

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

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**F.D., Appellant**

**and**

**U.S. POSTAL SERVICE, MAIN POST OFFICE,  
Missoula, MT, Employer**

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**Docket No. 07-2156  
Issued: September 18, 2008**

*Appearances:*  
*Appellant, pro se*  
*No appearance, for the Director*

Oral Argument May 6, 2008

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On August 20, 2007 appellant filed a timely appeal from a March 21, 2007 decision of the Office of Workers' Compensation Programs that denied his claim and a May 22, 2007 decision that denied his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a stress-related condition in the performance of duty causally related to factors of his federal employment; and (2) whether the Office properly refused to reopen appellant's claim for further review of the merits pursuant to 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

On September 22, 2006 appellant, then a 55-year-old supervisor of distribution operations, filed a Form CA-2, occupational disease claim, alleging that factors of his federal employment caused severe depressive/anxiety disorder, obsessive compulsive disorder and

exacerbation of multiple sclerosis. He stopped work on May 16, 2006. Appellant alleged that the following employment factors contributed to his diagnosed conditions: the organizational structure of the employing establishment; open hostility between the postmaster, Robert Galtrude, and the manager of mail processing, Richard Palmer; that he was the *de facto* manager of distribution operations without benefit of staff or adequate compensation; a May 16, 2006 discussion with Mr. Palmer; that he was improperly denied light duty; that he was tasked to work “craft” assignments; that he was expected to meet productivity goals and had a very rigid dispatch schedule with a mandate of having no late dispatches despite reduced run time for processing machines caused by staffing shortages and too few machines, and reduced processing of first class mail; and that he was required to remain on duty for over nine hours a day, often without compensation, for a minimum of three days a week. On October 16, 2006 the employing establishment controverted the claim.

Appellant submitted medical evidence including a June 5, 2006 report from William Patenaude, Ph.D., a clinical psychologist, who diagnosed adjustment disorder with anxiety and depression and advised that appellant could not work. In a September 21, 2006 report, Dr. Lennard S. Wilson, Board-certified in internal medicine and neurology, diagnosed probable mild multiple sclerosis. In reports dated January 11 and February 7, 2007, he confirmed the diagnosis and advised that appellant could not work.

By decision dated March 21, 2007, the Office denied the claim on the grounds finding that appellant had not established a compensable factor of employment.

Appellant submitted a March 23, 2007 letter in which Mr. Palmer denied his request for advanced leave and correspondence regarding Freedom of Information Act (FOIA) requests. On April 24, 2007 he requested reconsideration, arguing that he sustained an injury in the performance of duty and submitted publications regarding depression and multiple sclerosis. In a nonmerit decision dated May 22, 2007, the Office denied appellant’s reconsideration request.

### **LEGAL PRECEDENT -- ISSUE 1**

To establish his claim that he sustained a stress-related condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his condition.<sup>1</sup>

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*,<sup>2</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees’ Compensation Act.<sup>3</sup>

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<sup>1</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>2</sup> 28 ECAB 125 (1976).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.<sup>4</sup> When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an 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 or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.<sup>5</sup> A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>6</sup>

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.<sup>7</sup> Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

In the present case, appellant alleged that he sustained a stress-related condition as a result of several employment incidents and conditions. The Board must initially review whether the alleged incidents and conditions of employment are compensable under the terms of the Act.<sup>9</sup>

Appellant contended that the organizational structure of the employing establishment and that hostility between Mr. Galtrude and Mr. Palmer contributed to his condition. This does not relate to the specific requirements of his regularly or specially assigned duties and, therefore, would not arise in the performance of duty. Such a reaction relates to his dissatisfaction with perceived poor management, the desire to work in a particular environment and frustration in the failure to effect desired changes within the work environment relative to the industrial organization.<sup>10</sup> Such frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable.<sup>11</sup>

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<sup>4</sup> See *Robert W. Johns*, 51 ECAB 137 (1999).

<sup>5</sup> *Lillian Cutler*, *supra* note 2.

<sup>6</sup> *Roger Williams*, 52 ECAB 468 (2001).

<sup>7</sup> *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>8</sup> *Kim Nguyen*, 53 ECAB 127 (2001).

<sup>9</sup> *Cyndia R. Harrill*, 55 ECAB 522 (2004).

<sup>10</sup> *O. Paul Gregg*, 46 ECAB 624 (1995).

<sup>11</sup> *Cyndia R. Harrill*, *supra* note 9.

Regarding appellant's denial of a request for light duty and the May 16, 2006 discussion, the assignment of work is an administrative function of the employer.<sup>12</sup> Denials by the employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act as they do not involve appellant's ability to perform his or her regular or specially assigned work duties. Although the handling of disciplinary actions and the assignment of work duties are generally related to employment, they are administrative functions of the employer and not duties of the employee. Absent error or abuse, these matters would not be compensable.<sup>13</sup> The employing establishment noted that appellant stopped work after a discussion regarding his work performance. Supervisory discussions of job performance and reprimands are administrative or personnel matters of the employing establishment which are covered only by a showing of error or abuse.<sup>14</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>15</sup> In this case appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these administrative matters.

Appellant asserted that he was the *de facto* manager of distribution operations without benefit of staff or adequate compensation and that he was tasked to work craft assignments. The assignment of work, although generally related to the employee's employment, is an administrative functions of the employer and, absent error or abuse, are not covered under the Act.<sup>16</sup> Other than appellant's contention regarding these matters, he provided no evidence to establish that he was performing outside of his position description. In this case there is no evidence to establish error or abuse regarding this administrative matter regarding the assignment of appellant's work duties.<sup>17</sup>

Appellant noted that he was expected to meet productivity goals and had a very rigid dispatch schedule even though there were machine and staffing shortages and often had to work nine hours a day without compensation. The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable under the principles of *Cutler*.<sup>18</sup> In this case, however, appellant did not submit any evidence such as staffing reports or timesheets to establish that his allegations were factual.<sup>19</sup> As with all allegations, overwork must be established on a factual basis to be compensable.<sup>20</sup>

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<sup>12</sup> *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

<sup>13</sup> *Kim Nguyen*, *supra* note 8.

<sup>14</sup> *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

<sup>15</sup> *Cyndia R. Harrill*, *supra* note 9.

<sup>16</sup> *David C. Lindsey, Jr.*, *supra* note 14.

<sup>17</sup> *Kim Nguyen*, *supra* note 8.

<sup>18</sup> *Peter D. Butt, Jr.*, 57 ECAB 117 (2004).

<sup>19</sup> *Id.*

<sup>20</sup> *Sherry L. McFall*, 51 ECAB 436 (2000).

Appellant, therefore, did not meet his burden of proof to establish that he sustained a stress-related condition in the performance of duty causally related to factors of his federal employment.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.<sup>21</sup> Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).<sup>22</sup> This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>23</sup> Section 10.608(b) provides that, when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>24</sup>

### **ANALYSIS -- ISSUE 2**

With his April 15, 2007 reconsideration request, appellant merely reargued that he sustained an injury in the performance of duty. He therefore did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office, and was thus not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).<sup>25</sup>

With respect to the third above-noted requirement under section 10.606(b)(2), the merit issue in this case is whether appellant sustained an injury in the performance of duty. This requires the submission of evidence to show that he established a compensable factor of employment. With his reconsideration request, he submitted a March 23, 2007 letter in which Mr. Palmer denied appellant's request for advanced leave and correspondence regarding FOIA requests. The former is in regard to a factor that occurred after the instant claim was filed on September 22, 2006 and is therefore not relevant, and the Board is not the proper forum to address FOIA requests as its jurisdiction is limited to a review of final decisions of the Office.<sup>26</sup>

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<sup>21</sup> 5 U.S.C. § 8128(a).

<sup>22</sup> 20 C.F.R. § 10.608(a).

<sup>23</sup> 20 C.F.R. § 10.608(b)(1) and (2).

<sup>24</sup> 20 C.F.R. § 10.608(b).

<sup>25</sup> 20 C.F.R. § 10.606(b)(2).

<sup>26</sup> See *Karen L. Yaeger*, 54 ECAB 317 (2003).

Appellant also submitted a number of publications regarding multiple sclerosis and depression which are also irrelevant as they do not address the merit issue in this case.<sup>27</sup> Evidence that does not address the particular issue involved does not constitute a basis for reopening a claim.<sup>28</sup> Appellant therefore did not submit relevant and pertinent new evidence not previously considered by the Office, and the Office properly denied his reconsideration request.

### **CONCLUSION**

The Board finds that appellant did not establish that he sustained a stress-related condition in the performance of his federal duties and that the Office properly refused to reopen appellant's case for further consideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 22 and March 21, 2007 be affirmed.

Issued: September 18, 2008  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>27</sup> The Board also notes that excerpts from publications have little probative value in resolving medical questions unless a physician shows the applicability of the general medical principles discussed in the articles to the specific factual situation at issue in the case. *Roger G. Payne*, 55 ECAB 535 (2004).

<sup>28</sup> *Betty A. Butler*, 56 ECAB 545 (2005).