

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARRY E. RAABE and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Pittsburgh, Pa.

*Docket No. 96-1776; Submitted on the Record;
Issued June 8, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has established that he developed an emotional condition in the performance of duty, causally related to factors of his federal employment.

On April 30, 1993 appellant, then a 47-year-old letter carrier, filed a claim alleging that he developed an acute anxiety reaction with somatization due to stress from his job. Appellant identified employment factors implicated in causing his condition as including the addition of 45 minutes to the end of his already full route and a subtraction of only 30 minutes from the beginning, leaving an extra 15 minutes added to his route, the inclusion of 200 deliveries to apartments, with high turnover rates requiring additional time for forwarding mail or returning it to the sender, the route itself which had hilly terrain causing additional problems, the 28 mile length of the route and the problems with snow and ice, the change in system for casing a route required by management, the ever increasing volume of mail and the failure to adjust route accordingly, the lack of availability of the needed assistance in casing and delivering the route, the newspaper strike which caused the paper to send material through the employing establishment, the fact that he was working 10 hours per day, 6 days per week, the letter of warning he received for a misdelivery and the threat of losing his job if mistakes continued.

A June 21, 1993 supervisory response was submitted which noted that the apartment manager provided a tenant list to help delivery problems, that appellant had a poor record for misdeliveries, that appellant occasionally delivered employing establishment internal performance warning cards placed in individual slots having frequently misdelivered mail, that appellant had an uncaring attitude, that appellant would only receive assistance for the time he was late and that appellant's route volume was in "proper adjustment." The supervisor stated that with the change in system for casing mail, the time for casing was much less than that for an ordinary mixture of mail, that when appellant filed his claim he was working only 40 hours per week because he refused any overtime, but that he signed the overtime desired list and that appellant had had an exceptional number of accidents and compensation claims.

Appellant also submitted a May 3, 1993 report from Dr. Robert M. Pfoff, a Board-certified internist, which diagnosed acute anxiety reaction with somatization and his “rule out underlying depression symptoms exacerbated by stress at work.” In a May 17, 1993 form report, Dr. Pfoff diagnosed major depression and checked “yes” indicating an employment relationship, noting “stress at work exacerbated symptoms.” Appellant additionally submitted a June 2, 1993 report from Dr. R.J. Allister, a Board-certified psychiatrist, which noted that appellant claimed onset of symptomatology in December 1992 when appellant indicated there was an increase in work load and responsibilities. Dr. Allister noted that appellant stated that following a reprimand by a midlevel supervisor, his symptoms exacerbated and he opined that appellant’s “symptoms appear to be related to stressors on his job.”

The Office of Workers’ Compensation Programs requested further information on implicated factors of employment. Appellant responded noting that in November 1992 he had 45 minutes added to his route and only 30 minutes relieved from his route, leaving 15 minutes extra, that in April 1993 he was given a letter of warning about his mistakes and that his mental problems had worsened possibly due to his unresolved claim.

In a September 9, 1993 report, Dr. Allister noted that appellant’s symptomatology “initially seemed to be exacerbated by his job and he has demonstrated an almost phobic reaction to certain job situations.” He noted that appellant continued to react rather phobically to certain situations or interactions involving supervisory staff.

By report dated September 30, 1993, Dr. Pfoff noted that appellant had a long history of an underlying anxiety disorder and intermittent back problems, that beginning in April 1993 appellant had significant exacerbation of his emotional problems and that he presented with multiple somatic complaints including chest pains. He opined that appellant was totally disabled.

By report dated October 20, 1993, Dr. Allister reviewed appellant’s treatment history, noted that appellant began to experience depression and anxiety following difficult interactions with his supervisor, noted that appellant felt he had been inappropriately counseled by his supervisor and noted that appellant clearly related the onset of his symptoms to these episodes.

On November 9, 1993 appellant provided further information, noting that during the period June through December 1992 he repeatedly worked 10-hour days, 6 days per week, because of the increased mail volume generated from the protracted newspaper strike, that the Pittsburgh Press resorted to mailing the Allegheny Bulletin through the mails to satisfy advertising contracts, that additional mail volume was generated by advertisers who normally advertised in the Press but honored the strike and mailed individual flyers, that his route was increased by 45 minutes, but reduced by only 30 minutes, leaving 15 minutes of additional route time on his already overburdened route, that he attempted to absorb this extra time by working through breaks and lunch, that when evaluated, his route required 8 hours and 45 minutes, but that he still received no relief and that after he left, no one could complete his route within 8 hours, so the route received 30 minutes relief. Appellant alleged that, with the addition of time to his route, he had to request assistance about three times per week, that five carriers retired in October 1992 creating a further manpower shortage, that his requests for assistance were denied more often than honored, despite the increased work load, that his supervisor’s letter of warning

regarding misdeliveries stayed on his mind for several days, that at that time he experienced chest pains and that discipline for misdelivery was not consistent. Appellant stated that he was intimidated by constant route inspections, that he feared for his job, that the letter of warning caused panic attacks and that his anxiety was created by all of these factors.

By report dated February 14, 1994, Dr. Allister opined that there seemed to be a correlation between the onset of appellant's symptomatology and his "work related difficulties." He indicated that he "would consider the two related and the difficulties in the work setting could certainly contribute to [appellant's] psychiatric symptomatology."

On February 24, 1994 the Office received an employing establishment response, which noted that although appellant worked extensive overtime, he was on the "overtime desired" list, that many other carriers had to work overtime, that appellant's letter of warning was justified, that appellant's allegation that he was counseled by a supervisor on his day off was a fabrication and that appellant had problems prior to the new postmaster's arrival.

A coworker who replaced appellant submitted a statement claiming that the route was cut again by 30 minutes, that he received assistance and overtime on a regular basis, but that the route was still overburdened. The union president provided a statement noting that during the time of the newspaper strike, everyone had been working a lot of 10-hour days, that they were carrying mail volumes above any other previously experienced and that they had been carrying as many as 3 sets of marriage mail at the same time, without extra assistance given.

The Office prepared a statement of accepted facts noting that it accepted the following factors as having arisen in the performance of duty: that appellant's route was hilly, that appellant had to inspect his vehicle, that sometimes the roads appellant had to travel had not been cleared of snow, that a newspaper strike occurred in the summer of 1992 and the marriage mail became thicker, that apartments had a lot of mark-up mail for people who have moved or are on vacation and that appellant worked 10 hours per day, 6 days per week in the summer and part of the fall of 1992. The factors the Office found which did not arise from the performance of appellant's duties included: appellant's letter of warning, being threatened with dismissal, that appellant delivered orange warning cards and misdirected mail, that on his day off the supervisor informally counseled appellant, that appellant's work habits were criticized, that another man with more errors than appellant got a merit award, that appellant had a Veterans Administration compensable back condition, that he had a 1984 leg injury, that appellant was seeing health care providers and that appellant continued to engage in hobbies.

On March 16, 1994 Dr. Allister noted that appellant had always represented to him a causal relationship between the onset of his anxiety and panic and the interactions he had with his supervisors.

By decision dated April 1, 1994, the Office rejected appellant's claim finding that the evidence of file failed to establish that appellant sustained an emotional condition causally related to factors of his employment. The Office noted that none of the medical reports submitted attributed the development of appellant's emotional condition to any of the accepted factors of employment.

In response appellant, through his representative, requested a hearing, which was held on October 25, 1994. Submitted in support of the request was an October 12, 1994 report from Dr. Irvin M. Golding, a Board-certified psychiatrist, which reviewed appellant's symptoms, diagnosed major depression and opined that this was clearly a work-related illness. No specific factors of employment were identified or discussed.

Also submitted was a statement from a coworker, which indicated that appellant told him that he had been counseled by a supervisor on the supervisor's day off and the coworker noted that the supervisor visited appellant at his case the next day and had him sign a paper to the effect that he had been counseled by the supervisor. The union president and the union treasurer confirmed that appellant had told them that he had been counseled out on his route on the supervisor's day off.

In an August 24, 1994 report, Dr. Allister noted that appellant felt his job duties were "over-taxing him and causing his symptoms." He concluded that there "seems to be a direct relationship between work stressors and experiences he had on his past job and his symptomatology." An alternate work setting was recommended.

The postmaster submitted answers to appellant's allegations noting that appellant was never forced to work overtime, but wanted all the overtime he could get, that the supervisor never went out on appellant's route on his day off to counsel him, that if appellant worked 40 or even 30 hours of overtime in two weeks he would have been paid at the penalty overtime rate, which was not reflected on his pay stubs, that marriage mail was not an additional work load during the period as the employing establishment presently received three to four marriage mailings per week, that appellant had a historical problem with misdelivery and that he had delivered an internal establishment orange warning card, that Longwood deliveries were sorted via automation and that counseling could take place anywhere and anytime.

On January 5, 1995 the hearing representative affirmed the April 1, 1994 decision finding that the medical evidence submitted did not support a causal relationship between appellant's emotional condition and specific compensable factors of his employment. The hearing representative made new findings with respect to what factors implicated, by appellant as causing his condition were compensable. The hearing representative found that, because the employing establishment stated that appellant's route "was in proper adjustment," the extra 15 minutes added to his already full day could not be considered as a compensable factor of employment, that because the employing establishment stated that the extra marriage mail (inserts with advertisements) due to the newspaper strike was not an additional work load, that factor had not been established, that, although the employing establishment acknowledged that there was a staff shortage, appellant was on the overtime desired list and, therefore, this factor could not be considered and that although appellant worked a lot of overtime during the period of the newspaper strike, he did not indicate how this contributed to his condition and, therefore, cannot be considered. The hearing representative accepted as employment factors that appellant's route apartments had a high turnover in residents, which required extra time in the office and on the route, but noted that the employing establishment stated that assistance would be given when needed and that appellant's route was hilly and posed additional problems in the winter. The hearing representative found the following factors were not compensable: that

appellant received a letter of warning for misdelivery, that he was counseled without a union representative present, that appellant was denied advanced sick leave, that appellant was fearful of losing his job, that he was unhappy at procedural changes and that appellant was concerned about management using auxiliary help rather than adjusting routes “due to increase in volume of mail.”

Appellant, through his representative, again requested reconsideration. No additional evidence was submitted. By decision dated February 28, 1996, the Office denied modification of the January 5, 1995 decision. The reconsideration request was accompanied by additional legal argument which was noted by the Office but not commented upon.

The Board finds that appellant has failed to establish that he developed an emotional condition in the performance of duty, causally related to compensable factors of his federal employment.

To establish appellant’s claim that he has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.¹ Rationalized medical opinion evidence is medical evidence, which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. Such an opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.²

Workers’ compensation law is not applicable 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. These injuries occur in the course of employment and have some kind of causal connection with it, but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition, which will be covered under the Federal Employees’ Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not compensable where it results from such factors as an employee’s fear of a reduction-in-force, his frustration from not being permitted to work in a particular environment or to hold a particular position, or his failure to secure a promotion. Disabling conditions resulting from an employee’s feeling of job insecurity or the desire for a different job do not constitute personal injury, sustained while in the performance of duty within

¹ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² See *Martha L. Watson*, 46 ECAB 407 (1995); *Donna Faye Cardwell supra* note 1.

the meaning of the Act.³ When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded, because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.⁴ In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.⁵

When working conditions are alleged as factors in causing disability, the Office, 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.⁶ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁷ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.⁸ In the instant case the Board finds that appellant has implicated several compensable factors of employment.

The Board finds that the lengthening of appellant's route by 15 minutes a day was supported by the evidence of record and relates to the performance of his regular and specially assigned job duties. As such the Board finds that this constitutes a compensable factor of employment.⁹

The Board also finds that the record supports that there was an increased volume of mail during the newspaper strike. The Board notes that the Office's previous acceptance that there was an increased volume of mail was not addressed by the hearing representative. As this also

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Artice Dotson*, 41 ECAB 754 (1990); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984).

⁵ *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991).

⁶ *See Barbara Bush*, 38 ECAB 710 (1987).

⁷ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁸ *See Lillian Cutler*, *supra* note 3.

⁹ *See Peggy R. Lee*, 46 ECAB 527 (1995); *Elizabeth Pinero*, 46 ECAB 123 (1994); *Dodge Osborne*, 44 ECAB 849 (1993); *Frank A. McDowell*, 44 ECAB 522 (1993); *Gloria Swanson*, 43 ECAB 161 (1991).

relates to the performance of appellant's regular and specially assigned duties it constitutes a compensable factor of employment.

The Board further finds that appellant's performance of overtime work is also a compensable factor of his employment. The fact that appellant was on the "overtime desired" list does not diminish the fact that he performed overtime work as a part of his specially assigned duties. It appears overtime work was based on the lack of the availability of necessary assistance. The employing establishment acknowledged having staffing shortages, which impacted the volume of work assigned.

The Board also accepts that appellant's route was hilly, that sometimes the roads were not cleared in the winter, that the newspaper strike occurred in the summer of 1992 and the marriage mail became thicker and that mark-up mail increased with the addition of apartment complexes added to appellant's route. All of appellant's other allegations of implicated factors, however, have either not been proven, are not supported by the record, or are clearly noncompensable under Board precedent.

Appellant's burden of proof, however, is not discharged by the fact that he has established employment factors, which may give rise to a compensable disability under the Act. Appellant must also submit rationalized medical evidence establishing that his claimed emotional condition is causally related to an accepted compensable factor of employment.¹⁰ In this respect appellant has failed to establish his claim.

None of the medical evidence submitted addresses specific employment stressors or mentions any of the accepted employment factors in discussing causal relation. The medical evidence of record merely recites what appellant claims rather than providing a rationalized medical opinion identifying specific incidents of employment and relating them to the onset of appellant's disabling emotional condition. The medical reports of record merely refer generally to "stress at work," "stressors on the job," "certain job situations," "difficult interactions" with supervisors, "work-related difficulties," and "difficulties in the work setting," all without specifically identifying what stressors, situations, interactions, or difficulties they are implicating. None of the medical reports of record discuss the performance of appellant's regular or overwork, lack of assistance, or any other accepted factor of appellant's employment. Consequently, none of the submitted medical evidence establishes or supports that appellant's disabling emotional condition developed in response to accepted compensable factors of his employment. Therefore, he has failed to establish his claim.

¹⁰ *Brian E. Flescher*, 40 ECAB 532 (1989); *Ronald K. White*, 37 ECAB 176 (1983).

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

Dated, Washington, D.C.
June 8, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member