

surgery which causes a lot of pain. Not being able to perform my job and the demands placed upon me is causing a lot of stress. I suffer from anxiety and have panic attacks.”

On July 2, 2007 Dr. Peter R. Schmidt, Board-certified in emergency medicine, evaluated appellant for chest pain. He attributed appellant’s symptoms to anxiety.

The Office informed appellant on September 11, 2007 that it had administratively changed his claim to an occupational disease. The Office noted that it had previously denied a claim for a heart condition, assigned file number 142061463. It requested that appellant provide additional factual and medical information in support of his claim, including a detailed description of the employment factors to which he attributed his condition.

On October 4, 2007 the employing establishment controverted appellant’s claim. Cynthia L. Gibson, a team chief, noted that subsequent to his February 2007 heart surgery, appellant experienced chest pain and left work in May 2007. Appellant also experienced memory loss and sleep apnea. He requested accommodation but had not submitted medical evidence that “addressed the impact of his condition to perform his current duties nor clearly state how we could accommodate his medical conditions.” Ms. Gibson related that the employing establishment reduced appellant’s workload. She asserted that he had not adequately performed his duties since he started work in November 2006.

In a May 24, 2007 electronic mail message, appellant informed the employing establishment that he experienced heart pain at work and went to the emergency room. He requested light duty and advised that he intended to apply for disability retirement. Appellant noted that he underwent open heart surgery on February 23, 2007 and did not feel that he could perform his work duties. In electronic mail messages dated May 25, June 6 and 7, 2007, the employing establishment requested clarification of his work restrictions. In a June 18, 2007 electronic mail message, appellant again indicated that he intended to apply for disability retirement.

By decision dated October 22, 2007, the Office denied appellant’s claim on the grounds that he did not establish that he sustained an injury in the performance of duty. The Office found that the evidence showed that appellant experienced stress and anxiety due to his heart problems rather than work factors.

LEGAL PRECEDENT

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 Federal Employees’ Compensation Act.¹ On the other hand, the disability is not covered where it results from such factors as an

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

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.²

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.³ 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.⁴

ANALYSIS

On his claim form, appellant generally attributed his stress to open heart surgery, a sleep disorder, a memory disorder and pain from back surgery. The record does not indicate that any of these conditions have been accepted as employment related and thus any stress due to these medical conditions does not constitute a compensable employment factor. Appellant additionally noted that he experienced stress because he was unable to perform his job duties. Where a claimed disability results from an employee's emotional reaction to his regular or specially assigned duties or to an imposed employment requirement, the disability comes within the coverage of the Act.⁵ Appellant, however, did not explain whether he experienced stress performing his job duties or whether his stress arose because he was unable to work due to nonemployment-related medical conditions.

Appellant failed to provide a description of the specific employment factors which he alleged caused his emotional condition. The Office advised him in its September 11, 2007 letter that he should submit a detailed factual statement describing the employment incidents alleged to have caused his emotional condition. Appellant 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.⁶ 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.⁷

² *Gregorio E. Conde*, 52 ECAB 410 (2001).

³ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁴ *Id.*

⁵ *Robert Bartlett*, 51 ECAB 664 (2000); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁶ *Janet L. Terry*, 53 ECAB 570 (2002); *John Polito*, 50 ECAB 347 (1999).

⁷ Appellant submitted new evidence with his appeal. The Board has no jurisdiction to review new evidence on appeal; see 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration under 5 U.S.C. § 8128.

CONCLUSION

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 22, 2007 is affirmed.

Issued: June 24, 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