

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

FRANK J. GENTILE, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Utica, NY, Employer**

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**Docket No. 05-1242
Issued: July 10, 2006**

Appearances:
Thomas S. Harkins, 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 16, 2005 appellant, through his attorney, filed a timely appeal from a February 25, 2005 merit decision of the Office of Workers' Compensation Programs, denying his emotional condition 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 established that he sustained an emotional condition while in the performance of duty.

FACTUAL HISTORY

On December 4, 1998 appellant, then a 41-year-old modified-duty mail handler, filed an occupational disease claim for an emotional condition which he attributed to his federal employment. In July 1998, he first became aware of his depression and a rage disorder and on October 14, 1998, through counseling sessions, realized that these conditions were caused by his federal employment. By letter dated January 7, 1999, the Office advised appellant that the

evidence submitted was insufficient to establish his claim. The Office requested additional factual and medical evidence.

Appellant submitted a timeline of work events from May 1994 through August 1998, alleging that he was humiliated and embarrassed on his return to work on August 21, 1994 when assigned to sit in a hallway and watch an employee entrance. In October 1994, a custodian brought him a table and chair every night so that he could work on mail in the hallway. He stated that the custodian voiced displeasure about performing this task which made him feel stupid. On October 8, 1994 and in September 1995, his work hours were increased by three hours and four hours respectively. On May 4, 1995 appellant received a letter of warning for irregular absences and contended that he was being punished for his absences. He received a letter of warning on April 13, 1997 for failing to follow his limited-duty restrictions.

Appellant alleged that he was harassed by management calling and pressuring him to return to work against his physician's orders and a supervisor coming to his house two to three times a week to check up on him.¹ He was told to return to work because he was not home, even though he had advised that he would be at a hospital for the birth of a child. Appellant also noted that the employing establishment referred him to physicians who did not practice the type of medicine related to his injury.

Appellant also attributed his emotional condition to actions by Linda Snyder, a coworker. She allegedly bragged about reporting appellant to postal inspectors; advised a supervisor that she feared being harmed by appellant; threatened to give appellant poisoned popcorn and made untrue statements about him to new employees. Appellant contended that his work restrictions and the suggestions he made for improvement were ignored by management and that new casual workers judged him as being lazy. He alleged disparate treatment when his compensation claim or request for reimbursement of sick leave was denied, stating that the requests of coworkers were approved. Appellant also contended that management was trying to fire him due to sick leave usage.

Appellant submitted several documents related to an increase in his work hours and the May 4, 1995 and April 13, 1997 letters of warning. He submitted medical reports from Dr. Warren T. Rinehart, an attending Board-certified orthopedic surgeon, and hospital records dated from October 4, 1994 through April 2, 1996 addressing treatment of his back and emotional conditions. On September 28, 1995 Dr. Rinehart listed a history of harassment by management in giving appellant demeaning jobs. He stated that appellant had a chronic partial disability due to back pain and recommended that he continue working a three-hour shift.

The employing establishment controverted appellant's claim. In a December 28, 1998 statement, John Daniels, the plant manager, noted that he had no personal or first hand knowledge of appellant sustaining a work-related emotional condition. He stated that appellant

¹ Appellant filed a claim alleging that he sustained a back injury at work on March 31, 1997. By decision dated June 6, 1997, the Office found that he did not sustain an injury while in the performance of duty. In a November 18, 1997 decision, an Office hearing representative set aside the Office's June 6, 1997 decision and found that appellant sustained a cervical strain while in the performance of duty on March 31, 1997. By letter dated December 2, 1997, the Office accepted his claim for a cervical strain.

never approached him with any concerns regarding an unpleasant work environment. Dr. Daniels noted that Kenneth Gaetano, an employee, notified him that Ms. Snyder had stated that Mr. Gaetano and appellant were guilty of defrauding the government by filing fraudulent workers' compensation claims. Mr. Daniels stated that he personally visited the tour and made inquiries in an attempt to verify the allegation. He was assured that the incident was minor in nature and mirrored topics that were generally discussed among the limited-duty personnel. Mr. Daniels instructed Thomas A. Mercurio, manager of distribution operations, to tell Ms. Snyder that it was inappropriate for her to express opinions on coworkers' medical conditions. He told Ms. Snyder that her comments were unacceptable. No further complaints were received about Ms. Snyder making unsolicited statements. Mr. Daniels rejected Mr. Gaetano's proposal to remove her from the limited-duty section and place her on another tour as it would be a drastic measure and set a precedent for employees to petition management to isolate or change an employee's tour due to minor differences.

Mr. Mercurio denied harassing appellant by calling at home or pressuring him to return to work, going to his home, questioning his physicians or sending him for medical evaluations. He did not know whether appellant's allegation that Ms. Snyder had reported him to postal inspectors was true. Mr. Mercurio noted that appellant's request to not work in the same area as Ms. Snyder was granted. He reported that none of the supervisors had any knowledge about Ms. Snyder making untrue statements about appellant to new employees and denied that appellant's restrictions and suggestions were ignored.

In response to the Office's January 7, 1999 letter, appellant advised that his job did not require him to meet any deadlines, quotas or time frames and that he was provided with adequate tools and equipment to perform his work duties. He was not required to work overtime or take work home. Appellant had filed a grievance concerning the letter of warning for excessive use of sick leave. He described the development of his emotional condition, noting that in the spring of 1998 he did not want to go to work or interact with his family. Appellant experienced headaches and stomachaches at work and became short-tempered. His counselor diagnosed depression and a rage disorder. Appellant contended that Mr. Daniels did not remember the numerous complaints he made against his supervisors, Patricia Hernandez, Mr. Mercurio, Gail Servatius and Mr. Samuels, and that Mr. Daniels ignored his request not to work in the same area as Ms. Snyder. He related that Mr. Mercurio either forgot or was not aware that Ms. Snyder was sent to his work area at least once a week or came to his work area on her own. Appellant alleged that Ms. Servatius ignored him and stated that he was not in a constant state of rage as he and Mr. Mercurio talked about stock cars and appellant could hold a normal conversation and get along with people. He believed that the hobbies identified by Mr. Mercurio were not hobbies. Appellant was unable to provide names of his coworkers as witnesses due to possible retaliation by the employing establishment.

In a December 10, 1998 report, Maggie Putman, a therapist, diagnosed a single severe major depressive episode without psychotic features; a severe low back strain and occupational problems.

In a November 12, 1998 report, Dr. Suresh Rayancha, a psychiatrist, diagnosed post-traumatic stress disorder on Axis I; an underlying physical condition on Axis III and listed no diagnosis on Axis II. Dr. Rayancha opined that appellant's trauma was work related. On

November 30, 1998 Dr. Rayancha again diagnosed work-related post-traumatic stress disorder. He noted appellant's emotional symptoms and that he felt better since he was not working. Dr. Rayancha opined that most of appellant's symptoms "seem to be work related" and that he was unable to return to work. Treatment notes from Tracy Stein, a family nurse practitioner, noted that appellant experienced a rage disorder, depression, noninsulin dependent diabetes and hypercholesterolemia.

By decision dated June 14, 1999, the Office denied appellant's claim. It accepted as a compensable factor that Ms. Snyder had made allegations that appellant filed fraudulent workers' compensation claims and reported him to postal authorities. The Office denied appellant's other allegations, noting that they were not established as factual or the evidence did not establish error or abuse on the part of management. It noted that the medical evidence was insufficient to establish that appellant sustained an emotional condition caused by the accepted work factor.

Appellant requested an oral hearing before an Office hearing representative by letter dated July 12, 1999. He contended that the Office erred in considering his allegations separately rather than cumulatively as the cause of his emotional condition.

The Office received narrative statements from several of appellant's coworkers. Mr. Gaetano stated that Ms. Snyder bragged about how she called the postal inspector numerous times about appellant. She turned him in to Ms. Hernandez for putting up signs about her. After appellant heard that Ms. Snyder was telling lies about him to supervisors, he became visibly upset and complained about chest pains. Mr. Gaetano stated that their request to not work in the same area as Ms. Snyder was ignored. He was sitting next to appellant when Ms. Snyder told appellant that some popcorn had poison on it. Appellant became very upset every time Ms. Snyder was sent to work in their area and would leave because he wanted to hit her. His suggestions to management about how to work quicker and better were ignored. Appellant stated that, when new employees started working, Ms. Snyder took them aside and told them that appellant was faking a compensation claim.

Christian M. Grande stated that Ms. Snyder made a point of telling him that appellant was cheating workers' compensation and that she had turned him in several times. She seemed to relish in annoying appellant would go to his work area without being assigned to work there. When a supervisor stated that appellant was away from work on a mental disability, Ms. Snyder replied that she probably drove him from work. On several occasions, appellant's suggestions about improving work were ignored by Ms. Servatius and appellant's request to work in a different area was denied. During the last six months appellant worked, he became upset almost every night and made comments about running people over in the parking lot or punching people while at work.

Stephen J. Womeling stated that it was common knowledge that appellant had problems with Ms. Snyder. He witnessed Ms. Snyder's comment that she drove appellant away from work. Mr. Womeling stated that Ms. Servatius ignored appellant's suggestion to improve mail processing.

On May 3, 2001, in response to appellant's hearing testimony, Connie Hall, an injury compensation manager, submitted statements from Ms. Servatius, Ms. Hernandez and Mr. Daniels. She noted that appellant had filed several claims and was on the periodic rolls for four hours a day performing modified duty four hours a day. Ms. Hall stated that appellant was aware that he was the subject of more than one investigation by postal inspectors and became anxious when a reward poster for workers' compensation fraud was posted for all employees to view. A survey was conducted district wide and management attempted to improve the relationship between craft employees and staff. Ms. Hall noted that appellant failed to identify with specificity the "really dangerous" things going on at work. She contended that the witness statements were written by the same person and signed by the witnesses as none of them had dates or home addresses on them and they all had a semicolon after the closing. Although Mr. Gaetano had indicated that he worked side by side with appellant during most of the time when the alleged incidents occurred, he was not at work during the timeframe identified by appellant.

Ms. Servatius stated that she did not ignore appellant. She assigned work within his restrictions and did not recall him coming to her with any ideas related to mail processing. Ms. Servatius denied Mr. Grande's statement that she had ignored appellant. She noted that he had an attendance problem and that on March 16, 1995 she had a discussion with him about sick leave. Ms. Servatius issued a letter of warning to appellant for failing to be regular in attendance which was later reduced to restricted sick leave. She had another discussion with him on August 23, 1995 about sick leave usage.

Ms. Hernandez stated that appellant admitted to making a sign on his computer about Ms. Snyder and posting it. She advised him that employees were prohibited from displaying signs. Ms. Hernandez recognized that he had an enormous dislike for Ms. Snyder and she spoke to Ms. Snyder about her conduct. She denied appellant's allegations that he was forced to work in the same work area as Ms. Snyder. Often employees wanted to pick and choose the coworkers they wanted to work with but honoring such requests would foster a social club rather than a productive work environment. She moved appellant into another job assignment away from Ms. Snyder. Appellant was not assigned to embarrassing or humiliating work as the assignments were based on work that was available within the medical restrictions set forth by his physician. The increase in appellant's work hours was based on his physician's recommendation. She explained the procedure for issuing a letter of warning due to absence from work and stated that there were no irregularities in handling this matter. Ms. Hernandez denied the allegation that management was trying to fire appellant due to his sick leave usage.

Mr. Daniels disputed appellant's allegation that a survey was conducted at the employing establishment to address violence in the workplace. He explained that a national survey was conducted to measure employees' comfort level in their work environment. Mr. Daniels contended that the statements from appellant's witnesses lacked credibility. He related that the employing establishment had a zero tolerance policy for threats or acts of violence in the workplace and that appellant, by his own admission, violated this policy by expressing his desire to harm Ms. Servatius to a coworker.

On May 2, 2000 appellant disagreed with the statements of his supervisors.

By decision dated June 5, 2000, an Office hearing representative noted that the only accepted work factors were comments made by Ms. Snyder to employees that appellant had filed fraudulent workers' compensation claims. He found that the medical evidence was insufficient to establish a causal relationship between appellant's emotional condition and the accepted employment factor. The Office's June 14, 1999 decision was affirmed.

By letter dated September 20, 2000, appellant requested reconsideration and submitted a June 22, 2000 report from Ms. Putman. In a September 14, 2000 report, Dr. Rayancha found that appellant had a post-traumatic stress disorder first diagnosed in November 1998. Based on his recent psychiatric evaluation and review of information provided by Ms. Putman, Dr. Rayancha opined that the incidents involving Ms. Snyder were the cause of the diagnosed condition. He stated that appellant perceived a hostile work environment as a potential threat to his physical integrity. Dr. Rayancha noted appellant's symptoms of the disorder and stated that they caused clinically significant impairment in social, occupational and other important areas of functioning. He stated that appellant was depressed, socially withdrawn and anxious and opined that he met the diagnostic criteria for a post-traumatic stress disorder.

On November 18, 2004 appellant's attorney contended that the factual evidence and Dr. Rayancha's September 14, 2000 medical report established that appellant's emotional condition was caused by the accepted employment factor. On December 10, 2004 the Office advised counsel that the medical evidence was insufficient to establish that appellant sustained an emotional condition causally related to his employment. It requested that additional medical evidence be submitted to establish appellant's claim. In a January 31, 2005 letter, counsel advised the Office that no additional medical evidence was forthcoming as Dr. Rayancha believed that he had submitted all necessary information.

By decision dated February 25, 2005, the Office denied modification of the June 5, 2000 decision. It found that appellant failed to establish that he sustained an emotional condition caused by the accepted employment factor.

LEGAL PRECEDENT

A claimant 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 factors of his federal employment.² To establish that he sustained an emotional condition in the performance of duty, the claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.³

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁴ the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁵ 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 under the Act.⁶ When an employee experiences emotional stress in carrying out his employment 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 results from his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.⁷ 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 under the Act.

Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the 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.⁸ 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.⁹ However, an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.¹⁰

ANALYSIS

Appellant alleged that he sustained an emotional condition causally related to various factors of his federal employment, primarily harassment by management and a coworker and to error in certain administrative matters. The Board notes that appellant has not attributed his emotional condition to any *Cutler* factors; stating that he did not have to meet any deadlines, quotas, timeframes or work overtime and that he was provided with adequate tools and equipment to perform his job. The Office has accepted as a compensable factor the statements made by Ms. Snyder to various coworkers that appellant had filed fraudulent workers' compensation claims.

⁴ 28 ECAB 125 (1976).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ See *Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

⁷ *Lillian Cutler*, *supra* note 4.

⁸ *Id.*

⁹ *Michael L. Malone*, 46 ECAB 957 (1995).

¹⁰ *Charles D. Edwards*, 55 ECAB ____ (Docket No. 02-1956, issued January 15, 2004).

The incidents of harassment identified by appellant include being assigned to perform limited-duty work in a hallway and outside his medical restrictions, being pressured to return to work against his physician's orders, management checking on him while at home on leave, his suggestions for improvement being ignored, an increase in his work hours, letters of warning received for his absences and use of sick leave, and his leave requests being denied. The Board has held that the employee's unfounded perceptions of harassment do not constitute a compensable factor of employment.¹¹ Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. A claimant must substantiate such allegations with probative and reliable evidence.¹²

Appellant's modified-duty work assignment, letters of warning and approval of leave requests involve administrative and personnel matters.¹³ As noted, actions taken by management in administrative or personnel matters unrelated to the employee's regular or specially assigned work duties do not generally fall within coverage of the Act absent evidence of error or abuse.¹⁴ The Board finds that appellant has failed to submit sufficient evidence to establish error or abuse by his supervisors in these matters alleged. There is no evidence to support that appellant was required to work in a hallway or otherwise outside of his medical limitations. Ms. Servatius stated that he was assigned to work that conformed to his physical restrictions. Ms. Hernandez denied that appellant was assigned to embarrassing and humiliating work as the modified-duty work assignments were based on work available within his medical restrictions. The statements of his coworkers did not address these specific allegations. Appellant, in fact, noted that he was provided adequate tools and equipment to perform his work. The Board finds that appellant has not established that the employing establishment committed error or abuse pertaining to his modified-duty job assignments, in the processing of his leave requests or in issuing letters of warning pertaining to his use of leave.

Appellant did not submit any evidence to corroborate that a custodian expressed displeasure with having to bring him a table and chair, that he was pressured by the employing establishment to return to work or that his coworkers judged him as being lazy because he could not perform certain work duties. Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.¹⁵ Mr. Mercurio denied that he was abusive towards appellant or pressured him to return to work, went to his home, questioned his physicians or arbitrarily sent him to medical examinations. Appellant has the burden of establishing a factual basis for his allegations; he has not met this burden of proof where the

¹¹ *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹² *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); see *Donna Faye Cardwell*, *supra* note 3 (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* *supra* note 1 (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

¹³ *Peggy Ann Lightfoot*, 48 ECAB 490 (1997).

¹⁴ *Charles D. Edwards*, *supra* note 10.

¹⁵ *Compare, Alfred Arts*, 45 ECAB 530, 543-44 (1994) and *Abe E. Scott*, 45 ECAB 164, 173 (1993).

allegations in question are not supported by specific, reliable, probative and substantial evidence. The Board finds that appellant has not established these allegations as compensable factors of his employment. As noted, the Office accepted as a compensable factor the fact that Ms. Snyder had told various coemployees that appellant had filed fraudulent workers' compensation claims.

Ms. Servatius denied ignoring appellant or any suggestions for improvement at the employing establishment and did not recall appellant making any suggestions related to improving mail processing. Mr. Gaetano, Mr. Grande and Mr. Womeling stated generally that management had ignored appellant's suggestions which bothered him, but did not provide any specific information pertaining to any suggestions made or relate when and where they witnessed a supervisor ignoring appellant. Appellant has not established harassment with regard to this allegation.

The increase in appellant's work hours in October 1994 and September 1995, the letters of warning issued in May 1995 and April 1997,¹⁶ the denial of his request to not work in the same area as Ms. Snyder,¹⁷ request for sick leave reimbursement¹⁸ and an employee survey also involve administrative or personnel matters. The handling of these matters does not bear a relation to the duties appellant was hired to perform and, generally, do not arise within the performance of duty. As noted, coverage will be afforded in these administrative or personnel matters if there is evidence of error or abuse. As to the increase in appellant's work hours, Ms. Hernandez noted that they were increased in accordance with the medical restrictions from appellant's physician. Ms. Servatius explained that the letters of warning related to appellant's sick leave usage and his failure to attend work regularly. Although she noted that one letter of warning was reduced through the grievance process to restricted sick leave, the record does not establish that any such reduction of the penalty was error or abuse in the processing of this matter. Ms. Hernandez explained the procedures for issuing letters of warning and stated that the employing establishment had not acted erroneously in issuing them. Ms. Hernandez stated that management had not tried to fire appellant due to his sick leave usage.

Ms. Hernandez noted that appellant was not forced to work in the same area as Ms. Snyder and that she assigned him to another job away from the location in which Ms. Snyder worked. Mr. Mercurio also noted that appellant's request not to work in the same area as Ms. Snyder was granted. Mr. Daniels explained that a national employee survey was conducted to measure employee comfort level in the work environment. The Board finds that appellant has not shown error or abuse by the employing establishment with regard to these allegations. The evidence of record does not establish these as compensable factors of employment.

Appellant's burden of proof, however, is not discharged by the fact that he has established a compensable employment factor. To establish his claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an

¹⁶ *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

¹⁷ *Anna C. Leanza*, 48 ECAB 115 (1996).

¹⁸ *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Michael Thomas Plante*, 44 ECAB 510 (1993).

emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.¹⁹ As noted, the Office has accepted as compensable the comments made by Ms. Snyder to coemployees that appellant had filed fraudulent workers' compensation claims.

Dr. Rinehart's reports and treatment notes and a hospital report which covered intermittent dates from October 4, 1994 through April 2, 1996 addressed appellant's back and emotional conditions. However, these reports failed to discuss whether the emotional condition was caused or aggravated by the compensable factor found in this case, *i.e.*, Ms. Snyder's allegations that appellant filed false compensation claims. Dr. Rinehart's September 28, 1995 treatment note indicated that management personnel had harassed appellant by giving him demeaning jobs, but this allegation has not been accepted as factually established. On September 14, 2000 Dr. Rayancha reiterated the diagnosis of post-traumatic stress disorder first made in 1998. He indicated that, in making this diagnosis, he relied on a review of information provided by Mr. Putman. He commented that appellant perceived a hostile work environment; however the physician did not provide sufficient medical rationale to support the diagnosis or explain how it would be caused or aggravated by the compensable factor accepted by the Office. As such, the reports of Dr. Rayancha are not sufficient to establish appellant's claim. The Office advised that the medical evidence of record was insufficient on the issue of causal relationship but Dr. Rayancha declined to submit further medical evidence.

Ms. Putman's reports have no probative medical value as evidence supporting the claim as a therapist is not defined as a physician under the Act.²⁰ Similarly, the treatment notes of Ms. Stein, a family nurse practitioner, are not competent medical evidence as a nurse practitioner is also not defined as a physician.²¹ Appellant has failed to submit rationalized medical evidence establishing that his emotional condition was caused by Ms. Snyder's comments to employees that he had filed false compensation claims. He has failed to establish that he sustained an emotional condition while in the performance of duty.

CONCLUSION

The Board finds that appellant had not established that his emotional condition is causally related to his federal employment.

¹⁹ See *William P. George*, 43 ECAB 1159, 1168 (1992).

²⁰ See 5 U.S.C. § 8101(2)

²¹ *Id.*; *Joseph N. Fassi*, 42 ECAB 677 (1991).

ORDER

IT IS HEREBY ORDERED THAT the February 25, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 10, 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