

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

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**THOMAS R. CHAPAIS, Appellant**

**and**

**DEPARTMENT OF THE NAVY,  
PORTSMOUTH NAVAL SHIPYARD,  
Portsmouth, NH, Employer**

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**Docket No. 04-264  
Issued: May 10, 2005**

*Appearances:*

*James G. Noucas, Esq., for the appellant  
Evan H. Nordby, Esq., for the Director*

Oral Argument Held March 8, 2005

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On November 10, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated September 22, 2003, denying his emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the September 22, 2003 decision.

**ISSUE**

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to a compensable factor of his federal employment.

**FACTUAL HISTORY**

On February 7, 2001 appellant, then a 51-year-old crane instructor, filed a traumatic injury claim alleging that on September 18, 2000 he experienced a nervous breakdown and "attacked" objects in his work cubicle.

By decision dated April 10, 2001, the Office denied appellant's claim on the grounds that he failed to establish that his emotional condition was causally related to a compensable factor of employment.

On January 2, 2002 appellant requested reconsideration and submitted additional evidence. He explained that on September 18, 2000 a coworker asked him to retype a document and, due to an accumulation of work stress over time caused by attempting to perform his demanding work duties, he went into a "rage" and tore up his workstation. Appellant stated that his job required him to prepare lesson plans, observe crane operators to ensure that procedures were followed, complete administrative paperwork, update his equipment qualifications and make off-site trips that caused a work backlog.<sup>1</sup> He alleged that he received insufficient training for his position.

In a report dated January 4, 2002, Bennett S. Slotnik, Ph.D., a licensed clinical psychologist, indicated that appellant's emotional conditions, a neurodevelopmental attention deficit disorder, major depressive disorder with anxiety and panic disorder with agoraphobia, were caused by his difficulty with the "multi-tasking" required in his job, problems with time management and coping with a work environment that involved the processing of multiple stimuli simultaneously. He indicated that appellant had some difficulties with spelling and written self-expression which caused stress when he moved from his crane operator position to his position as a crane instructor and was required to prepare written documents. Dr. Slotnik stated that appellant's expanded and more complex work requirements as a crane instructor exceeded his abilities because of his attention deficit disorder.

In an undated narrative report apparently prepared at the end of September 2000, a February 16, 2001 narrative report and subsequent progress notes dated January 19, 2001 to April 23, 2001, Dr. David P. Jones, an osteopath specializing in psychiatry, stated that appellant was overwhelmed by his job duties and had become enraged two weeks earlier and lifted up his desk at his cubicle and started screaming. He diagnosed a major depressive disorder with anxiety and panic disorder with agoraphobia, aggravated by job stressors.

On May 13, 2002 the Office referred appellant, together with copies of medical reports and the statement of accepted facts, to Dr. Carl Metzger, a Board-certified psychiatrist, for an examination and evaluation as to whether his emotional condition was causally related to factors of his employment. The statement of accepted facts indicated that work incidents that were not considered to be in the performance of duty were his loss of his crane operator's license due to a crane accident in June 2000 and the September 18, 2000 incident when he went into a rage after being asked to retype a document. Factors that were not considered to be in the performance of duty because they were not established as factual were allegations that he did not receive sufficient training and, when he stopped working, he was replaced by two full-time instructors.

In a May 28, 2002 report, Dr. Metzger indicated that appellant believed that he was a good teacher in the operation of a crane but had difficulty preparing written reports and became depressed and angry. He diagnosed a dysthymic disorder and stated his opinion that appellant's

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<sup>1</sup> Appellant noted that there had previously been three crane instructors but, due to a reduction-in-force, he was performing all the teaching and administrative tasks.

work factors aggravated a preexisting psychological disorder but caused only temporary disability between November 2000 and January 2001.

By letter dated June 6, 2002, the Office asked Dr. Metzger whether he believed the incidents found to be in the performance of duty, increased workload, off-site trips that caused a backlog in his job and constant updating of lesson plans, had aggravated appellant's underlying emotional condition.

In an addendum report dated June 13, 2002, Dr. Metzger stated his opinion that the accepted work factors, increased workload, off-site trips and updating lesson plans, aggravated appellant's emotional condition but that his temporary disability had been caused by his perception that he was not competent to perform his job duties.

By decision dated June 20, 2002, the Office denied modification of its April 10, 2001 decision. The Office found that incidents which were compensable factors of employment were appellant's increased workload, the backlog created by his off-site trips, having to update his equipment qualifications, having to update lesson plans and having to observe crane operations. The Office found that incidents deemed not in the performance of duty were the revocation of his crane operator's license in 2000 and the September 18, 2000 incident when he became enraged and tore up his cubicle. The Office found that allegations that were not established as factual were insufficient training and being replaced by two full-time instructors. The Office further found that the medical evidence, represented by the reports of Dr. Metzger, established that appellant's emotional condition was not causally related to a compensable factor of employment.

Appellant requested reconsideration and argued that Dr. Metzger's reports did not represent the weight of the medical opinion evidence. He argued that the medical evidence he submitted established that his emotional condition was caused by compensable factors of his employment.

By decision dated September 22, 2003, the Office denied modification of its June 20, 2002 decision.

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act<sup>2</sup> provides for the payment of compensation benefits for injuries sustained in the performance of duty. 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.<sup>3</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *George C. Clark*, 56 ECAB \_\_\_\_ (Docket No. 04-1572, issued November 30, 2004).

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*,<sup>4</sup> the Board explained that there are distinctions in the type of employment situations giving rise to a compensable emotional condition under the Act. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within coverage under the Act.<sup>5</sup> 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 and in the course of employment. This is true when the employee's disability results from an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup>

Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. 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 frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>9</sup> Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act.<sup>10</sup> However, an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.<sup>11</sup>

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<sup>4</sup> 28 ECAB 125 (1976).

<sup>5</sup> *George C. Clark*, *supra* note 3

<sup>6</sup> *Lillian Cutler*, *supra* note 4.

<sup>7</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>8</sup> *Id.*

<sup>9</sup> *Lillian Cutler*, *supra* note 4.

<sup>10</sup> *Michael L. Malone*, 46 ECAB 957 (1995); *Gregory N. Waite*, 46 ECAB 662 (1995).

<sup>11</sup> *Charles D. Edwards*, 55 ECAB \_\_\_\_ (Docket No. 02-1956, issued January 15, 2004).

## ANALYSIS

Appellant alleged that his job required him to prepare lesson plans, observe crane operators, complete administrative paperwork, update his equipment qualifications and make off-site trips. He also alleged that he received insufficient training for his position. These allegations involve administrative or personnel actions that are not compensable under the Act absent evidence of error or abuse. The Board finds that appellant has failed to establish error or abuse in the employing establishment's handling of these administrative matters. Therefore, these allegations do not constitute a compensable factor of employment.

The Board finds that the incident on September 18, 2000 could constitute a compensable factor of employment. Appellant's emotional reaction on that date was a response to a specific job activity, having to type documents. He became angry when asked to retype a document. As his allegation regarding the September 18, 2000 incident concerns a regular or specially assigned work duty, this incident could be deemed a compensable employment factor. However, appellant's burden of proof is not discharged by the fact that he has established an employment factor which may give rise to a compensable disability under the Act. As noted above, appellant must also submit rationalized medical evidence establishing that his claimed emotional condition is causally related to an accepted compensable employment factor.<sup>12</sup>

The Office based its denial of appellant's emotional condition claim on the opinion of Dr. Metzger, the Office referral physician, that his temporary disability, caused by his preexisting dysthymic disorder, was not caused by any of the compensable factors of employment set forth in the statement of accepted facts but rather by his perception that he was not competent to perform his job.

Dr. Slotnik, appellant's psychologist, indicated that his emotional condition was caused by his difficulty with the "multi-tasking" required in his job, problems with time management and coping with a work environment that involved the processing of multiple stimuli simultaneously. He indicated that appellant had difficulties with spelling and written self-expression which caused stress when he moved from his crane operator position to his position as a crane instructor and he was required to prepare written documents. Dr. Slotnik stated that appellant's expanded and more complex work requirements as a crane instructor exceeded his abilities because of his attention deficit disorder. Dr. Jones, appellant's psychiatrist, indicated that appellant was overwhelmed by his work and had become enraged on September 18, 2000 and lifted up his desk at his cubicle and started screaming. He diagnosed a major depressive disorder with anxiety and panic disorder with agoraphobia, aggravated by job stressors.

Section 8123(a) of the Act provides, in pertinent part, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."<sup>13</sup> The Board finds that there is an unresolved conflict in the medical opinion evidence in this case between

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<sup>12</sup> *Brian E. Flescher*, 40 ECAB 532 (1989); *Ronald K. White*, 37 ECAB 176 (1985).

<sup>13</sup> 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

Dr. Metzger, the Office referral physician, and Drs. Slotnick and Jones, appellant's psychologist and psychiatrist, on the issue of whether his emotional condition was causally related to a compensable factor of employment. Accordingly, the case must be remanded for further development.

On remand, the Office should amend the statement of accepted facts to reflect that the work incident on September 18, 2000 constitutes a compensable factor of employment. The Office should then refer appellant, together with the case record and statement of accepted facts, to a Board-certified psychiatrist for a thorough examination and a well-rationalized determination as to whether appellant's emotional condition was caused or aggravated by a compensable factor of employment. After such further development as it deems necessary, the Office shall issue a *de novo* decision.

**CONCLUSION**

The Board finds that this case is not in posture for a decision due to an unresolved conflict in the medical opinion evidence and requires further development.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 22, 2003 is set aside. The case is remanded for further development consistent with this decision.

Issued: May 10, 2005  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member