

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

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ELEE BROWN, Appellant)
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and)
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DEPARTMENT OF THE ARMY,)
DIRECTORATE OF LOGISTICS,)
Fort Stewart, GA, Employer)
_____)

**Docket No. 04-2180
Issued: February 23, 2005**

Appearances:
Elee Brown, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 3, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated August 13, 2004, which denied his claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On February 9, 2004 appellant, then a 51-year-old munitions handler, filed an occupational disease claim alleging that he developed anxiety and stress as a result of being

overworked. He did not stop working but was assigned to a light-duty position on January 13, 2004.

Appellant submitted a statement dated February 9, 2004, alleging that in 2002 there was a reduction-in-force causing the employing establishment to become understaffed. His volume of work as a munitions handler substantially increased due to the deployment missions to Iraq. Appellant advised that his position as munitions handler was very physically demanding and required precise accountability. The increased work volume caused him stress and aggravated his existing conditions of hypertension, diabetes mellitus, congestive heart failure and asthma.

Also submitted were employing establishment medical records from July 7, 1998 to February 2, 2004, which noted appellant's treatment for high blood pressure. The reports noted increasing work stress which affected appellant's condition. Appellant came under the treatment of Dr. Eugene A. Nwosu, a Board-certified internist, who noted in reports dated January 12 and 21, 2004, that appellant was seen since May 1998 for severe hypertension and diabetes mellitus, which developed in 1993. He diagnosed dilated nonischemic cardiomyopathy secondary to hypertensive heart disease and diabetic cardiomyopathy and advised that appellant's hypertension was severe and required multiple medications for control. Dr. Nwosu noted that appellant complained of extreme fatigue and weakness after taking his medications and had foregone medication before going to work to avoid side effects. He recommended retirement based on appellant's medical condition and stressors from his working environment.

By letter dated March 18, 2004, the Office asked appellant to submit additional information including a detailed description of the employment factors or incidents that he believed contributed to his claimed illness and a comprehensive medical report from his treating physician, which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed emotional condition. The Office also asked the employing establishment to submit additional information which address the incidents appellant alleged contributed to his claimed illness.

The employing establishment submitted a statement from Belinda K. Horton, chief of the material control section, who noted that during the prior 12 to 16 months appellant's ability to perform his position declined and he was unable to remain focused or follow instructions despite a sincere effort to remain in the workforce. Ms. Horton advised that appellant did not present any conduct problems. She advised that the employing establishment was a rapid deployment installation and was operating at an extremely high level of activity since 2003 due to the deployment to Iraq. Appellant was assigned to the ammunition supply point where there was an added level of security and accountability and advised that the work was fast paced under the existing deployment conditions. She indicated that appellant worked additional hours as required so that the deployment missions were completed. Ms. Horton further noted that the employing establishment experienced staffing shortages over the past year due to the deployment missions.

In a August 13, 2004 decision, the Office denied appellant's claim finding that the medical evidence did not show that the claimed emotional condition was related to the compensable work factor of overwork.

LEGAL PRECEDENT

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.¹ Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,² the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.³ 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 under the Act.⁴ When an employee experiences emotional stress 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 an in the course of employment. This is true when the employee's disability results from his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.⁵ 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 under the Act.

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.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 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

¹ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² 28 ECAB 125 (1976).

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

⁵ *Lillian Cutler*, *supra* note 2.

⁶ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁷ *Id.*

ANALYSIS

In the instant case, the Board finds that appellant has established a compensable factor of employment as the record supports there was a staff shortage at the base, his employment duties increased due to the deployment to Iraq causing him to be overworked. Ms. Horton, the chief of the material control section, advised that the employing establishment was a rapid deployment installation which had been operating at an extremely high level of activity since 2003, due to deployment missions to Iraq. Ms. Horton noted that appellant was assigned to the ammunition supply point where there was an added level of security and accountability and that, due to deployment missions to Iraq, these duties were more critical and the work was fast paced. She advised that the employing establishment experienced staffing shortages due to the deployment missions and appellant worked additional hours as required to get the deployment missions completed.

Appellant's burden of proof is not discharged by the fact that he has established a compensable employment factor. To establish his occupational disease claim, appellant must also submit rationalized medical evidence establishing that his claimed conditions are causally related to the accepted work factor.⁸ While it is not disputed that appellant has hypertension and other conditions, the medical evidence does not address how or why the accepted employment factor caused or contributed to his hypertension or an emotional condition.

Employing establishment medical records from July 7, 1998 to February 2, 2004, noted that appellant experienced increasing work stress, which affected his high blood pressure conditions and that he was advised to retire on a medical disability. However the treatment notes do not provide any rationalized medical opinion from a physician explaining how his hypertension or other conditions were causally related to the accepted compensable employment factor.⁹ Specifically, the treatment notes fail to reference the accepted employment factor or explain how it caused or contributed to appellant's claimed condition.¹⁰

Dr. Nwosu noted treating appellant since May 1998 for severe hypertension and diabetes mellitus which developed in 1993. He diagnosed dilated nonischemic cardiomyopathy secondary to hypertensive heart disease and diabetic cardiomyopathy. He stated that appellant's hypertension was severe and required multiple medications for control. The physician recommended retirement based on appellant's medical conditions and stressors from his working environment. However, Dr. Nwosu did not attribute appellant's diagnosed conditions to working in an understaffed unit or to being overworked during the period 2003 to 2004.¹¹ He did not

⁸ See *William P. George*, 43 ECAB 1159, 1167 (1992).

⁹ *Id.*; see also *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

¹⁰ It also appears that these treatment notes were authored by nurses such that they cannot be considered medical evidence. See 5 U.S.C. § 8101(2). This subsection defines the term "physician." See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

¹¹ *Id.*

explain how the work appellant was required to perform contributed to the progression of any distance process or caused disability for work.

The Board finds that appellant has not submitted rationalized medical evidence establishing that his claimed conditions are causally related to the accepted compensable employment factor.¹²

CONCLUSION

The Board finds that appellant has not established that he sustained an emotional, hypertension or other condition causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the August 13, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 23, 2005
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹² See William P. George, *supra* note 8.