

**United States Department of Labor
Employees' Compensation Appeals Board**

FRANCIS J. CALABRESE, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Albany, NY, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 04-966
Issued: September 20, 2004**

Appearances:
Francis J. Calabrese, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On March 1, 2004 appellant filed appeals of two merit decisions of the Office of Workers' Compensation Programs both dated February 17, 2004, which: (1) denied appellant's claim for an injury or a recurrence of disability on October 24, 2001 causally related to a December 9, 1997 back injury or to factors of his federal employment; and (2) which rejected his claim for an emotional condition, causally related to compensable factors of his employment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the issues.

ISSUES

The issues are: (1) whether appellant sustained an injury or a recurrence of disability commencing October 24, 2001, causally related to a December 9, 1997 accepted back strain injury or to other factors of his federal employment; and (2) whether he sustained an emotional condition, causally related to compensable factors of his federal employment.

FACTUAL HISTORY -- ISSUE 1

On October 31, 2001 appellant, then a 47-year-old clerk, filed a recurrence claim alleging that on October 24, 2001 he experienced a recurrence of disability, causally related to his December 9, 1997 back injury.¹ The Office had accepted that on December 9, 1997 appellant had sustained a lumbar strain and noted that he had undergone lumbar disc surgery in May 1998. Appellant claimed that on October 24, 2001 he was told by his supervisor to leave his current light-duty assignment and to go to another work area where he had to stand up to do his job. Appellant claimed that this aggravated his lumbar back area where he had disc surgery done. He indicated that since he had returned to work he had experienced double carpal tunnel syndrome and elbow tendinitis and rotator cuff injury, and that occasionally his lumbar region ached with pain going down his left leg. Appellant also claimed that he had experienced a recurrence of back injury due to a May 1999 assault by a coworker.²

The limited-duty assignment offered to appellant on October 24, 2001 included sitting in a reception booth and answering telephones, monitoring visitors entrance/departures, dispensing visitor badges, and making announcements over the public address system. The physical requirements were noted to be sitting, stretching of arms, minimal writing, minimal bending/stooping from the waist up, minimal simple grasping and minimal standing. Appellant's medical restrictions also included no lifting greater than 10 pounds, no pushing/pulling or carrying, and no reaching or working above the shoulders.

On November 1, 2001 the Office requested further information including a description of appellant's duties and a medical report with an opinion on causal relationship of his condition to factors of his employment.

In a November 19, 2001 statement, appellant noted that he worked as a small parcel bundle sorter from May 1998 to August 2000 and using the bar code sorting machine from August 2000 to the present. He claimed that he was on and off light/limited duty due to recurring back problems and repetitive motion injuries. Appellant claimed that, on October 24, 2001, he was ordered to do a certain job at his employing establishment relating to damaged flats and magazines with another employee, who staked a claim on the only chair. Appellant claimed that he searched for another chair but could not find one, and so he had to work at a tall desk standing up and constantly bending over into a mail tub to retrieve his work, which aggravated his lower and mid back.

In a January 17, 2002 report from Dr. Mark Oldendorf, a Board-certified internal medicine specialist, in which he noted that appellant's original work injury occurred on December 9, 1997 due to lifting heavy sacks over a period of about one hour. Dr. Oldendorf noted that appellant developed sharp pain in his lower back, radiating to the left side, which

¹ This claim was assigned file No. 022024710.

² Appellant filed a separate claim regarding the assault by the coworker claiming that it caused his alleged emotional condition (file No. 022018199). A third claim for an accepted left shoulder condition, (file No. 022011107), was combined with a fourth claim accepted for lateral epicondylitis and carpal tunnel syndrome, (file No. 02200446).

resulted in a referral to neurosurgery and disc surgery in May 1998. Dr. Oldendorf noted that appellant was assaulted in March 1999 and was thereafter disabled for five months due to lumbar/cervical strain. He noted that appellant had pain in his hands, wrists, left elbow and left shoulder at various times as well as chronic neck pain causing him to be unable to perform his functions at the employing establishment. Dr. Oldendorf noted: "He has job duties causing him to stand up, on October 24, 2001 he had an exacerbation of his low back pain.... Things were further aggravated by his assault. His recent exacerbation of 2001, due to change in his job duties as well." He noted that appellant had decreased range of low back motion of flexion and rotation, positive straight leg raising at 30 degrees bilaterally, and chronic left posterior upper calf pain radiating down from the left back area. Dr. Oldendorf also noted that a May 1999 magnetic resonance imaging (MRI) scan demonstrated internal disc degeneration at multiple levels, status post left L5-S1 hemilaminectomy.

In a letter dated May 23, 2003, the Office advised appellant of the shortfalls of his claim. The Office indicated some confusion about the simultaneous new occupational disease claim appellant had filed.

A supervisor, Roberta H. Romey, provided a May 31, 2002 statement indicating that on October 24, 2001 four employees were working damaged mail, when the supervisor, S. Church, contacted Mr. Kean and advised that there were too many people working damaged mail. She noted that Mr. Kean told Ms. Church to move two people to the flat area to work damaged flats. Ms. Romey noted: "Because there was no chair in the area available, instead of asking the supervisor in the area for assistance in getting one [appellant] choose [sic] to give this supervisor a 3971 and left on October 24, 2001 at 09:30 saying he could not work under these conditions." She opined that appellant was in the flat area 30 to 45 minutes.

In a June 20, 2002 report, Dr. Ike Boka, an anesthesiologist specializing in pain management, detailed appellant's pain symptomatology and opined that he had a lot of somatization versus a low pain threshold. Following a work-up, an epidural steroid injection was performed on September 16, 2003.

Appellant also submitted medical records dating from April 1999, following the March 1999 assault, which predated the 2001 recurrence of disability.

A July 9, 2002 MRI scan report revealed a small left lateral disc herniation at L3-4, postoperative epidural fibrosis paracentrally on the left at L5-S1 and a mildly enlarged S1 nerve root.

By decision dated September 30, 2002, the Office rejected appellant's claim finding that an injury within the meaning of the Federal Employees' Compensation Act had not been demonstrated. The Office found that the medical evidence did not establish that a condition had been diagnosed in connection with standing up doing his job on October 24, 2001.

By letter dated October 9, 2002, appellant requested an oral hearing before an Office hearing representative on his case.

A hearing was held on November 20, 2003 at which appellant testified. Appellant testified that when he discovered that he had no chair or stool to sit on, he asked Joe Ensarro, a supervisor, for one, but was told that he “can’t do nothing at the time.” Appellant claimed that after searching for a chair he proceeded to work standing up, which caused a pull in his back that worsened as he continued, so he stopped and told Ms. Romey, his immediate supervisor, that he could not work like this and she accused him of not working. Appellant testified that they argued about his working, and then he went home because his back hurt.

By decision dated February 17, 2004, the hearing representative found that appellant failed to establish that he sustained an injury or a recurrence of disability commencing on October 24, 2001, causally related either to his employment duties at that time or to his December 9, 1997 accepted employment injuries. The hearing representative found as “factual” that the events of October 24, 2001 occurred as alleged, but found that the medical evidence failed to provide a definitive diagnosis or a rationalized opinion on causal relationship with the accepted employment factors or with the December 9, 1997 injuries.

LEGAL PRECEDENT -- ISSUE 1

An employee returning to light duty, or whose medical evidence shows the ability to perform light duty, has the burden of proof to establish a recurrence of temporary total disability by the weight of reliable, probative and substantial evidence and to show that he cannot perform the light duty.³ As part of his burden, the employee must show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the light-duty requirements.⁴

Appellant also has the burden of establishing by the weight of reliable, probative and substantial evidence that the injury claimed was caused or aggravated by his federal employment. As part of this burden, appellant must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship between the injury claimed and factors of his federal employment.⁵ Causal relationship is a medical issue that can be established only by medical evidence.⁶ The Board notes that the fact that a condition manifests itself or worsens during a period of employment does not raise an inference of an employment relationship.⁷

ANALYSIS -- ISSUE 1

In the present case, appellant claimed that he developed either a new back injury or a recurrence of a previous back strain injury. Appellant claimed that he was directed to work in

³ *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁴ *Id.*

⁵ *Steven R. Piper*, 39 ECAB 312 (1987); *see* 20 C.F.R. § 10.110(a).

⁶ *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

⁷ *Paul D. Weiss*, 36 ECAB 720 (1985); *Hugh C. Dalton*, 36 ECAB 462 (1985).

another duty assignment where he was required to stand at a tall desk, and where he had to bend over and reach to pick up packages out of a hamper.

Evaluating the case record related to an alleged new injury, the Board notes that appellant did allege that he developed his disabling low back problems in the course of one day and one shift and, in fact, in about two hours. This conforms to the definition of a traumatic injury instead of an occupational disease. However, none of the medical evidence submitted is sufficient to establish that appellant sustained a definite injury as a result of his assigned duties that date.

No medical reports of treatment given on or reasonably soon after the date of injury, were submitted.

Almost three months after the incident occurred, Dr. Oldendorf noted: "He has job duties causing him to stand up, on October 24, 2001 he had an exacerbation of his low back pain.... Things were further aggravated by his assault. His recent exacerbation of 2001, due to change in his job duties as well." Dr. Oldendorf noted that the MRI scan demonstrated internal disc degeneration at multiple levels, status post left L5-S1 hemilaminectomy. Dr. Oldendorf seemed to be saying that appellant's standing up at the tall desk on October 24, 2001 caused an exacerbation of his preexisting low back problems. However, he did not clearly state so, and he provided no rationale as to why pathophysiologically, the MRI scan findings and/or the low back pain would occur in the approximately two hours appellant was involved performing his duties standing up at the desk. As no definite diagnosis was given, beyond the identification of "low back pain," and the MRI scan report of degenerative spinal findings postoperatively, Dr. Oldendorf's report is of diminished probative value. As he did not discuss the pathophysiology of causal relationship between appellant's activity of standing up at a tall desk and reaching for parcels, and the development of low back symptomatology, his report is of further reduced probative value. As Dr. Oldendorf included appellant's 1999 assault in the development of appellant's 2001 condition, this additional causal factor dilutes the strength of, and confuses the causal connection with, his discreet work duties of October 24, 2001 even further, and therefore diminishes his report's probative value even further.

Dr. Boka, the pain management specialist, in his several reports, provided his discussion of his treatment of appellant with epidural steroid injections for pain relief, and did not even address the causation of appellant's diagnosed conditions with any specific employment factors. Dr. Boka opined that appellant manifested a lot of somatization, as opposed to a low pain threshold, and therefore he suspects an internal cause as opposed to an external cause of appellant's complaints. These reports, therefore, do not support a causal relationship with specific employment factors identified by appellant.

As he has not submitted any timely probative medical evidence which identified a discreet medical condition and causally related the onset of that condition to the work factors on October 24, 2001 appellant has not established a traumatic injury claim.

Appellant, further, has not established that he sustained a recurrence of disability causally related to his December 9, 1997 low back strain injury. The only condition accepted by the

Office related to appellant's low back was the lumbar soft tissue muscle strain injury. The herniated disc at C5-S1 was never accepted as being employment related. However, in this case, because appellant returned to limited duty following an accepted period of employment-related disability, the *Hedman*⁸ standard applies, wherein appellant must demonstrate a change in the nature and extent of either his work-related condition or his limited-duty job assignment. In this case, appellant very definitely had a change in the nature and extent of his limited-duty job assignment where he was removed from a sedentary job and directed to report to an assignment where he had no chair and had to constantly stand up at a tall desk and bend over to remove parcels from hampers or similar lifting activities. This was a change in the nature and extent of his limited duties as was previously being performed, it was a change from the April 26, 2001 limited-duty job description which he had accepted when he agreed to return to work, (that had only intermittent standing approved and lifting was not addressed but repetitive use of his left elbow and right wrist were prohibited, and arm rests were required), and was a change from the October 24, 2001 limited-duty position offered to appellant, which included minimal standing minimal bending/stooping from the waist up, and minimal grasping with a 10-pound lifting limitation.

As the record supports that appellant was subjected to a change in the nature and extent of his light-duty job requirements, he has establish the *prima facie* grounds for a recurrence of disability claim. Further, Dr. Oldendorf noted: "He has job duties causing him to stand up, on October 24, 2001 he had an exacerbation of his low back pain.... His recent exacerbation of 2001, due to change in his job duties as well." Dr. Oldendorf seems to be saying that appellant's changed duties including standing up at the tall desk on October 24, 2001 caused an exacerbation of his preexisting low back problems. However, as noted above, he did not clearly state so, and he provided no rationale as to why, pathophysiologically, the MRI scan findings and/or the low back pain would occur in the limited time appellant was involved performing his changed duties standing up at the desk. Once again, as no definite diagnosis was given, beyond the identification of "low back pain," and the MRI report of degenerative spinal findings postoperatively, Dr. Oldendorf's report is of diminished probative value. As he did not discuss the pathophysiology of causal relationship between appellant's new job activities of continual standing up at a tall desk and reaching for parcels, and the development of low back symptomatology, or the causation of his October 24, 2001 symptomatology and the December 9, 1997 low back strain injury, his report is of further reduced probative value.

Although appellant has demonstrated that, with respect to a recurrence of disability, he was subjected to a change in the nature and extent of his limited-duty job requirements, he has not submitted any probative medical evidence which discusses whether the conditions found were causally related to that October 24, 2001 change in his limited-duty job requirements or to the December 9, 1997 low back strain injury as a recurrence. He therefore has failed to establish his injury or recurrence claim.

⁸ See Terry R. Hedman, *supra* note 3.

CONCLUSION -- ISSUE 1

Appellant has not submitted probative rationalized medical evidence sufficient to establish that he either sustained a new injury on October 24, 2001, causally related to factors of his employment, or that he sustained a recurrence of disability commencing October 24, 2001, causally related to his December 9, 1997 low back strain injury.

FACTUAL HISTORY -- ISSUE 2

On October 24, 2001 appellant filed an occupational disease claim alleging that he experienced stress and anxiety causally related to actions by management in the course of his federal employment. Appellant alleged that management “willfully and conscientiously” tried to have him injured more than he already was injured. He claimed that a certain few people in management tried to cause further damage to preexisting job-related injuries. Appellant claimed that, ever since he complained when he was assaulted on the job by a coworker, which was accepted for cervical lumbar strain, management had attempted and succeeded in making him do work that hindered and did not help his job-related injuries, which was extremely stressful. Appellant also claimed that he was being harassed and threatened, and he alleged that he experienced retaliation because of his injuries.

The employing establishment controverted appellant’s claim, finding it so vague that rebuttal was impossible.

In support of his claim, appellant submitted an October 26, 2001 note from Dr. Oldendorf which stated that he needed to be excused from work for two weeks “pending psychiatric evaluation.”

By letter dated November 21, 2001, the Office requested that appellant provide further information including a detailed description of factors he implicated in causing his stress condition.

In response appellant submitted Equal Employment Opportunity (EEO) material including a complaint of discrimination dated December 5, 2001 and a counselor’s report dated April 18, 2001.

Appellant submitted an American Postal Workers’ Union (APWU) grievance dated April 24, 2001.

Appellant also submitted a December 12, 2001 podiatrist’s report signed with an illegible signature, which restricted appellant’s duty to eight hours of sedentary duty per day.

Appellant submitted an assignment order dated October 21, 2001, a limited-duty job assignment dated April 26, 2001 accepted by appellant on April 27, 2001,⁹ a limited-duty job assignment letter dated October 24, 2001, employment-related information on internal procedures, a letter to his congressional representative dated November 30, 2001 claiming stress, six personal statements, a dismissal of complaint and certificate of service dated May 3, 2001, and various factual and medical information for other claims and injuries.¹⁰

By decision dated December 27, 2001, the Office rejected appellant's emotional claim finding that he had not implicated any compensable factors of employment. The Office found that most of the factors were administrative or personnel in nature and without evidence of error or abuse, and the few factors which could have been compensable if proven were not substantiated as occurring as alleged. These possibly compensable factors included the alleged assault by being struck on the arm and on the left side of his neck by the now-deceased coworker, being name-called by coworkers, being spit upon, threats and insults by coworkers, retribution by management, being instructed to work in other areas as punishment, having to stand up to do his job, having to bend over to pick up things, having to lift things beyond his limitations, having to work outside his restrictions and employment organization complaints, none of which were substantiated as occurring as alleged. These later few factors include retaliatory actions against appellant by management, which were not proven, EEO and Merit Systems Protection Board (MSPB) complaints, which were not proven, and harassment and threats by management, if established as occurring as alleged. None of these potentially compensable factors have been established as occurring as alleged.

On January 2, 2002 the Office received a November 29, 2001 letter to appellant from the employing establishment declining to effectuate the resolution that he requested with respect to his complaints.

Also on January 2, 2002 the Office received a letter dated December 24, 2001 from the employing establishment which advised appellant that his EEO complaint had been accepted for investigation. No disposition or findings were included.

On January 3, 2002 the Office received a December 7, 2001 EEO dispute resolution specialist's inquiry report which outlined appellant's contentions. The counselor indicated that appellant contended that having to work outside of his restrictions and then changing his shift resulted in his physician taking him out of work. Further EEO paperwork was also submitted.

Appellant additionally submitted a memorandum of conference in which it was decided that appellant's assignment on October 24, 2001 in which he had to stand at a tall desk was within the working restrictions detailed in the April 26, 2001 job offer, which required only

⁹ This limited-duty job assignment appears to be the one in force at the time of his October 24, 2001 recurrence of disability. This job requires intermittent repair of damaged mail, answering the telephone, and reviewing job-related videos; it requires sitting, walking and intermittent standing, simple grasping, and dialing. Lifting was not addressed. Repetitive use of the left elbow and right wrist were prohibited and arm rests were required.

¹⁰ Appellant had other conditions accepted for carpal tunnel syndrome, lumbar strain, aggravation of cervical strain, left shoulder sprain and bilateral lateral epicondylitis.

intermittent standing and was basically sedentary without a lifting component involved or discussed.

Appellant also resubmitted much of the evidence previously submitted and considered by the Office.

On January 7, 2002 the Office received the employing establishment's rebuttal to appellant's charges claiming that he never did work outside his restrictions.

By letter dated January 7, 2002, appellant requested an oral hearing before an Office hearing representative.

In a response to the congressional representative's inquiry, the Director of the Office claimed that the documentation received did not support that the action of the employing establishment changing appellant's shift was improper or abusive.

By letter dated October 20, 2002, appellant requested that 13 witnesses be requested to testify at his scheduled hearing.

By report dated October 10, 2003, Dr. Kerry Ricker, an osteopathic Board-certified family practice physician, noted that appellant was being treated for ongoing back problems and pain control issues, as well as depression and anxiety. Dr. Ricker opined that appellant exacerbated his lumbar spine disease on October 24, 2001 during the day while he was working. He also opined that the anxiety and depression appellant suffered reflected the multiple injuries he had sustained secondary to his work, including the rotator cuff issues, bilateral carpal tunnel syndrome and progressive back deterioration. Dr. Ricker opined: "I feel that his employment and working conditions are causally related to the above back problems. I do not feel that [appellant] will be able to apply for, or sustain, any type of gainful employment as a direct result of these injuries."

An oral hearing was held on November 20, 2003 at which appellant testified. Appellant testified regarding the assault incident where he was struck in the right arm and called obscene names by a coworker. Appellant also testified that the coworker later spit in his face and struck him again with his right hand on the left side of his neck. Appellant claimed that he fell and hit the floor on his left side of his buttocks.

On January 2, 2004 the employing establishment noted that the person alleged to have assaulted appellant had died two years earlier, and that no one confirmed or witnessed the alleged strike in the neck. The employing establishment also noted that it was not accepted that appellant had a disc herniation that was work related, and that the late Mr. Pulensky's alleged threats and insults were not substantiated after investigation. The Office noted that, contrary to the April 26, 2001 limited-duty job offer that was accepted by appellant, and that limited him to intermittent standing, he had "no restriction on standing." The employing establishment stated that appellant spent a great deal of time not performing full duty due to his work injuries, and that he had experienced problems with interpersonal relationships with coworkers because of his sarcasm.

By decision dated February 17, 2004, the hearing representative denied modification of the prior decision dated December 27, 2001, finding that appellant had not submitted sufficient medical evidence to establish the causal relationship between his alleged emotional conditions and the implicated compensable factors of employment. The hearing representative modified the Office's findings and adjudicated the alleged recurrence of disability, but not the fact of injury as the Office had done. The hearing representative found that the fact that appellant's life was threatened by a coworker in June 1998 was compensable,¹¹ that appellant being called obscene names on two occasions was compensable,¹² and that being spat upon and assaulted by a coworker was compensable,¹³ but that the allegation that he was made to work outside his restrictions was not established as having occurred as alleged.

LEGAL PRECEDENT -- ISSUE 2

To establish appellant's occupational disease 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.¹⁴ Rationalized medical opinion evidence is medical evidence that 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 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.¹⁵

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. 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 Act. Generally speaking, when an employee experiences an emotional reaction to his or her regular or special assigned employment duties or to a requirement imposed by his employment or has fear or anxiety regarding his or her ability to carry out assigned duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such

¹¹ See *Fred Faber*, 52 ECAB 107 (2000); *Ronald C. Hand*, 49 ECAB 113 (1997) (threats to life by a coworker or supervisor are compensable).

¹² See *Felix Flecha*, 52 ECAB 268 (2001) (use of an epithet which is derogatory is compensable).

¹³ See *Helen Casillas*, 46 ECAB 1044 (1995) (physical contact may give rise to compensable factor).

¹⁴ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

¹⁵ *Id.*

situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.¹⁶ Conversely, if the employee's emotional reaction stems from employment matters which are not related to his or her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment, and does not come within the coverage of the Act.¹⁷ Noncompensable factors of employment include administrative and personnel actions, which are matters not considered to be "in the performance of duty."¹⁸

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.¹⁹ 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.²⁰ 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.²¹

ANALYSIS -- ISSUE 2

Although appellant filed a claim on October 24, 2001 alleging that he developed an emotional condition at that time, he listed employment factors which were not compensable factors of his employment. Appellant initially implicated management and their activities, claiming that they willfully and conscientiously tried to harm him and further damage his work-related conditions. This, however, was not proven as alleged. After developing the case, the Office accepted three compensable factors of appellant's employment; namely that appellant was threatened by a coworker, that he was verbally abused and insulted by the coworker twice, and that he was physically assaulted by this coworker.²²

¹⁶ *Donna Faye Cardwell*, supra note 14; see also *Lillian Cutler*, 28 ECAB 125 (1976).

¹⁷ *Id.*

¹⁸ See *Joseph DeDonato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

¹⁹ See *Barbara Bush*, 38 ECAB 710 (1987).

²⁰ *Ruthie M. Evans*, 41 ECAB 416 (1990).

²¹ See *Gregory J. Meisenberg*, 44 ECAB 527 (1993).

²² The Board notes that further analysis of the factual evidence of record to determine whether there are possibly further factors of appellant's employment which could, under certain conditions, be compensable, is not being conducted as the medical evidence of record is already being completely reviewed and, following such review, determined to be insufficient to establish any emotional condition claim as no factors of employment are implicated in the development of appellant's conditions. The factors implicated in any causal relationship with appellant's emotional conditions are appellant's physical injuries, and not management actions or supervisory decisions.

In support of his emotional condition claim appellant submitted a timely work excuse dated October 26, 2001 from Dr. Oldendorf, which stated that appellant needed to be excused from work for two weeks for psychiatric evaluation. This note had no diagnosis identified and did not discuss causal relationship with anything in particular. Therefore, this note does not establish appellant's claim.

Appellant submitted a report from about two years later from Dr. Ricker, a family practitioner, who mentioned appellant's depression and anxiety in addition to his multiple physical problems and opined, "I feel that his employment and working conditions are causally related to the above back problems. I do not feel that [appellant] will be able to apply for, or sustain, any type of gainful employment as a direct result of these injuries." This statement supports that, rather than being causally related to the compensable factors of his employment, appellant's emotional conditions are related to his physical injuries, which supports a consequential injury claim, but does not support that the emotional conditions are causally related to the compensable employment factors identified by the Office.

No other probative medical evidence was submitted by appellant to establish his emotional condition claim.

Appellant has not established that he developed an emotional condition causally related to compensable factors of his employment because he has not submitted rationalized medical evidence relating the emotional conditions found to any of the compensable factors. The medical evidence causally relates appellant's emotional conditions to his physical injuries and degenerative physical conditions.

CONCLUSION -- ISSUE 2

Appellant has not met his burden of proof to establish that he developed an emotional condition, causally related to compensable factors of his federal employment.

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs both dated February 17, 2004 are hereby affirmed.

Issued: September 20, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member