

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

J.Q., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Seattle, WA, Employer**

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**Docket No. 06-806
Issued: August 2, 2006**

Appearances:

*John E. Goodwin, 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

JURISDICTION

On February 15, 2006 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated May 9, 2005, in which an Office hearing representative affirmed as modified the Office's July 27, 2004 decision denying appellant's 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 is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On November 5, 2003 appellant, then a 52-year-old letter box mechanic, filed an occupational disease claim for compensation (Form CA-2) alleging that he sustained an emotional condition as a result of his federal employment. He stated that he was first aware of his condition and that it was caused by his employment on April 2, 1997.

In an accompanying statement dated October 6, 2003, appellant stated that he had been a postal employee since 1980 and that his job consisted of primarily repairing, installing and removing arrow locks on private or postal equipment that contained mail. He noted that on November 17, 1993 he injured his right arm and upper extremity while at work and that shortly thereafter his left arm began to hurt. Appellant returned to full-time work in June 1994 and reinjured his right upper extremity in July 1994 and that he has had difficulty in helping his daughter in softball. He then sustained a work-related injury on October 31, 1996 to his right upper extremity. Appellant stated that on November 19, 1996 he started to slide into major depression because he was advised by a physical therapist he may only return to 50 percent of his right upper extremity strength and noted that therapy for his upper extremity was painful. He then related another work-related right knee injury on August 16, 1999 for which he was placed on light work. Appellant stated that on October 5, 1999 he was assigned forklift training which he was unable to finish due to pain. On January 18, 2000 he returned to full duty and was able to finish training. Appellant then addressed prior issues noting that in October 21, 1998 there was extensive news coverage of mailbox theft which added to his stress as he was assigned over three dozen keys and that, if he were assaulted and the keys lost, the repair costs to the employing establishment could be \$8,000,000.00 worth of locks. He also noted that he was concerned about his personal safety. Appellant stated that a work order could have him traveling all over a significant geographical area repairing mailboxes and that he felt the stress of customers who lost medicine through theft. He added that a lock changeover program which ran from June to December 2000, which was managed by a craft employee, caused additional stress. Appellant cited as an example receipt of a work order around 2:30 to fix a lock while his tour ended at 3:30, thus causing stress to complete that work order. He stated that he felt stress in November 2000 due to overtime use and emergency calls. Appellant related that he often received work orders that were second and third requests that would be priorities for that day, and that often customers would be angry that locks had not been repaired, adding further stress. He noted a stress claim he filed in December 7, 2001 in response to a work incident where he declined a direct order three times from his supervisor. Although appellant was never charged with insubordination, this caused stress.¹ He then noted an October 22, 2002 work-related injury to the right lower leg, for which he wore an open-toed cast. Appellant returned to work after a two-week suspension,² at which time management assigned him to use special routes presumably to protect his open-toed cast, and that walking in the cast caused additional pain.

In a report dated October 21, 2003, appellant's psychiatrist, Dr. Keith L. Rogers, and a licensed clinical social worker, Chris Storey, stated that they were aware of some of appellant's duties as letter box mechanic with the postal service, and opined that "your injuries, and the difficulty performing your duties in the context of these injuries, contributed to developing depression."

On November 13, 2003 Clarence Larkins, a supervisor, stated that appellant's work relationships with coworkers was strained, that he had difficulty communicating with managers and many supervisors, and that it was difficult to communicate and supervise him. He noted appellant's five prior stress claims, all of which he asserted were denied by the Office, and that

¹ This claim is not before the Board on the present appeal.

² Appellant did not identify the circumstances giving rise to the suspension.

appellant had not worked since February 8, 2003. In a report dated November 18, 2003, the employing establishment controverted appellant's claim because there was no injury and no medical evidence to support an injury, that his stress was self-generated and that the claim was filed beyond the three-year time limit.³ The employing establishment submitted a position description of a letter box mechanic.

By letter dated November 24, 2003, the Office informed appellant of the type of evidence needed to support his claim and requested that he submit such evidence within 30 days.

By letter dated December 8, 2003, appellant, through counsel, reaffirmed his assertions that pain from prior jobs caused emotional conditions, that driving a forklift contributed to his emotional problems, that he had fear and anxiety about never leaving a work site until the mail was secure, that he had a duty to open a mailbox if a customer lost a key, that he had a duty to complete a task even if the work order did not match the required work, that he had fear about securing keys and that he had a special duty to deal with customers who were angry and upset. He noted that he disagreed with some parts of the Office's statement and misinterpreted some parts of his statement.

By decision dated July 27, 2004, the Office denied appellant's claim finding that he failed to establish a compensable factor of employment.

On August 11, 2004 appellant, through counsel, requested an oral hearing which was held on February 23, 2005. He testified that he first felt stress on March 2, 1997, and that he was now on disability retirement. Appellant testified that he stopped working on February 7, 2003 because the employing establishment ordered him home until he had a work release from his psychiatrist. He noted that on that day his supervisor "yelled" and threatened him because he was unsure of a work order, as policy had changed since he was last at work. Appellant submitted exhibits at the hearing including work orders outlining problems with postal boxes and requiring immediate maintenance. The covered time period was from September 1998 to October 2002.

In a March 8, 2004 letter, the employing establishment asserted that appellant had not substantiated his allegations and that his claimed stress was in reaction to administrative matters.

On March 21, 2005 Dr. Rogers and Mr. Storey essentially repeated their earlier report noting that they were aware that appellant's duties were not routine, that he injured his right arm/shoulder initially in 1993 with reinjury in October 1996. They further referenced appellant's diagnosis of depression in 1997⁴ and opined that the results of the injuries and his difficulty performing his duties contributed to developing depression. The report concluded that depressed moods decreases a person's ability to adapt to changes in work routine and that appellant's regular assigned duties, as they were not routine, exacerbated his depression.

³ The case record includes an Office computer record indicating appellant's claims for stress on November 9, 1999 and January 25, February 13, June 5 and December 7, 2001.

⁴ The record does not include any report diagnosing appellant with depression on or about 1997.

On May 9, 2005 the hearing representative affirmed as modified the Office's July 27, 2004 decision denying the claim. The hearing representative found that appellant included his reaction to pain caused by an accepted shoulder injury as a part of the current claim, and was a compensable factor of employment. However, the hearing representative found that the evidence of record was insufficient to establish that the claimed emotional condition was causally related to the accepted compensable factor of employment.

LEGAL PRECEDENT

To establish an emotional condition sustained in the performance of duty, a claimant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.⁵ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion derived from clinical findings on examination, on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. Such an opinion of the physician 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 employee and found compensable by the Office.⁶

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an individual's employment. There are many situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it, but are not covered because they do not arise out of or in the course of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Act.⁷ Generally speaking, when an employee experiences an emotional reaction to his or her regular or specially assigned employment duties or to a requirement imposed by his or her employment or has fear or anxiety regarding his or her ability to carry out assigned duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.⁸ The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of appellant's work or her fear and anxiety regarding his ability to carry out his duties.⁹ Conversely, if the employee's emotional reaction stems from employment matters which are not related to her regular or assigned work duties, the disability is

⁵ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁶ *Martha L. Watson*, 46 ECAB 407 (1995); *Donna Faye Cardwell*, *supra* note 5.

⁷ 5 U.S.C. §§ 8101-8193.

⁸ *Donna Faye Cardwell*, *supra* note 5; *see also Lillian Cutler*, 28 ECAB 125 (1976).

⁹ *Lillian Cutler*, *supra* note 8.

not regarded as having arisen out of and in the course of employment and does not come within the coverage of the Act.¹⁰

Noncompensable factors of employment include administrative and personnel actions which are matters, not considered arising in the performance of duty.¹¹ Although the handling of such matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee. However, to the extent that the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable factor.¹² However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, an emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.¹³

Verbal altercations, name calling or difficult relationships with supervisors in the workplace may be compensable if there is objective factual evidence supporting such allegations of mistreatment in relationships at work or of conduct or language which is otherwise unusual or not encountered as a norm of the employment.¹⁴ An employee's charges that he or she was harassed or discriminated against are not determinative of whether harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹⁵

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's reaction to the employment-related right upper extremity injury, the Board notes that an emotional condition related to pain and other limitations resulting from an employment injury is covered under the Act.¹⁶ Appellant's right shoulder sprain injury was accepted by the Office as occurring in the performance of duty and appellant has attributed his emotional condition to the pain generated by the injury. Therefore, the Board finds that appellant

¹⁰ *Id.*

¹¹ *Joseph DeDonato*, 39 ECAB 1260 (1988).

¹² *James P. Guinan*, 51 ECAB 604 (2000).

¹³ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹⁴ *Paul Trotman-Hall*, 45 ECAB 229 (1993).

¹⁵ *Anthony A. Zarcone*, 44 ECAB 671 (1993).

¹⁶ *Arnold A. Alley*, 44 ECAB 912 (1993); *Charles J. Jenkins*, 40 ECAB 362, 367 (1988).

has established that the work-related right shoulder sprain (Claim No. 140318983) constitutes a compensable employment factor.

However, appellant's burden of proof is not discharged by the fact that he has identified an employment factor which may give rise to a compensable disability under the Act. To establish his claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the identified compensable employment factor, the right shoulder sprain.¹⁷

The Board notes that the medical evidence consists of October 21, 2003 and March 21, 2005 reports from Dr. Rogers who stated he was aware that the results of appellant's shoulder condition and his nonroutine duties as a letter box mechanic contributed to his developing depression. The Board notes that these reports are insufficient to establish the claim as they do not establish medical rationale to explain how the accepted shoulder injury caused or contributed to the claimed emotional condition.¹⁸

Regarding appellant's allegations that the employing establishment harassed him on December 7, 2001 and February 7, 2003, when a manager and a supervisor, respectively, spoke to him and acted in aggressive manner, the Board has held that to the extent that disputes and incidents alleged as constituting harassment by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹⁹ However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.²⁰ In the present case, appellant has not submitted sufficient evidence to establish that he was harassed as alleged.²¹

Appellant stated that he filed a stress claim on December 7, 2001 when a manager gave him a direct order and placed himself "within my personal space" which appellant interpreted as a provocative action designed to illicit an attack. He asserted that the order was wrong which he then claimed was substantiated by another senior manager within a few minutes of review. However, it appears that this incident pertains to a separate claim filed by appellant. In any event, there is no evidence supporting that this is anything more than his perception of harassment. Similarly, appellant asserted that on February 7, 2003 a supervisor, Mr. Larkins, threatened him by standing over him and "yelling" that he (appellant) was threatening him. He explained that he had just returned after being out of work for a while and that he did understand a recent change in policy. Appellant claimed that Mr. Larkins yelled at him asserting that he had been there 20 years and should know everything and that he should go home until he had a work release from his psychiatrist. However, he did not submit any evidence supporting that this incident occurred as

¹⁷ *William P. George*, 43 ECAB 1159 (1992).

¹⁸ *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

¹⁹ *David W. Shirey*, 42 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806 811 (1986).

²⁰ *Jack Hopkins, Jr.*, 42 ECAB 818 (1986).

²¹ *Joel Parker*, 43 ECAB 220 (1991).

alleged or that it arose from appellant's performance of his regular duties. Appellant has not established a compensable employment factor under the Act regarding the incidents of December 7, 2001 and February 7, 2003.

Regarding appellant's allegation that the employing establishment assigned a nonsupervisor to oversee a lock changeover program, the Board finds that this allegation relates to an administrative or personnel matter, unrelated to the employee's regular or specially assigned work duties and does not fall within the coverage of the Act.²² Furthermore, he did not explain why the management of the lock changeover program was unjustified to the extent that it constituted error or abuse on the part of the employing establishment. Appellant submitted no corroborating evidence in support of his claim with regard to this matter. Thus, he has not established a compensable employment factor under the Act in this respect.

Appellant alleged that his emotional condition was due, in part, to a heavy workload necessitating overtime work. The Board had held that overwork may be a compensable factor of employment,²³ however, he must establish a factual basis for the assertion.²⁴ In this case, appellant has submitted no evidence to support his contention that he was overworked and, therefore, this contention cannot be deemed a compensable factor of employment. For example, he has not stated precisely when this occurred or what constituted overwork.

Appellant also listed additional multiple examples of work factors in his claim explaining why he believed his depression was caused by his employment, noting work orders that could have him traveling over a significant physical area, late work orders requiring working past his shift, priority work orders, and stress of working with customers. He also noted that his depression was associated with fear and anxiety about his duty to never leave a work site until the work was accomplished, to open a mailbox if a customer lost a key, to complete a task even if the work order did not match the required work, to secure keys, to deal with angry and upset customers, and his concern for his safety. Appellant further stated that he was concerned for his personal safety while on the job. Many of these concerns are essentially administrative as they concern assignment of work to him as a letter box mechanic and therefore are noncompensable.²⁵ Coverage therefore can only be afforded if error or abuse by the employing establishment is established.²⁶ In this case, appellant did not submit any evidence to establish that the employing establishment committed error or abuse with respect to these matters.²⁷ For example, he has

²² *Jimmy Gilbreath*, 44 ECAB 555 (1993); *Michael Thomas Plante*, 44 ECAB 510 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990).

²³ *Sherry L. McFall*, 51 ECAB 436 (2000).

²⁴ *Id.*

²⁵ *James W. Griffin*, 45 ECAB 774 (1994).

²⁶ *Richard J. Dube*, 42 ECAB 916 (1991).

²⁷ The Office noted in its July 27, 2004 decision that it had adjudicated previously appellant's claims concerning forklift training, a claim regarding appellant's responsibility for maintaining postal keys, and a December 7, 2001 stress claim.

submitted no evidence substantiating that the employing establishment erred or acted abusively in assigning him work.

With regard to encountering customers, this would be a compensable factor if done as part of his duties and if it is substantiated. However, appellant has not submitted evidence establishing specific encounters with specific customers on particular dates. Instead, he has made vague allegations that relate to his personal frustration at not being able to work in a particular environment and general job dissatisfaction. Appellant did not submit evidence to support his allegations.²⁸

Furthermore, appellant's fear regarding his safety is not compensable insofar as it reflects a desire on the part of appellant for a new work area as this relates to a fear of a future injury.²⁹ Also, disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.³⁰ When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.³¹ In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. Appellant has not shown that he was assaulted or sustained or encountered a specific dangerous situation while performing his duties; thus his fear is not compensable under the Act.

Appellant also alleged stress and embarrassment associated with national news coverage of local mailbox problems. However, his reaction is based on his perception and was not based on his regularly-assigned duties and thus it is not regarded as having arisen out of and in the course of employment and thus is noncompensable.³²

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

²⁸ See *Paul L. Stewart*, 54 ECAB 824 (2003).

²⁹ *Joseph G. Cutrufello*, 46 ECAB 285, 294 (1994).

³⁰ *Id.*

³¹ *Artice Dotson*, 41 ECAB 754 (1990); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984).

³² *Lillian Cutler*, *supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the May 9, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board