

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

R.V., Appellant

and

**DEPARTMENT OF THE NAVY, NAVAL AIR
DEPOT, Cherry Point, NC, Employer**

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**Docket No. 06-908
Issued: November 6, 2006**

Appearances:
Martin Kaplan, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 9, 2006 appellant, through his attorney, filed a timely appeal from March 9 and December 21, 2005 merit decisions of the Office of Workers' Compensation Programs denying his emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty. On appeal, appellant's attorney argues that he experienced stress in the performance of his job duties and established a compensable employment factor.

FACTUAL HISTORY

On August 13, 2004 appellant, then a 47-year-old industrial specialist, filed an occupational disease claim alleging that he sustained major depression due to factors of his federal employment. He stopped work on July 19, 2004 and did not return. In a statement

accompanying his claim, appellant related that he first experienced major depression in July 2003, while working as a building operations manager for four “depot-private industry partnerships.” He stated:

“My partnership responsibilities consumed my entire workweek (excluding leave, training, etc. [etcetera]) and exposed me to significant stress levels contributing to my illness. I would bring work home after hours in an attempt to keep up with the constant demands utilizing my docking station laptop computer.

“I managed the four partnerships in various stages of execution and planning. My daily efforts were confronted with exhaustive production oversight efforts, constant multitasking with problem resolution and perpetual priority adjustments in order to insure depot production goals (quality, schedule and cost) were attained. My efforts were necessary to insure partnership success or the depot would be at risk for loss of workload/jobs due to contract nonperformance.

“I was ultimately responsible for overseeing development and accuracy of technical information provided to our partners during the planning phases. The information draws were often frustrating due to nonavailability, inaccessibility or inaccuracy of data when generated from the depot’s workload control system. I would have to develop arduous specifications for programmers and validate design efforts to insure data accuracy to satisfy our customer’s needs.... Additionally, I was required to review and develop contract performance language between the depot and private industry with no previous work experience which contributed to additional stress leading to my illness.

“The stress[-]related illness was exasperated by the high level of responsibility, low level of authority and constant demands for management and technical oversight efforts. As chairperson for partnership planning boards, I encountered difficulty with team members providing timely responses to tasks and action assignments. This difficulty was attributed to my team members being managed by other competency groups, thus minimizing my limited authority and span of control. Furthermore, I was often confronted with reluctance by team members when providing technical information for the partnerships. This support was perceived as assisting ‘contractors’ to establish footholds in the depot, again, threatening loss of workload and job security. I had to tirelessly encourage workforce support to minimize distrust with the partnerships and assure future stability for the depot.”

Appellant noted that he had no direct subordinates to assist him and that the only “knowledgeable help” came from his division director who had “significant corporate knowledge of partnership requirements.”

In a statement dated October 1, 2004, the employing establishment controverted appellant’s claim. The employing establishment indicated that from May to December 2002 appellant worked satisfactorily in a position in the business office. Appellant was permanently reassigned in December 2002 because he desired a position with less travel. He missed work

beginning in September 23, 2003; subsequent to that date, he worked only November 4 and 5, 2003, January 4 to February 21, 2004 and July 10, 2004. Appellant took on tasks that were not assigned to him and took work home without management's knowledge. The employing establishment subsequently informed him not to take work home and noted, "[Appellant's] supervisors reported that [he] thought he needed to take work home because in his opinion the work product he was receiving from team members had mistakes and he believed he needed to personally redo their work or it would not get done properly." His supervisor informed appellant to let him know if he received inadequate work. The employing establishment further indicated that appellant may have previously received treatment for depression and challenged the medical evidence.

The employing establishment submitted numerous sworn statements from appellant's coworkers and supervisors challenging the accuracy of his depiction of his work duties.¹ In a sworn statement dated September 27, 2004, Frederick Davenport, appellant's first-line supervisor from April 2002 until April 2004, related that he performed his work quite well until January 2004. Mr. Davenport stated:

"A couple of months prior to [appellant's] absences beginning September 2003, [he] stated that he had to take work home in order to keep up with the workload. He had never complained that his workload was too much for him before that. When I asked what he had to take home to work on he said that data and assignments provided from team members required corrections. I told him that he should not be taking work home and if member assignments required correction he should return them to the team members for correction."

Mr. Davenport noted that appellant returned to work for a few days in November 2003 and for six weeks with restrictions beginning January 5, 2004. Appellant advised that he did not want to return to his prior position because "it was too much for him. I told [him] that he was trying to micromanage too much and was not properly delegating tasks. [Appellant] was clearly overly conscientious." Regarding appellant's allegation that it was difficult obtaining information from subordinates, Mr. Davenport stated: "[Appellant] was [t]eam [l]ead[er] for his program and had about 10 [to] 12 individual experts in various fields to whom he was to delegate relevant taskings. He mentioned to me that these people did not seem to want to support him and that he encountered difficulties because he had no authority over these people." Mr. Davenport indicated that he himself did not have problems with the team members. He also noted that appellant's contention that he was assigned to four partnerships that are now assigned to three people was "somewhat misleading" because of the stages of the projects. Mr. Davenport noted that appellant did not have production oversight but did confer with others "to determine the status of program goals and the likelihood of achieving them." He further did not develop specifications for programmers but "determine[d] if the specifications that were developed satisfied his needs." Mr. Davenport indicated that only infrequently would a team member distrust a partnership. Regarding appellant's allegation that he experienced "constant demands to satisfy the [employing establishment], contractor and military priorities simultaneously,"

¹ The Board will primarily discuss the statements of appellant's first and second-line supervisors during the relevant time period as they are in the best position to accurately address his work duties.

Mr. Davenport stated that this was “the core of his job. He was program manager and his job was to orchestrate. [Appellant] never complained to me about any specific responsibilities of his job, other than to say, in general terms, it was too much for him....” Mr. Davenport also indicated that another of appellant’s primary duties was supporting the Performance Based Logistics programs but he was not responsible for partnership success. He stated: “A program manager provides input and reviews the contract performance language so that he is aware of the requirements of the contract. The actual requirement of the contract language is under the legal department responsibilities.” Mr. Davenport asserted that appellant was responsible for obtaining the technical information that he needed but not the accuracy.

In a statement dated September 27, 2004, Diane Wade, appellant’s first-line supervisor since May 2004, indicated that she did not have any knowledge of events prior to January 2004 and limited knowledge of events from January and May 2004. Ms. Wade addressed the allegations raised by appellant by describing the duties of an individual in his job position.

In a statement dated September 29, 2004, Harriet B. Antaya, a coworker, disputed appellant’s version of his employment duties. Ms. Antaya noted that she never experienced difficulties with team members providing timely responses and indicated that appellant may have negotiated contract language one time but not routinely. Ms. Antaya noted that the four programs appellant managed were at different stages than at the present time. Regarding multitasking, she indicated that it was appellant’s job to find individuals who could resolve problems. Antaya maintained that she did not ensure production goals were met, did not set priorities, did not review the accuracy of technical information and did not develop specifications. She asserted that her efforts did not impact any jobs at the employing establishment.

Debra Bautista, appellant’s second-line supervisor from April 26, 2002 onward, provided a sworn statement on October 1, 2004. She related that appellant did not “develop contract performance language” and indicated that he worked on four programs when the projects were at earlier states and required less attention. Ms. Bautista stated that she instructed appellant to stop taking work home to complete and informed him that he exceeded his duties as program manager by checking the accuracy of the information provided him by his team members. She noted that appellant “expressed concern to his immediate supervisor and me that he suspected the accuracy of the data presented to him by his team members.” Ms. Bautista informed him to talk with the team member about his concerns; however, he “refused to take this advice and continued to correct the data himself, which created more work for him.” She specified that he managed partnerships rather than people, did not oversee production and was not expected to “resolve the problems of the planning and execution of the partnerships single handedly.” Ms. Bautista noted that encouraging employees to accept partnerships would “mainly have been an issue with new team members.” She indicated that she had no problems with his performance as program manager. Ms. Bautista also asserted that his job was to see that the partnerships met the needs of the employing establishments rather than the contractor and that he could not put anyone’s job at risk through his actions.

In a letter dated December 30, 2004, appellant's attorney argued that he experienced stress performing his usual employment duties and challenged the employing establishment's attempts "to minimize the level of responsibilities of [his] position...." He cited to statements from appellant's coworkers and supervisors in support of his contention.

In a letter received by the Office on January 3, 2005, appellant described in detail his employment duties from September 2002 to September 2003. He concluded that "the simultaneous responsibility of four partnerships, in various stages of planning and execution, culminated in physical and mental exhaustion." Appellant indicated that he voluntarily worked overtime without pay because he had a good work ethic and loved his job.

The employing establishment submitted a statement dated January 27, 2005, again challenged the details of appellant's depiction of his employment duties. The employing establishment maintained that he was not personally assigned the tasks he alleged caused him stress but instead worked as part of a team. Appellant did "have the responsibility for ensuring that the data provided to him in response to a request for the customer was accurate, which is called the validation process." The employing establishment noted that only one partnership managed by appellant was "ready for implementation" and reiterated that he did not prepare or negotiate legal documents.

By decision dated March 9, 2005, the Office denied appellant's claim on the grounds that he did not establish an emotional condition in the performance of duty. The Office determined that appellant did not establish any compensable employment factors.

On March 14, 2005 appellant requested an oral hearing. At the hearing, held on October 18, 2005, appellant's counsel argued that he experienced stress as a result of his duties as a program manager. Counsel noted that the partnerships were new programs with undefined procedures and that appellant "perceived his job to be to coordinate and make sure that the deliverables to the ... programs he was managing were correct and this caused a lot of extra work and a lot of stress on him...."² Appellant described his job duties as "the planning and implementation of partnerships" and meeting production deadlines. He asserted that he managed an implementation team and noted that the partnership programs were fairly recent. Appellant related that he spoke with his second-line supervisor in August and told her that he was experiencing problems due to "the demands and responsibilities associated with the four partnerships." He experienced problems getting information necessary in a timely manner. When appellant received information from his team, he had to unify the responses which he asserted differed from redoing work. On one occasion, he asked a team member for a list of material and the team member threw it back at him and told him to see his supervisor. Other employees considered the partnerships a threat to their job security, which impacted their responses to him. He described his attempts to keep up with his workload, including taking work home.

² His attending psychiatrist testified at the hearing that it was the work itself rather than issues with supervisor that caused appellant's emotional condition.

By decision dated December 21, 2005, the hearing representative affirmed the Office's March 9, 2005 decision. She found that appellant had not established that he was "overwhelmed" by his duties or that he was responsible for the duties claimed.

LEGAL PRECEDENT

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 regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³ 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.⁴

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.⁵ 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.⁶

ANALYSIS

Appellant attributed his major depression to his duties as a building operations manager in charge of four partnerships between the employing establishment and private industry. He related that his work required "exhaustive production oversight efforts, constant multitasking with problem resolution and perpetual priority adjustments...." Appellant asserted that he was "ultimately responsible for overseeing development and accuracy of technical information provided to our partners during the planning phases." He maintained that he encountered problems with the accuracy and availability of needed information and noted that he reviewed and developed contract language even though he had no previous experience in the area. As team leader, appellant experienced difficulty obtaining timely information from the team members, in part because some believed that the partnerships with private industry threatened their positions. He took work home with him in order to keep up with the workload. At the

³ 5 U.S.C. § 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁵ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁶ *Id.*

hearing, appellant noted that he had informed his second-line supervisor that the demands of four partnerships were causing him problems and that he had difficulty obtaining the necessary information. Appellant asserted that when he was responsible for unifying the information obtained from his team, which differed from redoing the work, he experienced stress meeting production deadlines.

In a statement dated September 27, 2004, Mr. Davenport noted that appellant performed his work well until January 2004. He informed Mr. Davenport that he took work home to correct assignments of team members and Mr. Davenport told him “that he should not be taking work home and if member assignments required correction he should return them to the team members for correction.” Appellant told him that the position was “too much for him” and Mr. Davenport opined that he was “not properly delegated tasks” and was “clearly overly conscientious.” He related that appellant did not had production oversight but instead conferred on the program goals, that he did not develop specifications for programmers but rather determined if the specifications satisfied his requirements and that he reviewed but did not develop contract language. Mr. Davenport noted that “the core of his job” was meeting simultaneous and constant demands from the employing establishment, private industry and the military. In a statement dated October 1, 2004, Ms. Bautista, appellant’s second-line supervisor, also told appellant not to take work home and told him that he exceeded his duties in checking the accuracy of the information provided by his team members. She noted that he worked as part of a team and that mainly new team members would need to be encouraged to accept partnership. Ms. Bautista challenged his statement that he could put another’s job at risk. In statements dated September 24 and 27, 2004, Ms. Antaya and Ms. Wade also provided their versions of appellant’s employment duties. In a January 27, 2005 statement, the employing establishment indicated that appellant had the responsibility to ensure the accuracy of information collected for customers.

Appellant’s emotional reaction to his job requirements constitutes a compensable employment factor. Although there is some disagreement over the exact details of his job duties, the basic facts are not in dispute. The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable.⁷ In this case, appellant’s job duties consisted of managing partnerships, satisfying the demands of the employing establishment and private industry, reviewing contract language and acting as team leader. He has attributed his stress directly to the performance of his employment duties. The Board has long held that where a claimed disability results from an employee’s emotional reaction to his regular or specially assigned duties or to an imposed employment requirement, the disability comes within the coverage of the Act.⁸ Therefore, appellant has identified compensable employment factors under *Cutler*.⁹

⁷ *Trudy A. Scott*, 52 ECAB 309 (2001).

⁸ *Beverly R. Jones*, 55 ECAB ____ (Docket No. 03-1210, issued March 26, 2004); *Penelope C. Owens*, 54 ECAB 684 (2003); *Robert Bartlett*, 51 ECAB 664 (2000); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁹ See *Lillian Cutler*, *supra* note 3.

As appellant attributed his emotional condition to the performance of his regular or specially assigned work duties, the case presents a medical question regarding whether his emotional condition resulted from the compensable employment factors. The case, therefore, must base its decision on an analysis of the medical evidence. As the Office found there were no compensable employment factors, it did not analyze or develop the medical evidence. The case will be remanded to the Office for this purpose.¹⁰ After such further development as deemed necessary, the Office should issue a *de novo* decision on this matter.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 21 and March 9, 2005 are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 6, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹⁰ See *Robert Bartlett*, *supra* note 8.