

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

_____)
J.P., Appellant)

and)

DEPARTMENT OF JUSTICE, FEDERAL)
CORRECTIONAL INSTITUTION,)
Seagoville, TX, Employer)

Docket No. 07-1679
Issued: December 14, 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 June 6, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated August 22, 2006. The record also contains a December 12, 2006 decision denying a request for a hearing and an April 12, 2007 decision denying appellant's request for reconsideration without merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established an emotional condition causally related to compensable factors of his federal employment; (2) whether the Office properly denied appellant's request for a hearing; and (3) whether the Office properly determined that appellant's application for reconsideration was insufficient to warrant merit review of the claim pursuant to 5 U.S.C. § 8128(a) and the Office's regulations.

FACTUAL HISTORY

On May 20, 2006 appellant filed an occupational disease claim (Form CA-2) alleging that he sustained an emotional condition as a result of his federal employment. On the claim form he indicated that he was a senior officer specialist. Appellant described his condition as post-traumatic stress disorder (PTSD), major depression disorder, psychotic features, mental stress, flashbacks, nightmares and inability to sleep. He became aware of his condition and its relationship to his employment on April 16, 2000. The reverse of the claim form indicated that appellant first reported the condition to his supervisor on April 22, 2000. The record indicated that appellant also filed a traumatic injury claim (Form CA-1) on May 20, 2006, with a date of injury of April 14, 2000.

In a narrative statement, appellant described an April 14, 2000 incident in which he saw a correctional officer and an inmate pushing each other. He stated that he ran upstairs to the mess hall to assist the officer, and they struggled to put handcuffs on the inmate. As the inmate was being cuffed, appellant indicated that food was thrown at him by other inmates until additional officers arrived and inmates were ordered back to their tables.

In a letter dated July 21, 2006, the Office requested that appellant submit additional evidence, including a detailed medical report. An employing establishment supervisor submitted a response indicating that appellant was involved in an emergency response to an inmate incident in April 2000. The supervisor indicated that he was not appellant's supervisor at that time and the only knowledge he had of the incident was from investigative files.

By decision dated August 22, 2006, the Office denied the claim for compensation. The Office found no compensable work factors were established. The April 14, 2000 incident was accepted as factual, but was considered a noncompensable work factor. The Office discussed appellant's position description, noting that his major duties were to provide supervision, care and correctional treatment of inmates and guidance to lower-graded correctional officers.

On November 8, 2006 appellant requested an oral hearing before an Office hearing representative. By decision dated December 12, 2006, the Office denied the request for a hearing. The Office's Branch of Hearings and Review found that the request was untimely and further stated that appellant could equally well address the issues by requesting reconsideration and submitting new and relevant evidence.

Appellant requested reconsideration on April 5, 2007. The record contains numerous medical reports submitted after the August 22, 2006 merit decision. The evidence includes a June 15, 2006 report from Dr. Stephen Eilers, a psychiatrist, who diagnosed PTSD, major depressive disorder, severe, recurrent with psychotic features. He stated that appellant's PTSD symptoms were related to a prisoner uprising incident on April 14, 2000. Dr. Eilers also opined that appellant was wrongfully terminated and his major depression and PTSD were directly related to his traumatic experiences as a senior officer specialist.¹ The record also contains a

¹ The record indicates appellant was terminated from employment March 6, 2006 for physical/medical inability to perform his position.

number of earlier reports from Dr. Eilers stating that appellant's PTSD symptoms were related to a prisoner uprising on April 14, 2000.

By decision dated April 12, 2007, the Office determined the application for reconsideration was insufficient to warrant merit review of the claim.

LEGAL PRECEDENT -- ISSUE 1

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.² This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.³ A claimant must also submit rationalized medical opinion evidence establishing a causal relationship between the claimed condition and the established, compensable work factors.⁴

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.⁵

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors 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.⁶ 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

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

⁴ *See Bonnie Goodman*, 50 ECAB 139, 141 (1998).

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *See Norma L. Blank*, 43 ECAB 389-90 (1992).

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.⁷

ANALYSIS -- ISSUE 1

The Office stated that it accepted an April 14, 2000 incident as factual, but found it was not compensable. No explanation was offered, other than to describe appellant's position description as a senior correctional officer. To the extent that the Office concluded that appellant was not performing his duties on April 14, 2000 because his position description did not specifically list coming to the aid of a corrections officer during an altercation with an inmate, there is no reasonable basis for such a conclusion. Appellant was responsible for enforcing rules regarding facility and inmate security, and was authorized to use force to maintain control of inmates. Clearly, the incident alleged by appellant on April 14, 2000, which involved intervening to help a corrections officer subdue and control an inmate, was within appellant's assigned duties. An emotional reaction to a regular or specially assigned work duty or a requirement imposed by the employment is covered under *Cutler*.⁸ It is therefore a compensable work factor.

As noted above, appellant must also submit medical evidence on causal relationship between a diagnosed emotional condition and the identified compensable work factor. There was no probative medical evidence of record prior to the August 22, 2006 decision. Accordingly, the Board finds that appellant did not meet his burden of proof to establish an injury in the performance of duty. The August 22, 2006 decision will be modified to reflect that a compensable work factor was established, but the medical evidence was insufficient to meet appellant's burden of proof.

LEGAL PRECEDENT -- ISSUE 2

The statutory right to a hearing under 5 U.S.C. § 8124(b)(1) follows the initial final merit decision of the Office. Section 8124(b)(1) provides as follows: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary...."

If the request is not made within 30 days or if it is made after a reconsideration request, a claimant is not entitled to a hearing as a matter of right.⁹ The Board has held that the Office, in its broad discretionary authority in the administration of the Act,¹⁰ has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.¹¹ The Office's

⁷ *Id.*

⁸ *See supra* note 5.

⁹ *Claudio Vazquez*, 52 ECAB 496 (2001).

¹⁰ 5 U.S.C. §§ 8101-8193

¹¹ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.¹²

ANALYSIS -- ISSUE 2

The request for a hearing in this case was dated November 8, 2006. Since this is more than 30 days after the August 22, 2006 merit decision, appellant is not entitled to a hearing as a matter of right. Even if a hearing request is untimely, the Office must exercise its discretion to grant or deny a hearing. In this case, the Office advised appellant that he could submit additional relevant evidence on the issue through the reconsideration process. This is considered a proper exercise of the Office's discretionary authority.¹³ The Board finds that the Office properly denied the request for a hearing.

LEGAL PRECEDENT -- ISSUE 3

To require the Office to reopen a case for merit review under section 8128(a) of the Act,¹⁴ the Office's regulations provides that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: "(i) shows that [the Office] erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by [the Office]; or (iii) constitutes relevant and pertinent evidence not previously considered by [the Office]."¹⁵ Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.¹⁶

ANALYSIS -- ISSUE 3

As the Board indicated in discussing the merit issue, appellant did establish a compensable work factor and therefore the medical evidence is relevant to the underlying merit issue. Appellant had not submitted any medical evidence prior to the August 22, 2006 merit decision. The record contains a number of medical reports submitted after the August 22, 2006 decision, including reports from Dr. Eilers with an opinion on causal relationship between PTSD and the April 14, 2000 incident. The medical evidence providing an opinion on causal relationship between a diagnosed condition and the compensable work factor constitutes relevant and pertinent evidence not previously considered by the Office. Pursuant to 20 C.F.R.

¹² *Claudio Vazquez, supra* note 9. See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.4(b)(3) (June 1997).

¹³ See *Mary E. Hite*, 42 ECAB 641, 647 (1991).

¹⁴ 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

¹⁵ 20 C.F.R. § 10.606(b)(2).

¹⁶ 20 C.F.R. § 10.608(b); see also *Norman W. Hanson*, 45 ECAB 430 (1994).

§ 10.606(b)(2), appellant has met a requirement to reopen his claim for merit review. Accordingly, the case will be remanded to the Office for a decision on the merits of the claim.

CONCLUSION

The evidence did establish a compensable work factor, but appellant did not meet his burden of proof to establish an employment-related emotional condition because he did not submit sufficient medical evidence. The request for an oral hearing was untimely and the Office properly exercised its discretion in denying the request. On reconsideration, the evidence of record contained new and relevant medical evidence that was sufficient to require a merit review of the claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 12, 2007 is set aside and the case remanded for further action consistent with this decision of the Board. The December 12, 2006 decision is affirmed. The decision dated August 22, 2006 is modified to reflect a compensable work factor on April 14, 2000 and affirmed as modified.

Issued: December 14, 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