

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

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**A.A., Appellant**

**and**

**U.S. POSTAL SERVICE, BAYAMON BRANCH  
OFFICE, Bayamon, PR, Employer**

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**Docket No. 09-1661  
Issued: April 2, 2010**

*Appearances:*  
*Paul Kalker, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 23, 2009 appellant, through counsel, filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated June 1, 2009 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 this claim.

**ISSUE**

The issue is whether appellant sustained an emotional condition in the performance of duty on February 16, 2008, as alleged.

On appeal, appellant's counsel contends that the Office erred in developing the claim as traumatic injury instead of as an occupational disease claim. He also contends that the evidence of record establishes that appellant was subjected to harassment and discrimination and that his emotional condition is causally related to these employment factors.

## **FACTUAL HISTORY**

This is the second appeal in this case. In the first appeal, the Board issued a decision on March 24, 2009 affirming a May 8, 2008 Office decision denying appellant's traumatic emotional condition claim and a June 16, 2008 nonmerit decision denying his request for reconsideration of the merits of his claim.<sup>1</sup> The Board found that he failed to establish any compensable factor with respect to his allegations regarding a February 16, 2008 incident. The Board further found that appellant's claim was traumatic in nature as he premised his claim based on an incident of February 16, 2008 involving his supervisors. In addition, the Board noted the submission of evidence regarding his Equal Employment Opportunity (EEO) claim of age and sex discrimination, which occurred over more than one day and stated that he was not precluded from filing an occupational disease claim based on these allegations. The facts and circumstances of the Board's prior decisions are incorporated by reference.<sup>2</sup>

Subsequent to the Office's June 16, 2008 nonmerit decision and prior to the Board's March 24, 2009 decision, appellant submitted additional medical and factual information including an October 3, 2008 statement and April 29, 2008 statement detailing alleged harassment and discrimination from 2000 to 2008, which included one line about the alleged February 16, 2008 incident; reports dated December 21, 2006, June 1<sup>3</sup> and 5 and November 19, 2008 report and disability notes dated from April 2, 2007 to February 29, 2008 from Dr. Jaime Del Toro, a treating physician; a January 30, 2008 EEO information for precomplaint counseling form; an October 23, 2008 EEO investigative affidavit by appellant; a February 10, 2009 determination by the Office of Personnel Management (OPM) that he was disabled due to schizoaffective disorder; a January 27, 2009 statement alleging a hostile work environment created by management for the past 24 months signed by coworkers.

In the June 5, 2008 report, Dr. Del Toro diagnosed schizoaffective disorder which began in August 2002. He opined that the condition had been aggravated from April to July 2008 and that appellant was currently totally disabled. In a November 19, 2008 disability report, prepared for a disability determination program, Dr. Del Toro noted that he had been treating appellant since April 1981. He diagnosed chronic schizoaffective disorder with active signs of bipolar type psychosis.

In a letter dated April 29, 2009, appellant's counsel requested reconsideration. He contended that the medical and factual evidence established that appellant sustained an emotional condition as a result of the harassment and discrimination he was subjected to over the years. Counsel further contends that the Office erred in treating the claim as a traumatic injury instead of as an occupational claim.

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<sup>1</sup> Docket No. 08-1984 (issued March 25, 2009).

<sup>2</sup> On March 15, 2008 appellant, then a 41-year-old rural carrier, filed a traumatic injury claim alleging that on February 16, 2008 he sustained an emotional condition due to his supervisor requiring him to leave keys, scanners and registered mail at the employing establishment in an unsecured area.

<sup>3</sup> This report is in Spanish.

On May 6, 2009 the Office received an April 26, 2009 report from Dr. Del Toro diagnosing schizoaffective bipolar type disorder. He noted that he reviewed witness reports from appellant's EEO complaint, which detailed alleged harassment and discrimination of appellant over a number of years. Dr. Del Toro noted that appellant had been treated since 1981 for psychiatric problems. He opined that appellant was totally disabled and that the condition had been exacerbated by the February 16, 2008 incident.

By decision dated June 1, 2009, the Office denied modification.

### **LEGAL PRECEDENT**

To establish that he sustained an emotional condition causally related to factors of his federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.<sup>4</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.<sup>5</sup> There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation.<sup>6</sup> Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>7</sup> On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>8</sup>

### **ANALYSIS**

As noted by the Board in its prior decision, appellant alleged that he sustained an emotional condition on February 16, 2008 as a result of his supervisor requiring him to leave keys, scanners and registered mail at the employing establishment in an unsecured area and harassment by his supervisor in refusing to follow a cease and desist order. The Board affirmed the Office's determination that he failed to establish a compensable factor of employment. The

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<sup>4</sup> See *C.F.*, 60 ECAB \_\_\_\_ (Docket No. 08-1102, issued October 10, 2008); *Doretha M. Belnavis*, 57 ECAB 311 (2006); *Kathleen D. Walker*, 42 ECAB 603 (1991). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

<sup>5</sup> *L.D.*, 58 ECAB 344 (2007).

<sup>6</sup> *A.K.*, 58 ECAB 119 (2006).

<sup>7</sup> 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>8</sup> *J.F.*, 59 ECAB \_\_\_\_ (Docket No. 07-308, issued January 25, 2008); *Gregorio E. Conde*, 52 ECAB 410 (2001).

initial issue to be resolved is whether appellant has submitted sufficient evidence to establish a compensable factor of employment.

On appeal, appellant's counsel contends that the Office erred in failing to adjudicate appellant's claim as an occupational disease claim instead of a traumatic injury claim. The Board, in its prior decision, found that the Office properly adjudicated his claim as traumatic rather than occupational disease claim based on his claim form and initial allegation. The claim form and initial allegation submitted by appellant attributed his condition to a single incident on February 16, 2008. As such, his claim is traumatic in nature as it was attributed to a single workday or shift.<sup>9</sup> Appellant, however, is not precluded from filing an occupational disease claim based on his allegations of discrimination and harassment.

Subsequent to the June 16, 2008 nonmerit decision, appellant submitted additional medical and factual information. The October 8, 2008 statement which included a brief description of the alleged February 16, 2008 incident is duplicative of that previously of record and reviewed by the Board. The January 27, 2009 statement by coworkers and the EEO forms do not establish any harassment on the part of management with respect to the alleged February 16, 2008 incident. The January 30, 2008 EEO precomplaint counseling form and the determination of disability by OPM, are not relevant to the alleged February 16, 2008 incident. Appellant submitted no other evidence to establish his allegations. He therefore failed to establish a factual basis for his claim of harassment by his supervisors on February 16, 2008.<sup>10</sup> The Board finds that the record is not sufficient to establish a compensable factor as a result of his supervisor requesting that he leave behind certain office equipment in an unsecured area. As appellant has not established any compensable work factors, the medical record regarding any psychiatric conditions need not be addressed.<sup>11</sup>

### **CONCLUSION**

The Board finds that appellant failed to establish that he sustained an emotional condition in the performance of duty on February 16, 2008, as alleged.

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<sup>9</sup> See 20 C.F.R. § 10.5(ee).

<sup>10</sup> See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

<sup>11</sup> See *E.R.*, 60 ECAB \_\_\_\_ (Docket No. 09-599, issued June 3, 2009); *Lori A. Facey*, 55 ECAB 217 (2004); *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 1, 2009 is affirmed.

Issued: April 2, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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