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

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| **R.F., Appellant** | ) | |
| **and** | ) | **Docket No. 07-623** |
| | ) | **Issued: September 7, 2007** |
| **U.S. POSTAL SERVICE, CORNELL STATION POST OFFICE, Bronx, NY, Employer** | ) | |

*Appearances:*
*Appellant, 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 January 3, 2007 appellant filed a timely appeal from a November 13, 2006 decision of a hearing representative of the Office of Workers' Compensation Programs which affirmed the denial of 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 has established that he sustained an emotional condition in the performance of duty.

### ***FACTUAL HISTORY***

On September 29, 2005 appellant, then a 47-year-old letter carrier, filed an occupational disease claim, Form CA-2, alleging that his preexisting depression and anxiety were aggravated in the performance of duty. He stated that work-related stress and his supervisors' failure to honor his medical restrictions had caused him to become disabled on July 25, 2005.

On September 18, 2005 appellant indicated that he had received treatment for anxiety disorder, bipolar disorder and depression since 1997, but had previously been able to manage these conditions with medication. He stated that his condition had deteriorated as a result of increased stress, responsibilities, workloads and harassment. Appellant alleged that he was allotted an unreasonable amount of time to complete unfamiliar routes with high mail volume; that his supervisors did not honor his work limitations, requiring him to continually remind them; that his supervisors pushed him to finish tasks faster; that his responsibilities had increased and changed, making it impossible to finish in eight hours; and that he was unable to take lunch and was forced to ask for help everyday in order to finish his responsibilities. He explained that the duties of a letter carrier had changed considerably over the years, and that the increased duties and responsibilities caused him stress that aggravated his preexisting illness.

Dr. Howard Isaacs, a Board-certified psychiatrist, removed appellant from work for short periods in 2001, 2002, 2004 and 2005 and provided temporary light-duty restrictions related to his severe depression and anxiety. On June 7, 2005 he removed appellant from work until June 27, 2005 because of severe depression and anxiety caused by work-related stress. Dr. Isaacs also provided a four-hour-per-day work limit from June 27 to July 9, 2005 and prohibited overtime thereafter.

On September 21, 2005 Dr. Isaacs submitted a report detailing appellant's psychiatric history. Beginning in 1997, he had treated appellant for anxiety and depression arising out of forced overtime at work, a custody battle with his ex-wife and the death of his mother. Dr. Isaacs stated that, because appellant took his home and work responsibilities very seriously, he became upset when things did not work out as desired. He reported that approximately two years prior, appellant's job stress "increased dramatically" as he was struggling to learn new routes at the same time his ability to finish his work in a timely manner was impacted by new regulations, increased workloads and increased responsibilities.

Dr. Isaacs diagnosed bipolar II disorder and placed appellant on new medications in addition to his ongoing psychotherapy. He stated, however, that appellant continued to feel depression and anxiety, which was "clearly a direct result of severe work-related stress." Dr. Isaacs stated that appellant began to experience greater vulnerability, reduced capacity to work, helplessness, hopelessness, increased hypertension and the new symptoms of tremors and vomiting. These symptoms indicated an aggravation and acceleration of appellant's preexisting conditions that were directly and causally related to the conditions of his employment and supervisory harassment. Dr. Isaacs stated that appellant was totally disabled from July 25 to September 29, 2005 and permanently partially disabled thereafter and would be under strict limitations of no more than eight hours per day of inside duty. He had read appellant's September 18, 2005 statement and was in agreement with the causes of his disability. On October 6, 2005 Dr. Isaacs renewed the medical limitations and stated that appellant could do indoor work only.

The employing establishment controverted appellant's claim on the grounds that his condition was preexisting and had questionable relation to his employment. It contended that appellant's aggravated condition was "self-generated" as it was based on disagreement or dislike of management actions. In a memorandum dated October 11, 2005, Winston Dinkins, the customer services manager, responded to appellant's allegations. Mr. Dinkins stated that

appellant was a reserve carrier and generally one of the first carriers out on the street. There was no reason to push him to work faster. He also stated that appellant received help with his assignments 95 percent of the time so that he did not have to work any overtime. Mr. Dinkins indicated that, because appellant had no permanent route, he was generally given two to three route "ends," each of which took 30 to 90 minutes to complete. He denied that appellant had been harassed by any supervisors, as evidenced by an investigation conducted by appellant's union.[1] Mr. Dinkins contended that appellant did not claim his condition was work related until he was sent home because of low mail volumes.

The employing establishment submitted memoranda prepared by appellant's supervisors for a grievance that appellant brought for failure to provide light-duty work. In a September 21, 2005 letter, Andrea Canada, a customer services supervisor, stated that, when appellant was under the four-hour work limitation, he would sort mail in the morning and leave by 11:00 a.m. at the latest, though he sometimes did not report for duty. She stated that, when there was no work in the morning, appellant was given the option of delivering mail in buildings for four hours in the afternoon, which he accepted without protest. Ms. Canada stated that appellant's duties had consistently been modified to meet his changing medical condition and that he had been reassigned from parcel post to "stick routes" to building routes with no walking.

In a September 23, 2005 statement, Mr. Dinkins stated that when he received Dr. Isaacs' four-hour work limitations, he notified appellant that mail volume was low and that he may have difficulty finding work at the station. He reported that appellant did four-hour street routes from June 28 to July 18, 2005, when he refused to continue. Appellant worked in the station on July 21 and 22, 2005, but work could not be found for him on the successive three days, despite the fact that Mr. Dinkins emailed other stations to see if there was work available. On July 25, 2005 appellant submitted documentation that he was totally disabled until August 25, 2005.[2]

By letter dated December 6, 2005, the Office informed appellant that the evidence did not establish that the alleged events occurred or that he had been injured in the performance of duty. The Office requested additional information from both appellant and the employing establishment about the allegations.

On December 8, 2005 appellant alleged that on several occasions between February and June 2005 he was "rushed" by Mr. Dinkins and Ms. Ramirez to get onto the street. On February 1, 2005 Mr. Dinkins harassed and intimidated him intensively, going so far as to question his bathroom breaks. In a February 3, 2005 note, Dr. Isaacs stated that appellant suffered from "episodes of severe depression and severe anxiety order due, in part, to work-related stress" and that he could not work any overtime and should not be asked or forced to do so. Appellant alleged that even after this note he was given assignments, including three successive route "ends," that were impossible to complete in an eight-hour shift. He stated that

[1] It is unclear what grievance Mr. Dinkins was referring to.

[2] Neither this note nor one removing appellant from work from August to September is in the record. Dr. Isaacs' September 21, 2005 report stated that appellant would be totally disabled until September 29, 2005, when he could return to an eight-hour, indoor only assignment.

on June 5, 2005 the stress of increased workloads and productivity demands led to a panic attack, dizziness, vomiting and dry heaving, which required him to see Dr. Isaacs for treatment.

A June 30, 2005 note from Dr. Isaacs stated that appellant was limited to four hours per day of indoor work until July 9, 2005 to allow him to acclimate to his medication, but that he could continue his normal 40-hour schedule beginning July 11, 2005. Appellant stated that Mr. Dinkins told him on July 11 and 12, 2005 that there was no inside work available and that, if he wanted to be paid, he would have to work delivering a route outside. He stated that he accepted the work, despite the fact that it violated his medical restrictions, because he could not afford to call in each day to see if he was needed indoors. Appellant tolerated the assignment for only two days before his medical condition was exacerbated. A July 12, 2005 note from Dr. Isaacs stated that appellant was being treated for depression and anxiety directly related to work stress and that he should be placed on a four-hour indoor only schedule indefinitely as his condition had not changed and he had not yet acclimated to his new medication.

On October 28, 2005 Dr. Isaacs made appellant's indoor work restriction permanent. Appellant had informed him on July 12, 2005 that the only four-hour schedules that were available involved outdoor work. Dr. Isaacs informed appellant that work on the street might be detrimental and cause a relapse. While appellant shared this fear, he requested that Dr. Isaacs allow street work as he was concerned about meeting his financial obligations.[3] Dr. Isaacs opined that appellant's permanent partial disability was the direct result of the employing establishment's refusal to provide four hours of indoor work that was "within his *original* limitations." (Emphasis is the original.)

A settlement agreement claim, to appellant and Mr. Dinkins dated October 19, 2005, related to an Equal Employment Opportunity (EEO) stated that appellant would have respect for Mr. Dinkins, who would agree that appellant was efficient, and would try to find work for appellant "to the extent is available." The document contained the note that a new EEO case had been filed and was pending.

By decision dated April 12, 2006, the Office denied appellant's claim. The Office found that there were no compensable factors of employment as appellant had submitted no evidence to substantiate his allegations of harassment and his disagreement with or dislike of management actions were considered to be self-generated and thus not compensable. On April 13, 2006 appellant requested an oral hearing.

On April 27, 2006 Dr. Isaacs contested the Office's finding that appellant's bipolar II depression and severe anxiety disorders were self-generated. He stated that depression and anxiety were medical conditions that can be "negatively impacted by external factors. Dr. Isaacs stated that, in his medical opinion, stress factors and conditions of work and factors such as harassment and failure to adhere to appellant's medical restrictions exacerbated appellant's preexisting condition.

[3] It is unclear from Dr. Isaacs' report or the record when appellant provided the July 12, 2005 indoor work restriction to the employing establishment.

On September 14, 2006 appellant and his coworker, Pedro Tebar, testified telephonically before the Office hearing representative. He noted that prior to June 2005 he was assigned to routes with which he was unfamiliar and then pressured to do overtime if he was unable to complete the work in eight hours. Appellant had to remind his supervisors about his limitations every day and then face their questions when he requested assistance. He alleged that he was regularly threatened with being disciplined for not "making the standards" and not working fast enough. Mr. Tebar, formerly appellant's union representative, stated that reserve carriers such as appellant were generally unable to complete routes as fast as regular carriers, who are more familiar with their routes. He also stated that one supervisor, Ms. Ramirez, was "constantly on [appellant's] back … trying to push him to go out on time" and that she used "little intimidation tactics" to "pick on him." Mr. Tebar said that in June 2004 he filed a grievance on behalf of appellant and three other individuals for the employing establishment's failure to abide by their medical limitations. He stated that a "cease and desist order" was issued because the employing establishment was found to be in violation of the national agreement.[4] Mr. Tebar stated that, as a result of losing the grievance, the employing establishment tried to make appellant's job "a little harder."

Appellant testified that starting in June 2005 he was told that there were no jobs for him at the employing establishment and that he would be required to call in every day to see if there was work available, since he was not willing to violate his doctor's orders and work outside. He said that his supervisors sometimes told him that there was no indoor work for him even when he knew that there were routes open or mail that could be sorted for the next day. Mr. Tebar said that he filed a grievance because other employees on light duty were being given more than eight hours of work in a day and appellant was not being given any work. He stated that the grievance had been denied and contended that the dispute resolution committee mistakenly thought that management was within its rights because appellant was totally unable to work.[5]

By decision dated November 13, 2006, the Office hearing representative affirmed the denial of appellant's claim. He found that appellant had not established any compensable factors of employment because there was no evidence to substantiate the allegations that he had been required to work overtime or that his requests for assistance were met with harassment. The hearing representative also found that appellant had not demonstrated abuse in his supervisor's failure to provide light-duty work and had not substantiated that the actions of his supervisors constituted harassment.

## ***LEGAL PRECEDENT***

To establish a claim of emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused

[4] The Board notes that there is no evidence in the record of this grievance or its outcome.

[5] The Board notes that there is no direct evidence of this grievance or its outcome in the record. The only grievance decision in the record is a denial of appellant's claim that he was improperly required to work outside on July 15 and 16, 2005.

or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.[6]

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 in which an injury or illness has some connection with the employment but does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that a disability results from an employee's emotional reaction to his or her regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act.[7] The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of his work or his fear and anxiety regarding his ability to carry out his duties.[8] By contrast, when disabilities are related to but do not arise out of employment they are not covered by the Act; such situations include an employee's fear of a reduction-in-force or frustration about not being permitted to work in a particular environment or to hold a particular position.[9] Although administrative and personnel matters are generally related to employment, they are functions of the employer and not duties of the employee. Thus, the Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.[10]

When working conditions are alleged as factors in causing 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 may be considered by a physician when providing an opinion on causal relationship, and which are not deemed factors of employment and may not be considered. When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.[11] When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.[12] As a rule, a claimant's

[6] *Leslie C. Moore*, 52 ECAB 132 (2000).

[7] 5 U.S.C. §§ 8101-8193.

[8] *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[9] *Id*; *see also Peter D. Butt, Jr.*, 56 ECAB ___ (Docket No. 04-1255, issued October 13, 2004).

[10] *See Charles D. Edwards*, 55 ECAB 258 (2004); *see also Ernest J. Malagrida*, 51 ECAB 287, 288 (2000).

[11] *Margaret S. Krzycki*, 43 ECAB 496 (1992).

[12] *See Charles D. Edwards*, *supra* note 10.

allegations alone are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.[13]

With regard to emotional claims arising under the Act, the term harassment as applied by the Board is not the equivalent of harassment as defined or implemented by other agencies, such as the EEO Commission, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers' compensation under the Act, the term harassment is synonymous, as generally defined, with a persistent disturbance, torment or persecution. Mere perceptions and feelings of harassment will not support an award of compensation.[14] For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. Rather, the issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[15]

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.[16] Neither the 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 a causal relationship.[17]

Where the claimant has not established any compensable employment factors, the Board need not consider the medical evidence of record.[18]

## ***ANALYSIS***

Appellant alleged that his preexisting depression and anxiety were aggravated by a variety of employment factors. The Office denied his claim on the grounds that his allegations were either noncompensable or uncorroborated. The issue to be determined is thus whether appellant has established that any of the employment factors are compensable under the Act.

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[13] *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Arthur F. Hougens*, 42 ECAB 455 (1991) and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence established such allegations).

[14] *Beverly R. Jones*, 55 ECAB 411 (2004).

[15] *James E. Norris*, 52 ECAB 93 (2000).

[16] *See Charles D. Edwards*, *supra* note 10.

[17] *Ronald K. Jablanski*, 56 ECAB ___ (Docket No. 05-482, issued July 13, 2005). *See also Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[18] *See Margaret S. Krzycki*, *supra* note 11.

Appellant alleged that his supervisors harassed him by constantly pushing him to complete his tasks faster, threatening him with discipline, and regularly questioning his need for assistance in completing his work. Mr. Tebar testified that he witnessed Ms. Ramirez pestering and intimidating appellant to get him to work faster. The employing establishment stated that appellant was not harassed and that, because he was a very fast worker, there was no need to push him to go faster. The Board has held that monitoring work and disciplining employees are administrative functions of a supervisor and are compensable under the Act only if appellant is able to establish that the employing establishment acted erroneously or abusively.[19] Monitoring and disciplining for the purposes of harassment would be erroneous or abusive. However, for harassment to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[20] Appellant and Mr. Tebar implicated the actions of his supervisors but offered no persuasive evidence to establish that they acted erroneously in assigning work. Appellant filed grievances and an EEO complaint against his supervisors, but submitted no administrative findings or final decisions to prove the administrative error or discrimination alleged.[21] The Board therefore finds that appellant has not established the harassment of his supervisors as a compensable factor of employment.

Appellant alleged that from February to June 2005 his supervisors regularly pushed him to work beyond his eight-hour limit to finish his work. The Board has held that being required to work beyond one's physical limitations may constitute a compensable employment factor if such activity was substantiated by the record.[22] Mr. Tebar stated that he won a grievance brought on behalf of appellant and other employees for the employing establishment's refusal to honor their employment limitations, but provided no documentation to support his contention. Because the employing establishment stated that it honored all of appellant's medical limitations, the testimony of appellant and Mr. Tebar, without objective evidence such as records of hours worked or a grievance decision, is insufficient to establish that appellant was overworked. The Board finds that appellant has not established being overworked from February to June 2005 as a compensable employment factor.

Appellant alleged that Mr. Dinkins required him to work an outside route on July 11 and 12, 2005 despite his medical limitations. The Board notes that Dr. Isaacs' June 7 and 30, 2005 reports both stated that appellant could return to an eight-hour shift on July 11, 2005 and did not restrict outside work. Appellant did not get another inside-only work restriction until reporting to Dr. Isaacs after his shift on July 12, 2005. Therefore, the Board finds that appellant has not established the assignment of outside duties on July 11 and 12, 2005 as a compensable employment factor.

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[19] *Beverly Jones*, *supra* note 14.

[20] *Reco Roncoglione*, 52 ECAB 454, 456 (2001).

[21] The Board has previously held that EEO settlement agreements that allege no wrongdoing do not establish harassment. *Lori A. Facey*, 55 ECAB 217 (2004).

[22] *Philip L. Barnes*, 55 ECAB 426 (2004); *Robert W. Johns*, 51 ECAB 137 (1999); S*andra F. Powell*, 45 ECAB 877 (1994).

Appellant alleged that in July 2005 he was improperly required to call in for assignments on any given day. Both he and Mr. Tebar alleged that there was indoor work for him to at the employing establishment, but that his supervisors were harassing or retaliating against him by denying work. Mr. Tebar stated that the grievance appellant filed on this matter was denied. Because the assignment of work is an administrative function of a supervisor, an emotional response to it is not compensable unless appellant is able to establish abuse.[23] In determining whether the employing establishment erred or acted abusively, the Board examines whether it acted reasonably.[24] Mr. Dinkins stated that, because mail volumes were low, there was less work to be done and appellant, as a reserve carrier with indoor restrictions, was not needed on three occasions. The opinions of appellant and his coworker that the employing establishment could have found appellant work are not adequate to establish that Mr. Dinkins and the other supervisors acted abusively or erroneously. The Board therefore finds that appellant has not established that the requirement to call in for work assignments was a compensable work factor.

On June 30 and July 12, 2005 Dr. Isaacs placed appellant under a four-hour-per-day, inside only work limitation from June 27 to July 9, 2005 and indefinitely after July 12, 2005. Appellant alleged that his emotional condition was exacerbated by being required to work outside routes in June and July 2005 in violation of these medical restrictions. As stated above, being required to work beyond one's physical limitations may constitute a compensable employment factor if it is substantiated by the record.[25] Appellant stated that his supervisors told him that, if he wanted to get paid, he would have to work outside of the employing establishment. Both Mr. Dinkins and Ms. Canada stated that while appellant was under the four-hour inside work restriction he worked outside routes when there was no indoor work available. Mr. Dinkins indicated that appellant worked an outside route from June 28 to July 18, 2005. There is evidence supportive of appellant's allegation that he was required to perform outside work when his medical limitations limited him to inside work. The Board will remand this to the Office for a finding of whether this allegation constitutes a compensable factor.[26]

Appellant alleged that he developed stress and anxiety as a result of his increased and changed job responsibilities. The Board has held that where a 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 under the coverage of the act.[27] Appellant stated that the duties of a letter carrier increased dramatically over time and that the effort of completing his tasks in the allotted time caused him a great deal of stress and anxiety.[28]

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[23] *Charles D. Edwards*, *supra* note 10.

[24] *Lori A. Facey*, 55 ECAB 217 (2004).

[25] *Philip L. Barnes*, *supra* note 18.

[26] As part of its adjudicatory function, the Office must make findings of fact as to which working factors are deemed compensable and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are noncompensable and may not be considered. *Bobby D. Daly*, 53 ECAB 691 (2002).

[27] *Lillian Cutler*, *supra* note 6.

[28] *Donna M. Schmiedeknecht*, 56 ECAB ___ (Docket No. 05-494, issued September 2, 2005) (postal employee's response to the requirement to complete tasks in eight hours found to be compensable factor).

He stated that he had anxiety due to his inability to complete assigned duties in an eight-hour shift. Mr. Tebar testified that reserve carriers, such as appellant, take longer to complete routes than regular carriers because they change routes on a daily basis and cannot become as familiar with them. Dr. Isaacs stated that appellant struggled to learn new routes and deal with new regulations governing his duties. He also stated that the work stress, combined with feelings of over responsibility, contributed directly to appellant's depression and anxiety. The Board notes that the Office did not address the issue of appellant's emotional reaction to his work duties. The Board will remand this issue for a finding of whether appellant established his job responsibilities as a compensable employment factor.

## ***CONCLUSION***

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty as a result of harassment, working beyond his limitations from February to June 2005 and on July 11 and 12, 2005, and having to call in daily for work assignments. The Board finds, however, that appellant has presented evidence generally supportive of his claims of working beyond his limits in June and July 2005 (excluding July 11 to 12, 2005) and stress arising from his regular duties. As the Office has made no findings of fact related to these claims, the Board will remand this case for further development, including, if necessary, development of the medical evidence.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 13, 2006 is affirmed in part and remanded in part for development in accordance with this opinion.

Issued: September 7, 2007
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