

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

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DOUGLAS E. MURPHY, Appellant)	
)	
and)	Docket No. 05-1916
)	Issued: March 16, 2006
U.S. POSTAL SERVICE, POST OFFICE, Pittsfield, ME, Employer)	
)	

Appearances:
Douglas E. Murphy, *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 September 14, 2005 appellant filed a timely appeal of a June 21, 2005 merit decision of the Office of Workers' Compensation Programs that found that he had not established any compensable factors of employment in his stress claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant has established that his chest pain and gastroesophageal reflux disease are causally related to compensable factors of his employment.

FACTUAL HISTORY

On January 10, 2001 appellant, then a 51-year-old rural carrier associate, filed an occupational disease claim for stress that he attributed to his postmaster's manipulation of his approved workers' compensation claim, his limited-duty pay and continuation of pay. He contended that on May 30, 2000 he was wrongfully assigned to a demeaning permanent limited-duty position with no benefits instead of a rehabilitation assignment to which appellant was

entitled and that the postmaster deliberately caused his October 16, 1999 back injury by requiring him to deliver two mail routes each day. Appellant stopped work on January 11, 2001 claiming that he could no longer work because the stress caused chest pain and gastroesophageal reflux disease.

In a January 11, 2001 report, Dr. Craig W. Curtis, a Board-certified family practitioner, stated that appellant's gastroesophageal reflux disease and dyspepsia could be contributed to by stress and mental anguish but that he was not rendering an opinion as to causation because he did not have records from the physician treating appellant for this problem. He noted that he did not have other input relating to interpersonal relationships at work, though it appeared there were some significant personnel-management issues. Dr. Curtis stated, "[c]ertainly emotional situations and personal bodily responses to these emotions can manifest themselves as physical symptoms." In a January 30, 2001 report, he stated that appellant's gastroesophageal reflux disease was better controlled on a different medication, with little to no symptoms. He diagnosed situational stress and recommended counseling to help resolve appellant's interpersonal difficulties.

By letter dated February 6, 2001, the Office advised appellant of the evidence he needed to submit in support of his claim for an emotional condition, including a comprehensive medical report from his treating physician explaining how factors of his employment contributed to his condition. In a February 22, 2001 response, he stated that he was not alleging that the stress of his employment had resulted in a mental health compromise, but that the tampering with continuation of pay, compensation pay for limited duty and the rehabilitation position was directly responsible for his gastroesophageal reflux disease and chest pain.

Appellant submitted May 25 and August 8, 2000 letters from the employing establishment to the Office, advising that the compensation paid by the Office for his disability from October 18, 1999 to June 2, 2000 was based on an incorrect number of hours worked per week. This resulted in the Office paying additional compensation for that period. On October 3, 2000 employing establishment pay adjustment request found that appellant was owed additional hours of continuation of pay for pay periods 22 through 25 of 1999, that pay was owed for pay periods 13 and 14 of 2000, when no time cards were submitted and that he should have been paid for 32 hours of work and sick leave for pay period 18, 2000. An October 3, 2000 notification of personnel action changed his status to nonleave earning effective April 22, 2000.

On March 23, 2001 the Office referred appellant, together with the medical records and a statement of accepted facts, to Dr. Aziz Massaad, a Board-certified surgeon, for a second opinion on whether factors of his employment contributed to his gastroesophageal reflux disease. In a May 1, 2001 report, he stated that he did not find any clear-cut evidence that appellant's condition was truly gastroesophageal reflux disease, as he had not undergone an endoscopy or upper gastrointestinal series. Dr. Massaad related that this disease was "usually and most commonly caused by a defective lower esophageal sphincter and is rarely affected by stressful conditions." He did not consider appellant disabled, as his symptoms were under control with medication.

On May 14, 2001 the employing establishment advised the Office that appellant was offered temporary limited duty and not a rehabilitation position because he was a rural carrier

associate, which is a temporary, not a career, position. He submitted a July 21, 2000 letter from the postmaster to his physician stating that appellant needed his current work limitations, as the postmaster would like to offer him a permanent rehabilitation position. An employing establishment offer of temporary limited duty, made to accommodate restrictions from appellant's October 16, 1999 low back injury,¹ was accepted by appellant on May 30, 2000 and he returned to work on June 5, 2000.

On October 19, 2001 the Office issued appellant payments of compensation for temporary total disability from January 11 to June 2, 2001. A notation accompanying these initial payments indicated that he was capable of limited duty, but that no work was available at the employing establishment. The Office issued periodic compensation payments for temporary total disability through June 14, 2002. By decision dated June 21, 2002, the Office found that appellant did not sustain an emotional or stress-related condition related to compensable factors of employment.

On July 29, 2002 the employing establishment advised the Office that the limited duty appellant was offered on May 30, 2000 was still available. On September 6, 2002 the employing establishment again offered this position to appellant, who declined it on September 10, 2002. By letter dated September 9, 2002, the Office advised him that it was unable to process his claims for compensation beginning June 15, 2002, as there was no medical evidence indicating he was totally disabled and suitable work was available. The Office noted that compensation was not authorized for appellant's stress claim and that it erred in paying compensation beginning January 11, 2001 on his low back claim. In an October 7, 2002 letter, he stated that he never claimed he was totally disabled, but that he could not work limited duty because of the abuse by his postmaster. By letter dated November 25, 2002 the Office advised appellant that it had previously informed him that the offered position was suitable, that his reasons for refusing it were unacceptable and that he had 15 days to return to work or face termination of his compensation for refusing suitable work. By decision dated December 31, 2002, the Office terminated appellant's compensation effective January 9, 2001, on the basis that he abandoned suitable work.

On January 16, 2003 appellant filed an appeal with the Board, which was docketed as No. 03-669. He subsequently advised that he only wished to appeal the June 21, 2002 Office decision, as he was pursuing a hearing before the Office on the December 31, 2002 termination decision. By order dated January 21, 2004, the Board remanded the case to the Office for completion of an incomplete record submitted on appeal to be followed by an appropriate decision. By decision dated December 1, 2003, the employing establishment terminated appellant's employment effective December 10, 2003, for being absent without leave since March 21, 2003. The employing establishment found that as a noncareer employee he was not entitled to permanent rehabilitation to a career position. On March 10, 2004 the Office reissued its June 21, 2002 decision denying appellant's stress claim.

On March 9, 2005 appellant requested reconsideration of the Office's March 10, 2004 decision, contending that he was a permanent employee at the time of his October 16, 1999

¹ This injury was accepted for a lumbosacral strain and a herniated disc.

employment injury. He submitted copies of sections of the collective bargaining agreement delineating different types of rural carriers, a page of the National Rural Letter Carrier Association's Injury Compensation Handbook stating that an employee who reaches maximum medical improvement, but remains totally or partially disabled beyond one year should either be returned to full duty or permanently reassigned to a modified position under the rehabilitation program and a page of the employing establishment's employee and labor relations manual stating, "A rehabilitation assignment is provided when the effects of the injury are considered permanent and/or the employee has reached maximum medical improvement."

By decision dated June 21, 2005, the Office denied modification of its March 10, 2004 decision, finding that appellant had not implicated any compensable factors of employment.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act. On the other hand the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.² Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.³

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

ANALYSIS

Appellant attributed his chest pain and gastroesophageal reflux disease to employing establishment actions following his October 16, 1999 low back injury: assignment to a limited

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Michael Thomas Plante*, 44 ECAB 510 (1993).

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

duty rather than a rehabilitation position, delayed and inaccurate pay and continuation of pay and placement in a nonleave earning status. These actions constitute administrative or personnel matters and thus are covered under the Act only if error or abuse by the employing establishment is shown.

Appellant has not established that he was a permanent employee at the time of his October 16, 1999 employment injury or that he was otherwise entitled to a rehabilitation assignment instead of the limited duty that he performed from June 5, 2000 to January 10, 2001. The employing establishment has maintained that his position of rural carrier associate was a temporary, noncareer position. Appellant's submission of sections of the collective bargaining agreement do not support a contrary result and his submission of parts of the Injury Compensation Handbook and the employing establishment's employee and Labor Relations Manual do not show entitlement of a temporary employee to a permanent rehabilitation position.

Appellant has shown that on April 22, 2000 he was placed in a nonleave earning status. He has not, however, shown that this action by the employing establishment was erroneous. Appellant also has not shown that he was given an improper assignment of work duties on October 16, 1999; that he found the limited-duty position demeaning amounts to frustration from not being permitted to work in a particular environment or to hold a particular position.

Appellant has established that the employing establishment committed errors in issuing his continuation of pay and in paying his wages during his limited-duty assignment. The employing establishment's adjustments to his continuation of pay and to his pay corroborate his allegations regarding errors in these personnel or administrative matters.

As appellant has substantiated a compensable factor of employment, the Board will proceed to an analysis of the medical evidence to determine whether it establishes that the compensable factor of employment contributed to the claimed conditions of gastroesophageal reflux disease and chest pain. There is no medical evidence addressing the cause of his chest pain. Dr. Curtis addressed the gastroesophageal reflux disease in a January 10, 2001 report, noting that stress could manifest itself in such physical symptoms, but also clearly stated that he was not rendering an opinion as to causation. In a May 1, 2001 report, Dr. Massaad stated that he could not confirm that appellant had gastroesophageal reflux disease, which is consistent with Dr. Curtis's January 30, 2001 report, stating that he had little or no symptoms of this condition. Appellant has not submitted a rationalized medical report relating his gastroesophageal reflux disease to the compensable factor of employment and thus, has not met his burden of proof.

CONCLUSION

Appellant has established a compensable factor of employment, namely errors by the employing establishment in administering his continuation of pay and his pay for limited duty, but has not submitted medical evidence sufficient to establish that this compensable factor of employment contributed to the conditions for which he claimed compensation.

ORDER

IT IS HEREBY ORDERED THAT the June 21, 2005 decision of the Office of Workers' Compensation Programs is modified to find a compensable factor of employment and is affirmed as modified.

Issued: March 16, 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