

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

F.G., Appellant)
and) Docket No. 08-1013
U.S. POSTAL SERVICE, POST OFFICE,) Issued: September 15, 2008
Trenton, NJ, Employer)

)

Appearances:

Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 13, 2008 appellant filed a timely appeal from Office of Workers' Compensation Programs' merit decisions dated September 25 and November 26, 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-1 traumatic injury claim for benefits based on an emotional condition on January 20, 2007. He alleged that he developed stress and anxiety due to a verbal and physical confrontation he had with a coworker on October 11, 2006. Appellant stated that he was shoved backward by another employee who started yelling at him and accused him of moving his mail.

In statements dated February 2 and 13, 2007, the employing establishment controverted the claim. The employing establishment noted that appellant did not report the alleged incident or file a claim for an alleged emotional condition until January 2007, more than three months after the occurrence of the alleged October 2006 work incident; this cast doubt on his assertion that the incident occurred as he alleged.

By letter dated February 21, 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.

By decision dated March 27, 2007, the Office denied appellant compensation for an emotional condition, finding that he failed to establish fact of injury. It stated that appellant failed to provide a valid statement explaining why he did not immediately report his claimed injury to his supervisor or the employing establishment, as it had requested.

By letter dated March 20, 2007, appellant's attorney requested an oral hearing, which was held on July 17, 2007. At the hearing, appellant advised that Carlos Arroyo, the employee with whom he had the October 2006 confrontation, transferred to the downtown station in approximately 2003 or 2004. He asserted that he had a problem with Mr. Arroyo soon after he arrived at the worksite because he did not do his work. Appellant stated that Mr. Arroyo confronted him in 2003 or 2004 because he tried to switch sides with him at the worksite and appellant refused; Mr. Arroyo became irate at his refusal. He related that on October 11, 2006, a truck arrived at approximately 7:00 a.m. Appellant stated that Mr. Arroyo unloaded the truck and appellant then began to unload a wired basket of mail when he was approached by a coworker. They heard screaming and hollering from Mr. Arroyo, who was approaching appellant saying that he had messed with and moved his mail. He came up to appellant and yelled at him, then pushed him, then walked away. Appellant testified that there were three or four witnesses to this incident, all of whom submitted statements regarding what happened between him and Mr. Arroyo on October 11, 2006. After he and Mr. Arroyo submitted statements regarding the October 11, 2006 incident, the employing establishment sent both of them home. Appellant stated that the employing establishment initiated an investigation of the incident; the day after the incident occurred he went to work and gave his statement to a postal inspector and was advised to return to work the next day. The postal inspector told him that he would be alone at the worksite. Mr. Arroyo was out of work for approximately two and one-half weeks, at which time the union called appellant and told him Mr. Arroyo was returning to work. Appellant stated that he did not want to work with Mr. Arroyo because he did not feel safe in his presence. He had a meeting with his union representative and Joe Sautello, the postmaster, who told him they could not transfer Mr. Arroyo. Appellant then agreed to a transfer to the Annex at Trenton, where he worked for approximately two to three weeks; he stated, however, that the union kept "harassing" him to return to his regular-duty station. He asserted that he believed the union was working with the postmaster and wanted him to return to his regular worksite because the people who replaced him were not performing their jobs in a competent manner. The postmaster then told him that he 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, whose brothers also worked at the station.

In a report dated February 1, 2007, received by the Office on July 16, 2007 Dr. Keith Alexander, PhD in psychology, 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 [d]owntown [s]tation.

"Although [appellant] continued to experience psychological symptoms while working at the Annex, the accommodation was satisfactory. He did, however, schedule an appointment with Dr. [Kathleen A.] 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."

Dr. Alexander also submitted handwritten notations from November to December 2006 and January 2007 indicating that appellant was afraid to return to work because he considered Mr. Arroyo a dangerous, unstable individual and felt unsafe at the worksite.

Appellant submitted a copy of an April 2, 2007 facsimile to "Tony" in which he stated:

"The thought of working with Carlos Arroyo has and continues to be a stressful and personal hardship. I still have fears of future violence and threats. These fears have problems with my sleeping patterns and constant stomach upset."

Appellant submitted two statements from coworkers, dated July 5, 2007, which corroborated that he had been involved in a verbal and physical confrontation with Mr. Arroyo on October 11, 2006. On July 23, 2007 the Office received a copy of a November 8, 2006 letter the employing establishment sent to appellant's congressional representative. The letter acknowledged that appellant was involved in a physical altercation with a coworker.

In a form report dated November 27, 2006, received by the Office on July 23, 2007, Dr. 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 form report dated January 11, 2007, received by the Office on July 23, 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 September 25, 2007, the Office denied appellant's emotional condition claim. It accepted the October 11, 2006 incident with Mr. Arroyo as a compensable factor of employment. The Office found, however, that the medical evidence of record did not establish that his claimed emotional condition was causally related to the accepted employment factor. It stated that the medical evidence appellant had submitted was not sufficient to establish that he had sustained his emotional condition in the performance of duty.

By letter dated November 7, 2007, appellant's attorney requested reconsideration. Appellant submitted an October 31, 2007 report from Dr. Alexander, who stated his disagreement with the Office's finding that his emotional condition did not arise from the October 11, 2007 work incident with Mr. Arroyo. Dr. Alexander noted that appellant had made an appointment with Dr. Bradley on November 16, 2006 because he was experiencing stress and anxiety at that time, even though he was still working at the Trenton Annex; this was several days prior to November 22, 2006, the day the employing establishment informed appellant that it was transferring him back to his original workstation where he would again work with Mr. Arroyo. He stated:

“Clearly, from the timeline given above, [appellant] was experiencing symptoms of: stress and anxiety while working at the Annex. He even sought medical treatment prior to being informed of a return to the downtown station. It is uncertain whether his symptoms that were already present would have abated if he had not been told to return to work at the downtown station. [Appellant] clearly needed and sought treatment for his symptoms prior to notification that he was to return to work with Mr. Arroyo.

“It remains my opinion that [appellant’s] emotional condition is a direct result of the October 11, 2006 work injury. His symptoms appeared within reasonable proximity of the event and he sought treatment for them within [five] weeks of the incident as his symptoms did not recover spontaneously and became intolerable.”

By decision dated November 26, 2007, the Office denied appellant's request for modification of the September 25, 2007 decision. It found that Dr. Alexander's October 31, 2007 report was not sufficient to establish that appellant's claimed emotional condition was causally related to the accepted employment factor. The Office stated that Dr. Alexander's diagnosis of an emotional condition arose from appellant's fear of a future injury, potentially caused by returning to work with coworker Mr. Arroyo and not the accepted October 11, 2006 work incident.

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.¹ There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.²

¹ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

² See *Ruth C. Borden*, 43 ECAB 146 (1991).

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 Federal Employees' Compensation Act.³ 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 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.⁴

ANALYSIS

In the instant case, the Office accepted one incident as compensable; *i.e.*, the October 11, 2006 assault and confrontation with coworker Mr. Arroyo. The Board finds that, given the circumstances described by appellant and accepted as factual by the Office hearing representative, the October 11, 2006 incident constitutes a compensable factor of employment.

However, appellant's burden of proof is not discharged by the fact that he has established an employment factor which may give rise to a compensable disability under the Act. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.⁵

Appellant submitted the February 1, 2007 report from Dr. Alexander, who stated that he began treating him on December 6, 2006 due to emotional symptoms he was suffering due to the October 11, 2006 work incident. Dr. Alexander diagnosed generalized anxiety disorder and adjustment disorder with anxiety. He opined that these conditions were directly related to the October 11, 2006 assault. Dr. Alexander noted that appellant was temporarily transferred to another worksite, the Trenton Annex, and did not have to work with Mr. Arroyo. However, during this time, appellant developed symptoms of anxiety, sleep difficulties, appetite changes and gastrointestinal distress. Dr. Alexander stated that appellant felt and continued to feel fearful of working with Mr. Arroyo because he considered him a threat to his physical and emotional integrity. He noted that, although appellant continued to experience psychological symptoms while working at the Annex, the accommodation was satisfactory. Nevertheless appellant scheduled an appointment with his treating physician, Dr. Bradley, for November 21, 2006 due to his ongoing psychological symptoms. When postmaster Mr. Sautello ordered appellant to report back to his regular workstation with Mr. Arroyo on November 22, 2006 or 'bid out,' he became increasingly distressed. Dr. Alexander stated that, due to his fears of an unsafe work environment in the presence of Mr. Arroyo, appellant called in sick and remained out of work; he examined appellant on December 6, 2006, at which time he certified his inability to return to work due to his work-related injury. He reiterated that he considered appellant's condition to be

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Id.*

⁵ See *William P. George*, 43 ECAB 1159, 1168 (1992).

a direct causal result of the October 11, 2006 work incident. Dr. Alexander also submitted notes dated November 2006 to January 2007 indicating that appellant was afraid to return to work because he considered Mr. Arroyo a dangerous, unstable individual and felt unsafe at the worksite. In addition, Dr. Bradley submitted form reports dated November 27, 2006 and January 11, 2007 which diagnosed stress, situational anxiety, skin rash, overeating and insomnia. She indicated that these symptoms were caused by recent conflicts with a fellow employee.

None of the reports from the physicians of record contained a rationalized medical opinion, based on a proper factual and medical background, explaining an opinion on causal relationship or otherwise relating their diagnoses to the factor found compensable in this case. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁶ Dr. Alexander does not provide an opinion relating appellant's October 11, 2006 assault as a causative factor to his diagnosed emotional conditions. Although he presented diagnoses of appellant's condition, he did not adequately address how these conditions were causally related to the October 11, 2006 work incident. The reports, appellant's April 4, 2007 facsimile and his hearing testimony indicate that he was stressed and fearful of Mr. Arroyo, to the extent that he was afraid to return to the worksite where he would be working alongside him. The Board had held that the possibility of a future injury does not constitute an injury under the Act.⁷ Dr. Alexander's diagnoses of generalized anxiety disorder and adjustment disorder with anxiety pertain to appellant's fear of returning to the worksite and sustaining a potential future injury, not to the accepted employment factor. Dr. Bradley's form reports merely present summary conclusions that appellant's conditions were causally related to the accepted employment factor. There is therefore insufficient rationalized evidence in the record that appellant's emotional condition was work related. For these reasons, the Board finds that appellant did not submit sufficient medical evidence to establish that he sustained an emotional condition causally related to his compensable work factor. The Board therefore affirms the hearing representative's September 25, 2007 decision.

Following the September 25, 2007 decision, appellant submitted Dr. Alexander's October 31, 2007 report. However, this report merely reiterated Dr. Alexander's previously stated opinion that appellant was experiencing symptoms from his emotional condition prior to being informed by the employing establishment on November 22, 2007 that he was being reassigned back to his regular duty station where he would work alongside Mr. Arroyo. This report did not contain a probative, rationalized medical opinion that his diagnosed emotional condition was causally related to the accepted October 11, 2006 work incident. The Office properly denied compensation for a work-related emotional condition in its November 26, 2007 decision.

⁶ See *Anna C. Leanza*, 48 ECAB 115 (1996).

⁷ See *Carlos A. Marrero*, 50 ECAB 117 (1998).

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 November 26 and September 25, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 15, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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