

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

JEFFREY W. OSBORN, Appellant

and

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

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 04-1691
Issued: December 28, 2004**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On June 23, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated June 8, 2004 which denied his claim for a consequential emotional condition due to his back injury. Pursuant to 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 met his burden of proof in establishing that he sustained an emotional condition as a consequence of his accepted back injury.

FACTUAL HISTORY

The record reflects that appellant has filed three separate claims before the Office. In claim number 092005230, the Office accepted that a December 18, 2000 work injury resulted in a contusion of the lumbar and lumbar sprain. In claim number 092007156, the Office accepted the condition of a lumbosacral strain for a February 21, 2001 injury, later expanded to include the conditions of degenerative disc disease L5-S1, sciatica and posterior lumbar interbody fusion.

In claim number 092014097, the Office denied appellant's claim for an emotional condition causally related to factors of his federal employment or to his accepted back injury of February 21, 2001. In an April 9, 2004 decision, the Board affirmed the Office's determination, in claim number 092014097, that appellant did not establish that he sustained an emotional condition causally related to his federal employment. The Board, however, remanded the case to the Office to issue a *de novo* decision on appellant's consequential injury claim for his emotional condition due to the back injury of February 21, 2001.¹ The facts and the history of the case are herein incorporated by reference.

Following remand, in a letter dated April 29, 2004, the Office advised appellant that his claims, 092014097, 092005230 and 092007156, were combined into claim number 092007156. The Office advised appellant that further information was required concerning whether he sustained a consequential injury in the form of an emotional condition due to his back injury of February 21, 2001. Appellant was requested to provide further factual and medical information, including a well-rationalized medical report regarding his emotional condition which included an opinion concerning the relationship between his stress-related claim and his back injury.

In a May 19, 2004 letter, appellant advised that his back surgery was authorized almost a year after his December 2000 accident and that, since surgery, he has not had any emotional illness. He stated that the employing establishment and the Office delayed responding to the doctor's requests, such as obtaining approval for a discogram test and his eventual surgery, which contributed to his breakdown of September 2001. While he was waiting for his testing and surgery to be approved, his job situation worsened as the employing establishment failed to honor his work restrictions. Appellant worked Christmas Day 2000, carried mail, ran a route and was forced to do collection runs which were against his physical restrictions. He provided the names of witness and telephone numbers.

In an October 24, 2001 letter, Susan K. Osborn, appellant's mother, addressed his history of injury and asserted that the employing establishment did not follow appellant's work restrictions.

Appellant also submitted materials previously of record relating to his back claim, which included: a March 27, 2001 magnetic resonance imaging (MRI) report; an August 16, 2001 letter from the Office authorizing a discogram; a September 17, 2001 letter from the Office to Dr. Kenneth L. Renkens regarding his surgical request; a September 24, 2001 letter scheduling appellant for a second opinion evaluation; and a November 5, 2001 letter from the Office expanding appellant's claim and authorizing a medical procedure.

He also submitted evidence previously of record relating to his emotional condition claim. This included: a September 17, 2001 prescription slip from Northeast Counseling & Psychiatric Centers advising that appellant was totally disabled from work due to emotional difficulties; and chart notes from St. Vincent Hospital for the period September 18 to October 30, 2001 documenting appellant's condition. In a September 21, 2001 Form CA-20, attending physician's report, Dr. Toner Overley, a Board-certified psychiatrist, stated that appellant was totally disabled from work due to major depression and opined, with a check mark, that

¹ Docket No. 03-1175 (issued February 21, 2001).

appellant's condition was caused or aggravated by employment activity. In a September 25, 2001 Form CA-17 duty status report, Dr. Overley advised that appellant was in a mental health program and unable to work.

In a November 11, 2002 report, Dr. Kim Duffey, Ph.D., a clinical psychologist, advised that she saw appellant in the day treatment program and opined that his depressive symptoms were a result of not obtaining 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 June 8, 2004, the Office denied appellant's claim for consequential emotional condition.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his employment.² This burden includes the submission of a detailed description of the employment conditions or factors, which appellant believes caused or adversely affected the condition, for which he or she claims compensation.³ This burden also includes the submission of rationalized medical opinion evidence, based upon a complete and accurate factual and medical background of appellant, showing a causal relationship between the condition, for which compensation is claimed and the implicated factors or conditions of his federal employment.⁴

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 coverage of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but nevertheless are not covered because they are not found to have arisen out of employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.⁵

It is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that

² *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

³ *See generally* 20 C.F.R. §§ 10.115-116 (1999).

⁴ *See Ruth C. Borden*, 43 ECAB 146 (1991).

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employee's own intentional conduct.⁶

ANALYSIS

In a May 19, 2004 letter, appellant contended that the Office and the employing establishment's delayed responding to his doctor's request to authorize surgery which contributed to his emotional condition. A review of the record indicates that several months had passed between the recommendation for a discogram and the subsequent request to authorize surgery. Appellant contends that he became appeared to have been frustrated with the delay over the processing of his claim and, as a consequence, developed an emotional condition. The Board, however, has held that frustration over the processing of a compensation claim is personal in nature and is not considered to advise in the course of employment or performance of duty.⁷ Appellant has not established a compensable employment factor in this respect.

Appellant also contended that the employing establishment did not honor his physical restrictions. 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.⁸ Although appellant provided the names and telephone numbers of potential witnesses, he bears the burden of proof to provide factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his emotional condition.⁹ In its April 9, 2004 decision, the Board addressed this allegation and found that the employing establishment had submitted evidence which directly refuted appellant's allegation. Appellant did not submit new evidence to substantiate that he was required to work beyond his physical limitations. Therefore, he has not established this allegation as a compensable employment factor.

Moreover, the record does not contain medical evidence sufficient to establish appellant's emotional condition as a consequence of the accepted back injury. Appellant submitted medical records in support of his claim but this evidence either contained no discussion of the causal relationship of his diagnosed emotional condition to the February 21, 2001 back injury or only provided support by checking a box "yes," on a form report, without further explanation to explain how such a causal relationship existed. The Board has held that a physician's form report which merely checks the box marked "yes" to the inquiry as to whether the condition for which treatment is rendered is causally related to the history of injury as given, is of diminished probative value as it constitutes a conclusion without the benefit of any medical rationale.¹⁰

⁶ See *Charlet Garrett Smith*, 47 ECAB 562 (1996).

⁷ See *Thomas J. Costello*, 43 ECAB 951 (1992).

⁸ *Robert W. Johns*, 51 ECAB 137 (1999).

⁹ See *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁰ *Barbara J. Williams*, 40 ECAB 649 (1989).

The September 17, 2001 prescription slip did not address how the back injury would have caused or contributed to an emotional condition. The chart notes from St. Vincent's Hospital dated September 18 through October 30, 2001 noted appellant's back pain and his emotional condition, but there was no discussion that his emotional conditions were related to the February 21, 2001 work injury. Dr. Overley failed to provide any medical rationale or explanation for his opinions that appellant's major depression was caused or aggravated by the employment-related back injury. Dr. Duffey also did not specifically relate an emotional condition to the back injury. Although Dr. Konkle's January 29, 2002 prescription note opined that appellant's emotional deterioration had a "clear onset" to his work-related injury, she did not offer any reasoned explanation in support of her stated conclusion. These medical reports are not sufficient to establish appellant's claim. For these reasons, appellant did not meet his burden of proof.

CONCLUSION

Appellant did not meet his burden of proof in establishing that he sustained an emotional condition as a consequence of his accepted back injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 8, 2004 is affirmed.

Issued: December 28, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member