

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAWRENCE SIMMS and DEPARTMENT OF JUSTICE,
BUREAU OF PRISONS, Alderson, WV

*Docket No. 99-2428; Submitted on the Record;
Issued November 17, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established an emotional or physical condition causally related to compensable factors of his federal employment.

In the present case, appellant, a correctional officer, filed a claim alleging that his federal employment contributed to heart disease and an emotional condition. By decision dated January 22, 1998, the Office of Workers' Compensation Programs denied the claim, finding that appellant had not established a compensable work factor. Following a review of the written record, an Office hearing representative affirmed the prior decision in a decision dated June 16, 1999.

The Board has reviewed the record and finds that the case is not in posture for decision.

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.¹

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

The Board notes that, to the extent appellant alleges an emotional reaction to administrative actions of the employing establishment,² appellant has not substantiated a compensable work factor. It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.³ The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.⁴ Unsupported allegations of error or abuse are not sufficient to establish a compensable factor of employment.⁵ In this case, appellant did not submit probative evidence establishing error or abuse by the employing establishment.

It is evident, however, that appellant has also identified the performance of his assigned duties as a correctional officer as contributing to an emotional and cardiac condition. Appellant noted “arduous, adverse and stressful working conditions” in being responsible for the custody and control of inmates, and handling any potential situations involving escape attempts or assaults. This allegation goes directly to the assigned job duties of a correctional officer, and would constitute a compensable work factor under *Cutler*.

The Office does not acknowledge that appellant has identified his work duties or make appropriate findings in this respect. For example, the Office stated in its January 22, 1998 decision that appellant was not assigned on a regular basis to work with Haitian or Cuban refugees. Appellant’s May 15, 1997 statement reports that his job duties at times included handling inmates who fought among themselves, including Haitian and Cuban refugees. The assertion by the employing establishment that he was not regularly assigned to refugees does not negate appellant’s assertion that his job duties at times included the handling of violent prisoners. The Office also found that stress from constant worry about prison escapes, violence, and outbreaks was not compensable because appellant worked at an all-women prison “where threatening circumstances were rare.” The issue, however, is whether appellant is implicating the performance of his regular or specially assigned duties. There does not appear to be any question that the duties of a correctional officer included the responsibility of controlling potentially violent inmates, whether actual episodes of violence were rare or common.

The Board notes that appellant has submitted supporting medical evidence. In a report dated December 20, 1996, Dr. J. Richard Frazier, a psychiatrist, noted that “by [appellant’s] description, the facility is a stressful environment to work in due to the nature of the work such as ensuring the security of the facility and the prisoners.” Dr. Frazier opined that appellant’s employment had aggravated his depression. Although the medical evidence is not sufficiently detailed to meet appellant’s burden of proof, appellant has submitted sufficient factual and medical evidence to require further development of the evidence.⁶ On remand, the Office should

² Appellant indicated, for example, that it took 11 years for him to progress from a GS-7 pay grade to a GS-8.

³ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

⁴ *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁵ *See Harriet J. Landry*, 47 ECAB 543, 547 (1996); *Martin Standel*, 47 ECAB 306, 308 (1996).

⁶ *See, e.g., Maribel Dayap*, 48 ECAB 248 (1996); *Donna J. DiBernardo*, 47 ECAB 700 (1996).

prepare a statement of accepted facts that properly distinguishes between compensable and noncompensable work factors. The Office should then obtain a reasoned medical opinion as to whether appellant has sustained an emotional or cardiac condition causally related to compensable work factors. After such further development as the Office deems necessary, it should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated June 16, 1999 is set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
November 17, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member