

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RICHARD J. THOMAS and U.S. POSTAL SERVICE,  
SOUTH UNITED STATION, Phoenix, AZ

*Docket No. 97-2763; Submitted on the Record;  
Issued August 12, 1999*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained a stroke or emotional condition in the performance of duty causally related to factors of his employment.

On August 4, 1995 appellant, then a 55-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained a stroke due to work-related stress on May 24, 1995. In an attachment, appellant attributed his stroke on May 24, 1995, which occurred while he was casing mail, to stress at work and listed 12 factors he believed contributed to his stress. He specifically alleged that he had 31 minutes added to his already overburdened route, his route being changed to single cell casing, his supervisors ganging up on him and threatening him with disciplinary action and possible removal, he was accused of creating his own overtime and he was forced to carry overtime, his supervisors would disapprove his estimated overtime, a supervisor followed him on his route and did a close observation of him casing mail, clerks were having difficulty with the changed schemes and 31-minute add-on, he feared losing his job as he was told he was inefficient and working in a climate of tension and fear, he was informed that his supervisors were going to count his mail three days in the office and follow him one day on his route and he had extra deliveries because of the 31 minutes added to his route which caused confusion. In his statement, appellant noted that "One supervisor even had a[n] exclusive member of the inspection Team come in special and give me a[n] individual 1 day case count.. I was 19 minutes UNDER-TIME."

In an attending physician's report (Form CA-20) dated August 29, 1995, Dr. Michael A. Epstein, an attending Board-certified neurologist, diagnosed a left pontine stroke. Under question eight, "Do you believe the condition found was caused or aggravated by an employment activity? (Please explain answer)." Dr. Epstein did not check either "yes" or "no," but noted "Question of Stress."

By letter dated October 16, 1995, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish his claim and requested appellant to provide any information and supporting documentation to support other claimed sources of stress.

By letter dated December 13, 1995, the employing establishment challenged appellant's claim and submitted statements by three supervisors and a station manager refuting appellant's allegations regarding his route and being overworked.

On February 26, 1996 appellant responded to the Office's request for additional information and submitted various articles on stress; letters from customers; statements from Richard F. Gornall, Mark A. Lamont, Sheila Masters, Ralph Love and Lewis Jake, Jr.; statements from Jim Drake and Jimmy G. Ruiz, union stewards; several Postal forms 3996; and a detailed statement from appellant dated December 4, 1995.

Mr. Drake stated that appellant called him several times during the spring of 1995 to discuss the way his supervisors treated him.

In his January 15, 1996 statement, Mr. Gornall, a coworker, indicated he was willing to testify on appellant's behalf and stated that he had overheard and observed "intimidating conversations with [Mr. Gornall] and management."

In a statement dated January 16, 1996, Mr. Love stated he worked at one end of the station and appellant worked at the other end. He then stated he remembered two statements from coworkers that appellant was being picked on by management.

In an undated statement, Mr. Lamont stated that management acted inappropriately toward appellant and harassed him. He indicated that appellant "was given case checks and each time he performed satisfactorily, even better than standards." Mr. Lamont also stated that he had "personally witnessed harassment on managements (sic) part towards" appellant.

In an undated statement, Ms. Masters stated that she too had witnessed management intimidating appellant.

In an undated statement, Mr. Jake indicated that there were "several instances of undue harassment and stress put onto" appellant.

In an undated statement, Mr. Ruiz stated that appellant was "put under a lot of pressure" by management.

By letter dated March 25, 1996, appellant submitted a detailed statement of the factors he believed caused his stress and contributed to his stroke. Appellant also responded to the evidence submitted by the employing establishment.

By decision dated April 2, 1996, the Office denied appellant's claim for compensation on the grounds that the evidence of record failed to establish fact of injury.

In a letter dated April 12, 1996, appellant requested a hearing on the denial of his claim.

By decision dated July 12, 1996, the hearing representative vacated the April 12, 1996 decision and remanded for the Office to determine whether appellant had alleged any compensable employment factors in his claim.

By decision dated August 20, 1996, the Office denied appellant's claim for compensation on the grounds that the evidence of record failed to establish an injury in the performance of duty as alleged.

In a report dated August 24, 1996, Dr. Mark J. Perlow, a Board-certified neurologist, stated:

“Middle-aged men or women with a history of hypertension, hypercholesterolemia, and diabetes mellitus can have small multiple strokes, often in the brain stem. It is conceivable that the dizziness that [appellant] experienced a couple of weeks prior to his admission at St. Joseph and somewhat prior to the even[t]s at the [employing establishment], might represent one of these small strokes.

“The events that occurred at the [employing establishment] on May 24, 1995, did not seem to be related to the patient's work activities and did not seem to be related to any stressful feelings that the patient may have had. They are most likely the results of the patient's underlying illness.”

Dr. Perlow opined that appellant's employment did not directly or indirectly cause appellant's stroke nor did his employment aggravate a preexisting condition.

In a letters dated August 27 and August 30, 1996, appellant again requested a hearing before an Office hearing representative.

In a report dated September 19, 1996, Dr. Epstein, while noting points of disagreement with Dr. Perlow, opined that “I agree with Dr. Perlow, as I have right along, that it is not possible to prove that [appellant's] stroke is related to stress or work related directly. It is not possible to prove or disprove this. The inability to prove is not the same as saying it does n[o]t occur, just the inability to prove.”

A hearing was held on March 27, 1997 at which appellant was allowed to testify and submit evidence.

By decision dated June 6, 1997, the hearing representative determined that appellant had not established that he had developed stress in the performance of duty which led to his stroke. The hearing representative also found that appellant had failed to establish any compensable factors and thus it was unnecessary to consider the medical opinion evidence.

The Board finds that appellant has not established that he sustained a stroke or emotional condition in the performance of duty causally related to factors of his employment.

To establish his occupational disease 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. 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. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.<sup>1</sup>

Workers' compensation is not applicable to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,<sup>2</sup> the Board discussed at length the principles applicable to alleged employment-related emotional conditions and the distinctions as to the type of employment situation giving rise to an emotional condition which will be covered by the Federal Employees' Compensation Act.<sup>3</sup> When an employee experiences an emotional reaction to his or her regular or specially assigned employment duties, or to a requirement imposed by the employment, 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 an emotional reaction to such a situation, the disability is generally regarded as due to an injury arising out of and in the course of employment and comes within coverage of the Act.<sup>4</sup> On the other hand, where the disability results from an employee's emotional reaction to employment matters, but such matters are not related to the employee's regular or specially assigned work duties or to requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within coverage of the Act.<sup>5</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors causing a condition or 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.<sup>6</sup> In the present case, the Board must, thus,

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<sup>1</sup> *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1989).

<sup>2</sup> 28 ECAB 125 (1976).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Lillian Cutler*, *supra* note 2.

<sup>5</sup> *Id.*

<sup>6</sup> *See Margaret S. Kryzcki*, 43 ECAB 496, 502 (1992); *Lillian Cutler*, *supra* note 2.

initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

In this case, appellant has attributed his work-related stress to various incidents and employment factors. He attributed the stroke he sustained in May 1994 to the stress he was subject to at work. Appellant attributed his stress to harassment including supervisors ganging up on him and threatening him with disciplinary action or possible removal, being watched while he cased mail and being told he was inefficient and working in a climate of tension and fear. Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition. There must be reliable and probative evidence that implicated acts of harassment or discrimination did, in fact, occur.<sup>7</sup> The employing establishment disputed appellant's allegations of harassment. Appellant submitted statements from coworkers and union stewards stating that appellant was being intimidated and harassed by management. However, this evidence is insufficient to support his allegations of harassment as the statements failed to provide any specific incidents of harassment or discrimination and have not offered any objective evidence to substantiate their belief that appellant was the victim of harassment.<sup>8</sup> Therefore, appellant has failed to establish these alleged factors of employment.

With regard to appellant's allegations regarding the denial of overtime, the Board finds that these were administrative actions. He has failed to introduce any evidence to establish that these administrative actions taken by the employing establishment were in error or that the employing establishment acted abusively in the administration of these personnel matters.<sup>9</sup> Appellant also failed to submit probative and reliable evidence supporting his allegations. As the factual record in this case fails to substantiate appellant's allegations of error or abuse on the part of the employing establishment, the Board finds that the administrative matters to which appellant attributes his emotional condition are not compensable factors of employment.

Further, appellant has not factually established that his work load was overburdened either prior to or subsequent to the addition of 31 minutes to his route. Appellant in his initial statement indicated that he was observed while working and found able to perform the duties in the time allotted. He has not specifically demonstrated that his work load became heavier with the addition of 31 minutes to his route and the automated system which reduced the time for mail sorting. The record fails to establish the truth of the matter asserted and therefore it cannot now be considered to be a compensable factor of employment.<sup>10</sup> Because appellant has failed to implicate any compensable factor of employment as causative of his stress condition, it cannot

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<sup>7</sup> *Sandra Shortridge*, 46 ECAB (1994).

<sup>8</sup> *See Merriett J. Kauffmann*, 45 ECAB 696 (1994).

<sup>9</sup> *Rudy Madril*, 45 ECAB 602 (1994).

<sup>10</sup> While overwork may give rise to a compensable factor of employment, a claimant must submit sufficient evidence to support her allegations. *William P. George*, 43 ECAB 1159 (1992).

now be said that his stroke was caused by employment factors. Consequently, these conditions are not related to an accepted employment condition or injury and are, therefore, not compensable under the Act.

The decision of the Office of Workers' Compensation Programs dated June 6, 1997 is hereby affirmed.

Dated, Washington, D.C.  
August 12, 1999

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member