

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

K.G., Appellant and DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Elgin, IL, Employer)))))))))))	Docket No. 08-673 Issued: July 23, 2008
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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
 JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 27, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated December 12, 2007, denying his claim for compensation. 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 on November 14, 2006.

FACTUAL HISTORY

On November 14, 2006 appellant, then a 53-year-old air traffic control specialist, filed a traumatic injury claim (Form CA-1) alleging that he sustained "stress related anxiety" as a result of a "confrontation at work" on that date. On the reverse of the claim form, a supervisor stated,

“After being relieved from position employee was given performance discussion” by a supervisor.

The Office, by letter dated November 21, 2006, requested appellant to submit additional factual and medical evidence regarding his claim for compensation. There is no indication appellant responded.

By decision dated December 28, 2006, the Office denied the claim for compensation. It found that the factual evidence was insufficient to establish an incident as alleged.

In a letter dated January 6, 2007, appellant indicated that he was submitting a medical report regarding his injury and he believed the Office may need to reconsider its decision. He submitted a December 13, 2006 report from Dr. Judi McInerney, a clinical psychologist, who reported that appellant had been treated since November 21, 2006 for acute stress disorder resulting from “an operational error at his job as an air traffic controller.” Dr. McInerney stated that, after the operational error occurred, appellant sustained physiological and psychological stress, but with treatment the acute stress disorder appeared to have resolved. On November 9, 2007 appellant requested reconsideration of the claim.

By decision dated December 12, 2007, the Office reviewed the case on its merits. The Office denied modification, finding the evidence insufficient to establish an employment incident occurred as alleged.

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 emotional reaction to his regular or specially assigned work duties or to a requirement imposed by

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

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

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

Appellant filed a traumatic injury claim alleging that he sustained stress-related anxiety as a result of a "confrontation" on November 14, 2006. As noted above, his burden of proof requires the submission of a detailed description of the alleged employment incident. In a claim for an emotional condition, the adjudicator must be able to make a proper determination of whether there are compensable work factors substantiated by the record, because not all incidents that are somehow related to employment are compensable work factors.

In this case, appellant failed to provide a detailed description of the alleged confrontation. The supervisor's statement on the claim form referred to a performance discussion, without further detail.⁶ Dr. McInerney referred to an "operational error." It is not clear what appellant has alleged occurred on November 14, 2006 and contributed to an emotional condition. The Board finds that appellant did not allege and substantiate a compensable work factor in this case. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.⁷

CONCLUSION

Appellant did not meet his burden of proof to establish an emotional condition causally related to compensable work factors on November 14, 2006.

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

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

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

⁶ To the extent the incident was administrative or a personnel matter, the evidence would have to establish error or abuse by the employing establishment to be considered a compensable work factor. *See id.*

⁷ *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 12, 2007 and December 28, 2006 are affirmed.

Issued: July 23, 2008
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