

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DON RUSSELL and U.S. POSTAL SERVICE,  
POST OFFICE, Tampa, FL

*Docket No. 00-326; Submitted on the Record;  
Issued January 12, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof in establishing that he developed an emotional condition due to factors of his federal employment.

On May 23, 1997 appellant, then a 42-year-old letter carrier, filed a notice of occupational disease alleging that his bladder and kidney degeneration were caused by "the stress placed upon me by my duties at the post office, [which] greatly aggravated my condition." He stated that he first became aware of his condition and that it was aggravated by his employment on May 1, 1997.

By letter dated July 2, 1997, the Office of Workers' Compensation Programs advised appellant that the information he had submitted in support of his claim for an emotional condition was insufficient to establish that he sustained an injury as alleged. The Office requested that appellant submit work factors which he considered stressful and to describe in detail the employment-related conditions or incidents which he considered contributed to his illness. The Office required appellant to be as specific as possible and to identify relevant dates and locations of instances which he believed related to his condition, and the names of coworkers and supervisors who were aware of or witness to, the incidents that appellant believed to be related to his condition. The Office also required medical records pertaining to his condition including copies of treatment notes and test results, and a comprehensive medical report from his treating physician which described his symptoms and the doctor's opinion, with medical reasons, on the cause of his condition.

In a medical report dated May 5, 1997, and received by the Office on August 21, 1997, Dr. Gillian (Jill) Karatinos, Board-certified in psychiatry, stated that she conducted a psychodiagnostic interview on appellant that day and reported findings. She noted appellant's complaint of chronic pain from bladder tumors and emotional distress, and also noted his recent employment history including his "suspension of his work schedule" based on appellant's

complaint against Fidel Linares, a supervisor, for battery in January 1997.<sup>1</sup> Based on diagnostic test scores and review of other medical reports, she noted the following conditions: major depressive disorder with single episode, severe, without psychotic features; generalized anxiety disorder; obsessive compulsive disorder; alcohol dependence; bladder tumors; blindness in the right eye; hypertension and hypercholesterolemia, and pain. Dr. Karatinos also noted that appellant had gained 55 pounds during the last year. She placed appellant on an antidepressant medication and ordered supportive psychotherapy.

By decision dated November 6, 1997, the Office denied appellant's claim for emotional stress on the grounds that he had failed to establish fact of injury. In an attached memorandum, the Office noted that appellant failed to submit evidence concerning specific employment factors which he believed caused or contributed to his emotional condition.

By letter dated July 20, 1998, appellant requested reconsideration.

In a police report dated January 17, 1997 and received by the Office on July 20, 1998, a police officer stated that he had interviewed a witness who stated that, on January 15, 1997, he observed Mr. Linares grab appellant by the elbow and pull him from his work station. The witness did not see appellant do anything "to be treated that way." In a police report dated the same day of an interview with Mr. Linares, he stated that, on January 15, 1997, appellant was "cutting up, talking and laughing loudly, and not working," and that he (Mr. Linares) was concerned that customers may hear the "commotion," and he therefore "escorted [appellant] away from everyone else so he would not cause a scene or scold him in front of his peers." Mr. Linares then stated: "He did grab appellant's elbow but not in an aggressive or hard manner."

In a narrative dated March 19, 1997 and received by the Office on July 20, 1998, appellant stated that, after two surgeries in June and July 1996, Dr. Said Hakky, his treating neurologist, stated that he had precancerous tumors in his bladder, and that in February 1997 he had a third surgery and was advised by his doctor that his tumors were permanent. He also noted that, on January 15, 1997, he was grabbed and dragged by Mr. Linares, the station manager, because he was to testify against Mr. Linares in an EEO claim. Appellant then stated:

"On January 17, 1997 I called the police and pressed charges for battery and testified in court about the retaliation on January 17, 1997. I went back to work on January 17, 1997 and as soon as I got back, the [employing establishment] had called and told them not to work me anymore until I dropped the charges against Mr. Linares. I was only allowed to work one to two hours a day from January 18 to July 28, 1997. During this time, my blood pressure medication was changed four times, I started to see a psychiatrist, Dr. Karatinos, for problems of sleep, pain and stress. The stress had deteriorated my health so much that the doctor ordered me to retire to try to stop the deterioration. I have filed many law suits

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<sup>1</sup> Appellant related to Dr. Karatinos that his "supervisor physically accosted him after he agreed to be a witness in an EEO [Equal Employment Opportunity] charge filed by a fellow employee against [the supervisor]. He says he was told he could not have his usual job back unless he drops the assault charges. The reduced hours [one to two hours worked per day] have posed a financial hardship and a psychological precipitant...."

against Mr. Linares and [the employing establishment] and are awaiting hearings on these cases.”

Appellant also stated:

“Prolonged standing and walking causes me pain in the bladder area. Kneeling, bending to pick up mail and flats, squatting, twisting and turning also causes pain and discomfort in the bladder area. Manual brakes on the postal jeeps strain the muscles in the prostrate and bladder area. Any jarring or sudden stops in the vehicle also causes pain. All of the above work activities are causing permanent aggravation to my back, stomach, bladder, prostrate, legs and left arm. Due to the antibiotics which I am prescribed, I am limited in my exposure to sunlight. Prolonged sitting put[s] pressure on the bladder and prostrate. The doctors in my case have advised me that the heavy exposure to some type of chemical agent has caused the irreversible damage to my body. The type and time of exposure is unknown at this time. The parts of my body affected due to the tumors include my back, stomach, bladder, prostrate, legs and left arm.”

In a narrative dated June 14, 1998 and received by the Office on July 20, 1998, appellant stated that he was advised by his doctor in October 1997 that he had tumors in his bladder and prostrate and that they were caused by exposure to agent orange. He was then placed on light duty on October 20, 1996. Appellant then noted his incident with Mr. Linares on January 15, 1997, that he told a judge on January 17, 1997 “what happened to me,” that he was not allowed to work more than one to two hours a day until he dropped his charges against Mr. Linares, that he was harassed, intimidated, threatened, abused without regard for his medical condition, that he “was singled out constantly for more medical statements ... they said they didn’t have which they did.” He added that senior management advised him that he would have to settle his problem with Mr. Linares, that the stress which was caused by management’s treatment “destroyed his immune system and that he was forced to retire on July 28, 1997 or starve.”

In a medical report dated June 19, 1998 and received by the Office on July 20, 1998, Dr. Karatinos stated that appellant related that his “extreme work stress” began on January 15, 1997 and aggravated his preexisting precancerous bladder tumors, compromised his renal function and promoted recurrent infections. She stated:

“[Appellant’s] stress consisted of: (1) physical assault by a supervisor, Fidel L.; (2) refusal to allow [appellant] to work him normal hours unless he dropped assault charges against Fidel, decreasing his working hours to one or two hours per day; (3) eventually forcing [appellant] to retire or starve.”

By merit decision dated August 6, 1998, the Office denied appellant’s request for reconsideration. In an attached memorandum, the Office stated that appellant presented no evidence that his condition was causally related to employment factors. The Office stated that, although it had accepted that his supervisor grabbed him by the arm on January 17, 1997 and escorted him to another room, the police report did not support that appellant was assaulted by his supervisor and thus appellant’s medical evidence from Dr. Karatinos which based appellant’s condition of the supervisor’s assault on appellant did not correctly relate the history of injury.

By letter dated August 2, 1999, appellant requested reconsideration. In support appellant submitted a July 30, 1999 medical report from Dr. Karatinos who stated that based on appellant's "harassment by his supervisor, not allowing him to work until his EEO charges ... were dropped and finally being forced to retire" were assaults on appellant's identity and integrity and caused him stress.

By merit decision dated September 13, 1999, the Office denied appellant's request for reconsideration. In an attached memorandum, the Office stated that appellant had proven one factor of employment as having occurred, that Mr. Linares grabbed him by the arm on January 15, 1997, but that the medical evidence submitted was insufficient to establish that that event caused his emotional condition.

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 is compensable. Disability is not compensable, however, when it results 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 or to hold a particular position.<sup>2</sup>

In this case, appellant stated, in essence, that his emotional condition and forced resignation were based on the cumulative effects of multiple work-related incidents including the battery upon him by Mr. Linares on January 15, 1997, his appearance before a judge subsequent to that incident, his reduction in work hours alleged to be based on his complaint against Mr. Linares, and harassment, intimidation, threats and abusive conduct towards him without regard for his medical condition, as well as senior management's seeming disregard for his situation.

Appellant's treating physician, Dr. Karatinos, stated that appellant's work stress consisted of the results of a physical assault by his supervisor, refusal to allow him to work normal hours unless he dropped assault charges against his supervisor, decreasing his working hours to one or two hours per day and forcing him to retire or starve, and that such stress aggravated his preexisting precancerous bladder tumors, compromised his renal function and promoted recurrent infections.

Although the Office advised appellant of the need to provide detailed descriptions of incidents which he believed caused or contributed to his emotional condition, the only incident which he established was the fact of his supervisor's grabbing his arm on January 15, 1997. None of the other allegations, such as harassment, intimidation, threats, abusive behavior and a work force reduction motivated by intimidation were established. The medical evidence submitted by Dr. Karatinos in support of this implicated work factor noted that appellant was physically assaulted by his supervisor. Although the Office accepted that appellant was grabbed by the supervisor, it did not find that an assault occurred. Nonetheless, Dr. Karatinos identified this event as contributing to appellant's emotional condition, but also relied on additional

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<sup>2</sup> *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

allegations such as management's refusal to allow appellant to work normal hours unless he dropped his assault charges against the supervisor, decreasing his working hours to one or two hours per day and eventually forcing him to retire. None of these allegations were accepted by the Office as having occurred, nor did appellant present any evidence that the instances occurred. The Board finds that the medical evidence in support of a causal relationship between appellant's emotional condition and the single implicated work factor is insufficient to establish causation because it is vague and unrationalized. The Board acknowledges appellant's emotional condition, but holds that the evidence of record fails to establish a causal relationship between his emotional condition and the work factor. Dr. Karatinos provided an in-depth evaluation of appellant's condition but did not establish a rationalized relationship between the accepted January 15, 1997 event and its aggravation on appellant's multiple emotional conditions. For example, in her May 5, 1997 report, she noted appellant's emotional condition and related work factors but did not provide a rationalized medical opinion establishing a causal relationship between the condition and his employment. Further, in her June 19, 1998 and July 30, 1999 reports, she specifically noted several work-related episodes including the January 15, 1997 incident, which she believed caused appellant's stress. However since Dr. Karatinos included several work-related issues which the Office did not accept as having occurred her report is of limited probative value.

Further, appellant stated in narratives dated March 19, 1997 and June 14, 1998 that he was subject to harassment, intimidation, threats and abuse by management, but was unable to support any of these allegations except for the January 15, 1997 incident which was accepted as having occurred. For harassment or discrimination to give rise to a compensable disability under the Federal Employees' Compensation Act, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>3</sup> Appellant has submitted no evidence in support of his allegations of harassment, except for the January 15, 1997 incident, by the employing establishment.

As appellant has failed to substantiate a compensable factor of employment, he has failed to meet his burden of proof and the Office properly denied his claim for an emotional condition.

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<sup>3</sup> *Alice M. Washington*, 46 ECAB 382 (1994).

The September 13, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
January 12, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member