

and he stopped work on January 15, 2002. In support of his claim, appellant submitted duty status reports dated January 21, 2002 from a physician whose signature is illegible and January 28, 2002 from Dr. Kenneth J. Kindya, a licensed psychologist, who diagnosed an anxiety and adjustment disorder with mood and behavior problems due to stress.

In a January 28, 2002 memorandum, Steve Hathaway, postmaster of the employing establishment, controverted appellant's claim. He stated that, due to an increase in security measures, the employing establishment had been instructed to secure all entry doors to its facility. He noted that appellant talked to him on January 10, 2002 about his frustrations with answering the door to the bulk mail acceptance unit. Appellant told Postmaster Hathaway that a couple of employees were ringing the buzzer and then leaving when he opened the door. Appellant stated that when he opened the door no one was there. Postmaster Hathaway suggested that appellant ignore this and they would probably stop, but if he knew who was doing it, Postmaster Hathaway would talk to these individuals. He related that he saw appellant that evening about 4:40 p.m. and he was in a good mood, they talked and he was fine. Postmaster Hathaway saw appellant again on January 11, 2002 and he was okay. He noted that appellant did not mention anything about the door or having any problems with answering it. Postmaster Hathaway told appellant that he would try to have a window and a remote button installed in the door so that appellant could see who was trying to gain access and could open the door in his office, but stated that he did not know if this was possible. On January 14, 2002 appellant worked his complete eight-hour shift and did not inform his supervisor, Claire Jamieson, or Postmaster Hathaway that he was having any problem that would stress him out to the point of leaving work. On January 15 and 16, 2002 appellant called in using sick leave. On January 17, 2002 appellant telephoned Ms. Jamieson and asked for a Form CA-1. When Ms. Jamieson asked appellant why he wanted the form, appellant stated that he was filing a stress claim and that she would not see him for 45 days. Postmaster Hathaway stated that appellant informed Ms. Jamieson of his doctor's appointment scheduled for January 21, 2002.

Patricia E. Chasse, an employing establishment human resources specialist, noted that appellant never indicated that he was experiencing stress due to the buzzer which had been recently installed at his insistence. She stated that Postmaster Hathaway did everything possible to accommodate the new instructions to increase security at all entry doors. She noted that Postmaster Hathaway spoke to appellant on several occasions and appellant never mentioned that he was stressed by his job.

By letter dated February 14, 2002, the Office advised appellant that the evidence submitted was insufficient to establish his claim. The Office further advised appellant about the type of factual and medical evidence he needed to submit to establish his claim.

The Office received additional duty status reports dated February 13, 20, 22 and 27, 2002 from Dr. Kindya reiterating that appellant had an adjustment disorder with emotional and behavioral problems due to stress. In a physician's report dated March 4, 2002, Dr. Corey Webb¹ indicated that appellant experienced anxiety caused by the employment activity of an overwhelming workload by placing a checkmark in the box marked "yes." His March 4, 2002

¹ The professional qualifications of Dr. Webb cannot be determined from the record.

state workers' compensation progress report noted that appellant experienced work-related anxiety and stress.

In response to the Office's February 14, 2002 letter, appellant submitted an undated letter from Dr. Kindya who reiterated the diagnosis of an adjustment disorder with disturbance of emotions and conduct. He opined that appellant's emotional condition was caused by work stressors which included multitasking, security bell and business mail duty and failure to receive proper training. Dr. Kindya's duty status reports dated from March 6 to August 14, 2002 reiterated the diagnosis.

Appellant submitted a narrative statement alleging that the employing establishment did not provide quarterly training in violation of its policy. He alleged that he had to handle additional telephone calls because the employing establishment's office in Bangor, Maine had not updated the telephone directory during the prior 10 years. Appellant explained that the first telephone number in the directory was for his office and he had to transfer the calls. He alleged that several customers sent complaints about him to his superiors including Postmaster Hathaway, and that one such complaint resulted in an investigation by the employing establishment and he was cleared of any wrongdoing. Appellant contended that he experienced difficulty, although he was successful, in multitasking when he had to wait on a customer in person, as well as, on the telephone. Upon implementation of the employing establishment's new security plan on Friday, January 11, 2002, he experienced severe stress the following Monday which led him to file a Form CA-1. Appellant explained that the security plan required him to open the door, which was located 52 feet away from his workstation, for business mail customers and then return to his workstation. He stated that this additional responsibility led to an overload of work. Appellant noted that around 1:30 p.m. on Monday, he paged his supervisor and told him that he went to the door in response to the doorbell which was presumably pushed by a customer and tried to open the door. He stated that someone on the other side of the door was pushing on the door so that he could not open it. Appellant tried another time to push the door open and the person on the other side prevented him from opening it. He related that he returned to his office frustrated and upset and raised his voice at supervisor, John McGrath. He told Mr. McGrath to fix the problem which he considered harassment by an unknown person.

The Office issued a December 18, 2002 decision finding that appellant failed to establish that he sustained an emotional condition in the performance of duty. The Office found that appellant's allegations regarding the lack of training, the handling of a high volume of misdirected telephone calls, an investigation of a customer complaint against him and security door duty involved administrative matters and the employing establishment did not commit error or act unreasonably in handling these matters. The Office also found no support for appellant's allegations that he experienced moderate levels of stress in simultaneously dealing with customers in person and on the telephone. The Office determined that appellant had failed to establish any compensable factors of employment.

Appellant requested an oral hearing before an Office hearing representative by letter dated January 17, 2003. On February 27, 2003 appellant requested that the Office issue a subpoena to Dr. Webb and Dr. Kindya to attend and testify since the records did not reflect the severity of his emotional condition during his initial visits and to explain the method of treatment

given and the length of treatment. He stated that the issuance of subpoenas was the best and only method to obtain the facts and evidence for this case.

By decision dated August 13, 2003, the hearing representative denied appellant's request to issue subpoenas on the grounds that Drs. Webb and Kindya could not add any testimony regarding appellant's employment factors. The hearing representative affirmed the December 18, 2002 decision finding that appellant failed to establish a compensable factor of employment.

LEGAL PRECEDENT -- ISSUE 1

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of his federal employment.² To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.³

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 the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the 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 to 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.⁴

In emotional condition cases, the Office 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 to be factors of employment and may not be considered.⁵ Therefore, the initial question is whether appellant has alleged compensable factors of employment that are substantiated by the record.⁶

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

³ *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Margaret S. Kryzcki*, 43 ECAB 496, 502 (1992).

⁶ *Donald E. Ewals*, 45 ECAB 111, 122 (1993).

ANALYSIS -- ISSUE 1

Appellant described the difficulties he had in handling his work duties which caused his emotional condition. These duties included handling misdirected telephone calls, providing customer service in person and on the telephone and answering a security door. Appellant also contended that his emotional condition was caused by a lack of adequate training, the filing of complaints against him by customers and an investigation of one of these complaints by the employing establishment. His contentions that he was overwhelmed by his various job responsibilities are supported by the record. Postmaster Hathaway was aware of appellant's frustrations with someone ringing the buzzer on the security door and then disappearing when he opened it. He offered to talk to the individual responsible for ringing the bell if appellant could identify the person, to put a window in the door so that appellant could see who was seeking access and install a remote button in appellant's office to open the door. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.⁷ In this case, appellant alleged that his claimed emotional condition arose as a result of his attempts to meet the demands of his position. Accordingly, the Board finds that appellant has established a compensable employment factor.

Appellant's burden of proof, however, is not discharged by the fact that he has established 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 accepted compensable employment factor.⁸ Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

The relevant medical evidence includes a March 4, 2002 attending physician's report from Dr. Webb in which he indicated that appellant's anxiety was caused by an overwhelming workload by placing a checkmark in the box marked "yes." In an undated letter, Dr. Kindya found that appellant's adjustment disorder with disturbance of emotions and conduct was caused by work stressors which included multitasking, security bell and business mail duty and failure to receive proper training.

The Board finds that, although neither Dr. Webb nor Dr. Kindya provided sufficient medical rationale explaining how the accepted employment factors caused or contributed to

⁷ See *Lillian Cutler*, *supra* note 4.

⁸ See *William P. George*, 43 ECAB 1159, 1168 (1992).

⁹ *Id.*

appellant's emotional condition, their reports are generally supportive of appellant's claim and sufficient to require further development by the Office.¹⁰ The case, therefore, will be remanded to the Office for preparation of a statement of accepted facts and further development of the medical evidence on the issue of whether appellant sustained an emotional condition causally related to the accepted compensable employment factors. After such further development as is deemed necessary, the Office should issue a *de novo* decision.

CONCLUSION

The Board, however, finds that the case is not in posture for decision as to the issue of whether appellant established that he sustained an emotional condition in the performance of duty. In light of this disposition of the case the issue concerning the hearing representative's denial of appellant's subpoena request is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' August 13, 2003 and December 18, 2002 decisions are set aside in part and remanded for further consideration consistent with this decision with respect to the finding that appellant failed to establish that he sustained an emotional condition in the performance of duty.

Issued: May 20, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹⁰ *Helen Allen*, 47 ECAB 141 (1995); *Peggy R. Lee*, 46 ECAB 527 (1995).