

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

H.J., Appellant)	
)	
and)	Docket No. 15-0705
)	Issued: November 2, 2015
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, Atwater, CA, Employer)	
)	

Appearances:
Daniel M. Goodkin, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 3, 2015 appellant, through counsel filed a timely appeal from a September 26, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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 met his burden of proof to establish that he sustained an orthopedic condition in the performance of duty; and (2) whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On September 14, 2012 appellant, then a 43-year-old factory manager, filed an occupational disease claim (Form CA-2) alleging that he sustained several work-related conditions. He asserted that the standing, lifting, crouching, bending, and stooping required by

¹ 5 U.S.C. § 8101 *et seq.*

his job over time caused multilevel degenerative disc disease, and that the stress of managing the factory caused depression, irritable bowel syndrome, chronic fatigue, and high blood pressure. Appellant stated that he first became aware of his claimed conditions on September 22, 2008 and that they were caused or aggravated by his employment. He indicated that his date of last exposure to work factors was September 22, 2009.²

In a letter dated October 24, 2012, OWCP requested that appellant submit additional factual and medical evidence in support of his claim. It also requested additional information from the employing establishment.

Appellant submitted a November 20, 2012 statement in which he provided further description of his claimed work factors. He indicated that he engaged in standing, lifting, crouching, bending, and stooping for eight hours per workday and sometimes performed such work on an overtime basis. Appellant alleged that an inmate death occurred during his shift in the unit for which he was responsible. He had to carry out the dead body of the inmate, conduct the investigation, and cleanup the cell. Appellant claimed that there were staff deaths and that he had to go to the hospital and speak to family members on three separate occasions. He stated that he had to oversee maximum security inmates and that he had 150 to 200 inmates to oversee with six staff members.³

Appellant submitted a November 21, 2012 form report in which Dr. Norman D. Schmidt, an attending Board-certified family medicine physician, stated that appellant could not perform his “usual job” and noted “significant back pain [with] running, restraining inmates and repetitive stooping.”⁴ Dr. Schmidt stated that appellant could work for four hours per day with restrictions including lifting no more than 20 pounds.

In a January 14, 2013 letter and a document memorializing a February 20, 2013 teleconference with OWCP, a safety manager for the employing establishment responded to appellant’s claims. He indicated that appellant engaged in standing, lifting, crouching, bending, and stooping, but did not engage in these activities constantly during an eight-hour workday. The safety manager stated that appellant did not provide specific information about carrying out a prisoner, but that he would not have been responsible for carrying out a prisoner. Other staff members would have been responsible for placing any such inmate on a gurney and removing the body. In addition, appellant would not have been required to cleanup cells. The safety manager indicated that appellant did not identify the three staff members he claimed had died and noted that he was aware of only one staff death, a death that occurred in 2008. He stated that he had direct knowledge of the circumstances of this death and its aftermath because he spoke to the deceased staff member’s family. Appellant was not present at the time of the killing or at the hospital when family members were notified. The safety manager indicated that appellant would not have been responsible for notifying inmate families of any incidents, since the chaplains were responsible for such notification. He noted that the factory only had 70 to 100 inmates and

² On the same form, appellant’s immediate supervisor indicated that appellant resigned on February 16, 2010.

³ Appellant submitted a description of the factory manager job which indicates that a factory manager has responsibility for indirect supervision of inmate workers in the factory.

⁴ The Board notes that, at the time this report was produced, appellant had not worked for the employing establishment for more than three years.

they were not directly supervised by appellant, but rather were directly supervised by six staff members. This was confirmed by appellant's position description which mentioned responsibility for "indirect" supervision of inmates.

In a February 25, 2013 decision, OWCP denied appellant's claim for work-related orthopedic and emotional conditions. It found that appellant had not submitted medical evidence containing a clear opinion that he sustained an orthopedic condition due to work factors. OWCP denied the emotional condition component of appellant's claim because he had not established any compensable work factors.

Appellant, through counsel, requested reconsideration of OWCP's February 25, 2013 decision and submitted a January 14, 2014 statement in which he further discussed his claimed work factors. He challenged some of the comments made by the safety manager for the employing establishment and asserted that he did in fact have contact with dead inmates and staff members and did in fact directly supervise inmates. Appellant did not provide any specific dates of contacts with dead inmates and staff members. He submitted a February 12, 2014 statement of an individual who stated that he had oversight over appellant's work division. The individual stated that appellant was required to respond to emergencies and take action to contain such situations, but he did not provide any details of specific actions appellant actually took in this regard.

Appellant submitted a January 10, 2014 report in which Dr. Schmidt stated that he had a history of chronic low back pain due to multilevel degenerative disc disease since 1994 with three separate back surgeries and hypertension dating back to 1995. He also had diagnoses of acid reflux disease and irritable bowel syndrome. Dr. Schmidt stated that he reviewed the description of the factory manager job and found that appellant's work history was consistent with his worsening medical condition. He posited that appellant's diagnosis of multilevel degenerative disc disease was worsened due to prolonged standing, stooping, bending, kneeling, and running to emergencies, including restraining inmates, as required by his work position.⁵ Dr. Schmidt noted that appellant's low back pain due to multilevel degenerative disc disease was worsened by the "mechanical effects of prolonged standing and assisting of restraining inmates during emergency situations at work."

In a May 19, 2014 decision, OWCP affirmed its February 25, 2013 decision denying appellant's claim for work-related orthopedic and emotional conditions. It found that he had not submitted rationalized medical evidence establishing a work-related orthopedic condition. OWCP denied the emotional condition component of appellant's claim because he had not established any compensable work factors.

Appellant, through counsel, requested reconsideration and submitted additional medical evidence, dated between 1994 and 2010, in support of his claim. None of these reports contained an opinion that appellant's medical condition was related to work factors.

⁵ Dr. Schmidt stated that appellant's hypertension, diarrhea due to irritable bowel syndrome, and gastroesophageal acid reflux disease were worsened by the stress associated with overseeing and supervising prison inmates and working in the prison system. He noted that stress has been documented to increase blood pressure and acid production. Dr. Schmidt also noted that in September 2009 he diagnosed adjustment disorder with mixed anxiety and depressed mood.

By decision dated September 26, 2014, OWCP affirmed its May 19, 2014 decision denying appellant's claim for work-related orthopedic and emotional conditions. It found that appellant had established that he engaged in repetitive standing, lifting, crouching, bending, and stooping at work, but that he had not submitted rationalized medical evidence establishing an orthopedic condition due to those work factors. OWCP again denied the emotional condition component of his claim because he had not established any compensable work factors.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each and every compensation claim, regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.⁶

OWCP regulations define the term occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift.⁷ To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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 employment factors identified by the claimant.⁸

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁹ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 employment factors identified by the employee.¹⁰ Neither the mere fact that a disease or condition manifests itself during a period

⁶ *Roy L. Humphrey*, 57 ECAB 238 (2005).

⁷ 20 C.F.R. § 10.5(ee).

⁸ *Supra* note 6.

⁹ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹¹

ANALYSIS -- ISSUE 1

Appellant claimed that the standing, lifting, crouching, bending, and stooping required by his job over time caused multilevel degenerative disc disease. The Board finds that, while he established that he engaged in repetitive standing, lifting, crouching, bending, and stooping at work, he did not submit sufficient medical evidence to establish that he sustained a specific back injury due to those work factors.

Appellant submitted a January 10, 2014 report in which Dr. Schmidt, an attending Board-certified family medicine physician, stated that he had a history of chronic low back pain due to multilevel degenerative disc disease since 1994 with three separate back surgeries. Dr. Schmidt stated that he reviewed the description of the factory manager job and found that appellant's work history was consistent with his worsening medical condition. He posited that appellant's diagnosis of multilevel degenerative disc disease was worsened due to prolonged standing, stooping, bending, kneeling, and running to emergencies, including restraining inmates, as required by his work position. Dr. Schmidt noted that appellant's low back pain due to multilevel degenerative disc disease was worsened by the "mechanical effects of prolonged standing and assisting of restraining inmates during emergency situations at work."

The Board notes that this report is of limited probative value in establishing appellant's claim for a work-related orthopedic condition because the report does not contain medical rationale in support of its opinion on causal relationship. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹² Dr. Schmidt did not describe appellant's work duties in any detail or explain how they would have been competent to cause the observed back condition.¹³ Such rationale is particularly necessary because appellant had a significant preexisting back condition and last worked for the employing establishment in 2009. Dr. Schmidt did not explain why appellant's back problems were not solely due to his preexisting back condition. Appellant had three prior back surgeries and there is no evidence that these surgeries were necessitated by a work injury.

Appellant submitted additional medical evidence in support of his claim, but none of these reports contained a rationalized opinion that his orthopedic condition was related to work factors.¹⁴ For these reasons, he did not meet his burden of proof to establish that he sustained an orthopedic condition in the performance of duty.

¹¹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹² *C.M.*, Docket No. 14-88 (issued April 18, 2014).

¹³ Dr. Schmidt stated that appellant engaged in restraining inmates during emergency situations at work. However, these actions have not been factually established.

¹⁴ On appeal, counsel argued that appellant submitted medical evidence showing his orthopedic condition was related to work factors, but he did not identify a rationalized medical opinion that supported this argument.

LEGAL PRECEDENT -- ISSUE 2

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 an 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 specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.¹⁵ 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.¹⁶

A claimant has the burden of establishing by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.¹⁷ This burden includes the submission of a detailed description of the employment factors or conditions which the claimant believes caused or adversely affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.¹⁸

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 a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.¹⁹ 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 record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.²⁰ As noted above, causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by a medical discussion explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.²¹

¹⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

¹⁶ *Gregorio E. Conde*, 52 ECAB 410 (2001).

¹⁷ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹⁸ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹⁹ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

²⁰ *Id.*

²¹ *See supra* notes 9 and 10.

ANALYSIS -- ISSUE 2

Appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. OWCP denied his emotional condition claim because he did not establish any compensable employment factors. The Board must, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA. The Board notes that appellant's claimed work factors are alleged to be related to his regular or specially assigned duties under *Cutler*.²²

Appellant alleged that working as a factory manager caused him to sustain the stress-related conditions of depression, irritable bowel syndrome, chronic fatigue, and high blood pressure. He claimed that while working as a factory manager an inmate death occurred during his shift in the unit for which he was responsible. Appellant asserted that he had to carry out the dead body of the inmate, conduct the investigation, and clean up the cell. He claimed that there were staff deaths and that he had to go to the hospital and speak to family members on three separate occasions. Appellant alleged that he had to oversee maximum security inmates and that he had 150 to 200 inmates to oversee with six staff members.

The Board finds that appellant did not establish the factual aspects of his claims regarding his duties or incidents/conditions of his job. He made a number of assertions regarding these matters, but he did not submit evidence supporting their actual occurrence or existence. Appellant's assertions are vague in nature. However, appellant did not provide any specific dates of contacts with incidences with inmates and staff members.

A safety manager for the employing establishment provided detailed statements countering appellant's assertions. He stated that appellant would not have been responsible for carrying out a prisoner or cleaning a cell. The safety manager noted that other staff members would have been responsible for these tasks.²³ He indicated that he was aware of only one staff death; he had direct knowledge of the circumstances of this death and its aftermath because he spoke to the deceased staff member's family. The safety manager indicated that appellant was not present at the time of the killing or at the hospital when family members were notified. Appellant would not have been responsible for notifying inmate families of any incidents. The safety manager noted that the factory only had 70 to 100 inmates, rather than 150 to 200 as alleged by appellant. They were not directly supervised by appellant, but rather were directly supervised by six staff members.²⁴

²² See *supra* note 15.

²³ Appellant submitted a February 12, 2014 statement of an individual who stated that he had oversight over his work division. The individual stated that appellant was required to respond to emergencies and take action to contain such situations, but he did not describe the extent of appellant's responsibility in this regard or provide any details of specific actions appellant actually took.

²⁴ The record contains a description of the factory manager job which indicates that a factory manager has responsibility for indirect supervision of inmate workers in the factory.

For the foregoing reasons, appellant has not established any compensable employment factors under FECA.²⁵ Therefore, he has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.²⁶

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 to establish that he sustained an orthopedic or emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the September 26, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 2, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

²⁵ On appeal, counsel argued that appellant submitted sufficient evidence to establish work factors, but he did not adequately describe the specific evidence which supported this argument.

²⁶ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).