

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

---

J.T., Appellant )  
and ) Docket No. 07-719  
U.S. POSTAL SERVICE, POST OFFICE, ) Issued: June 26, 2007  
Norfolk, VA, Employer )  
\_\_\_\_\_  
)

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On January 22, 2007 appellant filed a timely appeal from a November 30, 2006 merit decision 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 on September 8, 2006 in the performance of duty.

**FACTUAL HISTORY**

On September 19, 2006 appellant, then a 44-year-old tractor trailer operator, filed a claim alleging that he sustained an emotional condition on September 8, 2006 when he was forced to perform his employment duties "while a coworker was on the ground from a heart attack." He submitted form reports dated September 13 and 20, 2006 in which a physician diagnosed

depression and post-traumatic stress disorder and checked “yes” that the history of injury corresponded to that provided on the form of mental trauma from the death of a coworker.<sup>1</sup>

In a statement dated September 21, 2006, Sondra L. Kendrick, a manager with the employing establishment, confirmed that on September 8, 2006 a coworker of appellant’s collapsed at work. She stated:

“[Appellant] arrived on duty shortly thereafter and was instructed to continue the trip of the ill employee. At this time the employee was conscious and breathing. Employee was later pronounced dead at the hospital of an apparent heart attack.

“[Appellant] did not witness [the] employee collapse nor was he involved in any rescue efforts. [He] departed the facility shortly after the employee collapsed and continued in the performance of his duties. [Appellant] also reported to work the following morning and performed his duties as usual.”

By letter dated October 16, 2006, the Office notified appellant that the evidence currently of record was insufficient to meet his burden of proof. The Office provided him 30 days to submit additional evidence, including a detailed statement describing the development of his claimed emotional condition.

Appellant did not respond within the time allotted. By decision dated November 30, 2006, the Office denied his claim on the grounds that he did not establish an injury in the performance of duty.

#### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an “employee of the United States” within the meaning of the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while 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>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>4</sup>

To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether “fact of injury” is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner

---

<sup>1</sup> The name of the physician is not legible.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Anthony P. Silva*, 55 ECAB 179 (2003).

<sup>4</sup> *See Ellen L. Noble*, 55 ECAB 530 (2004).

alleged, by a preponderance of the reliable, probative and substantial evidence.<sup>5</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.<sup>6</sup> An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.<sup>7</sup>

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 Act.<sup>8</sup> 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>

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>10</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>11</sup>

## ANALYSIS

On his claim form, appellant attributed his condition to management forcing him to perform his employment duties while a coworker was incapacitated and lying on the floor of the employing establishment. Ms. Kendrick, a supervisor with the employing establishment, indicated that management told appellant to "continue the trip of the ill employee." The Board notes that the assignment of work is an administrative function of the employer and not a duty of

---

<sup>5</sup> *Delphyne L. Glover*, 51 ECAB 146 (1999).

<sup>6</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>7</sup> *Id.*

<sup>8</sup> 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>9</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>10</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>11</sup> *Id.*

the employee.<sup>12</sup> 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>13</sup> Appellant has not provided any evidence establishing of error or abuse by the employing establishment in assigning him the work duties of an ill coworker. Thus, he has not established a compensable employment factor.<sup>14</sup>

Additionally, appellant failed to provide a description of the specific employment factors which he alleged caused his emotional condition. The Office advised him in its October 16, 2006 letter that he should submit a detailed factual statement describing the employment incidents alleged to have caused his emotional condition; however, he did not submit such a statement. A claimant's burden of proof includes the submission of a detailed description of the employment factors or conditions which he or she believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>15</sup> As appellant failed to specifically identify the factors to which he attributed his claimed condition, he has failed to establish an essential element of his claim.

### **CONCLUSION**

The Board finds that appellant has not established that he sustained an emotional condition on September 8, 2006 in the performance of duty.

---

<sup>12</sup> *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>13</sup> *Lori A. Facey*, 55 ECAB 217 (2004).

<sup>14</sup> As appellant has not established a compensable work factor, it is not necessary to address the medical evidence. *Barbara J. Latham*, 53 ECAB 316 (2002).

<sup>15</sup> *Janet L. Terry*, 53 ECAB 570 (2002); *John Polito*, 50 ECAB 347 (1999).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 30, 2006 is affirmed.

Issued: June 26, 2007  
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