

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

K.R., Appellant

and

**DEPARTMENT OF JUSTICE, FEDERAL
BUREAU OF PRISONS, Danbury, CT, Employer**

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**Docket No. 07-1998
Issued: January 25, 2008**

Appearances:
Michael Sheridan, Esq., for the appellant
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 July 25, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated April 24, 2007. 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 an emotional condition causally related to compensable work factors.

FACTUAL HISTORY

On March 19, 2005 appellant, then a 48-year-old correctional officer, filed an occupational claim (Form CA-2) alleging that he sustained an emotional condition as a result of his federal employment. He submitted a narrative statement indicating that in 1996 he began

experiencing feelings of depression and anxiety related to conditions of his work environment. Appellant stated:

“[T]he overall mental concentration required to maintain the care, custody, and control of inmates, the exposure to danger and potential violence; the daily contact with convicted felons; the necessity of responding to emergency situations; the risk of contacting diseases; the lack of respect by the public toward correctional officers; the lack of respect and treatment by supervisors and administration toward correctional officers; the constant risk of injury or harm; the noise level, temperature, overcrowded, and isolation of a prison; exposure to emotionally draining situations (*i.e.*, resolving inmate disputes, inmate fights, etc.); the risk of injury; and routine crucial decision-making requirements; and working rotating shifts, to include working all hours of the day and night, weekends and holidays.”

Appellant filed an Equal Employment Opportunity (EEO) complaint in 1996 alleging that he was subject to harassment, discrimination and retaliation. According to him, a supervisor harassed him by “writing me up for being seven minutes late to work.” Appellant received a five-day suspension in November 2004, a letter of reprimand in December 2004 and a poor performance evaluation. He alleged that in February 2005 he was relieved of his outside patrol duty and assigned to a housing unit.

An employing establishment supervisor, Wesley A. Pummill, responded in a June 1, 2005 letter. He stated that appellant was not subject to harassment, discrimination or retaliation in any manner. Mr. Pummill noted that the EEO decision was favorable to the employing establishment. According to him, appellant had chosen work posts that provided limited or no inmate contact. With respect to disciplinary actions, Mr. Pummill indicated that there was no record of appellant being seven minutes late, but there was an instance of his being an hour and a half late due to adverse weather. He also indicated that appellant was not given a formal letter of reprimand and had received a fully satisfactory performance rating.

Appellant submitted an authorization for treatment (Form CA-16) dated March 7, 2005 from a psychiatrist whose name is illegible. The psychiatrist diagnosed major depression and checked a box “yes” the condition was causally related to employment. The record also contains an emergency room report dated February 25, 2005 indicating that appellant was treated for suicidal ideation.

In a report dated September 6, 2003, Dr. Sandra Cohen, a psychiatrist, diagnosed major depression. She noted that appellant reported difficulties on the job, some coworkers took offense at his constructive criticism, he felt trapped at work and unable to get a promotion. Dr. Cohen indicated that appellant’s psychiatric condition was of long duration, reaching back to childhood and over the prior six years he had significant life stressors, including his mother’s death from cancer, a severe leg fracture and resulting financial hardship and disappointment at work.

By report dated July 5, 2004, Dr. Roya Ghadimi, indicated that appellant had a 10-year history of depression. He stated that appellant reported that severe conflicts at work aggravated his suicidal thoughts.

In a report dated September 14, 2005, Dr. W. Douglas Gammon, a clinical psychologist, stated that appellant was not selected for a warehouse job he applied for in 1996 and had filed an EEO complaint. According to him, this was the beginning of “a spiraling down of [appellant’s] mood into a depressive state” and he noted that appellant received no promotions. Dr. Gammon further stated: “[Appellant’s] recounting of the threatening nature of his daily work as a [correctional officer] reveals that this environment precipitates regular anxiety attacks and these serve to further exacerbate his depression.”

By decision dated March 20, 2006, the Office denied the claim for compensation. The Office did not appear to find that any compensable work factors were substantiated.

Appellant requested a hearing, which was held on February 27, 2007. He submitted a March 9, 2007 report from Dr. Gammon, who stated that appellant had been experiencing feelings of anxiety and depression since 1996 “as a result of the following work requirements.” Dr. Gammon repeated essentially verbatim the work conditions identified by appellant in his initial narrative statement quoted above. He stated that in 2005 the culmination of all of these stressors served to throw appellant into a significant major depressive episode.

By decision dated April 24, 2007, the hearing representative affirmed the denial of the claim. The hearing representative indicated that the performance of appellant’s assigned duties were compensable work factors, but the medical evidence was insufficient to establish a diagnosed condition causally related to the compensable work factors.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment.¹ This burden includes the submission of detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.²

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 the employment but nevertheless does not come within the coverage of workers’ compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee’s frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee’s

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

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

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.⁴ Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.⁵

ANALYSIS

The initial question presented is whether appellant has established any compensable work factors with respect to his claim. Appellant alleged that he was subject to harassment, discrimination and retaliation and he noted that he had filed an EEO complaint in 1996. The EEO action appeared to be based on the failure to be selected for a job appellant had applied for, but the record does not contain an EEO decision. With respect to a claim based on harassment or discrimination a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁶ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.⁷ In this case, there is no probative evidence of harassment, discrimination or retaliation. There are no EEO decisions, witness statements or other probative evidence to establish a compensable work factor in this regard.

Appellant noted that he had been subject to several disciplinary actions by the employing establishment and that he also discussed a performance evaluation. These are administrative actions of the employing establishment and are not compensable work factors unless the evidence demonstrates error or abuse.⁸ The employing establishment explained the basis for any disciplinary action and no evidence of error or abuse in a specific administrative matter was presented.

In his initial statement, appellant referred to other factors he felt contributed to an emotional condition. He noted lack of respect by the public toward correctional officers, for example. Appellant's perception of a lack of respect is not a compensable factor.⁹ He also noted

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

⁵ *Margreat Lublin*, 44 ECAB 945, 956 (1993).

⁶ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁷ *Helen P. Allen*, 47 ECAB 141 (1995).

⁸ *See Bobbie D. Daly*, 53 ECAB 691 (2002); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁹ Personal perceptions alone are insufficient to establish a compensable work factor. *Andrew J. Sheppard*, 53 ECAB 170 (2001).

lack of respect by supervisors, but as noted above, there was no evidence of a compensable work factor based on actions of supervisors. In addition, appellant discussed his fear of possibly contracting a disease. The possibility of a future injury is not compensable under the Act.¹⁰ Appellant briefly noted rotating shifts and work conditions such as noise and temperature, without providing a detailed statement regarding these allegations.¹¹

Appellant referred generally to his regularly assigned duties. He indicated that his job involved the care and control of inmates and it required concentration and decision making. The employing establishment indicated that appellant at times had limited inmate contact. To the extent appellant implicates the performance of assigned duties as a correctional officer, this would be a compensable work factor. However, his statement addressing his work is general in nature and lacks any specific details. Appellant's claim must be supported by sufficient factual information to support his account of his work duties.¹²

CONCLUSION

Appellant did not meet his burden of proof to establish an emotional condition causally related to his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 24, 2007 is affirmed.

Issued: January 25, 2008
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

¹⁰ *Gaetan F. Valenza*, 39 ECAB 1349, 1356 (1988).

¹¹ A claimant must submit a detailed description of the alleged employment factors contributing to an injury. *Janet L. Terry*, 53 ECAB 570 (2002).

¹² *Compare, Bobbie D. Daly*, 53 ECAB 691, 694 (2002).