United States Department of Labor
Employees' Compensation Appeals Board

ANTONIO R. SANTOS, Appellant	)	
and	)	**Docket No. 06-325**
	)	**Issued: April 18, 2006**
U.S. POSTAL SERVICE, POST OFFICE, San Francisco, CA, Employer	)	

Appearances:
Antonio R. Santos, pro se
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 November 22, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decisions dated August 18, 2005, denying his request for an oral hearing before the Branch of Hearings and Review and June 14, 2005, denying his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained an injury causally related to factors of his federal employment culminating in a July 13, 2003 myocardial infarction; and (2) whether the Office properly denied his request for a hearing under section 8124 of the Federal Employees' Compensation Act.

FACTUAL HISTORY

On January 5, 2005 appellant, then a 55-year-old city letter carrier, filed an occupational disease claim alleging that the cumulative effect of the physical, psychological and emotional stresses of his position aggravated his heart condition and resulted in an acute myocardial

infarction on July 13, 2003. He first became aware of his heart condition on July 13, 2003 and realized that it was caused or aggravated by his employment on December 13, 2004. Appellant stopped work on July 13, 2003 and returned to a light-duty assignment with restrictions on October 19, 2004.

In a separate statement, appellant noted that his July 13, 2003 heart attack left him with only 20 percent heart function and he was on a heart transplant list. He was first treated at the Philippine Heart Center for chest pain in May 1992 and underwent a stress test in 1998, which he passed. Appellant noted that his symptoms started in 2002 and that he had experienced shortness of breath in May 2003. He started working for the employing establishment in October 1998 as a casual letter carrier, was reassigned as a casual clerk and mail handler in 1999, and was hired as a permanent letter carrier in October 2000. Appellant alleged that in October 2000 he was given extra workloads and worked 12 hours a day, 7 days a week, for approximately 4 weeks. He stated that he was subjected to highly stressful treatment while at the collection and dispatch unit and was assigned heavy routes and given extra workloads. Appellant stated that in 2002 he started to feel the accumulation of stress and his health started to deteriorate, so he did not sign the list of persons who wanted to work over time. He alleged, however, that he was still given extra work until his supervisor noticed his condition. Appellant stated that he smoked for only a year, with an average of one to three cigarettes a month, but attributed his disability to the physical, psychological and emotional stress at work. He stated that on the week of his July 13, 2003 heart attack, there were extra heavy loads of mail which might have been due to election campaign materials and that the Saturday relays were worst. Appellant alleged that these stressors triggered his heart attack on Sunday. He submitted records of his hospitalization report from August 4 to 16, 2003, for ischemic cardiomyopathy and chronic obstructive pulmonary disease. Appellant also submitted an August 4, 2003 hospitalization report, a copy of a hospitalization from March 4 to 5, 2004 for coronary artery disease and congestive heart failure, a copy of a July 23, 2003 discharge order, copies of work restrictions dated January 13, February 23 and June 4, 2004, a copy of an October 19, 2004 request and approval of light duty and a November 9, 1998 exercise test.

In a December 13, 2004 report, Dr. Maria Ansari, a Board-certified internist specializing in cardiovascular disease, stated that appellant provided a history of working long hours, sometimes seven days a week, with an unusually heavy workload in the days and weeks leading up to the acute myocardial infarction in July 2003. He conveyed that he was emotionally and physically drained from the frequent high workloads. Even though appellant never asked for extra work, he was frequently assigned to such duties and could not renegotiate reassignment without generating significant stress in his office. Based on a treadmill stress test of November 9, 1998, Dr. Ansari opined that he had no limitations at that time. However, somewhere between 1998 and 2003, appellant developed a significant change. His presentation in July 2003 was documented in the medical record to be consistent with unstable angina for approximately six weeks followed by an acute myocardial infarction, which changed appellant's functional abilities. Dr. Ansari stated that the presence of increased physical and emotional stress had been well documented as triggers of myocardial infarction and opined that appellant's working environment for several days leading up to his myocardial infarction could have easily precipitated his cardiac event on July 13, 2003.

In a January 12, 2005 letter, the employing establishment noted that its records indicated that, from June 18, 2002 to July 12, 2003, appellant worked only four hours per day. The employing establishment further advised that he was out of work from July 14, 2003 to March 2004 and that, when appellant returned, he continued to work four hours per day with express mail delivery, which was not arduous or strenuous. With express mail delivery, a supervisor usually accompanied appellant to assist him in loading, delivering and dispatching of the express mail. The employing establishment also indicated that it provided him a light-duty job offer of October 19, 2004 in response to his June 4, 2004 medical documentation, which complied with his restrictions. It further disputed appellant's claims pertaining to the amount of lifting, carrying, pushing and pulling his job required.

In a January 10, 2005 letter, Jim O'Connell, a manager, described the work that appellant performed while in the collection unit. He advised that appellant had bid on a relay route for his Saturday assignment and that a relay run may have 100 or more sacks weighing from 10 to 35 pounds. Mr. O'Connell stated that drivers were instructed to notify a supervisor if a sack was over 35 pounds or to break the sack down so that it weighed less than 35 pounds. He described the relay route and stated that, after the relay portion of the route, the driver was assigned to collections. Mr. O'Connell stated that appellant had bid on a six-hour Saturday route until June 2003, when he had an eight-hour route. Appellant worked eight hours on Saturday five times prior to July 13, 2003. Mr. O'Connell further stated that a review of appellant's work record while in the collection unit showed that he had worked primarily a part-time schedule. Until seven weeks prior to his heart failure, appellant worked a schedule of four hours per day four days per week and six hours on Saturday, with days off on Sunday and Thursday. Appellant did not work his days off, except for two occasions, during the period October 2002 to July 13, 2003. Excluding Saturdays, he worked over 5 hours on a weekday only 10 times and only once over 6 hours, from January until July 13, 2003. Four weeks prior to his episode, appellant had taken a two-week vacation and the July 4 holiday was the following Friday. Mr. O'Connell disputed appellant's claim of being given extra work and time even though he was not on the extra work list. He stated that appellant only had a pattern of working extra hours from July 24 to October 26, 2002.

By letter dated January 25, 2005, the Office advised appellant that the information he submitted was insufficient to establish his claim. The Office noted that his description of his work duties and required work overloads was in conflict with the employer's description. The Office further noted that the medical evidence failed to sufficiently explain the specific work factors or duties that caused the claimed cardiac infarction or the causal relationship between the specific work factors/stressors and the cardiac condition, both preexisting and at the time of the claimed injury. The Office requested additional factual and medical information from appellant.

Appellant submitted a March 10, 2005 statement, in which he alleged that all the positions he held were strenuous, held deadlines, quotas and time frames. He stated that the physical stressors were the actual work assignments he performed, "plus extras." Appellant stated that the psychological stressors were the reasons he thought he was put in those situations, noting that, after six months of recuperation from his injury, he was not allowed to go back to work until he could drive again. He stated that, upon his returned to work, he was performing his regular duties and that it was not until October 19, 2004 that he was offered light-duty work. Appellant became emotionally upset, especially on the daily bargaining for work assignments.

He submitted copies of previously submitted evidence together along with a copy of a 1992 laboratory/diagnostic results taken in the Philippines, a copy of a pay/leave adjustment form dated December 7, 1999, a copy of generic city carrier/clerk/mail handler job descriptions, which included exhibits/pictures.

By decision dated June 14, 2005, the Office denied appellant's claim. The Office found that he established a compensable work factor with respect to the duties he performed in the positions held from 1998 through 2004. However, there was insufficient medical evidence which addressed how the specific work duties caused or aggravated his cardiac condition.

On a form report dated July 26, 2005 and postmarked the same date, appellant requested an oral hearing on the June 14, 2005 decision.

By decision dated August 18, 2005, the Office's Branch of Hearings and Review denied appellant's request for a hearing finding the request to be untimely filed and could equally well be addressed by requesting reconsideration.

LEGAL PRECEDENT -- ISSUE 1

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 is deemed compensable.[1] To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.[2]

An employee has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.[3] This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[4]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in 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.[5] If a claimant does implicate a factor of

[1] *See Leslie C. Moore*, 52 ECAB 132 (2000); *Kathleen D. Walker*, 42 ECAB 603 (1991).

[2] *See Roger Williams*, 52 ECAB 468 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

[3] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[4] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[5] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

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.[6]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[7] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.[8] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[9]

ANALYSIS -- ISSUE 1

The Office accepted and the record reflects that appellant performed carrier duties in 1998, clerk/mail handler duties in 1999, carrier duties in 2000, part-time regular carrier duties in 2001 when he was transferred to the collection unit and light duty in October 2004. He has alleged that the cumulative effect of his work duties caused or aggravated his heart condition and led to the cardiac episode of July 13, 2003.

Appellant alleged that the physical stressors of his positions were the actual work assignments he performed plus all the "extras." He asserted that all the positions he held were strenuous, had deadlines, quotas and time frames. Appellant stated that his workload became too much for his preexisting heart condition. He stated that, as a casual, he was given extra work loads and sometimes worked for 12 hours a day, 7 days a week continuously through October 2000. Appellant stated that, when he was assigned to heavy routes, given extra workloads and time. He further stated that, sometime in 2002, he did not sign the list of persons who wanted extra work and time, but was still given extra work until appellant's supervisor noticed his condition.

Appellant's allegations concerning overwork may be considered a compensable factor of employment if substantiated by supportive evidence.[10] His burden of proof, however, is not

[6] *Id.*

[7] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[8] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[9] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[10] *See Frank A. McDowell*, 44 ECAB 552 (1993) (stating that the employee had identified a compensable employment factor, overwork).

discharged by the fact that he has identified a compensable employment factor. Appellant must submit sufficient evidence to substantiate his allegation of overwork.[11] He has not submitted sufficient evidence describing or substantiating his allegations of an excessive workload and appellant's general allegations concerning an excessive workload, without any supportive evidence, is insufficient to establish overwork as a compensable factor of employment.[12] Mr. O'Connell stated that appellant had a pattern of working extra hours from July 24 through October 26, 2002. Working extra hours, without any additional supportive evidence, would not by itself establish an excessive workload. Additionally, there is no medical opinion evidence of record which attributes appellant's working extra hours from July 24 to October 26, 2002 as causing or contributing to the cardiac event of July 13, 2003. Accordingly, the evidence fails to demonstrate that appellant was overworked.

Appellant alleged that the psychological stressors were the reasons he thought he was put in those situations. He noted that, after six months of recuperation from his injury, he was not allowed to return to work until he could drive again and, once he returned to work, appellant was placed back to his regular duties. It was not until October 19, 2004 that he was offered light-duty work. Appellant additionally stated that he became emotionally upset/drained, especially on the daily bargaining for work assignments.

The Board finds that the record does not establish that the administrative and personnel actions taken by management were in error and are, therefore, not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.[13] In the instant case, appellant has presented no evidence that the employing establishment acted unreasonably or committed error with regard to the incidents of alleged unreasonable actions involving personnel matters on the part of the employing establishment. Regarding his allegations that the employing establishment did not provide him with light duty, forced him to work outside his medical restrictions and forced him to engage in daily bargaining for work assignments, the Board finds that these allegations relate 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.[14] Although the assignment of work duties are generally related to the employment, they are administrative functions of the employer.[15] As appellant has failed to submit any supporting evidence to support his allegations, his reaction to such factors does not constitute an injury arising within the performance of duty.

[11] *Id.*

[12] *Cf. Janie Lee Ryan*, 40 ECAB 812, 818 (1989) (noting that the employee submitted detailed factual evidence delineating her work load). The Board further notes that appellant unsubstantiated allegations of inadequate training are insufficient to establish a compensable factor of employment.

[13] *See Alfred Arts*, 45 ECAB 530, 543-44 (1994).

[14] *See Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[15] *Id*.

The Board has held that emotional reactions to situations in which an employee is trying to meet his position requirements are compensable.[16] To the extent that appellant is attributing his regular work duties as causing or contributing to the cardiac event of July 13, 2003, the Board finds there is no well-rationalized medical evidence which specifically explains how or why his work duties caused or aggravated his cardiac condition or precipitated the event of July 13, 2003. In a December 13, 2004 medical report, Dr. Ansari provided a brief history of his health and employment. She stated that the presence of increased physical and emotional stress had been well documented to be triggers of myocardial infarction. Dr. Ansari opined that appellant's working environment for several days leading up to his myocardial infarction could have easily precipitated his cardiac event on July 13, 2003. The Board notes that she couched her opinion in speculative terms and did not provide adequate rationale for her opinion as to why his cardiac condition worsened. Dr. Ansari did not reference any particular employment factors as having caused or aggravated appellant's condition.[17] Without any further explanation or rationale, such report is insufficient to establish that his cardiac event of July 13, 2003 was causally related to his employment.[18]

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b) of the Act, concerning a claimant's entitlement to a hearing before an Office representative, states: "Before review under section 8128(a) of this title, a claimant ... not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."[19]

The Board has held that section 8124(b)(1) is "unequivocal" in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.[20] Even where the hearing request is not timely filed, the Office may, within its discretion, grant a hearing and must exercise this discretion.[21]

ANALYSIS -- ISSUE 2

The Office denied appellant's claim by decision dated June 14, 2005. He then requested an oral hearing from the Branch of Hearings and Review on a form letter dated and postmarked

[16] *See Lillian Cutler*, *supra* note 2.

[17] *See Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

[18] *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[19] 5 U.S.C. § 8124(b)(1); *see also* 20 C.F.R. § 10.616(a).

[20] *See Gerard F. Workinger*, 56 ECAB ___ (Docket No. 04-1028, issued January 18, 2005); *Tammy J. Kenow*, 44 ECAB 619 (1993).

[21] *Id.*

July 26, 2005 and received by the Office July 29, 2005. By decision dated August 18, 2005, the Branch of Hearings and Review denied appellant's request for an oral hearing as untimely.

In the instant case, the Office properly determined that appellant's July 26, 2005 request for a hearing was not timely filed as it was made more than 30 days after the issuance of the Office's June 14, 2005 decision. The Office, therefore, properly denied appellant's hearing as a matter of right.

While the Office also has the discretionary power to grant a hearing when a claimant is not entitled to a hearing as a matter of right, the Office, in its August 18, 2005 decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's hearing request on the basis that the issue in the case could equally be handled through the reconsideration process. The Board notes that the issue of whether appellant sustained an injury arising in the performance of duty is causally related to factors of employment on July 13, 2003 is a medical question and he can submit additional medical evidence regarding his claim. The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deduction from established facts.[22] In the present case, the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant's hearing request which could be found to be an abuse of discretion.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty on July 13, 2003. The Board further finds that the Office properly denied appellant's request for a hearing under section 8124 of the Act.

[22] *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

ORDER

IT IS HEREBY ORDERED THAT the August 18 and June 14, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 18, 2006
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