

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

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**D.T., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Oakland, CA, Employer**

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**Docket No. 09-352  
Issued: August 13, 2009**

*Appearances:*

*Alan J. Shapiro, 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  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On November 17, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' February 26 and October 22, 2008 merit decisions denying his emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the 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 on January 6, 2008.

**FACTUAL HISTORY**

On January 7, 2008 appellant, a 54-year-old mail processing equipment operator, filed a traumatic injury claim alleging that he experienced stress as a result of a coworker's harassment on January 6, 2008. In a statement accompanying his claim, appellant alleged that on the date in question, he was harassed by Albert Ramos, a coworker. He reported that Mr. Ramos sent him a radio dispatch in which he stated, "You better have your radio close." Appellant alleged that,

when he later complained about the harassment to Joseph Valenti, a supervisor, Mr. Ramos came very close to him and said, “Do n[o]t come in here to talk sh\*\* to me get out of this office.” He submitted a form from Kaiser Permanente, reflecting that he was treated on January 6, 2008 by Dr. Daniel Seth Pine, a Board-certified internist.

In a letter dated January 17, 2008, the Office informed appellant that the information and evidence submitted was insufficient to establish his claim. It advised him to provide details regarding the alleged January 6, 2008 events, as well as a comprehensive medical report, which contained a description of symptoms, a diagnosis, and a reasoned opinion as to whether his condition was causally related to the alleged employment events.

In an undated statement, Mr. Ramos acknowledged that he had sent a radio dispatch to appellant on January 6, 2008, but that appellant had refused the call. When he encountered appellant in Mr. Valenti’s office later that evening, appellant reportedly said, “Quit harassing me, you do it on purpose.” Mr. Ramos indicated that he told appellant that he should be speaking to his supervisor; whereupon, appellant pointed his finger at him and called him a racist. He stated that he then told appellant to “get his damn finger out of [his] face and not to raise his hand to [him] again.”

In an undated statement, Mr. Valenti reported that he overheard a heated argument between appellant and Mr. Ramos on January 6, 2008. Appellant informed Mr. Valenti that Mr. Ramos was harassing him and that he was experiencing heart palpitations. Ultimately, he was transported by ambulance to a hospital.

Other evidence of record reflecting appellant’s allegations of harassment by Mr. Ramos on the date in question include: a January 7, 2008 employing establishment memorandum; a January 8, 2008 union complaint by appellant; a January 7, 2008 Kaiser Permanente workers’ compensation form; and a January 6, 2008 interview by an employing establishment inspector.

In a report dated January 6, 2008, Dr. Pine noted appellant’s allegations of harassment on that date by a coworker, both on a dispatch radio and in his supervisor’s office. In the section reserved for objective findings, he stated that appellant was “calm, conversant, demonstrate[d] reasonable reflection and approach to his perceived persecution with no irrational thoughts.” Dr. Pine diagnosed “anxiety attack stress.” He provided no response to the question as to whether his findings and diagnosis were consistent with appellant’s account of his alleged injury. Regarding work status, he noted “no time off work.”

In a January 28, 2008 psychiatric report, Dr. Phuong-Thuy Le, a psychiatrist, diagnosed paranoid schizophrenia and stress at work. In response to a question regarding appellant’s current mental status, he replied that appellant “was very anxious and paranoid, his improvement to be determined.”

By decision dated February 26, 2008, the Office denied appellant’s claim. It found the incident as described to be factual and in the performance of duty. However, the medical evidence failed to demonstrate that his diagnosed emotional condition was causally related to the established employment events.

On March 25, 2008 appellant requested a telephonic hearing, which was held on July 14, 2008. Appellant reiterated his factual allegations. He stated that after Mr. Ramos yelled at him and told him to “get the hell out of th[e] office” on January 6, 2008, his body shook, his heart was beating fast, he was very nervous, and he felt as if he was going to pass out. After the incident, he was transported to the hospital and was “off work” for 50 to 60 days. Appellant testified that he had never received any treatment for a psychological condition before the alleged employment event.

By decision dated October 22, 2008, the Office hearing representative affirmed the Office’s February 26, 2008 decision.<sup>1</sup> The Office found that the incident alleged was factual and within the performance of duty but it found that the medical evidence was insufficient to show that appellant’s diagnosed condition was causally related to the established employment incident.

### **LEGAL PRECEDENT**

To establish that a claimant sustained an emotional condition causally related to factors of federal employment, he must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to the condition; (2) rationalized medical evidence establishing that he has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.<sup>2</sup>

Rationalized medical evidence is evidence which relates a work incident or factors of employment to a claimant’s condition, with stated reasons of a physician. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.<sup>3</sup>

### **ANALYSIS**

The Office determined that appellant established a compensable employment factor with respect to harassment by Mr. Ramos on January 6, 2008. However, the February 26 and October 22, 2008 decisions denied appellant’s claim on the grounds that he had not submitted sufficient medical evidence to establish that his condition was causally related to the established employment events. The Board must review the medical evidence to determine whether appellant sustained an emotional condition due to an accepted employment factor.

The Board finds that appellant did not submit sufficient medical evidence to establish that he sustained an emotional condition due to the accepted employment factors. Medical evidence of record consists of reports from Dr. Pine and Dr. Le, which provide diagnoses of psychological

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<sup>1</sup> The Board notes that the hearing representative initially issued her decision on October 15, 2008; however, the decision was reissued on October 22, 2008 for unexplained reasons.

<sup>2</sup> *C.F.*, 60 ECAB \_\_\_ (Docket No. 08-1102, issued October 10, 2008).

<sup>3</sup> *J.J.*, 60 ECAB \_\_\_ (Docket No. 09-27, issued February 10, 2009).

disorders. None of the reports submitted, however, contains a rationalized medical opinion explaining the cause of appellant's condition.

On January 6, 2008 Dr. Pine noted appellant's allegations of harassment on that date by a coworker, both on a dispatch radio and in his supervisor's office. He diagnosed "anxiety attack stress" and stated that appellant was "calm, conversant, demonstrate[d] reasonable reflection and approach to his perceived persecution with no irrational thoughts." Dr. Pine provided no response to the question as to whether his findings and diagnosis were consistent with appellant's account of his alleged injury. Moreover, he failed to express an opinion as to the cause of appellant's diagnosed condition. The Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.<sup>4</sup>

On January 28, 2008 Dr. Le diagnosed paranoid schizophrenia and stress at work. In response to a question regarding appellant's current mental status, he replied that appellant "was very anxious and paranoid, his improvement to be determined." To the extent that Dr. Le's report failed to express an opinion on the issue of causal relationship, it lacks probative value. Although he made a vague reference to what may be interpreted as work-related stress, Dr. Le failed to identify any specific work factor which he found to be the cause of appellant's diagnosed condition, and did not provide a clear opinion that appellant's stress condition was related to the specific accepted employment factors, rather than to general perceptions of harassment, or events that were not job related, nor did he explain how the accepted work factor caused or exacerbated appellant's condition. Medical conclusions unsupported by rationale are of diminished probative value.<sup>5</sup>

The Office advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms and contained test results, diagnosis, treatment and doctor's opinion, with medical reasons, on the cause of his condition. Appellant failed to submit appropriate medical documentation in response to the Office's request. As there is no probative, rationalized medical evidence addressing how appellant's claimed condition was caused or aggravated by accepted factors of his employment, appellant has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty causally related to factors of employment.

### **CONCLUSION**

Appellant failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty on January 6, 2008.

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<sup>4</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>5</sup> *Willa M. Frazier*, 55 ECAB 379 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 22 and February 26, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 13, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board