



After medical records noted anxiety and frustration, he was referred to a psychiatrist, Dr. Gary K. Arthur. In a report dated October 16, 2000, Dr. Arthur related appellant's history: A specialist in accident reconstruction had concluded that appellant was not wearing his seat belt at the time of the accident. Appellant was then charged with falsification of post office records, being absent without leave and not cooperating with postal inspectors. He was placed on two weeks' suspension without pay in April 2000. Dr. Arthur reported that appellant complained of increasing depression over the previous six to eight months, stating:

“He has insomnia, increasing irritability, negativistic thinking, decreased motivation, increased fatigue, nightmares and social withdrawal. He feels that this has developed from two sources, the first being the constant pain and physical disabilities from the injuries derived from the accident and the second is what he feels is harassment and questioning of his honor and truthfulness regarding the charges against him. In addition to the depression, he is experiencing increasing anxiety and paranoid ideation on a daily basis at work regarding management and the postal inspectors.”

After describing appellant's mental status, Dr. Arthur gave a principal diagnosis of major depressive illness, recurrent. Potentially relevant medical conditions included pain syndrome post car accident involving low back, neck, right elbow and right hand. Psychosocial and environmental problems included severe stressors (5/6), physical pain and disabilities, loss of respect at work, and legal difficulties regarding his work situation.

On March 29, 2001 Dr. Arthur advised the Office that appellant continued to be depressed and needed antidepressant medication in order to work: “He feels a great amount of stress at work and deals with shame on a daily basis in that they have called him a liar and punished him regarding the accident in which he was rear-ended.”

On January 3, 2002 Dr. Arthur advised the Office that the reason appellant was referred to him was to help with depression regarding pain and physical disabilities that resulted from an on-the-job accident. He noted a past history of depressive episodes, which most likely made appellant more vulnerable to depression under the current circumstances. Dr. Arthur noted that appellant was also stressed by the continuing controversy regarding the accident.

In a decision dated March 7, 2003, the Office denied compensation for appellant's emotional condition. The Office found that appellant had not established any factors that could be considered in the performance of duty.

On March 23, 2003 Dr. Arthur noted that on October 16, 2000 he had related appellant's emotional difficulties to two sources, including the constant pain and physical disabilities from the injuries derived from the accident. After citing a November 19, 2002 psychiatric report,<sup>1</sup> Dr. Arthur wrote:

“It is regretful that [appellant's] real and actual physical injuries with their consequential pain and limitations, and consequential depression, are also

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<sup>1</sup> This report was not submitted to the record.

involved with what were controversial facts about the accident in which he was rear ended while working. The formula is actually simple: Accident → physical injuries → pain and disabilities = aggravation of depressive illness.”

On September 30, 2003 the Office reissued its March 7, 2003 decision. Appellant requested an oral hearing before an Office hearing representative.

On February 6, 2004 appellant filed a claim for a schedule award. On March 16, 2004 the Office asked him to submit an assessment of permanent impairment following the criteria of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001).

In a decision dated May 13, 2004, the Office denied appellant’s claim for a schedule award. The Office noted that he did not submit the evidence requested. Appellant requested an oral hearing before an Office hearing representative.

On September 30, 2004 a hearing was held on both appellant’s emotional condition claim and his claim for a schedule award. He testified and submitted a September 27, 2004 report from Dr. Arthur, who advised that he continued to see appellant on a monthly basis throughout 2003 and 2004: “He continues to struggle with the depression that is directly related to pain and physical disabilities that resulted from his motor vehicle accident. There are many physical activities he can no longer do. This has affected his self-esteem at work and at home.”

Following the hearing, the Office received a March 4, 2005 report from Dr. David P. Kalin, a family practitioner, who reviewed appellant’s history and complaints and the numerous diagnostic studies and medical records. On physical examination he noted that appellant’s right elbow had almost complete range of motion, with flexion restricted by less than five degrees, and with 1+ palpable tenderness at the proximal aspect of the ulna without deformity, crepitation, swelling or discoloration. Neurologically, Dr. Kalin reported sensation and strength to be within normal limits. He addressed appellant’s rating under the A.M.A., *Guides* as follows: “When combined and rounded to the nearest value ending with 0 or 5 this patient has a permanent injury resulting in a permanent functional impairment rating of 5 percent to upper extremity secondary to injuries from the work-related U.S. Postal Service injuries of April 1, 1999.” Dr. Kalin reported that appellant’s current condition was the result of the cumulative effects of the motor vehicle accident on October 20, 1999 “and the more recent work-related U.S. Postal Service injury of the left knee of June 14, 2003.” He added that appellant had reached maximum medical improvement with regard to the October 20, 1999 motor vehicle accident.

On March 14, 2005 Dr. H. Gerard Siek, Jr., an orthopedic surgeon and Dr. Kalin’s associate, related appellant’s history and complaints, reviewed diagnostic studies and reported his findings on examination. He diagnosed chronic myofasciitis of the neck, chronic myofasciitis of the low back with hamstring tightness, mild respiratory congestion and morbid obesity.

In a decision dated September 15, 2005, the hearing representative affirmed the denial of appellant’s emotional condition claim and the denial of his claim for a schedule award.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8107 of the Federal Employees' Compensation Act<sup>2</sup> authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.<sup>3</sup>

### **ANALYSIS -- ISSUE 1**

The Office accepted appellant's October 20, 1999 employment injury for right elbow fracture, closed head injury, laceration to the face, thoracic strain and lumbar strain. He then filed a claim for a schedule award. Appellant has the burden of establishing that these accepted medical conditions caused permanent impairment to a scheduled member, organ or function of the body.

The only medical report that offers any rating of impairment is the March 4, 2005 report of Dr. Kalin, who reported that appellant had a permanent impairment rating of five percent "to upper extremity" secondary to an injury on April 1, 1999. Appellant's claim was accepted for a right elbow fracture. Dr. Kalin reported that appellant's right elbow had almost a complete range of motion, with flexion restricted by less than five degrees. According to Figure 16-34, page 472, of the A.M.A., *Guides*, such a small restriction represents no impairment due to lack of flexion. Also, Dr. Kalin reported sensation and strength to be within normal limits. Dr. Kalin did not report any findings on physical examination which correlate with a permanent impairment of the right upper extremity under the A.M.A., *Guides*.

Because appellant submitted no substantial medical evidence to support that his October 20, 1999 employment injury caused permanent impairment to a scheduled member, organ or function of the body, the Board finds that he has not met his burden of proof. The Board will affirm the Office's September 15, 2005 decision on the issue of permanent impairment.

### **LEGAL PRECEDENT -- ISSUE 2**

The Act<sup>4</sup> provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>5</sup> As the Board observed in the case of *Lillian Cutler*,<sup>6</sup> however, workers' compensation does not cover each and

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Id.* at § 8102(a).

<sup>6</sup> 28 ECAB 125 (1976).

every illness that is somehow related to the employment. When an employee experiences emotional stress in carrying out his employment duties or has fear and anxiety regarding his ability to carry out his duties and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability resulted from his emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of his work.

By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position. Workers' compensation law does not cover an emotional reaction to an administrative or personnel action unless the evidence shows error or abuse on the part of the employing establishment.<sup>7</sup>

As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.<sup>8</sup> The claimant must substantiate such allegations with probative and reliable evidence.<sup>9</sup>

### **ANALYSIS -- ISSUE 2**

Dr. Arthur, the attending psychiatrist, reported that appellant felt his emotional difficulties developed from two sources, the first being the constant pain and physical disabilities from the injuries derived from the accident, and the second being harassment and the questioning of his honor and truthfulness regarding the charges against him. The Office adjudicated that latter, finding that appellant did not establish any compensable factors of employment.

Appellant attributed his emotional condition to the employing establishment's investigation into whether he was wearing his seat belt at the time of the accident to the charges brought against him and a two-week suspension. To the extent that he felt stressed by the continuing controversy regarding the accident, appellant's claim is not one that is covered by workers' compensation. Although these matters do pertain to his federal employment, they are administrative or personnel matters, which fall generally outside the scope of the Act. The Board has held that an oral reprimand generally does not constitute a compensable factor of employment,<sup>10</sup> neither do disciplinary matters consisting of counseling sessions, discussion or

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<sup>7</sup> *Thomas D. McEuen*, 42 ECAB 566, 572-73 (1991), *reaff'd on recon.*, 41 ECAB 387 (1990).

<sup>8</sup> *See Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

<sup>9</sup> *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

<sup>10</sup> *Joseph F. McHale*, 45 ECAB 669 (1994).

letters of warning for conduct;<sup>11</sup> investigations;<sup>12</sup> determinations concerning promotions and the work environment;<sup>13</sup> discussions about an SF-171;<sup>14</sup> reassignment and subsequent denial of requests for transfer;<sup>15</sup> discussions about the employee's relationship with other supervisors;<sup>16</sup> or the monitoring of work by a supervisor.<sup>17</sup>

The Board has held, however, that error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.<sup>18</sup> Appellant has effectively alleged that the employing establishment wrongly investigated the accident, wrongly charged him and wrongly disciplined him. Perceptions alone, however, are not sufficient to establish entitlement to compensation. To discharge his burden of proof, a claimant must establish a factual basis for his claim by supporting his allegations with probative and reliable evidence.<sup>19</sup>

The record in this case contains no proof of error or abuse or unreasonable conduct by any employing establishment personnel. The record indicates that appellant pursued his allegations against the employing establishment by filing EEO complaints, writing his congressman and hiring a lawyer, but he has submitted no evidence to substantiate his allegations of error. Because the record contains no proof to establish that error or abuse or harassment did in fact occur, the Board will affirm the Office's September 15, 2005 denial of compensation for failure to establish a compensable factor of employment in the administrative or personnel matters that arose after the October 20, 1999 automobile accident.

Appellant also attributed his emotional difficulties to pain and physical disabilities arising from his October 20, 1999 employment injury. Dr. Arthur's initial medical reports addressed appellant's concerns pertaining to the noted actions taken by management following the motor vehicle accident. In 2002, he first addressed treating appellant for depression arising from pain and physical disabilities due to the accepted injury. On March 23, 2003 Dr. Arthur reduced his statement on causal relationship to a simple "formula." He also noted a past history of depressive episodes that most likely made appellant more vulnerable to depression under the current circumstances.

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<sup>11</sup> *Barbara E. Hamm*, 45 ECAB 843 (1994); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

<sup>12</sup> *Sandra F. Powell*, 45 ECAB 877 (1994).

<sup>13</sup> *Merriett J. Kauffman*, 45 ECAB 696 (1994).

<sup>14</sup> *Lorna R. Strong*, 45 ECAB 470 (1994).

<sup>15</sup> *James W. Griffin*, 45 ECAB 774 (1994).

<sup>16</sup> *Raul Campbell*, 45 ECAB 869 (1994).

<sup>17</sup> *Daryl R. Davis*, 45 ECAB 907 (1994).

<sup>18</sup> *Margreate Lublin*, 44 ECAB 945 (1993). See generally *Thomas D. McEuen*, *supra* note 7.

<sup>19</sup> *Ruthie M. Evans*, *supra* note 8.

While the reports of Dr. Arthur are not completely rationalized on the issue of causal relationship, they are sufficient to raise an uncontroverted inference between appellant's depression and the pain arising from the accepted injury.<sup>20</sup>

Appellant is claiming that his major depressive illness, recurrent, was aggravated by the accepted employment injury on October 20, 1999. The Board will remand the case for further development of the medical evidence as may be necessary and for an appropriate final decision on this issue.

### **CONCLUSION**

The Board finds that appellant has not met his burden to establish that the October 20, 1999 employment injury caused permanent impairment to a schedule member, organ or function of the body. The Board also finds that appellant has not established a compensable factor of employment in the administrative or personnel matters that arose after the October 20, 1999 automobile accident. The Board further finds that this case is not in posture for decision on whether appellant sustained an emotional condition consequential to the accepted October 20, 1999 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 15, 2005 decision of the Office of Workers' Compensation Programs is affirmed, in part. The case is remanded for further action consistent with this opinion.

Issued: August 14, 2006  
Washington, DC

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

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

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<sup>20</sup> See *John J. Carlone*, 41 ECAB 354 (1989).