

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

E.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
San Diego, CA, Employer)

Docket No. 13-1485
Issued: January 16, 2014

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 10, 2013 appellant, through his attorney, filed a timely appeal from the April 8, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied his psychiatric injury claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this merit decision.²

ISSUE

The issue is whether appellant sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On April 9, 2003 appellant, a 47-year-old mail processing clerk, filed an occupational disease claim alleging that the pain on the bottom of his feet was a result of repetitive activities at

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant filed a separate appeal from OWCP's April 1, 2013 decision to reduce his compensation under 5 U.S.C. § 8113(b). The Board will review that decision under Docket No. 13-1396.

work, including standing, walking and lifting. OWCP accepted his claim for aggravation of bilateral plantar fasciitis.³

In April 2006, appellant accepted a reassignment offer. He was able to work until September 2008, when he received notice that work was no longer available for him as a result of the National Reassessment Process (NRP). Appellant's limited duty having been withdrawn, he received compensation for wage loss on the periodic rolls.

In June 2009, Dr. Bernard L. Frankel, a Board-certified psychiatrist, evaluated appellant and diagnosed a recurrent, moderately severe major depression. OWCP asked appellant for clarification, including his reason for believing that his emotional condition was employment related.

In a July 2009 report, Dr. Frankel provided appellant's self-report findings, used to assess and plan treatment. He described appellant's presenting symptoms:

“[Appellant] endorsed symptoms of moderately severe Major Depressive Disorder, with frequent thinking he'd be better off dead, but no suicidal ideation, intent or plan. (It would hurt his wife, a breast cancer survivor and 15-year-old son too much.) [Appellant's] self-esteem was greatly impaired, together with feeling useless and guilty for not being able to keep a job. He believes [that] he will not be able to keep house and he does n[o]t seem himself as ever being able to work again.”

OWCP asked Dr. Frankel for clarification regarding the history of onset, social and family history and whether any specific work factors contributed to the diagnosis. It requested detailed reasoning.

On November 23, 2009 Dr. Frankel explained that appellant endorsed symptoms of major depressive disorder starting in 1986 with the death of his mother, followed by his youngest brother's suicide in 1991 and his father's death in 2001. Appellant was more or less continually depressed during these 15 years but was never treated for it until his primary care physician prescribed medication in June 2008. His depressive symptoms worsened after he lost his job. According to appellant:

“Things have been unstable since I was sent home from my job at the post office. They terminated me because they said they can no longer accommodate my disabilities. I'm on workers comp. I feel depressed and insecure. It's like I've lost everything. I feel useless. I don't enjoy life anymore. I'm working with an attorney but things are going to take time. In the meantime, my life is very unhappy.”

³ Appellant has had other employment injuries: a left wrist/thumb de Quervain's tenosynovitis as a result of repetitive work activities in 1994 (OWCP File No. xxxxxx878); a cervical strain, right shoulder strain and right trapezius strain as a result of repetitive activities in 1998; and an acute exacerbation of preexisting lumbar degenerative disc disease as a result of prolonged standing during a week of training in 2006.

Dr. Frankel noted that appellant's chronic back pain made him more depressed. He added, however, that he had no time in his few sessions with appellant to provide a detailed analysis with identification of specific work factors. Dr. Frankel could provide no further information than his belief that appellant's conflicts with coworkers and the eventual loss of his job contributed significantly to the onset or exacerbation of his depression.

Appellant's representative advised that some time ago "we requested that the claim be upgraded to include claimants psychiatric problem" and that to date he had received no official notice.

In an August 31, 2012 decision, OWCP denied appellant's emotional condition claim. It found that the evidence failed to establish the emotional injury as consequential to any established orthopedic injuries.

During a December 11, 2012 hearing before an OWCP hearing representative, appellant testified that he had no psychological problems prior to aggravating his bilateral plantar fasciitis in 2003. Appellant confirmed that he was working and did not have any psychological problems. He added that being sent home from work because they could no longer accommodate him caused him to become depressed. Having his job taken away was the reason appellant's psychological problem became acute and active. NRP, he confirmed, was the factor of employment that caused his psychological condition.

In a February 14, 2013 decision, the hearing representative affirmed the denial of appellant's emotional condition claim. She found that he failed to establish that his psychiatric condition was consequential to his accepted employment injuries. The hearing representative noted that appellant could file a new claim for an emotional condition causally related to conflicts with coworkers or administrative actions taken at the employing establishment.

On March 28, 2013 appellant requested reconsideration. He submitted a March 18, 2013 report from Dr. Frankel, who stated that it was his opinion that appellant's chronic, recurrent major depressive disorder of severe intensity "was definitely caused by the loss of his job with the U.S. Postal Service in 2009."

In an dated April 8, 2013 decision, OWCP reviewed the merits of appellant's claim and denied modification of its prior decision. It found that his allegation that the loss of his job contributed to his psychiatric condition was a new factor for which he must file a new claim. "You would then have to prove that the loss of your job was a work factor that occurred in the performance of duty, rather than a reaction to an administrative action." OWCP added that Dr. Frankel's reference to conflicts with coworkers was also a new intervening factor breaking the chain of causation. "You would have to file a new claim and provided (sic) a detailed statement establishing the facts of how the conflict occurred, what happened, what was said, etc."

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of his or her duty.⁴ When an employee experiences

⁴ 5 U.S.C. § 8102(a).

emotional stress in carrying out his or her employment duties or has fear and anxiety regarding his or her ability to carry out his or her duties and the medical evidence establishes that the disability resulted from his or her 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 resulted from his or her emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of his or her work. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.⁵

Workers' compensation does not cover an emotional reaction to an administrative or personnel action unless the evidence shows error or abuse on the part of the employing establishment.⁶

ANALYSIS

Appellant attributed his emotional condition to losing his job under NRP; to being terminated because the employing establishment could no longer accommodate his disabilities. He advised Dr. Frankel, an attending psychiatrist, that things became unstable when he was sent home from his job. Dr. Frankel, in turn, found that appellant felt uselessness and guilty for not being able to keep a job. Although appellant had endorsed symptoms of major depressive disorder starting in 1986, he did not receive treatment until 2008. His depressive symptoms worsened after he lost his job.

Dr. Frankel made a reference to unspecified conflicts with coworkers. Neither he nor appellant made clear that they were attributing the cause of the psychiatric condition to the loss of employment. Appellant testified that he was able to work without psychological problems, but losing his job caused him to become depressed. NRP was the factor of employment that caused his psychological condition to become acute and active. Dr. Frankel unequivocally found that appellant's chronic, recurrent major depressive disorder of severe intensity "was definitely caused by the loss of his job with the U.S. Postal Service in 2009."

As noted earlier, workers' compensation does not cover an emotional reaction to an administrative or personnel action unless the evidence shows error or abuse on the part of the employing establishment. Sending appellant home under NRP was an administrative or personnel action. He is thus attributing his emotional condition to something that is generally not covered by workers' compensation. An exception can be made in cases of administrative error or abuse, but there is no evidence that the exception applies in this case. The worsening of appellant's emotional condition after being sent home from work is, therefore, something that lies outside the scope of FECA's coverage. Accordingly, the Board finds that he has not met his

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Thomas D. McEuen*, 42 ECAB 566, 572-73 (1991).

burden to establish that he sustained an emotional condition in the performance of duty. The Board will affirm OWCP's April 8, 2013 decision.⁷

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the April 8, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 16, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

⁷ *E.g., T.E.*, Docket No. 08-1955 (issued March 5, 2009) (where the record failed to substantiate any impropriety in the handling of the claimant's termination, the Board found that the claimant had not established a compensable factor of employment).