



accident.<sup>1</sup> Appellant stated that he continued to have nightmares of the employment-related car accident which was responsible for his multilevel cervical fusion. He further stated that, during an examination by a behavioral/mental health specialist, he was told that his repeated nightmares of being hit from the rear by cars were probably related to the July 18, 2003 employment injury since he did not have post-traumatic stress disorder symptoms prior to the accepted injury. Appellant noted that his irritability and ability to concentrate seemed to become extreme. At the time of the filing of his claim, he was performing limited-duty work in the position of airway transportation systems specialist.

By letter dated November 14, 2006, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It addressed the additional factual and medical evidence he needed to submit directly to the Office within 30 days to establish his claim. This included a detailed description of the employment-related conditions or incidents that he believed contributed to his condition and a comprehensive medical report from his physician, which described his symptoms and included results of examinations and testing and provided a diagnosis and opinion, with medical reasons, on the cause of his condition. Appellant did not respond within the allotted time period.

By decision dated December 26, 2006, the Office found that appellant did not sustain an emotional condition while in the performance of duty. Appellant failed to submit evidence establishing that he sustained an injury at the time, place and in the manner alleged and a diagnosed medical condition causally related to the claimed event.<sup>2</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> has the burden of establishing the essential elements of his claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, 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 are causally related to the employment injury.<sup>4</sup> These are the essential

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<sup>1</sup> On August 15, 2006 the Office combined the instant claim assigned file number 252063541 with appellant's prior claim assigned file number 132085235, which pertained to employment-related injuries he sustained as a result of a July 18, 2003 car accident, into a master claim assigned file number 132085235. The Office stated that the instant claim was being treated as a consequential injury of the accepted July 18, 2003 employment injuries. The Board notes that the record does not specifically identify the accepted employment-related conditions.

<sup>2</sup> Following the issuance of its December 26, 2006 decision, the Office received factual and medical evidence. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

To establish that he sustained an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.<sup>6</sup>

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>7</sup> the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Act.<sup>8</sup> 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.<sup>9</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 his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.<sup>10</sup> 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.<sup>11</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>12</sup>

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<sup>5</sup> See *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

<sup>6</sup> See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>7</sup> 28 ECAB 125 (1976).

<sup>8</sup> 5 U.S.C. §§ 8101-8193.

<sup>9</sup> See *Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

<sup>10</sup> *Lillian Cutler*, *supra* note 7.

<sup>11</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>12</sup> *Id.*

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 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>13</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>14</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>15</sup>

### ANALYSIS

Appellant alleged that he sustained an emotional condition due to his July 18, 2003 employment-related injuries. The Board notes that an emotional condition related to pain and other limitations resulting from an employment injury is covered under the Act.<sup>16</sup> Appellant's July 18, 2003 injuries were accepted by the Office as occurring in the performance of duty and appellant has attributed his emotional condition to the pain generated by the injuries.

However, appellant's burden of proof is not discharged by the fact that he has identified an employment factor which may give rise to a compensable disability under the Act. To establish his claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the identified compensable employment factor, the July 18, 2003 employment injuries.<sup>17</sup>

The Board notes that, at the time of the Office's December 26, 2006 decision, appellant had submitted no medical evidence. By letter dated November 14, 2006, the Office clearly informed appellant that he had 30 days to submit a statement identifying employment factors and a comprehensive medical report from his physician to the Office. As the record before the Office at the time of its December 26, 2006 decision did not contain sufficient medical evidence to establish that the condition for which compensation is claimed is causally related to a compensable employment factor identified by appellant, the Board finds that appellant failed to establish that his emotional condition was caused by his July 18, 2003 employment-related injuries.<sup>18</sup>

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<sup>13</sup> *Lillian Cutler*, *supra* note 7.

<sup>14</sup> *Michael L. Malone*, 46 ECAB 957 (1995).

<sup>15</sup> *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>16</sup> *Arnold A. Alley*, 44 ECAB 912 (1993); *Charles J. Jenkins*, 40 ECAB 362, 367 (1988).

<sup>17</sup> *William P. George*, 43 ECAB 1159 (1992).

<sup>18</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

**CONCLUSION**

Appellant has established a compensable factor of employment, namely his emotional reaction to the July 18, 2003 employment-related injuries, but has not submitted medical evidence sufficient to establish that this compensable factor of employment caused or contributed to his emotional condition.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 26, 2006 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: June 5, 2007  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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