

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

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**W.W., Appellant**

**and**

**U.S. POSTAL SERVICE, OLD HAMMOND  
STATION, Baton Rouge, LA, Employer**

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**Docket No. 14-1018  
Issued: December 23, 2014**

*Appearances:*  
*J. Arthur Smith, III, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 31, 2014 appellant, through counsel, filed a timely appeal from an October 4, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 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 established that his stress and anxiety were causally related to the accepted employment factors.

On appeal, counsel contends that OWCP erred in failing to comply with the Board's remand instructions. He also contends that the medical evidence establishes that appellant's emotional condition and disability were caused by his employment.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On February 4, 2004 appellant, then a 43-year-old city carrier, filed an occupational disease claim alleging that he first became aware of his anxiety and stress on December 16, 1999. It was not until October 23, 2003 that he realized these conditions were employment related. Appellant stated that his health had worsened over the past six or seven years due to stress. On the back of the form, the employing establishment controverted the claim. It noted that this was the third claim appellant filed for stress.<sup>2</sup> Appellant stopped work on October 23, 2003 and did not return.<sup>3</sup>

In a letter dated February 20, 2004, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised as to the medical and factual evidence required to support his claim and given 30 days to submit the requested information.

Appellant submitted an August 25, 2000 report from Dr. Carmen M. Sugai, a treating Board-certified psychiatrist, who diagnosed major depression, generalized anxiety disorder, hypertension, and job stress. Dr. Sugai provided a medical and factual history, including appellant's statement that he felt more stress and was not happy with his job. Appellant identified increased time demands a tense workplace.

In a December 17, 2003 report, Dr. Gerald C. Heintz, a Board-certified psychiatrist, stated that appellant was seen for complaints of work stress, depression, and anxiety attacks. He diagnosed anxiety disorder and depression. Dr. Heintz related that appellant is "an excessive worrier in general." He attributed appellant's anxiety to the employment conditions appellant described.

In a February 4, 2004 report, Dr. Edward E. Jeffries, an attending Board-certified family practitioner and sleep medicine physician, reviewed the employment factors identified by appellant. As a result of the excessive work stress, appellant sustained an acute anxiety attack. Dr. Jeffries stated that appellant had been having work problems for some time and became disabled commencing October 24, 2003 due to his work-related emotional condition. He recommended a disability retirement.

By decision dated April 8, 2004, OWCP denied appellant's claim. It found that he failed to establish any compensable factors of employment.

On April 14, 2004 appellant requested an oral hearing before an OWCP hearing representative, which was held on October 20, 2004. Appellant submitted a May 13, 2004 report from Dr. Jeffries, who noted that appellant had been treated by his practice since 1993 and provided a medical history of complaints and illnesses. The diagnoses included recurrent depression, panic disorder anxiety, hypertension, allergic rhinitis, shortness of breath, and work-

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<sup>2</sup> The employing establishment noted the prior claim file numbers as xxxxxx640 and xxxxxx704. Claim file number xxxxxx640 was an occupational disease claim which OWCP denied on February 4, 2004. Claim file number xxxxxx704 was a traumatic injury claim which OWCP denied on December 24, 2003.

<sup>3</sup> On November 8, 2007 appellant was informed that his disability retirement under the Office of Personnel Management had been approved.

related stress. Dr. Jeffries related that appellant was first seen for stress-related headaches, anxiety and job-related depression in 1999. He noted that appellant's job-related anxiety continued over the next few years. In September 2002, appellant was put on antidepressant and antianxiety medicine for his job-related stress. At times, his work stress was overwhelming and the medication helped. Dr. Jeffries stated that in October 2003 appellant sustained an acute anxiety attack due to the severity of his work problems. Dr. Jeffries concurred with the opinion of appellant's psychiatrist that he was totally disabled due to his work-related depression and extreme anxiety.

By decision dated January 5, 2005, an OWCP hearing representative affirmed the April 8, 2004 decision as modified. He found that appellant had established compensable factors with respect to overtime and working parts of different routes. The hearing representative found the medical evidence was insufficient to establish a causal relationship between the accepted factors and his anxiety and stress.

In a letter dated January 3, 2006, counsel requested reconsideration. Appellant mentioned medical and factual evidence that he was submitting in support of his claim; but no evidence was attached.

By decision dated February 14, 2006, OWCP denied appellant's request for reconsideration.

On May 11, 2006 counsel filed an appeal with the Board and requested an oral argument.

By order dated December 29, 2006, the Board granted the Director of OWCP's motion to remand the case and cancel oral argument. On remand, OWCP was to consider all the evidence of record, including appellant's submissions in support of his reconsideration request.<sup>4</sup>

On January 3, 2006 counsel requested reconsideration and submitted evidence in support of his request.

In an August 23, 2006 report, Dr. Jeffries diagnosed shortness of breath, possible asthma; allergic rhinitis, hypertension, fatigue, and significant anxiety due to appellant's job situation. He had treated appellant since 1993 and provided a history of his respiratory problems. Dr. Jeffries stated that during the period of treatment, appellant complained about work problems and the work environment. In August 2003, appellant complained that he was unable to get his work done in the specified time, that he was under constant scrutiny, and worked longer in order to get the work done on his route. Dr. Jeffries stated that appellant was "under pressure to continue to perform his duties despite his physical limitations."

In a June 22, 2005 deposition, Dr. Jeffries testified that appellant's primary problems with respect to his disability were his panic disorder and anxiety. He testified that appellant has been totally disabled from work since October 23, 2003. Dr. Jeffries attributed appellant's depression and anxiety to his work. He provided testimony regarding treatment of appellant and noted that a psychiatrist was also treating appellant for his psychiatric conditions.

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<sup>4</sup> *Order Granting Remand and Cancelling Oral Argument*, Docket No. 06-1765 (issued December 29, 2006).

In a December 7, 2006 addendum, Dr. Jeffries diagnosed recurrent depression, anxiety with panic attacks, allergic rhinitis, and hypertension. He stated that appellant's condition had deteriorated since May 2004. Dr. Jeffries noted that appellant was totally disabled from work due to the extreme anxiety caused by the possibility of returning to work at the employing establishment.

By decision dated April 30, 2007, OWCP denied modification of its prior decision. It found the medical evidence insufficient to establish causal relation.

On April 17, 2008 counsel requested reconsideration. In a July 4, 2003 report, Dr. Philip Louis Cenac, Jr., a treating Board-certified psychiatrist, listed diagnoses including paranoid personality disorder, somatization disorder, dipsomania with excessive daytime sleepiness. He opined that appellant probably would not return to work and was totally disabled.

On April 9, 2007 Dr. Jeffries diagnosed recurrent depression and anxiety with panic disorder. He opined that he doubted that appellant would ever return to work as a result of "the work conditions he experienced at the postal service and his extreme anxiety."

On April 23, 2008 OWCP received an undated report from Dr. David C. Greeson, a treating Board-certified psychiatrist, who provided a medical and social history and findings on mental status examination. Dr. Greeson's diagnoses included post-traumatic stress disorder, panic disorder with agoraphobia, and problems with occupational environment. He stated that appellant probably had panic attacks and generalized anxiety disorder prior to working for the employing establishment and opined that the conditions were aggravated by his employment. Specifically, Dr. Greeson attributed the aggravation to appellant's confrontation with his supervisor and inability to escape. He opined that appellant "has been traumatized by being reprimanded on the job while experienc[ing] panic attacks" which aggravated and largely caused his anxiety and depression.

By decision dated July 2, 2008, OWCP denied modification of its prior decision.

By order dated July 14, 2009, the Board set aside the July 2, 2008 decision. The Board found that OWCP failed to make findings addressing why the medical evidence was insufficient to support appellant's claim.

On October 7, 2009 OWCP referred appellant for a second opinion evaluation to Dr. Arthur S. Samuels, a Board-certified psychiatrist, to determine whether his emotional condition was caused or aggravated by the accepted employment factors. In the attached September 30, 2009 statement of accepted facts, it listed two compensable work factors: (1) that, in addition to his regular route, appellant worked parts of different routes; and (2) he worked overtime.

In an October 29, 2009 report, Dr. Samuels diagnosed post-traumatic stress disorder and panic disorder with agoraphobia. He opined that appellant was totally disabled due to his physical and severe emotional limitations. Dr. Samuels attributed appellant's condition to his employment. He related that the factors identified in the statement of accepted facts had aggravated and accelerated appellant's symptoms. Dr. Samuels stated that appellant's mail route was slowed down by his asthmatic condition. Criticisms by appellant's supervisor exacerbated

his breathing difficulties as well as causing anxiety. Dr. Samuels attributed appellant's shortness of breath to his asthma which was aggravated by his work situation and dusty work environment. He concluded that appellant's condition was permanent due to his failure to respond to treatment and the persistence of his symptoms.

In a supplemental report dated January 14, 2010, Dr. Samuels noted that appellant "was particularly sensitive to dust on his route" as a result of his asthma and resulting difficulty breathing. As a result of this difficulty in breathing, appellant's work performance was slowed down. Dr. Samuels stated that both overtime work and route changes contributed to appellant's problems and the fear of an asthmatic attack resulted in a panic disorder. While the statement of accepted facts did not support that appellant's supervisors criticized his work, appellant was self-critical due to his being "very proud of his abilities and somewhat a perfectionist."

By decision dated May 10, 2010, OWCP denied appellant's claim. It found that the medical evidence was insufficient to establish a causal relationship between the compensable work factors and his emotional condition.

Subsequent to the May 10, 2010 decision, appellant submitted medical and factual evidence.

By order dated August 12, 2011, the Board set aside the May 10, 2010 decision denying appellant's claim and remanded it for evaluation and review of all the medical evidence.<sup>5</sup> The Board found that OWCP failed to consider all the medical evidence as it only discussed Dr. Samuel's opinion.

By decision dated February 13, 2012, OWCP denied modification.

On February 8 and 13, 2013 counsel requested reconsideration. In a supplemental report dated February 2, 2013, Dr. Greeson stated that he has treated appellant since February 2008 for his psychiatric condition. He opined that the employing establishment aggravated his condition by requiring appellant to work overtime as it increased his level of stress. This increased appellant's vulnerability to other conditions: asthma, panic disorder and depression. Dr. Greeson stated that appellant "was traumatized by panic attacks while at the work setting" and that his stress was increased by working overtime. He provided a description of a panic attack which he opined caused appellant's post-traumatic stress disorder. Dr. Greeson opined that appellant's stress was increased as due to being required to work on different routes.

In a February 8, 2013 report, Dr. Brad J. Gaspard, an attending Board-certified family practitioner, related that appellant had been treated for asthma, shortness of breath, and chronic anxiety. He reviewed appellant's medical record and noted that appellant stopped work for the employing establishment due to anxiety, his other medical problems, and extreme work stress. After reviewing Dr. Greeson's report, Dr. Gaspard stated that it was clear that appellant's "anxiety problems were a direct result of the stressors placed on him" at the employing establishment. Appellant related stress due to being frequently asked to work overtime and being required to work on routes that were not his regular route. Dr. Gaspard opined that

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<sup>5</sup> *Order Remanding Case*, Docket No. 11-229 (issued August 12, 2011).

appellant's emotional condition was due to being required to work overtime and variation in appellant's work schedule.

On October 4, 2013 OWCP issued new statement of accepted facts. The accepted factors of employment were listed as: (1) appellant worked light duty with work restrictions due to his asthma of not walking more than two and one-half hours a day; (2) an accommodation of casing mail or riding assignments for the two and one-half hours to ensure that appellant had an eight-hour workday; (3) appellant assisted other carriers by working parts of different routes for two and one-half hours to ensure an eight-hour workday; and (4) that appellant worked overtime when needed, but was not required to work overtime.

By decision dated October 4, 2013, OWCP denied modification.<sup>6</sup>

### **LEGAL PRECEDENT**

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric 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 emotional condition.<sup>7</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>8</sup> the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under FECA.<sup>9</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 under FECA.<sup>10</sup> When an employee experiences emotional stress in carrying out his employment duties and the medical evidence establishes that the disability resulted from his 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 emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.<sup>11</sup> There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the

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<sup>6</sup> The Board notes that, following the October 4, 2013 decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

<sup>7</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>8</sup> 28 ECAB 125 (1976).

<sup>9</sup> 5 U.S.C. §§ 8101-8193.

<sup>10</sup> *See Anthony A. Zircon*, 44 ECAB 751 (1993).

<sup>11</sup> *Supra* note 8.

concept or coverage under FECA. 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 FECA. 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>12</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>13</sup> If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, it must base its decision on an analysis of the medical evidence.<sup>14</sup>

### ANALYSIS

OWCP accepted two compensable work factors that, apart from his usual route, he worked parts of different routes and also worked overtime. It denied his claim on the grounds that the medical evidence failed to establish that his emotional condition was causally related to the accepted compensable factors of employment. The Board finds that the weight of medical evidence establishes appellant's emotional condition was caused by the accepted employment factors.

OWCP referred appellant to Dr. Samuels for a second opinion evaluation to determine whether appellant's emotional condition was causally related to the compensable factors of employment. In an October 29, 2009 report, Dr. Samuels diagnosed the psychiatric conditions of post-traumatic stress disorder and panic disorder with agoraphobia. He stated that the compensable employment factors noted in the statement of accepted facts aggravated appellant's condition. In a supplemental January 4, 2010 report, Dr. Samuels stated that appellant was also slowed down by his asthma which was due to dust on his route. He opined that appellant's condition had been aggravated by his overtime work and route change as well as the fear of an asthmatic attack resulted in a panic disorder.<sup>15</sup>

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<sup>12</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, *supra* note 8.

<sup>13</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>14</sup> *Id.*

<sup>15</sup> The Board notes that the reports from Drs. Gaspard, Greeson, Heintz, Jeffries and Sugai all opined that appellant's emotional condition was employment related. All of appellant's treating physicians including Dr. Cenac concluded that appellant was totally disabled due to his emotional condition.

This is a substantial and probative medical opinion, one that establishes the essential element of causal relationship. Dr. Samuels based his opinion on a complete factual and medical background, expressed his opinion with reasonable medical certainty, and supported his opinion with medical rationale explaining the nature of the relationship between the diagnosed condition and the established factors of employment. He demonstrated that his conclusion is rational, sound, and logical. Further, there is no medical opinion to the contrary. The Board finds that the clear weight of the medical evidence establishes that appellant sustained post-traumatic stress disorder and panic disorder with agoraphobia in the performance of duty and will reverse OWCP's October 4, 2013 decision.

**CONCLUSION**

The Board finds that the weight of the medical evidence establishes that appellant sustained post-traumatic stress disorder and panic disorder with agoraphobia in the performance of duty. The Board reverses OWCP's decision and remands the case for a determination of appellant's entitlement to compensation for wage loss and medical expenses.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 4, 2013 is reversed and the case remanded for further action consistent with the above opinion.

Issued: December 23, 2014  
Washington, DC

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

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

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