

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JEFFREY L. GOMEZ and U.S. POSTAL SERVICE,  
POST OFFICE, Santa Ana, CA

*Docket No. 00-503; Submitted on the Record;  
Issued February 27, 2001*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to factors of his employment.

This is the second appeal in this case.<sup>1</sup> By decision dated July 2, 1999, the Board remanded the case for further development on the issue of whether appellant was required to perform light-duty jobs, which exceeded his physical limitations.<sup>2</sup> Appellant had alleged that his light-duty jobs, such as hand stamping mail and working as a watchman which required waving of his arms to direct traffic, sometimes holding a flashlight, caused pain to his back and arms.<sup>3</sup> The facts of this case as set forth in the July 2, 1999 decision of the Board and are hereby incorporated by reference.

In a statement dated September 7, 1999, appellant alleged that, although the written job offers described duties, which were within his physical restrictions, he was required to perform other duties, which exceeded his restrictions. He alleged that, while working as a clerk, he was required to lift full trays of mail from hampers and carts, input data, hand-stamp mail and pull mail from cases, and that these actions exceeded his restrictions of no repetitive movements, bending or stooping. Appellant alleged that, while working as a watchman, he exceeded his restriction of no prolonged flexing of the arms, wrists or hands and no exposure to inclement weather when he was required to carry a flashlight and stand in the rain and cold while directing

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<sup>1</sup> See Docket No. 97-2594. On April 14, 1995 appellant, then a 45-year-old mail processor, filed a claim for an emotional condition, which he attributed to several factors of employment. The Office of Workers' Compensation Programs denied his claim by decisions dated September 28, 1995 and July 28, 1997.

<sup>2</sup> Appellant had filed claims for bilateral carpal tunnel syndrome and for a traumatic back injury.

<sup>3</sup> In its July 2, 1999 decision, the Board found that the other factors alleged by appellant to have caused his emotional condition were either noncompensable factors of employment or were not proven to have occurred.

traffic.<sup>4</sup> He stated that the guardhouse provided was too small for two individuals to use at the same time and there was another person assigned to the watchman duty with him.

By decision dated September 24, 1999, the Office denied appellant's emotional condition claim on the grounds that the evidence of record was insufficient to establish that he was required to perform work which exceeded his physical restrictions.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained an emotional condition causally related to factors of his employment.

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>5</sup> On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>6</sup>

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.<sup>7</sup> This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>8</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in 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>9</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

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<sup>4</sup> Appellant submitted statements from individuals who stated that they saw appellant directing traffic using a flashlight.

<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> See *Thomas D. McEuen*, 41 ECAB 387, 391 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>7</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>8</sup> *Effie O. Morris*, 44 ECAB 470, 473 (1993).

<sup>9</sup> See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389 (1992).

record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>10</sup>

The Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if such activity was substantiated by the record.<sup>11</sup>

Appellant submitted medical evidence in support of his contention that his light-duty jobs exceeded his work restrictions.

A disability certificate dated March 5, 1993 indicated that appellant was not to lift more than 10 pounds.

A report dated May 6, 1993 indicated that appellant was not to lift more than 25 pounds.

A disability certificate dated July 8, 1993 indicated that appellant was not to lift more than 15 pounds.

In notes dated September 15, 1993, Dr. John Gonzalez related that appellant's condition did not improve with light duty. However, he did not indicate that appellant was working beyond his restrictions.

A disability certificate dated November 29, 1993 related appellant's complaint that night work aggravated his condition because of the cold temperatures and he indicated that day work might be helpful. However, the physician did not state that appellant was restricted to day work.

In a report dated December 13, 1993, Dr. Victor Smart-Abbey, appellant's attending Board-certified neurosurgeon, advised that appellant should avoid lifting and carrying over 50 pounds and should wear a wrist splint.

In a report dated January 4, 1994, Dr. Smart-Abbey indicated that appellant should not lift, pull, push or carry greater than 50 pounds.

In a report dated February 24, 1994, Dr. Smart-Abbey stated that appellant had maintained his employment duties with the restrictions previously recommended. He noted that there was improvement in appellant's condition but recommended the use of a wrist splint and no lifting or carrying over 50 pounds for an additional six weeks.

In a report dated April 18, 1994, Dr. Smart-Abbey related that appellant was hand stamping mail but was not working on a computer or performing repetitive work with his hands. He stated that appellant should continue his work duties but avoid repetitive movement of the wrist joint and the fingers as in the use of a computer keyboard or typewriter.

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<sup>10</sup> *Id.*

<sup>11</sup> *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

In a form dated April 19, 1994, Dr. Smart-Abbey's recommendations included no lifting over 20 pounds and no exposure to extreme temperatures.

In a report dated June 15, 1994, Dr. Smart-Abbey recommended no repetitive hand or wrist motion.

In a report dated July 22, 1994, Dr. Smart-Abbey recommended no repetitive wrist or finger movements.

In a report dated March 2, 1995, Dr. Smart-Abbey listed restrictions of no repetitive bending, stooping or lifting greater than 50 pounds.

In a disability certificate dated July 31, 1995, Dr. Smart-Abbey indicated no lifting over 15 pounds or use of the hands in repetitive grasping, pushing, torquing, pulling or carrying.

In a report dated September 28, 1995, Dr. Smart-Abbey related that appellant had continued his employment with the restrictions provided but that he was sitting for eight hours a day doing nothing. He stated that appellant's work duties should preclude activities requiring repetitive lifting with the right hand of more than 10 to 15 pounds, repetitive pushing, pulling, grasping, pinching, torquing or holding movements with the right hand, repetitive fingering, repetitive motion of the hands and fingers for more than 30 to 45 minutes each hour, and prolonged and repetitive pinch grip and grasping.

Appellant submitted copies of job offers for modified jobs, which he contended exceeded his work restrictions and caused his emotional condition.

A job offer dated February 2, 1993 for a modified mail processor position indicated that duties would include performing data input and other duties within appellant's medical restrictions which included no walking, no climbing stairs, no bending to lift, no pushing equipment, no lifting over 10 pounds, standing no more than 2 hours and no twisting. Appellant signed the job offer indicating his acceptance of the offer. There are no medical reports contemporaneous with this job offer. However, appellant signed the job offer indicating his acceptance of the position and there is no evidence that the job exceeded any medical restrictions.

A modified job offer dated May 3, 1994 for a hand-stamp clerk indicated that the duties included repairing damaged mail with restrictions of no lifting over 20 pounds, no repetitive wrist and finger movement, and walking only in the automation operations area. A July 6, 1995 letter from the employing establishment stated that employees working in the hand-stamp section were required to work at their own pace. Appellant has provided no evidence that he was required to exceed his restrictions in performing this job.

A job offer dated May 25, 1994 for a modified clerk position indicated that the duties included directing trucks into the docking area and checking identification. The job offer indicated that appellant's medical restrictions included no lifting greater than 20 pounds. Appellant argued that he was required to use a flashlight to direct traffic and had to work in the rain and cold. He submitted witness statements in which several individuals stated that they saw

him directing traffic with a flashlight while performing his watchman position. However, in a statement dated July 6, 1995, an employing establishment representative stated that appellant was not required to hold anything in his hands while directing traffic and that he was provided with rain gear and a guardhouse to use in inclement weather.<sup>12</sup> There is insufficient evidence of record that this job exceeded appellant's physical restrictions.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.

The decision of the Office of Workers' Compensation Programs dated September 24, 1999 is affirmed.

Dated, Washington, DC  
February 27, 2001

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>12</sup> As noted above, in a report dated April 19, 1994, Dr. Smart-Abbey had recommended no working in extreme temperatures.