

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

(PTSD) in the performance of his duties as a border patrol agent. He became aware of his illness on April 17, 2012 and realized that it was caused or aggravated by his employment on April 30, 2013.<sup>2</sup> The employing establishment noted that appellant was working light duty or administrative duty since July 25, 2012. It noted that he requested and was approved for a nonper-diem detail to Sandusky Bay, Ohio starting September 9, 2012. The employing establishment advised that appellant was temporarily assigned to that station and performing administrative duties.

In letters dated June 20, 2013, OWCP requested additional factual and medical evidence from appellant and the employing establishment. It asked that he describe in detail the work-related conditions or incidents that he believed contributed to his condition. OWCP asked that appellant provide relevant dates, locations, coworkers and duties related to his allegations. It also requested witness statements from anyone who could verify his allegations.

OWCP received an April 18, 2012 disability certificate from an individual whose signature is illegible advising that appellant could return to full duty on that date. It also received treatment notes dated from November 15 to 29, 2012 from a Veterans Affairs Hospital related to appellant's treatment for panic attacks.

In a March 9, 2013 report, Dr. Craig Lemmen, a Board-certified psychiatrist and neurologist, evaluated appellant in a fitness-for-duty examination and found that he was not fit for duty. Appellant related that his veterans' 30 percent disability rating for PTSD was increased to 70 percent. Dr. Lemmen diagnosed PTSD and panic attacks. In an April 6, 2013 report, Dr. Paul Prunier, a Board-certified psychiatrist and neurologist, evaluated appellant and concurred with Dr. Lemmen. He advised that appellant was not fit for duty.

In a letter dated April 30, 2013, the employing establishment informed appellant regarding his request for an extension to his Sandusky Bay, Ohio detail. Appellant's position required that he be available for duty on a regular full-time basis and able to perform the full range of duties of the position. It referred to reports of Dr. Lemmen, who concluded that appellant was psychiatrically unfit for duty and medically unable to perform the duties of a border patrol agent. The employing establishment offered appellant the opportunity to apply for a disability retirement with the Office of Personnel Management, update his skills and search for a new job within his physical qualification requirements or resign from his position and apply for disability within one year of the date of his resignation.

In a report dated May 15, 2013, Dr. Eric T. Ricchetti, a Board-certified orthopedic surgeon, noted treating appellant for a right scapulothoracic bursectomy with lysis of adhesions and excision of the superior medial angle of the scapula performed on April 5, 2013. He advised that appellant could return to work with restrictions to include a one- or two-pound lifting restriction and no repetitive overhead. Dr. Ricchetti noted that, three months after surgery, appellant could lift up to 10 pounds and at six months postoperative, appellant should be released from his restrictions.

---

<sup>2</sup> Appellant also filed a traumatic injury claim, file number xxxxxx033, for an April 17, 2012 incident in which he claimed that he got light-headed, had chest tightening and had difficulty breathing during weapons training. This claim was doubled with the present claim.

In a June 25, 2013 statement, appellant identified that the employment conditions that aggravated this PTSD included: shift muster meeting; postacademy training formations; postacademy class leader position that he occupied for most of class 985's postacademy training; working at night alone against superior forces in numbers; working for numerous hours in extreme heat; and speaking with upper management.

OWCP received a description about chest pain, a prescription history, part of an unsigned PTSD evaluation, and a December 4, 2012 report from a social worker requesting a compassionate transfer.

On July 2, 2013 OWCP received a statement from Don Dunahue, a veteran service officer, who explained that appellant had several claims with the Veterans Administration which resulted in his current disability. Mr. Dunahue noted that appellant was accepting a 100 percent disability grant and his presence in Ohio was necessary due to the forthcoming medical examinations.

In a February 4, 2013 report, Dr. Anne S. Davidson, a Board-certified psychiatrist, noted that she was treating appellant for PTSD. She advised that his assignment in Laredo, TX, was more difficult for him due to the confrontational nature of the work and risks involved as a border patrol agent. Mr. Dunahue stated that his job placed him in positions which triggered his PTSD. She noted that appellant believed another assignment of a different nature or light duty would be desirable.

By decision dated September 20, 2013, OWCP denied appellant's claim.<sup>3</sup> It found that the evidence failed to establish an emotional condition in the performance of duty. OWCP found that appellant had not established any compensable factors of employment.

### **LEGAL PRECEDENT**

Workers' compensation law does not apply to each and every 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 or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>4</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 or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>5</sup>

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

---

<sup>3</sup> This decision superseded a September 11, 2013 decision.

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 126 (1976).

adversely affected by employment factors.<sup>6</sup> 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.<sup>7</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP 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 the physician when providing an opinion on causal relationship and, which working conditions are not deemed factors of employment and may not be considered.<sup>8</sup> If a claimant does implicate a factor of employment, OWCP 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 the matter establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.<sup>9</sup>

### ANALYSIS

Appellant alleged an emotional condition in the performance of his duties as a border patrol agent. The Board must thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA. Appellant has attributed his emotional condition to the regular or specially assigned duties of his position as a border patrol agent. Therefore, the Board must evaluate whether he has established a compensable factor under *Cutler*.<sup>10</sup>

Appellant alleged that his PTSD was aggravated by his duties as a border patrol agent. On June 20, 2013 OWCP requested that he provide specific details about the work factors that contributed to his condition. Appellant submitted a general statement in which he identified: shift muster meeting; postacademy training formations; a postacademy class leader position that he occupied for most of class 985's postacademy training; working at night alone against superior forces in numbers; working for numerous hours in extreme heat; and speaking with upper management. He did not offer any other details. Appellant did not describe any particular incidents in detail or provide the specific dates of work or duties which he felt aggravated his preexisting PTSD condition. The evidence of record does not establish that he sustained a compensable factor under *Cutler*. Thus, appellant's general allegations are insufficient to establish any compensable work factors.

---

<sup>6</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>7</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>8</sup> *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>9</sup> *Id.*

<sup>10</sup> *See supra* note 4.

To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>11</sup> In this case, appellant did not provide a detailed factual statement outlining specific work factors or incidents at particular times and places. He did not provide any corroborating evidence, such as witness statements, to support his claim. Without such evidence appellant failed to provide a factual basis to support his emotional condition claim.<sup>12</sup>

As appellant has not established a compensable employment factor, it is not necessary to address the medical evidence.<sup>13</sup>

On appeal, appellant argued that he had submitted the requisite evidence to describe his performance duties that aggravated his condition. However, as noted above, the evidence submitted was vague and nonspecific and therefore insufficient to meet his burden.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof in establishing that he sustained an emotional condition in the performance of duty.

---

<sup>11</sup> See *Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>12</sup> See *B.H.*, Docket No. 12-1851 (issued February 20, 2013).

<sup>13</sup> *Garry M. Carlo*, 47 ECAB 299 (1996). See *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 20, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 23, 2014  
Washington, DC

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

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

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