked outside his work restrictions and his allegation that the emotional condition arose from his back injury did not relate to any actual work factors. The Office advised that appellant might have developed an emotional overlay or consequential condition from his February 2001 back injury, which could be pursued under that claim.

In a January 11, 2002 letter, Ms. Osborn requested an oral hearing. She stated that appellant's first claim, concerning the February 21, 2001 back injury, was approved and alleged that the present emotional condition claim would never have happened if the first claim had been processed in a timely fashion and if appellant's supervisors had respected his work limitations. She stated that the process took so long that appellant's pain medication became ineffective and he was working in constant pain under threatening supervisors. A hearing was held on October 29, 2002, during which appellant and his mother testified. Reports on appellant's back condition, status post L5-S1 lumbar fusion with a posterior lumbar interbody device were submitted, along with a time line outlining the Office's development of appellant's back condition claim and when his depression began.

In a January 11, 2002 report, Dr. Kim A. Duffey, a psychologist, advised that she saw appellant in the day treatment program and opined that his depressive symptoms were a result of not getting the back surgery in a timely fashion. In a January 29, 2002 prescription note, Dr. Amy D. Konkle, a psychiatrist, opined that appellant's emotional deterioration had a clear onset to his work-related injury.

By decision dated January 23, 2003, an Office hearing representative affirmed the December 13, 2001 denial of appellant's claim, finding that appellant failed to establish a compensable factor of employment.

LEGAL PRECEDENT

To establish that he sustained an emotional condition causally related to factors of his federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.⁴

⁴ *Leslie C. Moore*, 52 ECAB 132 (2000).

Workers' compensation law is not applicable 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. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.⁵ On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.⁶ Perceptions and feelings alone are not compensable. 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.⁷

ANALYSIS

Appellant alleged that his emotional claim was based on two factors, his accepted back injury of February 21, 2001 and the employing establishment's failure to provide work meeting his physical restrictions stemming from the back claim. With respect to appellant's back claim, appellant has asserted that the Office did not timely process his back claim and Ms. Osborn contended that appellant's emotional condition would not have manifested if the back claim had been timely processed. A review of the timeline of events in the development of appellant's back claim reveals that several months passed between a recommendation for a discogram and subsequent request for surgery, before the Office authorized such procedures. Appellant appeared frustrated with the delays and developed an emotional condition soon thereafter, which he attributed to his back claim. The Board has adhered to the general principle that an appellant's frustration over the processing of his compensation claim is personal in nature and is not considered to be within an employee's course of employment or performance of duty.⁸ Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant has also contended that the employing establishment made him work outside of his physical restrictions. In her October 18, 2001 letter, Ms. Osborn alleged that appellant's supervisors instructed him to do the same amount of work as a normal carrier or he would lose his job. She further contended that the September 10, 2001 collection run was outside of appellant's limitations. The Board has held that being required to work beyond one's physical limitations may constitute a compensable employment factor if such activity is substantiated by the evidence of record.⁹ Appellant has not submitted sufficient evidence to establish that he was required to work beyond his physical limitations. The statements from Mr. Gorge, a supervisor, and Mr. Sechman, a manager, indicate that appellant was provided with daily work assignments

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Bonnie Goodman*, 50 ECAB 139 (1998); *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *Robert Knoke*, 51 ECAB 319 (2000).

⁸ *See Thomas J. Costello*, 43 ECAB 951 (1992).

⁹ *Robert W. Johns*, 51 ECAB 137 (1999).

consistent with his medical restrictions and was directly involved in the process of deciding whether the proposed work assignments conformed with his restrictions. Appellant therefore has not provided any evidence that the employing establishment required him to work beyond his restrictions. Therefore, appellant has not substantiated that he was required to work beyond his restrictions.

The Board notes that Ms. Osborn, in her October 18, 2001 letter, contended that appellant continued to work even when his pain medication stopped working in August. The Board has held that an emotional condition related to chronic pain and limitations resulting from an employment injury maybe covered under the Act.¹⁰ The Board notes, however, that the medical evidence submitted in this case fails to relate to a compensable factor of employment or to the pain resulting from appellant's back injury, which is not part of the present claim. Dr. Duffey relates appellant's emotional condition to "not getting the back surgery in a timely fashion," which, as previously discussed, relates to frustration over the processing of his compensation claim and is not covered under the Act. Dr. Konkle, in her January 29, 2002 prescription note, opined that appellant's emotional deterioration had a clear onset to his work-related injury. This opinion appears to relate the emotional component to appellant's back claim. Appellant has the burden of proof to establish that he sustained a claimed condition in the performance of duty and, as part of that burden of proof, he must establish the employment factors alleged to have caused or aggravated the claimed condition.¹¹ Thus, appellant has not established a compensable employment factor under the Act in this respect.

Although the Office had advised appellant that he could pursue a consequential injury claim for his emotional condition under his back claim, the Board finds appellant filed the present claim alleging that the emotional condition was due to the back injury. Statements from appellant in amplification and expansion of a claim are as much a part of the claim as the claim form itself.¹² Whether or not a separate claim form should have been submitted, appellant's statements and the evidence submitted pertaining to an emotional condition arising from his back injury in the present claim is sufficient to constitute a claim for compensation.¹³ Technical requirements of pleading are inconsistent with the remedial purposes of the statute.¹⁴ Therefore, on remand, the Office should issue a *de novo* decision on appellant's consequential injury claim for his emotional condition due to his back injury.

¹⁰ See *Arnold A. Alley*, 44 ECAB 912, 921-22 (1993); *Charles J. Jenkins*, 40 ECAB 362, 367 (1988).

¹¹ See *Leslie C. Moore*, *supra* note 4.

¹² See *Wilfred M. Hamilton*, 41 ECAB 524 (1990); *Josephine B. Lampariello*, 8 ECAB 626 (1956).

¹³ See *Wilfred M. Hamilton*, *id.*; *Marc J. Logie*, 12 ECAB 257 (1960).

¹⁴ See *Grady L. Frazier*, 40 ECAB 1298 (1989) (the Act and the regulations promulgated thereunder, are remedial in nature). Cf. *Wilfred M. Hamilton*, *supra* note 12 (technical requirements of pleading are inconsistent with the remedial purposes of the statute); *Harry A Stolple*, 6 ECAB 983 (1954) (to interpret the Board's regulations in a highly technical manner would create an unjust and unnecessary burden upon the party seeking the appeal, and would be inconsistent with the informal nature of the appellate procedure, designed as it is for federal employees and their families).

CONCLUSION

The Board finds that appellant has not established several alleged factors of employment. The Board will remand the case to the Office to issue a *de novo* decision on appellant's consequential injury claim for his emotional condition due to his back injury.

ORDER

IT IS HEREBY ORDERED THAT the January 23, 2003 decision of the Office of Workers' Compensation Programs is affirmed, in part. The case is remanded for further development to be followed by a *de novo* decision on appellant's claim that his emotional condition is due to his back injury.

Issued: April 9, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member