

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

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**KARL H. BOWER, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Sacramento, CA, Employer**

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**Docket No. 04-335  
Issued: September 29, 2004**

*Appearances:*  
*Karl H. Bower, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On November 20, 2003 appellant filed an appeal of the decision of the Office of Workers' Compensation Programs dated September 23, 2003, rescinding acceptance of his emotional condition claim. 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The issue on appeal is whether the Office properly rescinded its acceptance of appellant's claim for an employment-related emotional condition.

**FACTUAL HISTORY**

This case has been before the Board previously. By decision dated November 28, 1990, the Board affirmed a January 8, 1990 Office decision that rejected compensation for periods of disability before June 29, 1987, as such periods were not found to be caused by factors of

appellant's employment.<sup>1</sup> The facts and the circumstances of the case up to that point are noted below.

On June 25, 1987 appellant, then a 38-year-old letter carrier filed an occupational disease claim alleging that he suffered from stress due to continued harassment by management causally related to his employment. On the claim form, appellant alleged that management harassed him by observing him while he was casing mail and while he was out on his route and further by denying him help with his route and requests for emergency leave. Appellant also indicated that after 15 years of working for the employing establishment he was told he was carrying his mailbag on the wrong shoulder. Appellant stopped work approximately July 3, 1987.

In supplemental statements submitted with the claim, appellant alleged that he had a cocaine addiction and his problems with the employing establishment began when he disclosed his problem and signed up for the Postal Par Program. Appellant alleged that although the program was supposed to be confidential it was not and when management found out "all heck broke lose." He alleged that he felt like he was being picked on by management because he was always being singled out and called into the back office for not wanting to work overtime and not taking all his mail. Appellant alleged that management would stand behind him and tell him that he was not casing mail fast enough. He further alleged that, when he would ask for a day off, two weeks in advance of a court date, management would wait until the day before the court date to tell him that there was not enough help in the office to give him the day off. Appellant alleged that when he was in the drug program he was lied to by his supervisor Charles Sumpter regarding his suspension for being absent without leave (AWOL). Appellant alleged that he had the opportunity to grieve the supposed suspension but his supervisor changed the date of a step-one grievance hearing from March 15<sup>th</sup> to March 5<sup>th</sup> which caused him a two-week suspension. He asserted that both his supervisors admitted that they do not understand people who abuse drugs and that Barry Witmer allegedly stated that if he had his way appellant would not be working there. Appellant stated that Mr. Sumpter had made a similar comment to others, which was corroborated through witness statements. He further stated: "All this [led] to my being off from work for almost one year. I returned to work on February 7, 1987 and had more problems with management. This time my problems were over a dog bite which I was found to have been at fault." Appellant asserted that he was given a letter of warning for the dog bite which would be on his record for two years. He alleged that he grieved this decision and the reprimand was reduced to three months. Appellant stated that, during his hearing for the dog bite, he was praised on how well he had been performing his job duties; however, after the meeting he was asked to accompany Clarence Craig to his office without a union steward who then criticized appellant's job performance and told him that something would have to be done if it did not improve. He then alleged that on one occasion he put in for help on his route for legitimate reasons and he was not assisted. Appellant also asserted that, before a step-two grievance meeting was scheduled to begin, he was yelled at about clocking out and getting to the meeting on time. Appellant indicated that management was playing with his mind and that he became too emotionally upset to work after being back to work for only five months.

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<sup>1</sup> Docket No. 90-1016 (issued November 28, 1990).

Appellant submitted various medical reports in support of his claim that established diagnoses of adjustment disorder with mixed emotional features (depression and anxiety), polysubstance abuse (cocaine, marijuana and valium), chronic, post-traumatic stress disorder and mixed personality disorder with paranoid, passive aggressive and oppositional traits.

The employing establishment challenged appellant's claim and asserted that appellant had many personal problems which interfered with his work. Representatives of the employing establishment denied all allegations of harassment, unfair treatment and abuse on behalf of appellant's supervisors.

By decision dated January 15, 1988, the Office denied appellant benefits on the grounds that the weight of the medical evidence had failed to establish that his psychiatric condition was causally related to employment factors. Appellant requested a hearing and on March 24, 1988 the Office set aside the prior decision for additional development, on the grounds that appellant had submitted sufficient medical evidence to make a *prima facie* case that prior emotional and psychological conditions were aggravated by the stress factors which he experienced at work.

Following development of the claim, the Office, by decision dated December 2, 1988, rejected appellant's claim for compensation for the periods prior to June 29, 1987, as the evidence did not establish that appellant's psychiatric condition and disability in 1986 and early in 1987 were causally related to employment factors. The Office accepted the claim from June 1987 onward for adjustment disorder with mixed emotional features and adjustment reaction with psychotic features with subsequent disability effective July 2, 1987 and medical benefits onward.

The following allegations were accepted by the Office as factors of appellant's federal employment: (1) On occasion, during the course of sorting mail, appellant's supervisor would stand behind him and monitor his actions; (2) Appellant's delivery of mail was also monitored on a regular basis which involved the supervisor going out to the route and watching appellant deliver the mail from house to house; (3) In February 1987 appellant was placed on restricted sick leave status which required appellant to produce a physician's report to substantiate each period of sick leave usage; (4) In February 1987 an improvement in appellant's work performance was noted. On one occasion during a period of improved work a relief supervisor asked appellant to deliver mail on another route after appellant had completed the carrying of his route early and appellant became upset and complained the next day to his regular supervisor; (5) On May 8, 1987 appellant was delivering mail when a dog bit him on the leg; (6) On May 18, 1987 the employing establishment issued him a disciplinary letter of warning because he delivered mail in an area where a dog was unleashed, placing himself in a position of being bitten. Although the dog was unleashed, appellant delivered the mail because the owner of the dog was standing next to the dog. After receiving the letter of warning, appellant stopped reporting to work early. He took more than eight hours to deliver his route and began requesting assistance from other carriers to complete his route; (7) In the summer of 1987 the electricity went out at the post office during mail sorting. Appellant continued to sort letters by flashlight as did some of the other carriers; (8) On July 2, 1987 appellant was scheduled to attend a hearing on a grievance he filed over receiving the letter of warning pertaining to the dog bite and his supervisor told him to come in early from his route so that he could make it to the hearing on time. Appellant came in from his route approximately 20 minutes before the scheduled end of

his 8-hour work shift. His supervisor told him to clock out which would mean that appellant would not get paid for a full eight-hour workday. Appellant stated that he would not clock out until his regular quitting time of 2:30 and his supervisor then had the next line supervisor instruct appellant to clock out. Appellant then clocked out and went to the hearing; and (9) On July 3, 1987 appellant was sorting his mail when he asked the supervisor for three hours of assistance delivering the mail. The supervisor told him there was no assistance available. Appellant became upset and went to his supervisor's office where his supervisor told appellant that his work was not at an acceptable level. He became very upset and had a long argument with his supervisor and then left work. Appellant has not returned since.

Appellant appealed the December 1988 decision denial of time off from March 1986 to February 1987, which an Office hearing representative affirmed on January 4, 1989 and January 8, 1990, followed by the Board's issuance of the November 28, 1990 decision, which also affirmed the denial discussed above.

On August 20, 2003 the Office issued a notice of proposed termination of compensation and medical benefits by rescinding its prior acceptance of appellant's claim for adjustment disorder with mixed emotional features or any other emotional condition. The Office noted that the events and incidents cited by appellant as causing his condition did not arise from the performance of his regular or specifically assigned job duties but instead that they arose from administrative matters having no relationship to those duties. The Office further recommended that appellant had not established error or abuse of discretion on those matters, therefore his emotional reaction could not be said to have arisen in the performance of duty. The Office advised appellant that if he disagreed with the proposed action he could submit additional evidence or argument relevant to the issue described within 30 days or it would proceed with termination.

On August 22, 2003 appellant, through his representative, requested an extension of time to respond to the proposed rescission with medical evidence and on August 27, 2003 he requested a hearing.

By decision dated September 23, 2003, the Office finalized the termination decision on the grounds that the alleged emotional condition was found to have not occurred in the performance of duty. The Office determined that the original acceptance of the case was in error.

### **LEGAL PRECEDENT**

The Board has upheld the Office's authority to reopen a claim at any time on its own motion under section 8128(a) of the Federal Employees' Compensation Act and, where supported by the evidence, set aside or modify a prior decision and issue a new decision.<sup>2</sup> The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be set aside in the manner provided by the compensation statute.<sup>3</sup> It is well established that once the Office accepts a claim, it has the burden of justifying

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<sup>2</sup> *Eli Jacobs*, 32 ECAB 1147 (1981).

<sup>3</sup> *Doris J. Wright*, 49 ECAB 230 (1997); *Shelby J. Rycroft*, 44 ECAB 795 (1993).

termination or modification of compensation. This holds true where the Office later decides that it has erroneously accepted a claim for compensation.<sup>4</sup> In establishing that its prior acceptance was erroneous, the Office is required to provide a clear explanation of its rationale for rescission.<sup>5</sup>

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 Act.<sup>6</sup> 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.<sup>7</sup>

As a general rule, an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee.<sup>8</sup> However, the Board has also held that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.<sup>9</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>10</sup>

### ANALYSIS

In the present case, the Office originally accepted appellant's claim from February 7, 1987, the date he returned to work onward on the basis that his allegations were established by the evidence of record and gave rise to an adjustment disorder with mixed emotional features. In the September 23, 2003 decision, the Office rescinded acceptance of the claim for adjustment disorder with mixed emotional features or any other emotional condition on the grounds that there had been changes in the law clarifying that certain decisions made by management constitute personnel actions and not job duties. The Office reviewed the evidence and clearly explained that the events and incidents that appellant cited as causing his condition did not arise from the performance of his regular or specifically assigned job duties, but instead they arose

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<sup>4</sup> See 20 C.F.R. § 10.610.

<sup>5</sup> *Alice M. Roberts*, 42 ECAB 747 (1991).

<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> *Joel Parker, Sr.*, 43 ECAB 220 (1991).

<sup>8</sup> See *Michael L. Malone*, 46 ECAB 957 (1995); *Gregory N. Waite*, 46 ECAB 662 (1995).

<sup>9</sup> See *Elizabeth Pinero*, 46 ECAB 123 (1994).

<sup>10</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

from administrative matters having no relationship to those duties. The Office further discussed that because appellant had not established error or abuse of discretion on these matters his emotional reaction could not be said to have arisen in the performance of duty but simply based upon his perceptions.

Appellant alleged that his supervisor would stand behind him and monitor his actions while he sorted and delivered mail; required him to produce a physician's report to substantiate sick leave usage; asked him to deliver mail on another route after he completed his route early; issued him a letter of warning after he was bitten by an unleashed dog; denied him three hours of delivery assistance and instructed him to clock out early. Appellant also alleged that during the summer of 1987 he continued to work when the electricity went out at the employing establishment during mail sorting. The Office explained that with regard to the dog bite, appellant never mentioned it as a source of stress and having to work with a flashlight in the dark on one occasion in 1987 was never cited as a cause of his condition. As stated above the Office found that his other allegations related to administrative or personnel matters unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.<sup>11</sup> As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In this case, appellant has submitted no evidence substantiating his allegations that the employing establishment acted unreasonably.<sup>12</sup>

As the evidence of record at the time of the Office's rescission does not establish that appellant's condition arose from compensable factors of his employment, the Office properly rescinded its acceptance of the claim for an employment-related emotional condition.<sup>13</sup>

### **CONCLUSION**

The Board finds that the Office met its burden of proof in rescinding its acceptance of appellant's claim for an emotional condition.

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<sup>11</sup> 5 U.S.C. §§ 8101-8193; see *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gates*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

<sup>12</sup> *Martha L. Watson*, 46 ECAB 407 (1995).

<sup>13</sup> See *Paul L. Stewart*, 54 ECAB \_\_\_\_ (Docket No. 03-1107, issued September 23, 2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 23, 2003 is affirmed.

Issued: September 29, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member