

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT J. NACKMAN and U.S. POSTAL SERVICE,  
POST OFFICE, Oak Creek, WI

*Docket No. 01-2025; Submitted on the Record;  
Issued April 4, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,  
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof to establish that he sustained an emotional condition causally related to compensable work factors.

On November 3, 1999 appellant, a 42-year-old mailhandler, filed a claim alleging that he had emotional stress as a result of his federal employment. Appellant indicated on the claim form that he had received death threats at work. In a January 11, 2000 statement, appellant stated that he had received four written notes containing death threats. Appellant also alleged that he had notified appropriate personnel at the employing establishment and the police department, but had received no response.

By decision dated September 13, 2000, the Office of Workers' Compensation Programs denied the claim. The Office accepted that appellant had received written death threats and such incidents were compensable work factors; however, the medical evidence was found to be insufficient to establish the claim. In a decision dated April 24, 2001, an Office hearing representative affirmed the prior decision.

The Board finds that appellant did not meet his burden of proof in this case.

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 factors of his federal employment.<sup>1</sup> To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying 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

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<sup>1</sup> Pamela R. Rice, 38 ECAB 838 (1987).

(3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.<sup>2</sup>

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 coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>3</sup>

The record substantiates appellant's allegation that, commencing July 29, 1999, appellant found brief notes in the area around his locker that contained death threats directed toward him. The Office properly indicated that these incidents constitute compensable work factors.<sup>4</sup>

With respect to appellant's statement that he sustained stress from what he described as a lack of response by the employing establishment, the record does not substantiate a compensable work factor. An investigation into appellant's allegations would be considered an administrative function of the employing establishment, rather than regular or specially assigned duties of the employee.<sup>5</sup> Unless the evidence discloses error or abuse by the employing establishment, the administrative matter will not be considered a compensable factor of employment.<sup>6</sup> There is no evidence in the record that establishes error or abuse by the employing establishment in responding to the threatening notes found by appellant. The evidence indicates that the employing establishment did respond to the incidents: investigations were conducted by appellant's supervisor, employing establishment inspectors, as well as the local police department. Appellant's frustration that the author of the notes was not identified does not establish error or abuse by the employing establishment and is not considered a compensable work factor.

Since appellant did substantiate compensable work factors, the medical evidence must be reviewed to determine if it is of sufficient probative value to establish an emotional condition in the performance of duty. In this case, the medical evidence is of diminished probative value on the issue of causal relationship between a diagnosed emotional condition and the compensable

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<sup>2</sup> See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>3</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> Cf. *Gregory N. Waite*, 46 ECAB 662 (1995) (evidence did not substantiate allegation of death threats); see, e.g., *Eugene A. Urban*, Docket No. 98-1603 (issued September 26, 2000).

<sup>5</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994); *Sandra F. Powell*, 45 ECAB 877 (1994).

<sup>6</sup> See *Jimmy B. Copeland*, 43 ECAB 339 (1991).

work factors. In a report dated September 27, 1999, Dr. Thomas Lehmann, a psychologist, reported in his history that he “initially saw appellant on September 17, 1997 when he was obviously distressed by the death threats which he has received” while at the employing establishment.<sup>7</sup> Dr. Lehmann does not provide any additional background with respect to the employment factors. He stated that appellant had a number of depressive and anxious symptoms, but does not provide a clear diagnosis or an opinion on causal relationship between a diagnosed emotional condition and the compensable work factors.

In order to be of probative value, the medical evidence must include a reasoned opinion, based on a complete and accurate background, on causal relationship between a diagnosed condition and the identified compensable work factors.<sup>8</sup> The Board finds no medical evidence of record that is sufficient to meet appellant’s burden of proof in this case.

The decisions of the Office of Workers’ Compensation Programs dated April 24, 2001 and September 13, 2000 are affirmed.

Dated, Washington, DC  
April 4, 2002

Michael J. Walsh  
Chairman

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

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<sup>7</sup> Dr. Lehmann reported the date of initial treatment as September 17, 1997; he indicated in an October 3, 2000 report that he meant September 17, 1999.

<sup>8</sup> See *Elizabeth W. Esnil*, 46 ECAB 606, 621 (1995).