

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

T.Y., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Gretna, LA, Employer

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**Docket No. 10-231
Issued: September 2, 2010**

Appearances:
Appellant, pro se
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 October 30, 2009 appellant filed a timely appeal from an October 8, 2009 merit decision of the Office of Workers' Compensation Programs rescinding acceptance of 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 case.

ISSUE

The issue is whether the Office met its burden of proof to rescind acceptance of appellant's emotional condition claim.

FACTUAL HISTORY

On April 30, 2009 appellant, then a 51-year-old letter carrier, filed an occupational disease claim alleging that he sustained paranoia and stress due to factors of his federal employment. He attributed his condition to the employing establishment sending him somewhere and then calling him back for something else, changing his start time, telling him he

would fill a position and then giving the position to a coworker and informing him that he would be transferred but not transferring him. Appellant stopped work on April 30, 2009.

By letter dated May 12, 2009, the Office requested additional factual and medical information. On May 22, 2009 appellant related that there was much noise, teasing and confusion on the work floor.¹ In December 2000, his supervisor told him that his life was not worth living. After appellant was injured in January 2001 the employing establishment took multiple adverse actions taken against him, changed his schedule and job duties constantly and gave him conflicting work assignments.²

In a January 29, 2008 settlement agreement, appellant agreed to receive wages for eight hours in exchange for dismissing an Equal Employment Opportunity complaint. The agreement indicated that it was not an admission of wrongdoing by the employing establishment.

An undated Step B Team Decision instructed the employing establishment to immediately rescind a letter of warning issued to appellant on March 18, 2009. The team determined that management had failed to meet with the union and thus did not provide contentions in support of its position.

On June 17, 2009 the Office informed appellant that it had accepted his claim for an adjustment disorder with mixed anxiety and depressed mood. Appellant filed a claim for compensation beginning April 24, 2009.³ By letter dated July 31, 2009, the Office requested medical evidence supporting appellant's disability claim.

In a statement dated August 11, 2009, appellant's supervisor related that his schedule was changed so that he could cover afternoon operations. He stated, "We tried to have [him] fill a position that ultimately belongs to the clerk craft and is a clerk position. The transfer job goes to someone already at that location." The supervisor asserted that appellant's "allegations that adverse decisions were made is totally incorrect as moves were made to accommodate his doctor's orders. Business models were also considered consistent with [employing establishment] policy changes."

In a telephone call dated August 21, 2009, the Office informed appellant that it had accepted his claim without sufficient factual development. It notified him that his case would be redeveloped.

¹ In a statement dated May 2, 2001, appellant related that his immediate supervisor made derogatory statements towards him and his sister-in-law. He related that the supervisor told him, within his sister-in-law's hearing, that she did not "have shit for a husband." The supervisor also told him blood and s-t were thicker than water.

² Appellant submitted two May 21, 2009 statements from witness who generally related that management harassed injured employees.

³ In a witness statement dated May 22, 2009, received by the Office on June 23, 2009, Emma Wilkins noted that supervisor ignored employees talking in a loud and disruptive manner on the work floor. In a witness statement dated May 24, 2009, a coworker related that management harassed and discriminated against appellant.

By letter dated September 3, 2009, the Office requested additional information from the employing establishment.⁴ On October 1, 2009 the Office informed appellant by telephone that it had rescinded acceptance of his case.

By decision dated October 8, 2009, the Office denied appellant's emotional condition claim after finding that he had not established any compensable employment factors.

On appeal appellant questioned why his case was originally accepted and then rescinded. He cited Board legal precedent to support that a claim was compensable if it arose out of the performance of work duties. Appellant maintained that the original acceptance was correct.

LEGAL PRECEDENT

Section 8128 of the Federal Employees' Compensation Act provides that the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or application.⁵ The Board has upheld the Office's authority to set aside or modify a prior decision and issue a new decision under section 8128 of the Act.⁶ The power to annul an award, however, is not an arbitrary one and an award for compensation can only be set aside in the manner provided by the compensation statute.⁷

Workers' compensation authorities generally recognize that compensation awards may be corrected, in the discretion of the compensation agency and in conformity with statutory provision, where there is good cause for so doing, such as mistake or fraud.⁸ It is well established that, once the Office accepts the claim, it has the burden of justifying the termination or modification of compensation benefits.⁹ The Office's burden of justifying termination or modification of compensation holds true where the Office later decides that it has erroneously accepted a claim of compensation. In establishing that its prior acceptance was erroneous, the Office is required to provide a clear explanation of its rationale for rescission.¹⁰

ANALYSIS

The Office accepted appellant's claim for an adjustment disorder with mixed anxiety and depressed mood. It later reopened his case after finding that it had accepted the claim without adequate factual development. By decision dated October 8, 2009, the Office denied appellant's

⁴ In a statement dated September 24, 2009, Norbert J. Lewis, a supervisor, related that appellant was treated the same as all carriers and that his position was not stressful.

⁵ 5 U.S.C. § 8128; *see also M.E.*, 58 ECAB 694 (2007).

⁶ *John W. Graves*, 52 ECAB 160 (2000).

⁷ *See* 20 C.F.R. § 10.610; *Cary S. Brenner*, 55 ECAB 739 (2004); *Stephen N. Elliott*, 53 ECAB 659 (2002).

⁸ *L.C.*, 58 ECAB 493 (2007).

⁹ *Andrew Wolfgang-Masters*, 56 ECAB 411 (2005).

¹⁰ *See Amelia S. Jefferson*, 57 ECAB 183 (2005); *Delphia Y. Jackson*, 55 ECAB 373 (2004).

emotional condition claim. It concluded that he had not shown that the employing establishment's decisions regarding the assignment of work and work locations constituted a compensable employment factor or that management acted in a discriminatory or abusive manner.

The Office did not identify its decision denying appellant's emotional condition claim as a rescission; however, as it had accepted his claim, the Office bears the burden of proof to rescind acceptance.¹¹ In establishing that its prior acceptance was erroneous, it is required to provide a clear explanation of the rationale for rescission.¹² The Office provided a cursory description of appellant's allegations and summarily determined that the allegations were not compensable. It did not attempt to present evidence or argument in support of a rescission of his claim. Rather, the Office impermissibly shifted the burden of proof to appellant to establish an employment-related emotional condition. Consequently, it has not properly rescinded the accepted condition of adjustment disorder with mixed anxiety and depressed mood.¹³

CONCLUSION

The Board finds that the Office did not properly rescind its acceptance of appellant's claim.

¹¹ *George A. Rodriguez*, 57 ECAB 224 (2005).

¹² *See supra* note 10.

¹³ *V.C.*, 59 ECAB ___ (Docket No. October 18, 2007).

ORDER

IT IS HEREBY ORDERED THAT the October 8, 2009 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 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