

compensable work factors had been established: an erroneous administrative action with respect to the termination of employment; and performing work that was outside his medical restrictions. The allegation of discrimination was found not to be established as a compensable work factor, and the medical evidence was found not of sufficient probative value to establish an injury causally related to the compensable factors. In a decision dated July 3, 2002, the Board found that appellant was entitled to further merit review of his claim.² The Board found that appellant had submitted new and relevant evidence with respect to his claim, including an April 7, 2000 decision from the Merit Systems Protection Board (MSPB). The record indicates that appellant also submitted additional medical evidence. In a report dated December 4, 1997, Dr. S. Chandra Shekher, a psychiatrist, indicated that appellant reported he was harassed and discriminated against at work. She diagnosed chronic undifferentiated schizophrenia. In a February 7, 2000 report, Dr. Shekher noted that a major stress for appellant was a motor vehicle accident involving his daughter in December 1997.

Based on the April 7, 2000 MSPB decision, the Office determined in an October 22, 2002 decision that appellant had established an additional compensable work factor.³ The claim was denied on the grounds that the medical evidence was insufficient to establish that the accepted work factors caused or contributed to his emotional condition.

By decision dated March 17, 2004, the Board again found that appellant was entitled to a merit review of his claim.⁴ The Board indicated that appellant had requested reconsideration of the October 22, 2002 decision by letter dated November 27, 2002, but the Office did not issue a decision denying merit review until November 6, 2003. Since the delay in issuing the decision precluded appellant from exercising his right to appeal a merit decision, the Board remanded the case for further merit review. The history of the case is contained in the Board's prior decisions and is incorporated herein by reference.

The Office issued a decision dated July 2, 2004 denying modification of the denial of the claim. The Office determined that the evidence was not sufficient to warrant modification.⁵ In a letter dated November 24, 2004, appellant requested reconsideration of his claim, contending that the Office had failed to consider a medical report from Dr. Thomas McMath. The Board notes that appellant had submitted a report dated August 22, 2002 which stated that the examining provider was Thomas McMath and the report was "approved" by Dr. J. Arias. The report provides a diagnosis of delusional disorder and is not signed.

² Docket No. 02-236 (issued July 3, 2002).

³ The Office found that the employing establishment had improperly required appellant to use annual leave during a 13-week period prior to a work stoppage on April 29, 1994.

⁴ Docket No. 04-303 (issued March 17, 2004).

⁵ The decision contains appropriate citations to Board precedent regarding denial of modification, as well as references to the "clear evidence of error" standard for untimely reconsideration and case law concerning the standard for reopening a claim for merit review on a timely reconsideration request.

By decision dated January 13, 2005, the Office reviewed the case on its merits and denied modification. The Office reviewed the medical evidence and found that it was not sufficient to establish causal relation between the accepted factors and appellant's emotional condition.

LEGAL PRECEDENT

To establish a 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.⁶

The Board has held that 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 employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to his regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of his work or his fear and anxiety regarding his ability to carry out his work duties.⁷

By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.⁸

The Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors, which may be considered by a physician when providing an opinion on causal relationship, and which are not deemed factors of employment and may not be considered.⁹ As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim; the claim must be supported by probative evidence.¹⁰

⁶ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁷ *Ronald J. Jablanski*, 56 ECAB ____ (Docket No. 05-482, issued July 13, 2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁸ *Id.*

⁹ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

¹⁰ *See Charles E. McAndrews*, 55 ECAB ____ (Docket No. 04-1257, issued September 10, 2004).

ANALYSIS

The Board directed the Office to issue a merit decision with respect to appellant's claim in its March 17, 2004 decision. The July 2, 2004 Office decision reviewed the claim on its merits and on January 13, 2005 the Office again provided a merit review of the case. The Office has accepted three factors of employment as compensable: (1) unloading trucks in derogation of work restrictions, (2) administrative error in terminating appellant's employment, and (3) administrative error in requiring use of annual leave in the weeks prior to April 29, 1994. Appellant has not submitted any probative evidence establishing any additional compensable work factors. With respect to an allegation of discrimination, appellant did not submit any probative evidence since the Board last reviewed the merits of this case. As the Board noted in its February 19, 1999 decision, the Equal Employment Opportunity (EEO) Commission decision had found no discrimination in this case. Appellant has not submitted probative evidence of discrimination or any evidence sufficient to establish other compensable work factors.

It remains appellant's burden of proof to submit medical evidence on causal relationship between a diagnosed emotional condition and the compensable work factors. The Board previously reviewed the medical evidence that was before the Office at the time of its April 17, 1996 merit decision. Since that time, appellant has not submitted probative medical evidence on the issue presented. Dr. Shekher did not provide an accurate background discussing the accepted work factors, or a reasoned medical opinion on causal relationship. With regard to the August 22, 2002 report, the Board notes that it contains references to a Thomas McMath and to a Dr. J. Arias, but the report is not signed. It is not clear whether a physician under the Act¹¹ prepared and reviewed this report, and it is of no probative value to appellant's claim. It is well established that medical evidence lacking proper identification is of no probative medical value.¹² The record does not contain a medical report with a complete factual and medical background, and a reasoned medical opinion on causal relationship between a diagnosed emotional condition and the accepted work factors. The Board finds that appellant did not meet his burden of proof in this case.

CONCLUSION

Appellant did not establish an emotional condition causally related to the compensable work factors.

¹¹ See 5 U.S.C. § 8101(2).

¹² *Thomas L. Agee*, 56 ECAB ____ (Docket No. 05-335, issued April 19, 1985); *Richard F. Williams*, 55 ECAB ____ (Docket No. 03-1176, issued February 23, 2004); *Merton J. Sills*, 39 ECAB 572 (1988).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 13, 2005 and July 2, 2004 are affirmed.

Issued: March 21, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board