United States Department of Labor
Employees' Compensation Appeals Board

J.G., Appellant	)	
and	)	**Docket No. 09-456**
	)	**Issued: October 14, 2009**
DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS & BORDER PATROL, Chicago, IL, Employer	)	

Appearances:
James R. Linehan, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 5, 2008 appellant, through counsel, filed a timely appeal from an October 20, 2008 merit decision of the Office of Workers' Compensation Programs denying his emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant's preexisting post-traumatic stress disorder was aggravated by factors of his federal employment.

FACTUAL HISTORY

On June 23, 2005 appellant, then a 34-year-old seized property specialist, filed an occupational disease claim alleging that on June 13, 2005 he realized his stress had been aggravated by work factors. He first became aware of his condition in July 2004. Appellant stopped work on June 15, 2005 and has not returned.

In a June 16, 2005 report, Dr. Jadwiga A. Kuszynska, a treating Board-certified psychiatrist, indicated that appellant had been under her care since July 2004 for "severe stress related to his work situation." She indicated that appellant was totally disabled for the period June 15 to July 5, 2005.

On July 5, 2005 the employing establishment controverted appellant's claim. It noted that appellant averaged approximately 3.6 hours of overtime per month over the past year.

By letter dated July 19, 2005, the Office informed appellant that the evidence was insufficient to support his claim. Appellant was advised to submit medical and factual information to support his emotional condition claim.

In a June 22, 2005 attending physician's report (Form CA-20), Dr. Kuszynska diagnosed post-traumatic stress disorder. She checked "yes" to whether the condition was employment related, noting that appellant had a stressful and hostile job environment.

On August 11, 2005 appellant related that he had a stress reaction during a March 2004 paintball training exercise. His heart rate increased and he began to have trouble breathing when paint balls hit a car he used to cover his position. Appellant's daily routine at work required inputting information into files that were identified by 16 digit numbers and he was responsible for the storage, safekeeping and witnessing to the destruction of sensitive and high value items. He alleged that his days were unpredictable and that he was always on call. Appellant noted that the merger with Homeland Security added new duties. He became frustrated due to the additional assigned duties and believed he was a burden and weak link to his team because of his mistakes. Appellant felt closed in and paranoid by the cameras at work.

Dr. Samson Seplow, a resident in psychiatry at the Veterans Administration, noted that appellant was seen on June 15, 2005 for stress. He had a history of post-traumatic stress disorder following return from the Persian Gulf. In June 3, 2005 progress notes, Dr. Seplow noted that appellant had a history of post-traumatic stress disorder and was seen because he has not been feeling well and experienced weird dreams. Appellant related that he had been making mistakes at work and had poor concentration, "seeing numbers in reverse." He informed Dr. Seplow that he had been having panic attacks since his last appointment.

In progress notes dated June 11, 2005, Dr. Kuszynska noted that appellant was seen for a panic attack which occurred the prior day and that he turned in his gun. Appellant related being "under extreme stress at work lately and that he does not think he can continue working there." Dr. Kuszynska diagnosed post-traumatic stress disorder and referred him for group treatment.

Dr. Kim Dong, in June 15, 2005 progress notes, reported that appellant was seen for chest pain, palpitation and shortness of breath. He indicated that appellant had a history of depression and stated that he had "been under stress [at] work."

In progress notes dated June 16, 2005, Dr. Saeed Salehinia, a psychiatric resident, diagnosed post-traumatic stress disorder, possible depression and panic attack. He noted appellant's history of post-traumatic stress disorder and that appellant was seen for a panic attack that day.

By decision dated April 14, 2006, the Office denied appellant's claim. It accepted that appellant attended physical training which included paintball exercise, but found the medical evidence insufficient to establish that his psychiatric condition was causally related to the accepted work factor.

In a letter dated March 28, 2007, appellant's counsel requested reconsideration. He submitted additional records from the Veterans Administration.

In a February 6, 2006 report, Dr. John P. Bair, a clinical psychologist, and Dr. Kuszynska concluded that appellant was disabled due to his generalized anxiety disorder and severe post-traumatic stress disorder. They indicated that appellant was unable "to engage in competitive employment." Appellant was attending regular psychotherapy sessions once or twice a week.

In a February 16 2007 progress note, Dr. Paul Dave Whitaker, Ph.D., a clinical psychologist at the Veterans Administration, diagnosed post-traumatic stress disorder. He noted that appellant discussed his job as a customs officer and how the job was ended by his post-traumatic stress disorder and a harsh work environment. Dr. Whitaker opined that appellant's ability to concentrate and tolerate stress had been significantly impaired as a result of his anxiety disorder. In a March 22, 2007 report, he noted appellant was physically capable of performing his usual work duties, but that his anxiety, depression and post-traumatic stress disorder interfered with his ability to concentrate or perform in employment.

By decision dated October 20, 2008, the Office affirmed the denial of appellant's claim. It found that none of the medical records submitted provided a report addressing how the accepted work factor had caused or aggravated appellant's medical condition.

LEGAL PRECEDENT

The Federal Employees' Compensation Act[1] 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.[2]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.[3] In the case of *Lillian Cutler*,[4] the Board explained that there are distinctions in the type of employment situations giving rise to a

[1] 5 U.S.C. §§ 8101-8193.

[2] *C.F.*, 60 ECAB ___ (Docket No. 08-1102, issued October 10, 2008); *D.L.*, 58 ECAB ___ (Docket No. 06-2018, issued December 12, 2006.

[3] *L.S.*, 58 ECAB ___ (Docket No. 06-1808, issued December 29, 2006).

[4] 28 ECAB 125 (1976).

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.[5] 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.[6] 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.[7] 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.[8] However, 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.[9]

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.[10] 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.[11]

ANALYSIS

Appellant attributed his disability commencing June 13, 2005 was due to increased duties and intense assignments following the merger with Homeland Security, that his workdays were unpredictable and that he began to feel paranoid and closed in by the cameras located inside and outside a vault where items were processed and stored for safekeeping. By decisions dated April 14, 2006 and October 20, 2008, the Office denied his emotional condition claim. It found that he established an employment factor, the physical training exercise in March 2004 but that

[5] *A.K.*, 58 ECAB ___ (Docket No. 06-626, issued October 17, 2006).

[6] *Lillian Cutler*, *supra* note 4

[7] *Id.*

[8] *Michael L. Malone*, 46 ECAB 957 (1995).

[9] *Charles D. Edwards*, 55 ECAB 258 (2004).

[10] *Dennis J. Balogh*, 52 ECAB 232 (2001).

[11] *T.G.*, 58 ECAB ___ (Docket No. 06-1411, issued November 28, 2006).

the medical evidence did not establish that appellant's emotional condition was caused or contributed to this factor.

Appellant attributed his emotional condition to work-related stress. Specifically, he listed his employment duties and stated that the overwhelming pressure of those activities was stressful. Appellant contended that the merger with Homeland Security added new work duties and intense assignments. He 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 employment factors.[12] This burden includes the submission of a detailed description of the employment factors or conditions which he believes caused or adversely affected the condition or conditions for which compensation is claimed.[13] Appellant provided a general listing of his employment duties. While he contended that the merger with Homeland Security increased his work duties and involved more intense assignment, he did not provide a detailed explanation as to those duties he was required to perform following the merger or a description of those assignments he considered more intense. The employing establishment generally denied that any duties were added following the merger with Homeland Security, noting only that he averaged 3.6 hours of over time in the year prior to his disability. Appellant made only general references to his workday also being unpredictable. Therefore, the Board finds that appellant has not substantiated that his employment duties caused or contributed to his claimed emotional condition.

The Office accepted that appellant was required to attend physical training in March 2004. As appellant substantiated a compensable work factor, the Board must review the medical evidence to determine if this factor caused or contributed to her diagnosed emotional condition. To establish his occupational disease claim for an emotional condition, appellant must submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.[14]

Appellant submitted extensive medical records related to his treatment at the Veteran's Administration for a preexisting post-traumatic stress disorder and anxiety. However, none of the treatment records provides an opinion by a physician addressing how the accepted work factors in March 2004 caused or contributed to appellant's disability for work commencing June 13, 2005. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.[15] In a February 6, 2006 note, Dr. Bair, a treating clinical psychologist, and Dr. Kuszynska, a psychiatrist, diagnosed severe post-traumatic

[12] *Pamela R. Rice*, 38 ECAB 838, 841 (1947).

[13] *Effie O. Morris*, 44 ECAB 470 473-74 (1993).

[14] *See M.D.*, 59 ECAB ___ (Docket No. 07-908, issued November 19, 2007; *William P. George*, 43 ECAB 1159 (1992) (Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence).

[15] *See Anna C. Leanza*, 48 ECAB 115 (1996).

stress and generalized anxiety disorder which was attributed to appellant's prior military service. Dr. Kuszynska did not provide any opinion addressing the March 2004 training exercise as a causative or aggravating factor of his diagnosed emotional condition. The physicians did not address how appellant's preexisting condition or anxiety were causally related to the March 2004 training required in his job as a customs agent. There is insufficient medical evidence of record to support that appellant's emotional condition was work related. The Board finds that appellant did not submit sufficient medical evidence to establish that he sustained an emotional condition causally related to his compensable work factor.

The progress notes from the other treating physicians at the Veterans Administration are similarly insufficient to establish causal relationship. They each treated appellant for either depression or post-traumatic stress disorder. On February 16, 2007 Dr. Whitaker stated that appellant had trouble with his concentration and the ability to tolerate stress due to his anxiety condition. However, there is no opinion addressing how the accepted training exercise or other duties required as a customs agent had aggravated appellant's condition such that he could no longer work as of June 13, 2005. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[16] This evidence is insufficient to establish that appellant's condition was caused or aggravated by the compensable work factor.

On appeal appellant's counsel contends that appellant's post-traumatic stress disorder was aggravated by his federal employment, specifically the training incident of March 2004. Appellant contends that the claim should be compensable as the medical evidence of record "strongly *suggests* a cause and effect relationship" to his working conditions." [Emphasis added.] As noted, appellant's burden of proof includes the necessity to submit rationalized medical opinion evidence explaining the causal relationship between the accepted factor of employment and his disability for work. The treatment records submitted by appellant do not address how appellant's preexisting post-traumatic stress disorder was aggravated by the training exercise. The medical evidence of record reflects treatment for depression, anxiety and post-traumatic stress disorder. However, the Veterans Administration physicians did not provide any opinion supported by rationale explaining how appellant's training in March 2004 contributed to his disability such that he could no longer work as of June 13, 2005. The Board finds that he has not met his burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that his preexisting post-traumatic stress disorder was aggravated by the accepted compensable factor.

[16] *S.E.*., 60 ECAB ___ (Docket No. 08-2214, issued May 6, 2009).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 20, 2008 is affirmed.

Issued: October 14, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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