United States Department of Labor
Employees' Compensation Appeals Board

JOHN P. BATISTE, Appellant	)	
and	)	**Docket No. 05-1307**
	)	**Issued: April 13, 2006**
U.S. POSTAL SERVICE, POST OFFICE, New Orleans, LA, Employer	)	

Appearances:
John P. Batiste, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 7, 2005 appellant filed a timely appeal of a May 5, 2005 merit decision of a hearing representative of the Office of Workers' Compensation Programs that found that he did not sustain an emotional condition in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On August 15, 2001 appellant, then a 51-year-old mail processor, filed a claim for compensation for an occupational disease of generalized anxiety disorder and job stress, stating that not having a chair that helped his physical condition resulted in chronic pain causing personality and sleep pattern changes. He submitted an August 6, 2001 report from Dr. Anthony Johnson, a Board-certified psychiatrist, noting a history of a back injury with secondary chronic pain the past two years and of his job as his main stressor and diagnosing generalized anxiety

disorder and job stress. Appellant also submitted an August 10, 2001 report from Heidi Leffler, a social worker, stating that he was seen for job-related stress symptoms.

In response to an Office request for further information, appellant attributed his condition to being injured on the job, not receiving a paycheck, not receiving assistance or counseling from the employing establishment or the Office and being driven into bankruptcy with the possibility of being evicted from his home. He submitted a January 11, 2002 report from Ms. Leffler stating that the employing establishment did not want to accommodate appellant regarding his back injury.

By decision dated May 29, 2002, the Office found that appellant had not established that he sustained an injury in the performance of duty, as he had not established any compensable factors of employment. He requested a hearing, which was held on November 21, 2002. Appellant testified that after his back injury at work he was not placed in the job indicated by his doctor, that he was not allowed to work the number of hours he was due and that he was not allowed to hit the clock when he did work. He submitted evidence from his approved back injury case concerning his need for and the Office's approval of a special chair for work. By decision dated February 6, 2003, an Office hearing representative found that appellant had not shown error or abuse regarding his hours of work or clocking in and that he had not shown that he was not appropriately accommodated with a chair.

Appellant requested reconsideration and submitted an August 4, 2003 decision of the Equal Employment Opportunity Commission, finding that the employing establishment illegally discriminated against him on the basis of his physical disability when it failed to reasonably accommodate his impairment by providing him with an adequate chair from June 1999 to November 2001. By decision dated November 4, 2003, the Office found that the evidence established a compensable work factor, *i.e.*, denial of reasonable accommodation. The Office referred appellant, his medical records and a statement of accepted facts to Dr. Douglas W. Greve, a Board-certified psychiatrist, for a reasoned medical opinion of whether this work factors contributed to a diagnosed psychiatric condition. In a January 16, 2004 report, Dr. Greve concluded that he had no emotional condition related to the accepted work factor and that the old diagnosis of generalized anxiety disorder was not present.

By decision dated January 28, 2004, the Office found that appellant had no medical condition causally related to the established work factor. He requested a hearing, which was held on February 25, 2005 before the same Office hearing representative who held the November 21, 2002 hearing. Appellant testified that he was discriminated against when the employing establishment forced him to take leave for 20 months, though he was ultimately compensated by the Office for this time and that the employing establishment did not comply with his doctor's directive to work only four hours a day until August 28, 2004. By decision dated May 5, 2005, the Office hearing representative found that the Office properly relied on the report of Dr. Greve, that the prior medical reports did not specifically identify employment factors and that an employment-related psychiatric condition was not established.

LEGAL PRECEDENT

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 work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act. 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.[1] Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.[2] Where appellant alleges compensable factors of employment, he must substantiate such allegations with probative and reliable evidence.[3]

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused or adversely affected by his employment. As part of this burden he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation. The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions is sufficient to establish causal relation.[4]

ANALYSIS

Appellant has established a compensable factor of employment, namely the employing establishment's failure to accommodate his disability from his back condition by providing him with a suitable chair. He submitted no evidence to support the other allegations he made about improper job duties or hours and these allegations are not established as compensable employment factors.

Appellant does not meet his burden of proving his emotional condition claim when he establishes a compensable employment factor. He must also submit medical evidence relating his emotional condition to the established compensable factor. Dr. Johnson stated in an August 6, 2001 report, that appellant's main stressor was his job, but did not identify specific

[1] *Lillian Cutler*, 28 ECAB 125 (1976).

[2] *Michael Thomas Plante*, 44 ECAB 510 (1993).

[3] *Joel Parker, Sr.*, 43 ECAB 220 (1991).

[4] *Bruce E. Martin*, 35 ECAB 1090 (1984).

factors of the job. The reports from Ms. Leffler do not constitute probative medical evidence, as she is not a "physician" as defined under the Act.[5] Dr. Johnson did not address the compensable factor found in this case. The report of Dr. Greve negated causal relation, but it is not necessary for the Office to disprove appellant's case.[6] The burden of proof remains with him and he did not meet it.

On appeal, appellant contends that the Office hearing representative who issued the Office's May 5, 2005 decision was not impartial because she also issued a prior decision in this case on February 6, 2003. He, however, has made no showing of any partiality in the May 5, 2005 decision and there is no prohibition in the Act, the Office's regulations or procedure manual or in Board decisions against an Office hearing representative holding more than one hearing in the same case.

CONCLUSION

Appellant has not established that he sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the May 5, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 13, 2006
Washington, DC

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

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

[5] Section 8101(2) of the Act (5 U.S.C. § 8101(2)) defines "physician" to include psychologists, but Ms. Leffler is a social worker, not a psychologist. *See Debbie J. Hobbs*, 43 ECAB 135 (1991).

[6] *Judith A. Peot*, 46 ECAB 1036 (1995).