

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of HOMER L. MOONEY and U.S. POSTAL SERVICE,  
POST OFFICE, Little Rock, Ark.

*Docket No. 96-2360; Submitted on the Record;  
Issued January 13, 1998*

---

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in rescinding its acceptance of appellant's claim for an emotional condition in the performance of duty.

On November 5, 1993 appellant, then a 38-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained an emotional and psychosomatic reaction due to discrimination by the employing establishment. Appellant attributed his condition to harassment by Mr. Harold Simmons, his station manager, which "became traumatic for me mentally during June 9 and 10, 1992...."

The record indicates that appellant filed an Equal Employment Opportunity (EEO) complaint alleging that the employing establishment discriminated against him by not permitting him to work overtime on June 9, 1992 and by sending a supervisor to accompany him on his route on June 10, 1992.

In a statement dated June 9, 1993, appellant related that he had psychosomatic disorder which produced symptoms of diffuse gastritis and irritable bowel syndrome. Appellant attributed his condition to his supervisor and a manager verbally abusing him on June 9, 1993 by telling him he was too slow, watching him case mail and following him "to secretly [] spy on me." Appellant stated that when he returned to the workplace on June 9, 1993 "there was someone casing on my route that should not have been doing so." Appellant further related that on June 10, 1993 a manager told appellant's supervisor to follow him on his route.<sup>1</sup>

In a report dated June 10, 1993, Dr. J. Dale Calhoon, Board-certified in family practice, diagnosed situational reaction and found that appellant should remain off work until June 15, 1993.

---

<sup>1</sup> It appears from the record that the events related by appellant occurred in 1992 rather than 1993.

In a report dated October 8, 1993, Dr. Alonzo D. Williams, a Board-certified internist, noted that appellant complained of burning, epigastric pain, fullness and bloating which began one year ago when he filed a discrimination suit against the employing establishment. Dr. Williams found that an upper endoscopy performed on October 8, 1993 revealed diffuse gastritis. Dr. Williams diagnosed diffuse gastritis “most likely associated with stress and anxiety” and lower cramping abdominal pain, a change in bowel habits, blood from the rectum and to rule out a colonic lesion.

In a certificate to return to work dated November 8, 1993, Dr. Williams found that appellant would be unable to work for an indefinite period of time.

In a report dated November 9, 1993, Dr. Williams diagnosed diffuse gastritis most likely due to stress and anxiety at work and lower cramping abdominal pain. Dr. Williams noted that medications had not eliminated appellant’s symptoms.

In a report dated December 20, 1993, Dr. Jim Aukstuolis, a psychiatrist, related that appellant had “severe emotional and psychological dysfunction stemming from the stress of harassment and intimidation in his work environment. His symptoms have escalated significantly due to the more hostile work environment since he filed a discrimination suit in June 1992” Dr. Aukstuolis diagnosed “job-related psychosomatic illness, psychological factors affecting physical condition and major depression.”

By letters dated January 21, 1994, the Office requested additional information from both appellant and the employing establishment.

The record contains a settlement agreement dated October 9, 1992 regarding appellant’s allegation of an overtime violation on June 9, 1992. The settlement provide compensation for lost overtime on June 9, 1992 when another employee cased his mail.

In a statement dated January 29, 1994, appellant attributed his emotional condition to verbal abuse and harassment by management. Appellant stated that on June 9 and 10, 1992, his supervisor and manager placed deadlines on him and questioned his need for overtime on his route. Appellant stated that when he returned from his route his manager, Mr. Simmons, had instructed a coworker to case his mail in violation of a union agreement. Appellant related that his supervisor would have coworkers case his mail, which increased his work load and then push him to complete his route in eight hours. Appellant said that when he did not sign up for overtime management would try to force him to complete his route in eight hours; that when a substitute completed his route the substitute would only deliver half the mail so the next day he had more to deliver; and that his supervisor allowed coworkers to laugh at him and told him that he was slow.

The Office prepared a statement of accepted facts dated March 9, 1994. The Office found that appellant attributed his condition to “working overtime while overtime was available on other routes.” The Office accepted as factual that appellant’s allegation that he was discriminated against because he was told to leave mail he could not deliver within eight hours in the office and that when he returned another employee was casing the mail but found that these

incidents did not occur in the performance of duty. The Office did not accept as factual verbal harassment on June 9, 1993 by his supervisor and manager or harassment by coworkers.

On March 9, 1994 the Office informed appellant that it had accepted his claim for major depression and gastritis.

By letters dated May 16, 1994, the Office requested that Drs. Auksuolis and Williams provide a comprehensive medical opinion answering questions posed by the Office regarding appellant's condition. The Office included a statement of accepted facts and indicated that it had accepted appellant's claim for neurotic depression and gastritis.

In a report dated July 11, 1994, Dr. Aukstuolis noted the history of injury as supervisor's harassing and discriminating against him at work. Dr. Aukstuolis stated that appellant filed a discrimination suit in June 1992 which led to continued discrimination and his supervisor's "harassing him, intimidating him, giving him extra work and complaining that he worked too slow and could not finish all the additional work." Dr. Aukstuolis found that appellant developed severe depression, anxiety and physical symptoms including gastrointestinal distress, cramping pains, nausea and rectal bleeding due to the "perceived stress and harassment." Dr. Aukstuolis diagnosed "work-stressed psychosomatic illness as well as psychological factors affecting physical condition," major depression, anxiety disorder and diffuse gastritis. Dr. Aukstuolis found that appellant's current condition "appears to be causally related to his employment factors" and that he could return to work in a reduced stress environment but could not return to "his previous duties due to the heavy physical demands of that job."

In a report dated July 14, 1992, Dr. Williams related that he had treated appellant since October 1993 and that he found evidence of diffuse peptic ulcer disease and irritable bowel syndrome. Dr. Williams noted that he had referred appellant to a psychiatrist for assistance with the depressive component of his illness and stated that the psychiatrist could best determine when he should return to work.

By letter dated August 18, 1994, the Office requested that Dr. Aukstuolis provide a treatment plan including an estimate of when appellant could return to work.

In a report dated August 22, 1994, Dr. Aukstuolis related:

"[Appellant] is presently considered ready to return to light[-]duty work away from his previous environment. He should do well in an office type setting at present with reduced stress and production demands for now. He should be ready for full[-]duty employment by January 1, 1995, if present progress continues and he can be placed in a nonphysically demanding work situation."

By letter dated April 12, 1995, the Office requested that Dr. Aukstuolis provide an opinion on whether appellant had fully recovered from his employment-related emotional condition and, if not, to discuss which specific work factors contributed to his current condition.

In a report dated April 24, 1995, Dr. Aukstuolis related that appellant continued to feel overwhelmed and anxious and stated:

“With his mental disorder and current medications and their side effects such as drowsiness and decreased concentration, he would not be able to engage in employment where he would have to operate machinery or drive a vehicle. He would also have extreme difficulty with high volume of work, the stress of meeting deadlines or maintaining adequate concentration and pace necessary for [employing establishment] work. I believe that attempting to return to work at the [employing establishment] would cause a relapse of his previous condition and mental deterioration due to both his underlying anxiety and depressive problems as well as being exposed to the danger of recurring difficulties due to the work situation and environment being unchanged from when he worked there previously.”

On February 29, 1996 the Office issued a notice of proposed termination of compensation on the grounds that it had accepted appellant’s claim in error as his condition did not arise in the performance of duty. In the accompanying memorandum to the Director, the Office found that it had failed to follow its procedures to determine whether the incidents claimed by appellant as causing his condition occurred in the performance of duty before reaching a determination on the claim. The Office further found that appellant had not established a compensable factor of employment.

Appellant submitted a report dated March 26, 1996 from Dr. Aukstuolis, who related that appellant “continues to have problems with anxiety stemming from his initial deterioration due to the work[-]related problems he had while employed at the [employing establishment] in June 1992.” Appellant further submitted reports from Dr. Aukstuolis dated December 12, 1993 and July 11, 1994, which were previously of record.

In a report dated March 28, 1996, Dr. Williams discussed appellant’s history of gastrointestinal distress which began in October 1993 after he filed a discrimination suit at work. Dr. Williams discussed his history of treatment of appellant for chronic gastritis, which he found due to emotional stress and anxiety and his referral of appellant for psychiatric treatment.

By decision dated May 28, 1996, the Office finalized its proposed termination of appellant’s compensation by rescinding its acceptance of the conditions of major depression and gastritis.

The Board finds that the Office met its burden of proof to rescind its acceptance of appellant’s claim.

The Board has upheld the Office’s authority to reopen a claim at any time on its own motion under section 8128(a) of the Federal Employees’ Compensation Act and where supported by the evidence, set aside or modify a prior decision and issue a new decision.<sup>2</sup> The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be set aside in the manner provided by the compensation statute.<sup>3</sup> It is

---

<sup>2</sup> *Eli Jacobs*, 32 ECAB 1147 (1981).

<sup>3</sup> *Shelby J. Rycroft*, 44 ECAB 795 (1993).

well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation.<sup>4</sup> This holds true where, as here, the Office later decides that it has erroneously accepted a claim for compensation. To justify rescission of acceptance, the Office must establish that its prior acceptance was erroneous based on new or different evidence, or through new legal argument and/or rationale.<sup>5</sup>

In the present case, the Office submitted sufficient new legal argument and rationale to justify its rescission of the acceptance of appellant's claim for major depression and gastritis. In its May 28, 1996 decision, the Office offered a new legal argument in justification of rescission by explaining that it erred when it initially accepted appellant's claim without first making the necessary factual findings regarding which of appellant's claimed employment factors were compensable and which were not compensable. Although a claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the emotional condition for which he or she claims compensation was caused or adversely affected by employment factors,<sup>6</sup> the Office, as part of its adjudicatory function, must make findings of fact regarding which alleged 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>7</sup> If a claimant does implicate a factor of employment, the Office 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, the Office must base its decision on an analysis of the medical evidence.<sup>8</sup>

After pointing out the necessity to make factual findings regarding the compensability of the employment factors alleged by appellant, the Office then provided additional rationale for its rescission of the acceptance of appellant's claim by explaining, for the first time, why appellant did not establish any compensable employment factors.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act.<sup>9</sup> Disability is not compensable, however, when it results

---

<sup>4</sup> See *Frank J. Meta, Jr.*, 41 ECAB 115 (1989); *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>5</sup> *Laura H. Hoexter*, 44 ECAB 987 (1993); *Beth A. Quimby*, 41 ECAB 683 (1990).

<sup>6</sup> *Pamela R. Rice*, 38 ECAB 838 (1987). This burden includes the submission of a detailed description of the employment factors or conditions which a claimant believes caused or adversely affected the condition or conditions for which compensation is claimed. *Effie O. Morris*, 44 ECAB 470 (1993).

<sup>7</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>8</sup> *Id.*

<sup>9</sup> 5 U.S.C. §§ 8101-8193.

from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment to hold a particular position.<sup>10</sup>

Appellant attributed his emotional condition, in part, to harassment by his supervisor and by coworkers. To support a claim based upon harassment, there must be some evidence that the harassment did in fact occur.<sup>11</sup> Mere perceptions alone of harassment are not compensable under the Act.<sup>12</sup>

Appellant alleged that, on June 9 and 10, 1992, his supervisor harassed him by placing a deadline on him to complete his route, allowing another employee to case his mail and following him on his route. There record, however, does not establish that these instances constituted harassment. The monitoring of appellant's route and of the time it takes to complete the route is an administrative function of the employer and is not a compensable factor unless there is affirmative evidence that the employer either erred or acted abusively in the administration of the matter.<sup>13</sup> In the instant case, appellant has not submitted any evidence which would establish error or abuse.

Regarding appellant's claim that his supervisor wrongly allowed a coworker to case mail on his route, the Board finds that this allegation relates to an administrative or personnel matter unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act. Appellant submitted a settlement agreement between the union and management wherein he received compensation for lost overtime due to the coworker casing his mail. However, the Board has held that the mere fact that personnel actions were later modified or rescinded does not, in and of itself, establish error or abuse.<sup>14</sup> The settlement agreement does not contain any acknowledgment by the employing establishment that the actions taken at that time were in error. There is no evidence establishing that this incident constitutes a compensable factor of employment.

Appellant further alleged that his supervisor permitted his coworkers to laugh at him and tell him that he was slow. However, appellant did not provide any notable details of these alleged incidents or otherwise provide sufficient corroborating evidence, such as witness statements, to establish that these acts actually occurred.<sup>15</sup> Thus, appellant has not established a compensable employment factor under the Act.

---

<sup>10</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>11</sup> *Richard J. Dube*, 42 ECAB 916 (1991).

<sup>12</sup> See *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>13</sup> See *Jimmy Gilbreath*, 44 ECAB 555 (1993).

<sup>14</sup> *Michael Thomas Plante*, 44 ECAB 510 (1993).

<sup>15</sup> See *William P. George*, 43 ECAB 1159 (1992).

Appellant further maintained that he had an unreasonable work load as management would try to force him to complete his route in eight hours when he did not sign up for overtime and that other employees would case his mail and thus increase his load but he still had to complete his route in eight hours. Appellant also stated that the other carriers on his route would leave part of the mail undelivered which would double his work the following day. Although the Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable,<sup>16</sup> appellant did not submit any evidence to establish the factual aspect of this allegation.

For the foregoing reasons, the Office properly rescinded the acceptance of appellant's claim for major depression and gastritis on the basis that he did not establish any compensable employment factors under the Act.

The decision of the Office of Workers' Compensation Programs dated May 28, 1996 is hereby affirmed.

Dated, Washington, D.C.  
January 13, 1998

George E. Rivers  
Member

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

---

<sup>16</sup> See *Georgia F. Kennedy*, 35 ECAB 1151 (1984).