

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

P.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Las Vegas, NV, Employer**

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**Docket No. 13-1092
Issued: June 19, 2014**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 3, 2013 appellant filed a timely appeal from merit decisions dated January 31 and February 25, 2013 of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish an emotional condition causally related to the accepted January 30, 2012 employment factor; and (2) whether he sustained physical injuries on January 30, 2012 in the performance of duty, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 31, 2012 appellant, then a 56-year-old letter carrier, filed a traumatic injury claim alleging that at 12:15 p.m. on January 30, 2012 he sustained burning eyes, itchy skin and left shoulder, neck and lower back injuries when gasoline was thrown on him and his truck at work. He stopped work on the date of injury. Appellant's regular work hours were 8:00 a.m. to 4:30 p.m. with rotating days off work. In a January 30, 2012 letter, he stated that a customer on his route had three loose dogs which had previously attacked the regular carrier. When appellant walked by that customer's home appellant was asked about the whereabouts of his mail. He responded that his mail was being forwarded and home delivery was no longer provided. The customer threatened to turn his dogs loose on appellant. Appellant responded that he would run them over with his truck. He continued to his next loop to deliver mail. While retrieving a tray out of the back of his truck appellant was hit with fluids. He thought it was a sprinkler, but smelled gas. Appellant saw a man running and then he got into his truck and chased the man for two blocks. As he exited his truck he slipped on liquid on the floor near the pedals of his truck causing her to fall. Appellant then chased the man who jumped over a fence.

An unsigned narrative statement dated January 30, 2012, indicated that appellant was retrieving mail from his truck when somebody spilled gasoline on him and his truck.

In an undated narrative statement, Alan Romans, a witness, stated that he heard yelling. He saw a kid running in front of his house and a mailman chasing him in his truck. Mr. Romans also saw a truck with at least three kids in it chasing the mailman.

In an undated narrative statement, a witness whose signature is illegible stated that she saw a mailman screaming at a boy. The mailman got into his truck and chased the boy. A silver truck followed the mailman's truck.

A Form CA-16 signed by the employing establishment on January 31, 2012 authorized medical treatment for appellant's back, neck and bilateral shoulder injuries.

Dr. Ceylon T. Caszatt, a general practitioner, dictated a February 2, 2012 report that provided a history that on January 30, 2012 someone sprayed gasoline on appellant as he was getting mail from the back of his truck. Appellant drove after the suspect. When he tried to catch the suspect he fell on his stomach hurting his neck, both shoulders and lower back. The report provided a history of appellant's medical condition. He had a progressive increase of symptoms since his injury. Appellant had not worked since the incident and was very anxious about returning to work due to pain and anxiety related to a possible repeat of the attack described above. He did not have any skin complaints, but he had neck, back and shoulder pain. The report listed findings on physical and x-ray examination. Appellant had cervical, lumbosacral and shoulder strains. Another report dated February 2, 2012 from Dr. Caszatt stated that appellant could return to work on that date with restrictions. He was referred to physical therapy for the treatment of his cervical and lumbar conditions. An amended note dated February 7, 2012 of Dr. Caszatt stated that a left shoulder x-ray was taken.

In a February 6, 2012 report, Dr. David D. Moon, an osteopath, obtained a history that on January 30, 2012 gasoline was thrown on the back of appellant's head while he was getting mail.

Appellant slipped and fell on his left side while chasing the man. Dr. Moon noted appellant's back pain, shoulder treatment and inability to work for two weeks. He listed findings on physical examination and diagnosed lumbar pain, right shoulder and cervical strains and headache. Dr. Moon advised that appellant sustained bilateral shoulder pain during his January 30, 2012 work injury. In a February 7, 2012 duty status report, he obtained a history that on January 30, 2012 appellant was attacked by kids who threw a petroleum-based product into his eyes. Dr. Moon advised that appellant sustained lumbar and bilateral shoulder strains as a result of this incident. Appellant was unable to perform his work duties and was placed off work for two weeks.

Crystal Peterson, an employee of Accelerated Rehabilitation and Pain Center, in a February 9, 2012 telephone note, advised that appellant had been having a lot of anxiety since January 30, 2012. Appellant had difficulty sleeping and his mind was constantly going.

By letter dated February 16, 2012, OWCP noted that, when appellant's claim was received, it appeared to be a minor injury that resulted in minimal or no lost time from work. Because the employing establishment did not controvert the merits of the case, payment of medical expenses was administratively approved. OWCP had not formally considered the merits of appellant's claim and noted that it had been reopened because he had not returned to full-time work. It advised him that the evidence submitted was insufficient to establish his claim. OWCP requested additional factual and medical evidence. It also requested that the employing establishment submit medical evidence if appellant was treated at its medical facility. In a separate letter dated February 16, 2012, OWCP requested that the employing establishment provide information regarding the January 30, 2012 incident.

Dr. Moon, in a February 14, 2012 report, noted that appellant had presented with neck and shoulder issues and noted difficulty sleeping due to frequent nightmares about the January 30, 2012 incident. Appellant also had constant fatigue, continued numbness in his neck and tingling that radiated into his left arm. He experienced anxiety while thinking about his mail route and being attacked again. Dr. Moon provided a history of his medical treatment and physical examination findings. He provided osteopathic manipulative therapy and trigger point injections and diagnosed anxiety disorder.

OWCP requested that the employing establishment provide additional information, including the proper procedure that mail carriers were instructed to follow when assaulted and whether this procedure was communicated to them during their initial training.

In a February 16, 2012 prescription note for a cervical magnetic resonance imaging (MRI) scan, Dr. Moon advised that appellant had cervical pain, strain and radiculopathy. In reports dated February 22 and March 6, 2012, Dr. Moon reiterated his diagnosis of cervical strain and addressed appellant's treatment. In a duty status report dated March 6, 2012, he advised that appellant's cervical and bilateral shoulder strains were caused by the January 30, 2012 incident.

Appellant submitted a February 22, 2012 statement in which he noted that he was not the regular carrier on the route involved in the January 30, 2012 incident. A man splashed fluid from a two to three-gallon bucket that hit appellant's back, hair and pants. The fluid also splashed onto the front window, dashboard, steering wheel, seat and on mail inside his truck.

Appellant stated that his shoes were wet and, when he drove to the location to pursue the man, he slipped as he got out of his truck. He fell on his left shoulder and neck. The man jumped over a fence and appellant was unable to climb the fence. Appellant reported this incident to police and was able to identify his attacker. He responded "yes" to OWCP's question whether there was animosity between him and the assailant by reason of personal association away from work. Appellant stated that, five minutes before the attack, the assailant had asked if there was any mail for him. He responded that his mail was being forwarded because his dogs had attacked the regular carrier eight months ago. The assailant threatened to let his three dogs loose on him and appellant advised the assailant not to threaten him. Appellant was mentally burnt out and afraid to return to work. He had shoulder and neck pain and headaches.

The employing establishment provided a statement dated February 24, 2012, noting a new standard training program for city letter carriers was upgraded in 2005. It was uncertain as to whether appellant had received similar or the same information when he first started work in 1987. The employing establishment acknowledged that appellant had notified supervisors, police, the fire department and postal inspectors who all responded to the January 30, 2012 incident. The guide, entitled "Standard Training Program for City Letter Carriers," provided safety instructions to ensure the security of the mail and equipment, to notify a supervisor about any security problems, to not endanger oneself in the event of a threat assault or robbery or angering or harassing the attacker, and to report the robbery or assault as soon as possible. The employing establishment submitted additional employment records which included a list of training courses taken by appellant from March 1, 1987 to February 11, 2004.

In a decision dated March 27, 2012, OWCP accepted that appellant was performing his assigned duties on January 30, 2012 when he and his postal vehicle were hit by gasoline. It, however, denied his claim, finding that he was not in the performance of duty when he climbed into his vehicle to pursue the assailant as he substantially deviated from his regular assigned work duty, delivering mail. OWCP noted the safety rules and procedures contained in the employing establishment's training materials and stated that, as a letter carrier and not a law enforcement officer, appellant was not under any obligation to give chase or attempt to apprehend a potential suspect. It, therefore, concluded that any resultant injury was not compensable.

By letter dated April 18, 2012, appellant requested an oral hearing before an OWCP hearing representative.

An operative report dated March 29, 2012 of Dr. James W. Vahey, a Board-certified orthopedic surgeon, stated that appellant had undergone surgery to treat his left thumb extensor pollicis longus zone 2 extensor tendon laceration.

Dr. Moon later, in an April 4, 2012 work status report, advised that appellant could return to work on April 9, 2012 with no restrictions.

Janice Cullen, a human resource management specialist at the employing establishment, expressed her disagreement with OWCP's decision. In her May 11, 2012 letter, she stated that, as a former letter carrier, she would have reacted in a similar manner as appellant during the January 30, 2012 incident. Ms. Cullen stated that letter carriers were out there on their own

without protection from harassers, assaulters, rabid dogs or speeding cars. Appellant always acted as a professional letter carrier and not as a policeman during the incident. Ms. Cullen contended that someone should be punished for criminally assaulting him.

In an August 15, 2012 report, Isaac Tunnel, a physician's assistant, advised that appellant's chronic neck pain, shoulder impingement syndrome, dysfunction of the Eustachian tube and acquired lumbar fusion were unchanged. Appellant had post-traumatic stress.

Susan Blesch, a licensed marriage and family therapist, noted in an August 29, 2012 report, appellant's symptoms following the January 30, 2012 employment incident and advised that these symptoms were consistent with criteria for post-traumatic stress syndrome.

In a September 24, 2012 decision, an OWCP hearing representative affirmed the March 27, 2012 decision. The hearing representative found that the physical injuries appellant sustained as a result of his fall on January 30, 2012 while chasing the assailant did not occur in the performance of his job duties. The hearing representative also found that the medical evidence was insufficient to establish that he sustained an emotional condition causally related to the accepted January 30, 2012 gasoline attack.

By letter dated November 1, 2012, appellant requested reconsideration.

In letters dated October 29, 2012, Dr. Alex Del Rosario, a Board-certified psychiatrist, advised the employing establishment that on October 22, 2012 appellant was admitted to Spring Mountain Sahara under his care. Appellant was discharged on October 29, 2012 and cleared to return to work on November 5, 2012. Dr. Del Rosario strongly recommended that he be assigned to a new mail delivery route. He stated, "It is my professional opinion that it is counterproductive to his continued stability if he is continually exposed to triggers related to the incident which occurred while on his current route." In an October 31, 2012 letter to the employing establishment regarding appellant's request for a transfer from his assigned route, Dr. Del Rosario stated, "This route is pertaining to the gasoline attack at Biljac Avenue on January 30, 2012. Peter has been diagnosed with post-traumatic stress disorder and major depression related to the above incident."

In a January 31, 2013 decision, OWCP denied modification of the September 24, 2012 decision. It found that appellant had not submitted sufficient evidence or argument to establish that the physical injuries he sustained as a result of his January 30, 2012 fall occurred in the performance of duty. OWCP further found that he failed to submit any rationalized medical evidence to establish that his emotional condition was caused by the accepted January 30, 2012 gasoline attack.

On February 21, 2013 appellant requested reconsideration and submitted several reports by Dr. Del Rosario.

In an October 23, 2012 hospital admission report, Dr. Del Rosario listed a history that appellant attempted suicide. He stated, "The patient had been increasingly angry and anxious since an incident in January of 2012 where a customer in his route threw gasoline on him." Dr. Del Rosario related that he presented with "depression, anxiety, flashbacks of trauma, had overdosed on a handful of muscle relaxants and had been drinking alcohol." He identified

the admitting diagnoses as, among other things, “Axis I: major depression, single episode, severe post-traumatic stress disorder” and “Axis IV: psychological stressors: trauma in January of 2012.” In a discharge report dated October 29, 2012, Dr. Del Rosario reiterated the history of the January 2012 employment incident. The discharge diagnoses were the same as those on admission.

In a February 25, 2013 decision, OWCP again denied modification of the January 31, 2013 decision on the grounds that appellant failed to provide any rationalized medical evidence to establish that his diagnosed emotional conditions were causally related to the accepted January 30, 2012 work factor.

LEGAL PRECEDENT -- ISSUE 1

To establish a 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 stress-related 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 stress-related condition.² If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.³ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.⁴

ANALYSIS -- ISSUE 1

OWCP accepted, as a compensable factor of employment, that on January 30, 2012 a customer threw gasoline on appellant and his truck while he was performing his regular work duties as a letter carrier. It found that he failed to provide sufficient medical evidence to establish that he sustained an emotional condition due to the established employment factor. The Board finds, however, that this case is not in posture for a decision as to the issue of causal relationship.

Appellant submitted evidence supporting that his diagnosed emotional condition was causally related to the accepted compensable employment factor.⁵ Dr. Del Rosario’s October 23, 2012 hospital admission report found that appellant had major depression and post-traumatic stress disorder as a result of the accepted employment factor. He stated, “The patient had been increasingly angry and anxious since an incident in January of 2012 where a customer in his route threw gasoline on him.” Dr. Del Rosario further stated that appellant presented with “depression, anxiety, flashbacks of trauma, had overdosed on a handful of muscle relaxants and had been drinking alcohol.” He identified the admitting diagnoses as, among other things,

² *Leslie C. Moore*, 52 ECAB 132 (2000).

³ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁴ *Id.*

⁵ *See William P. George*, 43 ECAB 1159, 1168 (1992).

“Axis I: major depression, single episode, severe post-traumatic stress disorder” and “Axis IV: psychological stressors: trauma in January of 2012.” In an October 29, 2012 discharge report, Dr. Del Rosario reiterated the above-noted history of the accepted employment factor and diagnoses. He discharged appellant from the hospital on October 29, 2012 and released him to return to work on November 5, 2012. Dr. Del Rosario stated, “It is my professional opinion that it is counterproductive to his continued stability if he is continually exposed to triggers related to the incident which occurred while on his current route.” On October 31, 2012 Dr. Del Rosario reiterated, “This route is pertaining to the gasoline attack at Biljac Avenue on January 30, 2012. [Appellant] has been diagnosed with post-traumatic stress disorder and major depression related to the above incident.”

The Board finds that, although Dr. Del Rosario did not provide sufficient medical rationale explaining how the compensable work factor resulted in appellant’s emotional condition, his reports are generally supportive of appellant’s claim and raise an uncontroverted inference of causal relationship sufficient to require further development by OWCP.⁶ The case, therefore, is remanded to OWCP for further development of the medical evidence. After such further development as deemed necessary, it shall issue a *de novo* decision on the emotional condition aspect of appellant’s claim.

LEGAL PRECEDENT -- ISSUE 2

FECA provides for the payment of compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.⁷ The phrase sustained while in the performance of duty in FECA is regarded as the equivalent of the commonly found requisite in workers’ compensation law of arising out of and in the course of employment.⁸

To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in the master’s business, at a place where he or she may reasonably be expected to be in connection with the employment and while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.⁹ In deciding whether an injury is covered by FECA,¹⁰ the test is whether, under all the circumstances, a causal relationship exists between the employment itself or the conditions under which it is required to be performed and the resultant injury.¹¹

In determining whether an injury occurs in a place where the employee may reasonably be or constitutes a deviation from the course of employment, the Board will focus on the nature

⁶ See *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

⁷ 5 U.S.C. § 8102(a).

⁸ See *Valerie C. Boward*, 50 ECAB 126 (1998).

⁹ See *R.A.*, 59 ECAB 581 (2008); *Mary Keszler*, 38 ECAB 735 (1987).

¹⁰ 5 U.S.C. §§ 8101-8193.

¹¹ See *Mark Love*, 52 ECAB 490 (2001).

of the activity in which the employee was engaged and whether it is reasonably incidental to the employee's work assignment or represented such a departure from the work assignment that the employee becomes engaged in personal activities unrelated to his or her employment.¹² The Board has noted that the standard to be used in determining that an employee has deviated from his or her employment requires a showing that the deviation was "aimed at reaching some specific personal objective."¹³

ANALYSIS -- ISSUE 2

Appellant alleged that on January 30, 2012 he sustained work-related eye, skin, left shoulder, neck and back injuries when he slipped in gasoline on the floor of his truck and fell on the ground as he got out of his truck to chase an assailant who had thrown gasoline on him, his mail and truck. The Board finds that he has not established that he sustained a physical injury in the performance of duty on January 30, 2012.

The record establishes that, following the accepted gasoline attack on January 30, 2012, appellant stopped work and deviated from his mail delivery duty to attend to a purely personal matter, chasing and attempting to catch his assailant. He explained that he chased the assailant for two blocks in his truck. Appellant fell while getting out of his truck to continue to chase his assailant, who later eluded appellant by jumping over a fence. He stated that his animosity towards his assailant was personal and not associated with work. The witness statements and factual history provided in the February 2, 2012 report of Dr. Caszatt, the February 6, 2012 report of Dr. Moon and October 24 and December 6, 2012 reports of Dr. Del Rosario support appellant's account of events. Appellant's activity is precisely the type of "specific personal objective" that removes an employee from the performance of duty.¹⁴ There is no indication that this activity was a requirement of his employment or that the employing establishment derived some substantial benefit from the activity which caused injury. The employing establishment's 2005 standard training program guide provided safety instructions to its employees which included not endangering oneself in the event of a threat assault or angering or harassing an assailant and reporting the assault as soon as possible. For the stated reasons, the Board finds that appellant was not in the performance of duty when he fell while getting out of his truck to chase and attempt to catch his assailant on January 30, 2012. The physical injuries he sustained on January 30, 2012 did not arise in the course of his employment as a letter carrier.¹⁵

The present case is similar to *J.P.*,¹⁶ where the claimant engaged in a physical altercation with a man after being verbally threatened by him. In that case, the claimant attended a

¹² *Phyllis A. Sjoberg*, 57 ECAB 409 (2006).

¹³ *Rebecca LeMaster*, 50 ECAB 254 (1999).

¹⁴ *Id.*

¹⁵ The Board notes that the employing establishment has not alleged and OWCP has not applied the statutory defense of willful misconduct in the present case. 5 U.S.C. § 8102(a)(1); *Paul Raymond Kuyoth*, 27 ECAB 498, 505 (1976), *reaff'd on recon*, 27 ECAB 253 (1976).

¹⁶ Docket No. 12-145 (issued March 25, 2013).

reception in a hotel which included instructors and fellow trainees and was certainly business related. He further asserted that an unknown man touched him from behind and asked him to shake his hand. The claimant declined, believing the man to be intoxicated, but the man persisted in trying to get him to shake his hand. The man suggested that he and the claimant take things outside. The claimant got up and chest bumped the man into a column and the man punched the claimant twice in the face. The claimant struck back but another person forced him to the ground, breaking his leg. The Board noted that OWCP did not dispute that the claimant was in the performance of duty while sitting with his fellow trainees and instructors in the hotel after eating dinner. The Board also noted OWCP's finding that he remained in the course of employment when he stayed after the reception to talk and have a couple of drinks with other students and instructors. The Board affirmed OWCP's finding that the claimant deviated from employment when he engaged the man in an altercation not reasonably expected or contemplated by the employer. The Board found that the weight of the evidence established that he initiated the physical confrontation by chest bumping the man into a column.

In the present case, it is not disputed that he was in the performance of duty when the assailant threw gasoline on him and his vehicle. The Board finds, however, that when he got into his truck to chase the assailant and later fell when leaving his truck to pursue the assailant, he engaged in activities not reasonably expected or contemplated by the employing establishment and thus removed himself from coverage under FECA. Appellant initiated the incident and was engaged in an activity not reasonably expected or contemplated by the employing establishment and thus removed himself from coverage of FECA.

The instant case is distinguished from *Leslie C. Moore*.¹⁷ In *Moore* the claimant alleged that he sustained a stress-related condition after an assault in the parking lot of the employing establishment. The Board found that, while the assault may have arisen out of inappropriate comments made by appellant to a coworker, FECA does not exclude coverage because an employee either acts as an aggressor or otherwise engages in an action imputing culpability or fault. As the assault arose on the premises due to a work-related dispute which occurred while the claimant was performing his work duties, the Board found the situation compensable. In the present case, however, appellant was not on his route when he fell while getting out of his truck. Further, he was not performing his work duties at the time of injury, rather he was pursuing his assailant. Moreover, appellant stated that his animosity towards the assailant was personal in nature as he was threatened with physical harm by the assailant's dogs. As the Board finds this incident outside the performance of duty, it is not necessary to address the medical evidence.¹⁸

CONCLUSION

The Board finds that this case is not in posture for decision as to whether appellant sustained an emotional condition due to the accepted January 30, 2012 compensable employment factor. However, the Board finds that appellant has failed to establish that he sustained physical injuries on January 30, 2012 in the performance of duty.

¹⁷ 52 ECAB 132 (2000).

¹⁸ *Alvin V. Gadd*, 57 ECAB 172 (2005).

ORDER

IT IS HEREBY ORDERED THAT the February 25 and January 31, 2013 decisions of the Office of Workers' Compensation Programs are set aside in part and affirmed in part, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 19, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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