

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

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**DAVID APGAR, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Glassboro, NJ, Employer**

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**Docket No. 05-1249  
Issued: October 13, 2005**

*Appearances:*  
*Thomas R. Uliase, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On May 18, 2005 appellant, through his attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated October 5, 2004 and January 27, 2005 finding that he had not established an emotional condition in the performance of duty. 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 has met his burden of proof in establishing an emotional condition in the performance of duty on February 10, 2001.

**FACTUAL HISTORY**

On September 16, 2003 appellant, then a 49-year-old supervisor of customer service, filed a traumatic injury claim alleging that on February 10, 2001 he developed stress when he was directed to report to a postal route site where a casual carrier, Joan DiJoseph, was unconscious. Appellant discovered upon his arrival that Ms. DiJoseph had experienced a stroke and she died later that day.

The employing establishment controverted appellant's claim noting that he did not report his injury until after his employment was terminated on September 11, 2003.

By letter dated October 1, 2003, the Office requested additional factual and medical evidence in support of appellant's claim and allowed him 30 days to submit this evidence. Appellant responded on October 13, 2003, stating that he did not immediately file the claim because he felt that as a supervisor he would be stigmatized as weak for experiencing an emotional condition. He sought initial treatment through the Employee Assistance Program. Appellant noted that Ms. DiJoseph's accident file remained in the file cabinet and that he continued to be affected each time he accessed the files.<sup>1</sup> He stated that, on February 10, 2001, Sal Riccardi, the officer-in-charge, directed him to have a discussion with Ms. DiJoseph regarding her performance. Appellant advised Ms. DiJoseph that, if she could not complete her deliveries in a timely manner, her employment could be terminated. That afternoon Mr. Riccardi informed appellant that Ms. DiJoseph was unconscious in her postal vehicle and instructed him to investigate. When appellant arrived, Ms. DiJoseph was in an ambulance, unconscious and unresponsive to treatment. The emergency personnel informed appellant that Ms. DiJoseph had "stroked." Appellant stated, "I was traumatized by this event, especially due to the 'warning' that I had given her that morning regarding Georgetown Road and that I had suffered a similar brain attack and was stressed by the thought of that incident while on duty." Ms. DiJoseph was pronounced dead soon after being transported to a local hospital. Appellant alleged that unnamed persons accused him of killing his carriers. He noted that he was undergoing psychiatric treatment prior to February 10, 2001.

By decision dated November 4, 2003, the Office denied appellant's claim, finding that the factual evidence was insufficient to establish how appellant was involved in the incident and that appellant failed to submit any medical evidence in support of his claim.

Through his attorney, appellant requested an oral hearing on November 12, 2003 which was held on July 1, 2004. Appellant testified that he had a stroke on November 24, 1989. His physicians diagnosed clinical depression and he began to take antidepressant medication beginning in 2000. Appellant described the events of February 10, 2001, noting that he informed Ms. DiJoseph that, if she did not complete the Georgetown Road portion of her route within the time allotted, he could terminate her. After Mr. Riccardi informed appellant that Ms. DiJoseph had collapsed while on her route, appellant and Arthur Henzie, a coworker, went to the scene to investigate. They found Ms. DiJoseph under medical care. Appellant secured the mail and then went to the ambulance to check on Ms. DiJoseph. He discovered that she was unconscious. Appellant stated, "[I]t really affected me simply because I told her that she had -- this happened on Georgetown Road ... right at the beginning of that street and I don't know, sometime -- somehow I feel like was she running?" Appellant also stated that when he looked at

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<sup>1</sup> The Office's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee) As appellant's contention that he sustained additional traumatic injuries by accessing the accident files, occurred on dates other than February 10, 2001, this contention will not be addressed in the appeal currently before the Board, as there is no final adverse Office decision. See 20 C.F.R. § 501.2(c).

Ms. DiJoseph he could see himself as he was in 1989 unconscious and lying in the street. Appellant discussed this incident with his psychiatrist.

By decision dated October 5, 2004, the hearing representative affirmed the November 4, 2003 decision, finding that there was no medical evidence to establish an injury.

Appellant, through his attorney, requested reconsideration on October 25, 2004. In a report dated September 30, 2004, Dr. Farrell R. Crouse, a Board-certified psychiatrist, noted that on February 10, 2001 appellant informed a supervisee that she would either have to speed up her route or he would have to fire her. He noted that the carrier died of a stroke that day and that appellant immediately began to have Jacksonian seizures requiring the use of a cane, as well as severe bouts of guilt, anxiety and depression. Dr. Crouse stated, “[Appellant] feels this had a deleterious affect on his ability to supervise thereafter to the present which eventually caused him to be demoted to [that of a] part-time employee. Even yet he has bouts of severe feeling of guilt, anxiety and depression.”

By decision dated January 27, 2005, the Office denied modification of the October 5, 2004 decision, finding that Dr. Crouse’s September 30, 2004 report was not sufficient to establish that an injury occurred as alleged.

### **LEGAL PRECEDENT**

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether “fact of injury” has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred. The second component is whether the employment incident caused a personal injury. Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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<sup>2</sup> *Steven S. Saleh*, 55 ECAB \_\_\_ (Docket No. 03-2232, issued December 12, 2003).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *See Thomas D. McEuen*, 41 ECAB 387, 390-91 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as 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.<sup>5</sup> 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.<sup>6</sup> Such opinion of the physician must be one of reasonable medical certainty and must be supported by medical reasoning explaining the nature of the relationship between the diagnosed condition and the employment.<sup>7</sup>

### ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of the events of February 10, 2001. The Office denied appellant's claim finding that he had failed to submit any medical evidence diagnosing a condition and, in its decisions, did not analyze the events to which appellant attributed his emotional condition to determine if these events were compensable.

The Board finds that appellant has established a compensable factor of employment to which he attributed his conditions of anxiety and stress. It is not contested that Mr. Riccardi, the officer-in-charge, specifically directed him to investigate Ms. DiJoseph's condition on that date after the employing establishment was notified that she had collapsed while on her route at Georgetown Road. Appellant stated that he became traumatized upon finding that Ms. DiJoseph was unconscious and unresponsive to efforts to revive her. He related that earlier that morning he had discussed problems with her performance on the mail route for which she could be disciplined. Appellant stated that he felt guilty and experienced stress in light of a stroke he had in 1989. The Board finds that appellant was specially assigned the duty of investigating Ms. DiJoseph's condition on February 10, 2001. Under *Cutler*, this constitutes a compensable factor.<sup>8</sup>

Appellant also attributed his emotional condition to statements by unnamed persons that he was killing his carriers. A claimant's burden of proof includes submission of a detailed description of the employment factors or conditions that appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>9</sup> Appellant has not

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<sup>5</sup> *Tina B. Francis*, 56 ECAB \_\_\_ (Docket No. 04-965, issued December 16, 2004); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>6</sup> *Id.*

<sup>7</sup> *Leslie C. Moore*, 52 ECAB 132, 134 (2000).

<sup>8</sup> *Larry J. Thomas*, 44 ECAB 291, 300 (1992). (The Board found that the emotional reaction of a claimant who came upon a suicide victim during the course of his assigned duties was compensable).

<sup>9</sup> *Janet L. Terry*, 53 ECAB 570, 577 (2001).

provided sufficient evidence regarding this allegation as he failed to provide the identity of those involved or dates that such accusations were made. Therefore this is not found a compensable factor of employment.

Appellant has established a compensable factor of employment; his specially assigned duties on February 10, 2001. Therefore, the Board must review the medical evidence.<sup>10</sup>

Dr. Crouse, a Board-certified psychiatrist, completed a report on September 30, 2004 noting that on February 10, 2001 appellant informed a supervisee, that she would either have to speed up her route or he could fire her. He noted that the carrier later died of a stroke that day and that appellant immediately began to have Jacksonian seizures requiring the use of a cane, as well as severe bouts of guilt, anxiety and depression. Dr. Crouse stated, “[Appellant] feels this had a deleterious affect on his ability to supervise thereafter to the present which eventually caused him to be demoted to [that of a] part-time employee. Even yet he has bouts of severe feeling of guilt, anxiety and depression.” While this report suggests a causal relationship between the incidents of February 10, 2001 and appellant’s emotional reaction Dr. Crouse did not offer his own opinion supported with medical rationale, explaining how appellant’s anxiety and depression were caused or contributed to by the accepted factor.<sup>11</sup> The medical evidence does not contain a firm medical opinion with supporting rationale attributing appellant’s emotional condition to the events of February 10, 2001. The report of Dr. Crouse is insufficient to meet appellant’s burden of proof and does not establish that he sustained an emotional condition as a result of his employment duties on that date.

### **CONCLUSION**

The Board finds that appellant has substantiated a compensable employment factor with respect to his specially assigned duties on February 10, 2001. The medical evidence, however, is not sufficiently rationalized to establish that he sustained an emotional condition due to this factor.

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<sup>10</sup> See *Francis*, supra note 5.

<sup>11</sup> Medical reports not containing rationale on causal relation are of diminished probative value. *Jimmie H. Duckett*, 52 ECAB 332, 336 (2001).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated January 27, 2005 and October 5, 2004 are affirmed, as modified.

Issued: October 13, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board