



them in harm's way. He noted losing acquaintances in the war and alleged that it was stressful working in his environment during wartime. Appellant noted that he had been in the military for a long time and had seen so much. He stated that he had to wear a military uniform which reopened some traumatic experiences. Appellant stated that it was stressful wearing a military uniform in his neighborhood, which was anti-military, poverty stricken and filled with gangs. He stated that he was robbed twice and his home was "broken into." Appellant also alleged that it was stressful having to constantly speak to military personnel on the telephone. He was terminated April 1, 2005.

By letter dated August 24, 2005, the Office requested additional information from appellant. It asked him to provide details regarding employment-related conditions or incidents he believed contributed to his condition, as well as a comprehensive medical report containing a diagnosis and an opinion, with medical reasons, explaining how employment conditions contributed to the diagnosed condition.

In an undated letter, received by the Office on September 12, 2005, appellant stated that every time he would receive a battle roster list, he would pull the folder for people being deployed to Iraq. He stated that the realization of knowing he was attributing to activating those people to go into a war zone was very stressful. Appellant indicated that he was part of the Desert Storm operation and that reflecting on his past experience to the present situation contributed to his condition. He alleged that entering the checkpoint each day was a detriment to his health. Appellant advised that his building received bomb threats at least three times a month. He stated that he and a coworker were required to transport military records for soldiers being activated to Iraq. Appellant stated that it was emotionally hard for him as he had worked with a couple of the men being deployed and the war was at its climax. He noted that he worked part time while being treated for his emotional condition. In an undated letter received September 19, 2005, appellant stated that he first became aware of his condition and its relationship to his employment on August 18, 2004 and that he stopped work on April 1, 2005. He noted experiencing loss of memory, confusion, anger, depression and physical ailments as a result of such work conditions.

In October to November 2004 progress notes, Dr. Ronald E. Allen, a clinical psychologist, provided an assessment of history of psychosis; history of paranoid schizophrenia; and history of "seizure."

In a February 1, 2006 decision, the Office denied appellant's claim, finding that he had failed to establish a compensable factor of employment. On February 21, 2006 appellant requested an oral hearing, which was held on January 25, 2007.

In a January 27, 2007 letter, appellant reiterated his previous contentions. He indicated that, when entering his building, there was a list of those who had died in active duty and that he knew three of those who had died. Appellant stated that seeing this list everyday was stressful as he had a hard time dealing with death and violence. He noted that he had a prior emotional condition in 2002, when he was in the Army National Guard. Appellant stated that, although he was on active duty, he was never deployed during Desert Storm due to his emotional condition. He indicated that one day he had to pull over 200 folders of soldiers being activated and that it was emotionally stressful to see that many soldiers being deployed into a terrible situation.

Appellant indicated that he had trouble sleeping and had feelings of severe anxiety and paranoia. He stated that it was also stressful not knowing when it would be his time to go to Iraq. Appellant stated that in September 2004 he had to wear his military uniform at all times and that wearing the uniform home from work added to his depression and stress. He further stated that the people he worked with were constantly being sent to Iraq and the possibility of them not returning alive was hard to handle such that it was difficult to function in his job. Appellant alleged that the work environment and ethic of how things were administered also caused or contributed to his emotional condition. He stated that it was stressful to see the pictures of soldiers who had died as he had to see it everyday as he walked to his workstation. Appellant indicated that, after he was terminated, his car was repossessed and his house was "broken into." He indicated that he was angry and depressed because of his debts and that he could no longer work.

In a January 26, 2007 letter, Dr. Edward L. Eaton, a Board-certified psychiatrist, indicated that since 2004 during appellant's national guard work and job working as a human resource assistant, he began having difficulty in that he was pulling records of friends and employees which caused emotional stress as he knew that they were going to be put in "harm's way" by being sent to Iraq. He further noted that appellant reduced his workday to part time while he was in treatment for his emotional condition.

Progress notes from Dr. Allen from March to October 2004 contained a provisional diagnosis of paranoid schizophrenia. Of record were also medical treatment notes from 2002 pertaining to appellant's emotional conditions; an October 3, 2006 magnetic resonance imaging (MRI) scan; and copies of appellant's current medications.

By decision dated April 3, 2007, the Office hearing representative modified the February 1, 2006 decision to reflect that appellant established two compensable work factors. These were: (1) that appellant was required to pull about 50 personnel folders per day between June 2004 and April 2005 for personnel being sent to active duty in Iraq; and (2) that he and a coworker were required to transport military records for soldiers being sent to active duty in Iraq. The hearing representative, however, affirmed the denial of appellant's claim as the medical evidence did not establish that his emotional condition was caused by the established work factors.

On March 10, 2008 appellant requested reconsideration. He asserted that the medical evidence supported his claim and that what he had submitted was proof that he was required to wear a military uniform during employment. A duplicate copy of Dr. Eaton's January 26, 2007 report was submitted along with an indiscernible scanned photograph.

Appellant also submitted partial copies of his Veterans' Administration Medical Center (VAMC) records dated January 21, 2004 through July 4, 2007. This was comprised of: a partial report dated March 12, 2007 for a neurology consult with Dr. Harvinder Mundh, a neurologist, for seizure disorder; a partial report dated January 24, 2007 from Dr. David B. Crawford, a psychiatrist, diagnosing recurrent moderate major depression; a partial undated report indicating that appellant was seen for neck pain following a motor vehicle accident; a January 22, 2004 note from Dr. Susan Sanfilippo, a clinical psychologist, providing an assessment of schizophrenia; a January 21, 2004 note from a clinical social worker, noting that appellant

wanted a post-traumatic stress disorder evaluation due to his service in the Gulf War; and a July 4, 2007 note that he was seen by an orthopedist for left knee pain.

In a February 6, 2008 medical report, Dr. Lenton Morrow, a psychiatrist, noted appellant's psychiatric history. He noted that appellant was working as a human resource assistant and worked part time due to medical reasons. Dr. Morrow noted appellant's job, in part, consisted of pulling and organizing folders for Iraq-bound soldiers. He noted that appellant was depressed, sad and angry about this as he felt like he was abetting their departure to Iraq and felt guilty about potentially putting them in "harm's way." Dr. Morrow diagnosed psychosis (probably schizophrenia) and adjustment disorder with depressed mood and anxiety. He observed that appellant had historical symptoms of psychosis and currently experienced rather hefty guilt about his role in soldiers' lives as they went to war. Dr. Morrow advised that it was unclear whether this represented a distortion of his reality consistent with psychosis or whether it was a feature of depressive symptoms, although his VA records suggested the former. He stated that it was unclear whether appellant's job was the cause of his symptoms or if his symptoms were from the natural history of the course of his psychotic condition and this was exacerbated by job stresses. Dr. Morrow opined that it was the former and that this suggested appellant had an adjustment disorder.

By decision dated June 12, 2008, the Office affirmed the April 3, 2007 decision denying appellant's claim.

### **LEGAL PRECEDENT**

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 employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to his regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of his work or his fear and anxiety regarding his ability to carry out her work duties.<sup>1</sup> By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.<sup>2</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

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<sup>1</sup> *Ronald J. Jablanski*, 56 ECAB 616 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>2</sup> *Id.*

factors of employment and may not be considered.<sup>3</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>4</sup> As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim, but rather, must be corroborated by the evidence.<sup>5</sup> Mere perceptions and feelings of harassment will not support an award of compensation.<sup>6</sup>

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that an emotional condition was caused or adversely affected by her employment.<sup>7</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.<sup>8</sup>

### ANALYSIS

Appellant alleged a variety of matters contributed to his emotional condition. Some of his allegations involve administrative or personnel matters. As a general rule, such administrative actions are not covered by workers' compensation. There is an exception, however, where the evidence establishes error or abuse by the employer in an administrative or personnel matter.<sup>9</sup> The Office found, and the record supports, that appellant observed a list of people who had died in Iraq, three of which he knew and that he was terminated on April 1, 2005. Appellant also alleged that he had to go through a checkpoint. He, however, failed to provide sufficient evidence of error or abuse in management's handling of these matters. All employees were confronted by the same list of people when entering the work area and were required to enter through the same checkpoint. In addition, the record fails to substantiate any improprieties with the handling of the termination. Therefore, appellant has not established a compensable factor of employment with regard to these administrative and personnel matters.

While appellant alleged that he was required to wear a military uniform to and from work, that he was required to engage in constant telephone contact with military personnel and

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<sup>3</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>4</sup> *Id.*

<sup>5</sup> *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Arthur F. Hougens*, 42 ECAB 455 (1991) and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence established such allegations).

<sup>6</sup> *Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>7</sup> *See Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>8</sup> *See Ronald K. Jablanski*, 56 ECAB 616 (2005).

<sup>9</sup> *See supra* note 7.

that his building was subjected to three bomb threats, he submitted no probative evidence to substantiate such allegations. To the extent that he is asserting this amounts to harassment or disparate treatment, the Board has held that mere perceptions and feelings of harassment or discrimination will not support an award of compensation.<sup>10</sup> The claimant must substantiate such allegations with probative and reliable evidence. Appellant's statements are too vague to be accepted as factual as they are lacking in detail to support that the events occurred as alleged. For example, there is no evidence that he was required to wear his uniform while performing his federal civilian duties or that he was required to wear it home. Appellant did not provide sufficient detail to establish what bomb threats occurred while he worked on particular dates or exactly what his telephone contact with military personnel entailed and to what extent. As there is no probative evidence to substantiate such allegations, any reaction appellant may have had is considered self-generated. Furthermore, while appellant did not provide any evidence regarding his allegations that his house and car were "broken into," these events would not be considered in the performance of duty as they are not related to his everyday duties or special assignments in his employment. Likewise, absent error or abuse, appellant's reaction to events following the termination of his federal employment is not a compensable factor of employment.

Appellant alleged that working in an environment during war time was stressful. He advised that he felt he was sending the people deployed to active duty in Iraq into "harm's way." However, there is no evidence that appellant was involved in the selection process or issuing orders to activate any individuals to active duty. Thus, his perception of what may or may not happen to these individuals, beyond his established work duties, is considered self-generated. Furthermore, while it upset appellant to see photos of fallen soldiers on the wall he passed to get to his workstation and upset him to work with and establish relationships with people who might become or were activated to go to Iraq, his desire to work in a certain environment is not considered to be a compensable factor of employment.

The Office accepted two compensable work factors: (1) that, between June 2004 and April 2005, appellant was required to pull approximately 50 folders per day folders for personnel being deployed to active duty in Iraq; and (2) that appellant and another coworker were required to transport military records for soldiers being activated to go to war in Iraq. Under *Cutler*,<sup>11</sup> appellant has established compensable work factors. This is not enough, however, to entitle him to benefits. Appellant must further establish a causal connection between these compensable factors of employment and his diagnosed medical conditions. He must establish that he sustained an injury arising out of the employment.<sup>12</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of

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<sup>10</sup> See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

<sup>11</sup> *Lillian Cutler*, *supra* note 1.

<sup>12</sup> *Beverly R. Jones*, *supra* note 6.

whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background, 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 compensable employment factors identified by the claimant.<sup>13</sup>

The medical evidence is insufficient to establish that appellant sustained an emotional condition causally related to his federal employment. The medical evidence indicates that appellant had been evaluated and treated for various psychiatric and orthopedic conditions. However, the majority of the medical evidence does not discuss appellant's specific work tasks or projects which the Office accepted as compensable work factors or explain how the compensable work factors contributed to an emotional condition.

In his February 6, 2008 report, Dr. Morrow noted appellant's job, in part, consisted of pulling folders for Iraq-bound soldiers and his guilt associated with that task. He diagnosed psychosis (probably schizophrenia) and adjustment disorder with depressed mood and anxiety. Dr. Morrow advised that it was unclear whether appellant's guilt about his role in soldier's lives as they go to the Iraq war was based on his psychosis or depressive symptoms. He stated that he believed appellant's job was the cause of his symptoms and that he had an adjustment disorder. However, Dr. Morrow failed to provide any reasoned explanation regarding the relationship of appellant's work duties to his emotional condition. His support for causal relationship is also equivocal in nature as he also noted that it was unclear regarding whether appellant's job caused or aggravated his emotional condition.<sup>14</sup> Dr. Morrow's report is not sufficient to establish that appellant sustained an emotional condition causally related to a compensable work factor.

The record also contains partial reports from the VAMC physicians. Thus, it is unknown whether the diagnosis provided is based on a complete and accurate factual background as little to no history is discernable from such reports. A physician's opinion must be based on a complete and accurate factual and medical background and must be supported by medical rationale.<sup>15</sup> Furthermore, the reports of Dr. Crawford and Dr. Sanfilippo fail to offer any opinion regarding whether the two accepted work factors causes or aggravated appellant's diagnosed condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>16</sup> Thus, these reports are insufficient to establish appellant's claim.

In his March to October 2004 progress notes, Dr. Allen provided a provisional diagnosis of paranoid schizophrenia. However, in addition to not providing a more definitive diagnosis, he did not specifically address whether the compensable employment factors caused or aggravated the diagnosed condition. In his January 26, 2007 report, Dr. Eaton indicated that appellant had

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<sup>13</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Donna Faye Cardwell*, *supra* note 10.

<sup>14</sup> *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions which are speculative or equivocal in character have little probative value).

<sup>15</sup> *Roger Dingess*, 47 ECAB 123 (1995).

<sup>16</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

emotional stress since 2004 pulling records of friends and employees who were being activated to go to Iraq. He, however, failed to provide a diagnosed condition or explain how appellant's compensable work factor of pulling records caused or contributed to an emotional condition based on appellant's belief that such persons were going to be put in harm's way by being activated and sent to Iraq. As noted medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.

The remainder of the medical records, including those from VAMC, are insufficient to establish appellant's claim. For example, appellant submitted a January 21, 2004 note from a social worker. However, as a social worker is not a physician as defined under the Act, the January 21, 2004 note does not constitute competent medical evidence.<sup>17</sup> Appellant also submitted various other medical records that do not pertain to his claimed emotional condition. As these reports are not relevant to his claim for an emotional condition, they are insufficient to establish his claim.

There is no rationalized medical evidence of record, based on a complete and accurate factual background, explaining how appellant's diagnosed conditions of psychosis and adjustment disorder were caused or aggravated by the two accepted employment factors. Therefore, the Office properly denied his emotional condition claim.

#### **CONCLUSION**

The Board finds that appellant has failed to establish that his emotional condition was causally related to a compensable factor of employment.

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<sup>17</sup> See *Phillip L. Barnes*, 55 ECAB 426 (2004). See 5 U.S.C. § 8101(2).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 12, 2008 is affirmed.

Issued: March 5, 2009  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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