

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

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**F.G., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Trenton, NJ, Employer**

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**Docket No. 08-1012  
Issued: November 19, 2008**

*Appearances:*  
*Thomas R. Uliase, 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  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 19, 2008 appellant filed a timely appeal from Office of Workers' Compensation Programs' merit decisions dated June 13 and December 27, 2007. Under 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**

Appellant, a 46-year-old mail handler, filed a Form CA-2 claim for benefits based on an emotional condition on December 13, 2006. He alleged that he developed stress and anxiety on November 22, 2006 when management ordered him to return to the worksite and work alongside

a coworker who had threatened him and physically and verbally assaulted him on October 11, 2006.<sup>1</sup>

By letter dated January 4, 2007, the Office advised appellant that he needed to submit additional information in support of his claim. It asked appellant to describe in detail the employment-related conditions or incidents which he believed contributed to his emotional condition, and to provide specific descriptions of all practices, incidents, etc., which he believed affected his condition.

In an office note dated December 6, 2006, Dr. Keith Alexander, Ph.d in psychology, related appellant's account of the October 11, 2006 physical altercation with Mr. Arroyo and noted that appellant had been temporarily transferred to another work area. He then stated that on November 22, 2006, his postmaster, Joe Sautello, called him and told him to go back to work at the downtown annex and work with Mr. Arroyo, or "bid out." Appellant stated that he was supposed to return to work on November 27, 2006 but refused to do so because he did not feel safe. He complained of sleeplessness and anxiety. Appellant indicated that he filed a police report regarding the matter.

In an office note dated December 15, 2006, Dr. Alexander related that appellant told him he had filed an Equal Employment Opportunity (EEO) complaint, that he was tense, and that "I don't feel safe around this guy." A January 9, 2007 office note from Dr. Alexander indicated that appellant feared an altercation and the loss of his job if he returned to his worksite. A January 9, 2007 form report from Dr. Alexander indicated that appellant was disabled as of November 27, 2006 and that he could not work in the same hostile work environment with the offending coworker who initiated the physical altercation with appellant on October 11, 2006.

In a form report dated November 27, 2006, received by the Office on July 23, 2007, Dr. Kathleen A. Bradley, a Board-certified family practitioner, diagnosed stress, situational anxiety and insomnia. She stated: "Recent conflicts with a fellow employee causing stress and insomnia ... likely to pursue another job, needs help with sleep."

Dr. Bradley also noted that appellant had developed a skin rash.

In a report dated January 18, 2007, Dr. Alexander related that appellant wanted to return to work, but not in the same location as Mr. Arroyo. He reiterated that appellant wanted to work where he could be safe.

In an undated statement, received by the Office on January 26, 2007, appellant indicated that he was assaulted by his coworker, Mr. Arroyo, on October 11, 2006. He was transferred to

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<sup>1</sup> Appellant filed a prior traumatic injury claim for benefits based on an emotional condition, File No. xxxxxx845, which pertained to a verbal and physical confrontation he had with coworker, Carlos Arroyo, on October 11, 2006. By decisions dated September 25 and November 26, 2007, the Office accepted the October 11, 2006 incident as a compensable factor of employment but found that appellant did not submit sufficient medical evidence of record to establish that the claimed emotional condition was causally related to the accepted employment factor. In a September 15, 2008 decision, the Board affirmed the September 25 and November 26, 2007 decisions. In the present case, File No. xxxxxx677, the Board will consider separately whether the November 26, 2006 incident with management constituted a compensable factor of employment.

another worksite, the Trenton Carrier Annex, on October 30, 2006, and Mr. Arroyo was removed from all work until November 27, 2006. On November 22, 2006 appellant's postmaster, Mr. Sautello, called him at the annex and told him that he was going to be reassigned to his regular workstation at the downtown post office with Mr. Arroyo or "bid out." Appellant stated:

"The thought of returning to work with Mr. Arroyo is a stressful and personal hardship. I still have continuous fears of future threats and violence. I have obtained professional help in dealing with my anxieties."

Appellant stated that he filed an EEO complaint and a police report regarding the incident.

In a report dated February 1, 2007, received by the Office on July 16, 2007, Dr. Alexander stated:

"[Appellant] initiated treatment with me on December 6, 2006 due to emotional symptoms he was suffering as a result of an October 11, 2006 work incident and its related sequelae. I have been continuing to treat [appellant] since that date and have thus far seen him for a total of seven visits of individual psychotherapy from December 6, 2006 through February 1, 2007. His current working diagnoses are generalized anxiety disorder and adjustment disorder with anxiety. In addition to psychotherapy, [appellant] is also receiving psychiatric medication from his primary care physician....

"Based upon my evaluation and treatment to date of [appellant], it is clear to me within a reasonable degree of medical certainty that his emotional condition is directly related to an assault that occurred at this work in the Trenton Downtown Station of [the employing establishment] on October 11, 2006. [Appellant] reported that while working on October 11, 2006 he was approached by a coworker, [Mr.] Arroyo, who began yelling at him while accusing him of moving his mail. He indicated further that Mr. Arroyo 'got in my face' and pushed him forcefully backwards in front of three witnesses. [Appellant] has not worked with Mr. Arroyo since that day.

"After an initial investigation, [appellant] returned to his usual position and work location on October 13, 2006 while Mr. Arroyo was apparently suspended for approximately two and a half weeks. During this time, he developed symptoms to include anxiety, sleep difficulties, appetite changes and gastrointestinal distress among others. [Appellant] felt and continues to feel fearful of working with Mr. Arroyo directly as he perceives him as a threat to his physical and emotional integrity. He had expressed this to his superiors and was therefore offered and accepted a move to another facility, the Hamilton Carrier Annex. [Appellant] started working at the Annex on October 30, 2006, the same day that Mr. Arroyo was scheduled to return to work at the Downtown Station.

"Although [appellant] continued to experience psychological symptoms while working at the Annex, the accommodation was satisfactory. He did, however, schedule an appointment with Dr. Bradley for November 21, 2006 due to ongoing

psychological symptoms, but did not see her until November 27, 2006. On November 22, 2006 [appellant] was informed by the postmaster, Mr. Sautello, that, despite his protests, he was to report back to his regular workstation with Mr. Arroyo on November 27, 2006 or 'bid out.' [Appellant] became increasingly distressed and upon seeing Dr. Bradley later that day received psychiatric medication. Due to his fears of an unsafe work environment in the presence of Mr. Arroyo, [appellant] called out sick and has remained out of work. Since I saw him on December 6, 2006, I have certified his inability to return to work at the Trenton Downtown Station due to his work-related injury.

“[Appellant] has reported to me no prior emotional conditions before the October 11, 2006 work incident which required treatment. He clearly has symptoms consistent with his reaction to the assault to include as noted above anxiety, sleep and appetite disruption, gastrointestinal distress, mood fluctuations, weight gain (12 pounds) hypertension, etc. As I stated above, it is clearly my professional opinion within a reasonable degree of medical certainty that [appellant's] condition is a direct causal result of the October 11, 2006 work incident. He continues to be in need of treatment for his condition to include psychotherapy and medication.”

In a form report dated January 11, 2007, Dr. Bradley reiterated her diagnosis of stress and stated: “Out of work since last visit ... filing a complaint regarding conflicts with a fellow employee. Still not sleeping ... [over]eating with [attendant] weight gain.”

Dr. Bradley also reiterated that appellant had developed a chronic skin rash.

By decision dated June 13, 2007, the Office denied appellant's emotional condition claim, finding that the November 22, 2006 incident in which postmaster Sautello ordered him to return to work alongside Mr. Arroyo was not a compensable factor of employment. It did not make findings regarding the October 11, 2006 assault. Instead, the Office found that appellant's reaction to being told to either return to work with Mr. Arroyo or to bid for another job was an administrative determination which was not compensable because appellant failed to show the action was erroneous or abusive.

By letter dated October 24, 2007, appellant's attorney requested a review of the written record. He submitted a copy of the July 17, 2007 hearing transcript and September 25, 2007 hearing representative decision denying the traumatic injury claim appellant filed regarding the October 11, 2006 incident.<sup>2</sup> At the hearing, appellant asserted that he had a problem with Mr. Arroyo since the time he first became employed at the downtown post office because he did not do his work, which culminated with the October 11, 2006 assault. He accepted a temporary transfer from the downtown post office to the Trenton Annex, where he worked for approximately two to three weeks. The postmaster then told him on November 22, 2006 that he

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<sup>2</sup> As indicated above, the Office hearing representative decision accepted the October 11, 2006 incident with Mr. Arroyo as a compensable factor of employment but found that the medical evidence of record did not establish that his claimed emotional condition was causally related to the accepted employment factor.

had to come back or bid on a new job. Appellant, however, did not want to return to his original duty station because he did not feel safe working with Mr. Arroyo.

Dr. Alexander submitted a March 29, 2007 report in which he stated:

“[Appellant] cannot work in same hostile work environment with offending coworker who initiated physical altercation with patient.

“[Appellant] is involved in strong effort to obtain work placement of [employing establishment] in a different location/shift than the one that causes him to be in direct contact with offending coworker and increases psychological symptoms.”

Dr. Alexander submitted form reports dated April 24, June 7 and 28, 2007 in which he essentially reiterated the previous findings and conclusions he presented in his March 29, 2007 form report.

In an October 31, 2007 report, Dr. Alexander challenged some of the findings and statements made by the Office hearing representative in his September 25, 2007 decision, which affirmed the denial of appellant’s traumatic injury claim. He also reiterated his opinion that appellant’s emotional condition was causally related to the October 11, 2006 incident with Mr. Arroyo.

By decision dated December 27, 2007, an Office hearing representative affirmed the June 13, 2007 decision.

### **LEGAL PRECEDENT**

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition, and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.<sup>3</sup> There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.<sup>4</sup>

The first issue to be addressed is whether appellant has cited factors of employment that contributed to his alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act.<sup>5</sup> On the other hand, disability is not covered where it results from an employee’s fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee’s feeling of job insecurity

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<sup>3</sup> See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

<sup>4</sup> See *Ruth C. Borden*, 43 ECAB 146 (1991).

<sup>5</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.<sup>6</sup>

### ANALYSIS

The Board finds that the administrative and personnel actions taken by management in this case contained no evidence of agency error, and are therefore not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.<sup>7</sup> In the instant case, appellant has presented no evidence that the employing establishment acted unreasonably or committed error with regard to the November 22, 2006 incident involving an alleged unreasonable action involving personnel matters on the part of the employing establishment.

Appellant has alleged that he sustained an emotional condition on November 22, 2006 because management told him to return to work at the Trenton Annex worksite alongside Mr. Arroyo, the coworker, who physically assaulted and threatened him on October 11, 2006. Appellant submitted personal statements, hearing testimony from his July 17, 2007 traumatic injury claim and reports from Drs. Alexander and Bradley which indicated that he experienced stress and anxiety when Mr. Sautello told him on November 22, 2006 that he was being reassigned back to the downtown worksite where he previously was employed. Appellant stated that he did not feel safe working in the same area as Mr. Arroyo, whom he perceived as a threat to his physical and emotional well-being. He asserted that he experienced anxiety, sleep difficulties, appetite changes and gastrointestinal distress. The Office, however, properly found that the November 22, 2006 incident was not compensable. The Board has held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment as they do not involve the employee's ability to perform his or her regular or specially assigned work duties but rather constitute his or her desire to work in a different position.<sup>8</sup> An employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.<sup>9</sup> The employing establishment was acting within its administrative capacities in reassigning appellant back to his former worksite. Appellant has presented no evidence that the employing establishment acted unreasonably or committed error with regard to this incident involving an administrative managerial function.<sup>10</sup>

Accordingly, a reaction to such factors did not constitute an injury arising within the performance of duty; such personnel matters were not compensable factors of employment in the

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<sup>6</sup> *Id.*

<sup>7</sup> *See Alfred Arts*, 45 ECAB 530, 543-44 (1994).

<sup>8</sup> *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

<sup>9</sup> *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

<sup>10</sup> The Board noted in its September 15, 2008 decision that the possibility of a future injury does not constitute an injury under the Act. *See Carlos A. Marrero*, 50 ECAB 117 (1998).

absence of agency error or abuse. The Office therefore properly found in its June 13 and December 27, 2007 decisions that appellant failed to establish the November 22, 2006 incident as a compensable factor of employment.

The Board notes that, since appellant has not established a compensable work factor, the medical evidence will not be considered.<sup>11</sup>

### **CONCLUSION**

The Board finds that the Office properly found that appellant failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the December 27 and June 13, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 19, 2008  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>11</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).