United States Department of Labor
Employees' Compensation Appeals Board

T.L., Appellant	)	
	)	**Docket No. 07-64**
and	)	**Issued: March 23, 2007**
DEPARTMENT OF VETERANS AFFAIRS, CARL VINSON MEDICAL CENTER, Dublin, GA, Employer	)	

Appearances:
Appellant, pro se
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 October 10, 2006 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated October 19, 2005 which denied his claim for a stress-related condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he developed an emotional condition while in the performance of duty.

FACTUAL HISTORY

On June 19, 2004 appellant, then a 52-year-old utilities system operator, filed an occupational disease claim generally alleging that he developed stress as a result of being understaffed and overworked. He indicated that his position as a utilities system operator required him to work alone and handle multiple ringing telephone lines, alarms, radios and

weather bulletins, which caused stress and aggravated his heart, diabetes and joint conditions. Appellant became aware of his condition on February 15, 2002 and realized that his condition was aggravated by his employment on June 17, 2004. He did not stop work.

In a June 17, 2004 report, Dr. Catherine Bomberger, a Board-certified internist, noted treating appellant since 2001 for severe coronary artery disease, noninsulin-dependent diabetes and angina worse with exertion and stress. She opined that appellant's current job was contributing to his declining health and placed extreme stress on his heart and joints. Dr. Bomberger recommended a disability retirement.

By letter dated August 5, 2004, the Office asked appellant to submit additional information, including a detailed description of the employment factors or incidents that he believed contributed to his claimed illness. It also requested a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed emotional condition.

Appellant submitted a narrative statement alleging that the utilities section at the employing establishment had eliminated positions after employees retired or left the agency which resulted in staffing shortages. He indicated that his position as a utilities system operator was very physical and demanding and required him to perform multiple tasks, including lifting, climbing, working overhead, working in extreme temperatures and in confined spaces which caused him stress. Appellant often had to work alone, work overtime and on weekends with rotating shifts because of the staff shortages and these circumstances caused him stress and aggravated his heart disease, diabetes and joint pain. From January 2 to June 6, 2004, he worked 31 shifts alone, 3 shifts of overtime and one 16-hour shift and submitted time and attendance sheets to support his claim. On August 13, 2004 while on approved sick leave, appellant was notified by his supervisor that he would have to return to duty on August 16, 2004 and that his previously approved sick leave would be denied and changed to leave without pay. In an August 14, 2004 statement, Chris Mimbs, an operator, noted that from January 2 to June 6, 2004 appellant worked alone during his 8-hour shift on 31 separate occasions.

In reports dated December 12, 2001 to October 21, 2003, Dr. Bomberger diagnosed coronary artery disease and chronic stable angina. He recommended that appellant return to work in a light-duty position; however, his employer did not offer light duty. Appellant returned to work full duty which caused additional stress. On April 13, 2004 Dr. Bomberger treated him for chest tightness, arthritis, hypertension and left knee pain.

In reports dated February 28 to March 5, 2002, Dr. Joe H. Johnson, a specialist in cardiology, treated appellant for significant coronary artery disease. In an operative report dated February 28, 2002, he performed a cardiac catheterization which revealed significant three-vessel coronary artery disease with osteo left main stenosis. On February 28, 2002 Dr. Johnson performed a coronary artery bypass surgery times four, vein graft right and a vein graft marginal and diagnosed coronary artery disease. On August 31, 2004 he noted that appellant progressed well postoperatively and his wound healed without any problem. Dr. Johnson opined that appellant's employment was not a contributing factor to the development of his coronary blockage. In reports dated June 24 to November 21, 2003, Dr. Maria H. Bartlett, a Board-certified internist, treated appellant for angina. She diagnosed chronic stable angina

hyperlipidemia and borderline hypertension. Dr. Bartlett recommended that appellant return to work in a sedentary job with limited activity. On November 21, 2003 she indicated that he had returned to work full time and experienced episodes of chest discomfort while working and when extremely busy. In a report dated May 21, 2004, Dr. Bartlett treated appellant for chest tightness which occurred while under stress at work. She diagnosed coronary artery disease with stable patterns of angina related to increased stress, hyperlipidemia, diabetes and episodes of memory loss. Dr. Thomas C. Jones, a Board-certified internist, treated appellant on September 16, 2004 for diabetes mellitus and hyperlipidemia. He noted that appellant's history was significant for his hypertension, coronary artery disease and a bypass in 2002. Dr. Jones opined that appellant was in declining health due to family history and outside stress which exacerbated his health status.

By letter dated February 10, 2005, the Office asked the employing establishment to address the incidents that appellant alleged contributed to his claimed illness.

The employing establishment submitted a statement from G. Dewayne Jeffers, utility systems supervisor, who advised that the staffing level for the boiler plant was 24 hours a day, 7 days a week with a one-man shift from midnight to 8:00 a.m. and a two-man shift from 8:00 a.m. to 4:00 p.m. and from 4:00 p.m. to midnight. Mr. Jeffers indicated that, when one person was on leave the shift was not covered by overtime, rather, it was left for one person to work the shift alone. He indicated that the employing establishment has been short staffed requiring one person to work the shift alone more than usual. Mr. Jeffers concurred with appellant's allegations in his CA-2 form, but indicated that these circumstances were the exception and not the rule.

In a decision dated May, 20 2005, the Office denied appellant's claim on the grounds that he failed to submit medical evidence establishing that his medical conditions were causally related to factors of his federal employment. The Office found that appellant established a compensable employment factor under *Cutler* in that his position as a utilities system operator often required him to work alone and assume many duties like answering multiple telephone lines while alarms, weather bulletins and radios sounded at the same time.

On June 9, 2005 appellant requested a review of the written record. He submitted a duplicate of the June 17, 2004 report from Dr. Bomberger.

In a decision dated October 19, 2005, the hearing representative affirmed the May 20, 2005 decision.

LEGAL PRECEDENT

To establish his claim that he sustained a stress related condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has a medical condition; (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 diagnosed condition.[1] Workers' compensation law does not apply to each and every injury or

[1] *Donna Faye Cardwell*, 41 ECAB 730 (1990).

illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,[2] the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional or stress-related condition arising under the Federal Employees' Compensation Act[3] 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.[4] 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 an 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.[5] 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 or stress related 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.[6] 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.[7]

ANALYSIS

The Office accepted that appellant established a compensable factor of employment under *Cutler* pertaining to his regular work duties due to a staff shortage and his duties which required that he work alone and answer multiple telephone lines while alarms, weather bulletins and radios sounded at the same time. Mr. Jeffers, a utility systems supervisor, advised that the staffing level for the boiler plant was 24 hours a day, 7 days a week with a one-person shift from midnight to 8 a.m. and a two-person shift from 8:00 a.m. to 4:00 p.m. and from 4:00 p.m. to midnight. Mr. Jeffers indicated that, when one person was on leave the shift was not covered by overtime, rather, one employee was responsible for working the shift alone. He further indicated that the employing establishment had been short-staffed requiring one person to work the shift alone more than usual.

[2] 28 ECAB 125 (1976).

[3] 5 U.S.C. §§ 8101-8193.

[4] *See Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

[5] *Lillian Cutler*, *supra* note 2.

[6] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[7] *Id.*

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. To establish his occupational disease claim, he must also submit rationalized medical evidence establishing that his claimed conditions are causally related to the accepted compensable employment factor.[8] While it is not disputed that appellant has a cardiac condition, diabetes and a joint condition, the medical evidence does not explain how or why the accepted employment factor caused or contributed to the cardiac condition, diabetes and a joint condition or an emotional condition.

Appellant submitted reports from Dr. Bomberger, dated December 12, 2001 to October 21, 2003, who diagnosed coronary artery disease and chronic stable angina and recommended that he return to work in a light-duty position. In a report dated April 13, 2004, Dr. Bomberger treated appellant for chest tightness, arthritis, hypertension and left knee pain. None of these reports, however, address how appellant's diagnosed coronary artery disease or angina was caused or contributed to by the accepted employment factor.

Dr. Johnson also treated appellant for coronary artery disease. On February 28, 2002 he performed a cardiac catheterization and a coronary artery bypass surgery and diagnosed coronary artery disease. However, Dr. Johnson did not attribute his condition to working in an understaffed unit or to being overworked.[9] Instead, in a report dated August 31, 2004, he opined that appellant's employment was not a contributing factor to the development of his coronary blockage.

Dr. Bartlett diagnosed chronic stable angina, hyperlipidemia and borderline hypertension. She recommended that appellant return to work in a sedentary job with limited activity. On November 21, 2003 Dr. Bartlett indicated that appellant had returned to work full time and experienced episodes of chest discomfort. On May 21, 2004 she treated him for chest tightness which occurred while at work "under stress" and diagnosed coronary artery disease with stable patterns of angina related to increased stress, hyperlipidemia, diabetes and episodes of memory loss. However, Dr. Bartlett did not provide a rationalized medical opinion addressing how appellant's angina or physical conditions were causally related to the accepted compensable employment factor.[10] Dr. Bartlett's notes fail to reference the accepted employment factors or explain how such factors caused or contributed to appellant's claimed condition or disability.

A report from Dr. Jones dated September 16, 2004 noted treating appellant for diabetes mellitus and hyperlipidemia. He opined that appellant was in declining health due to a family history and outside stress which has exacerbated his health status. However, Dr. Jones did not address the fact that appellant's work unit was understaffed and explain how overwork would cause or contribute to his diabetes or hyperlipidemia.

[8] *See William P. George*, 43 ECAB 1159, 1167 (1992).

[9] *Id.*

[10] *Id.; see also Jimmie H. Duckett,* 52 ECAB 332 (2001); *Franklin D. Haislah,* 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

The Board finds that appellant has not submitted rationalized medical evidence establishing that his claimed conditions are causally related to the accepted compensable employment factors.[11]

Appellant's allegation with regard to denied sick leave in August 2004 relates to administrative or personnel actions. In *Thomas D. McEuen*,[12] the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively the Board has examined whether the employing establishment acted reasonably.[13]

Appellant alleged that on August 13, 2004 while on approved sick leave, he was notified by his supervisor that he would have to return to duty on August 16, 2004 and that his previously approved sick leave would be denied and changed to leave without pay. The Board notes that the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[14] The Board has held that emotional reactions regarding leave are not compensable work factors where appellant offered no independent evidence that the employing establishment erred or acted abusively in these matters.[15] In this case, appellant has not offered evidence to establish error or abuse regarding his use of leave. Thus, he has not established administrative error or abuse in regard to this matter and, therefore, it is not compensable under the Act.[16]

CONCLUSION

The Board finds that appellant has not established that he sustained a stress-related condition causally related to factors of his federal employment.

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[11] *See William P. George, supra* note 8.

[12] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler, supra* note 2.

[13] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[14] *See Judy Kahn*, 53 ECAB 321 (2002)

[15] *Michael Thomas Plante*, 44 ECAB 510 (1993).

[16] Appellant's occupational disease claim also appears to be alleging that he developed a separate occupational disease which caused an aggravation of his heart and diabetic condition and joint pain as a result of being required to climb ladders, work overhead, lift and work in extreme temperatures while in the performance of duty. However, it appears from the record that the Office did not issue a final decision on this matter and, therefore, the Board does not have jurisdiction over the issue. *See* 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the October 19, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 23, 2007
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