

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

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**T.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Mapill, OK, Employer**

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**Docket No. 07-391  
Issued: May 18, 2007**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 27, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated October 13, 2006, denying his emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501(d)(3), the Board has jurisdiction over the merits of this claim.

**ISSUE**

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

**FACTUAL HISTORY**

On October 25, 2005 appellant, then a 62-year-old rural mail carrier, filed an occupational disease claim, alleging that on September 6, 2005 he first realized that his post-traumatic stress disorder had been aggravated by his employment.

By letter dated November 14, 2005, the Office asked appellant to submit factual and medical information, including a detailed description of the employment factors or incidents that he believed contributed to his claimed illness.

In support of his claim, appellant submitted medical and factual evidence. The medical evidence included: medication information and laboratory results; progress notes from the Bonham Veterans Administration Medical Center for the period November 19, 2002 to June 27, 2005;<sup>1</sup> an August 12, 2005 report by Dr. Ronal D. Hale, a treating physician; and an August 26, 2005 report by Christine Eger, a licensed clinical social worker. Dr. Hale requested that appellant be retired on disability. Ms. Eger noted that appellant had been treated for chronic post-traumatic stress disorder and that he is currently unemployable in any job he considered stressful. She noted that appellant “has a history of homicidal ideation under stress.”

In an October 21, 2005 statement, appellant alleged that his military service-connected post-traumatic stress syndrome had been aggravated by the September 11, 2001 attacks on the World Trade Center, the current Iraqi war and stressful working conditions. He noted starting work for the employing establishment as a rural route carrier in April 1993. As a result of the stress of working at the employing establishment, “combined with being in constant pain and the rejection of my workers’ compensation claim” appellant experienced depression and his post-traumatic stress syndrome worsened. On April 8, 2005 he alleged that he was reprimanded by his supervisor for filing three injury reports within three months. In summary, appellant noted:

“Now, after working in almost constant pain for almost a year and being in extreme pain for six months more, filing for and being denied a valid workmen’s compensation claim, (which was later accepted), then being totally ignored by the postal system for several months. Then, after suffering surgery and the pain of rehabilitation only to learn I will never have more than 50 percent use of my right arm. Combine this with the fact I have n[o]t been paid since April 22, and have completely used up my savings just to exist (at present, I’m living on borrowed money.) My levels of stress, depression, frustration and anger have increased to the point that I am barely functional.”

Appellant also stated that he was considered unemployable by his Veterans Administration (VA) counselor, yet in order to be paid by the employing establishment he has “to do unneeded ‘busy work.’” He contended that his current condition was due to the treatment by the employing establishment over the prior year.

In a December 4, 2005 statement, appellant gave a history of his employment at the employing establishment and interactions with coworkers and supervisors. He stated that he became extremely depressed in 1995 following the Oklahoma City bombing. Appellant related that his guilt returned after the September 11, 2001 terrorist attack and worsened with the invasions of Afghanistan in 2002 and Iraq in 2003. On June 30, 2003 he was approved for a 50 percent disability by the VA for his post-traumatic stress disorder. Appellant related that he was involved with a running battle with Monique Tally, an injury compensation specialist, regarding his workers’ compensation claim. He stated that he presented Ms. Tally with materials from the VA stating that he was unemployable and that she would return his completed forms and “request something else.” Appellant related that he became very stressed on August 31, 2005 after talking with Ms. Tally. On August 22, 2005 he was advised that his claim of April 8, 2005 had been accepted. Ms. Tally informed appellant that medical treatment was authorized and, in

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<sup>1</sup> The progress notes detailed appellant’s group and individual therapy treatment.

order to receive wage-loss compensation, a doctor's statement of disability for the period April 8 to September 6, 2005 was required. Appellant stated that at this point he "began to shake uncontrollably and stuttering to the point I was unintelligible." Ms. Tally informed appellant to return to his post office and that a "'*busy work*' job would be CREATED for" him. (Emphasis in the original.) Following his conversation with Ms. Tally appellant stated that he was still shaking uncontrollably and depressed to the point of contemplating suicide, as the VA had found him unemployable. Appellant alleged that he was unable to perform the duties of his position as it involved working eight-hour days inside the employing establishment and around the public and coworkers. He stated that Patti Sparlin, the postmaster, informed him that neither she nor her supervisor wanted him working inside the office. Ms. Sparlin informed appellant that he would not be fired if he "didn't fill the position." Based on his discussion with Ms. Sparlin, appellant believed that he would be placed on administrative leave. Appellant stated that, while he technically had a job, he had not been paid since April 8, 2005, which caused him stress. Subsequently, the Social Security Administration reinstated his disability benefits.

On an attending physician's report (Form CA-20) dated March 13, 2006 Arleta Brown, RN, diagnosed post-traumatic stress disorder and checked "yes" that this condition had been aggravated by appellant's employment.

By decision dated March 2006, the Office denied appellant's claim on the basis that he failed to establish that the claimed injury arose in the performance of duty.

In a letter dated April 24, 2006, appellant requested reconsideration. He noted that his last day at the employing establishment was April 8, 2005. When appellant subsequently went to the employing establishment after receiving "the letter of my change of status," found that the lock to the back door had been changed. He contended that Ms. Sparlin did not provide him with a new key, which "effectively locked me out of the building." Appellant contended that he "was locked out of the building because the employees there were now afraid of me."

By nonmerit decision dated May 15, 2006, the Office denied appellant's request for reconsideration.

On September 14, 2006 appellant requested reconsideration. He submitted letters from the employing establishment; three pages from an April 22, 2006 disability determination report by Dr. Baha Abus-Esheh, a May 13, 2006 report by Patrick Turnock, Ph.D.; progress notes from the Bonham Veterans Administration medical center for the period December 14, 2005 to August 8, 2006;<sup>2</sup> an August 26, 2005 report by Ms. Evers; a January 14, 2006 disability determination by the Department of Veterans Affairs<sup>3</sup> and factual statements dated November 3, 2005 to September 14, 2006.

In a May 16, 2006 letter, the employing establishment informed appellant that it was unable to provide a reasonable accommodation for him and recommended retirement.

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<sup>2</sup> The progress notes detailed appellant's group and individual therapy treatment.

<sup>3</sup> This decision increased appellant's disability for post-traumatic stress disorder to 100 percent.

In a May 13, 2006 report, Dr. Turnock diagnosed major depressive disorder and post-traumatic stress disorder. He concluded that appellant was capable of working provided “he is isolated from others.”

By decision dated October 13, 2006, the Office denied modification of its prior decisions.

### **LEGAL PRECEDENT**

The Federal Employees’ Compensation Act<sup>4</sup> provides for the payment of compensation benefits for injuries sustained in the performance of duty. To establish a claim that he sustained an emotional condition in the performance of duty, an employee must submit the following: (1) factual evidence identifying compensable employment factors or incidents alleged to have caused or contributed to his condition; (2) 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.<sup>5</sup>

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment.<sup>6</sup> In the case of *Lillian Cutler*,<sup>7</sup> the Board explained that there are distinctions in the type of employment situations giving rise to a compensable emotional condition under the Act. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the coverage under the Act.<sup>8</sup> When an employee experiences emotional distress in carrying out his employment duties and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee’s disability results from an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.<sup>9</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>10</sup> Generally, actions of the employing establishment in administrative matters, unrelated to the employee’s regular or specially assigned work duties, do not fall within coverage of the Act.<sup>11</sup> However, an administrative or personnel matter will be considered to be an

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *D.L.*, 58 ECAB \_\_\_\_ (Docket No. 06-2018, issued December 12, 2006); *George C. Clark*, 56 ECAB \_\_\_\_ (Docket No. 04-1573, issued November 30, 2004).

<sup>6</sup> *L.S.*, 58 ECAB \_\_\_\_ (Docket No. 06-1808, issued December 29, 2006).

<sup>7</sup> 28 ECAB 125 (1976).

<sup>8</sup> *A.K.*, 58 ECAB \_\_\_\_ (Docket No. 06-626, issued October 17, 2006); *George C. Clark*, *supra* note 5.

<sup>9</sup> *Lillian Cutler*, *supra* note 7.

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

<sup>11</sup> *Michael L. Malone*, 46 ECAB 957 (1995).

employment factor where the evidence discloses error or abuse on the part of the employing establishment.<sup>12</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>13</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 record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>14</sup>

### ANALYSIS

Appellant alleged that he sustained an emotional reaction to his having been ordered to perform what he termed busy work, being locked out of work, reprimanded for filing compensation claims, having a compensation claim form denied and Ms. Tally's misinformation regarding his compensation claim. These allegations involve administrative or personnel actions that are generally not compensable under the Act absent evidence of error or abuse.

The Board has held that mere disagreement or dislike of a supervisory or management action will not be compensable without a showing through supporting evidence that the incidents or actions complained of were unreasonable.<sup>15</sup> Appellant has not provided sufficient evidence that the employing establishment acted unreasonably in handling these administrative matters. The record reveals that appellant had several injuries at work for which he filed claims, most recently April 8, 2005 to his shoulders. He alleged being reprimanded for filing three compensation claims within a short period of time. However, appellant did not provide evidence of error or abuse by his supervisor or that Ms. Tally erroneously returned his compensation claim form or provided misinformation regarding the processing of compensation claims. Therefore, his allegations regarding these administrative matters are not found to be compensable factors of employment.

Appellant alleged that upon discussing his return to work following the April 8, 2005 injury he was to be given a busy-work position. He alleged that the employing establishment failed to put him on administrative leave and restricted him from the employing establishment premises after being determined to be a possible threat. The Board finds that these allegations relate to administrative or personnel matters unrelated to his regular or specially assigned work

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<sup>12</sup> *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>13</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>14</sup> *T.G.*, 58 ECAB \_\_\_\_ (Docket No. 06-1411, issued November 28, 2006).

<sup>15</sup> *Janice I. Moore*, 53 ECAB 777 (2002).

duties and do not fall within the coverage of the Act.<sup>16</sup> Although the assignment of work and being restricted from the employing establishment are generally related to the employment, these are administrative functions of the employer, and not duties of the employee.<sup>17</sup> The Board has found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>18</sup> The record contains no evidence of any error or abuse by appellant's supervisors. There is no evidence supporting appellant's contention that he was locked out at the employing establishment on the grounds that he was deemed to be a threat. Appellant has not provided any evidence, besides his uncorroborated statements, to support his allegations that the actions of the employing establishment were unreasonable. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Regarding appellant's emotional reaction to the denial of certain compensation claims, the Board notes that the development of any emotional condition related to such matters does not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties.<sup>19</sup> Therefore, this is not a compensable factor of employment.

As appellant failed to establish any compensable factors of employment, the Office properly denied his claim.<sup>20</sup>

### CONCLUSION

The Board finds that appellant failed to establish that he sustained an emotional condition in the performance of duty causally related to a compensable factor of his employment.

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<sup>16</sup> An employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. *Sandra Davis*, 50 ECAB 450 (1999).

<sup>17</sup> See *Janet I. Jones*, 47 ECAB 345 (1996); *Jimmy Gilbreath*, 44 ECAB 555 (1993).

<sup>18</sup> *Jeral R. Gray*, 57 ECAB \_\_\_\_ (Docket No. 05-1851, issued June 8, 2006).

<sup>19</sup> *David C. Lindsey, Jr.*, 56 ECAB \_\_\_\_ (Docket No. 04-1828, issued January 19, 2005); *George A. Ross*, 43 ECAB 346 (1991).

<sup>20</sup> As appellant did not establish a compensable employment factor, the Board need not address the medical evidence of record. See *D.L.*, 58 ECAB \_\_\_\_ (Docket No. 06-2018, issued December 12, 2006); *Kathleen A. Donati*, 54 ECAB 759 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 13, 2006 is affirmed.

Issued: May 18, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board