

morning dental appointment where it was determined that he needed a root canal. Appellant noted calling the chief psychologist and chaplain of the employing establishment to apprise them. He did not file his claim sooner because he was disabled from work due to post-traumatic stress disorder and his psychologist advised him not to have contact with persons associated with his job. Appellant stopped work on February 29, 2008.

In a May 30, 2008 decision, the Office denied appellant's claim finding that the claimed emotional condition did not occur in the performance of duty. It explained that the evidence did not establish that the claimed incident occurred while he was performing his duties or related to the performance of his duties. The Office found that appellant did not establish any compensable employment factors, as his going to a root canal appointment was not a factor of employment.

On August 12, 2008 appellant requested reconsideration. In an undated statement, he noted that Dr. C. Coutts, a Board-certified psychiatrist, treated him on February 29, 2008 for acute anxiety and stress related to stabbings at work to which he was a first responder and to the most recent of four threats on his life from inmates. Appellant indicated that his supervisor encouraged him to contact the investigator regarding the fourth threat made on his life since September 2002 and, in doing so, he exacerbated his symptoms. He indicated that the other origins of stress were not getting a paycheck and health problems, including a defective urinary sphincters which caused him to be incontinent pending surgery to correct his condition.

In reports dated February 29 to July 31, 2008, Dr. Coutts treated appellant for stress related to multiple threats on his life while working as a chaplain. He diagnosed acute stress disorder, prostate cancer, Human Immunodeficiency Virus (HIV) positive and occupational stressors. On April 30, 2008 Dr. Coutts diagnosed post-traumatic stress disorder associated with stress experienced on the job. Appellant reported being threatened by inmates on three occasions, witnessing a murder and having his paycheck stopped. On July 31, 2008 Dr. Coutts stated that appellant had a panic attack while driving to have dental work done. He noted that appellant's life had been threatened three times in the previous week and, with a high anxiety level, he started experiencing panic attacks. In a May 14, 2008 report, Dr. Mohammad Afzal, a Board-certified pediatrician, treated appellant for post-traumatic stress disorder after his life was threatened by inmates. He diagnosed HIV positive, anxiety, gout and post-traumatic stress disorder.

In an August 28, 2008 decision, the Office denied appellant's reconsideration request on the grounds that his letter neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision.

LEGAL PRECEDENT -- ISSUE 1

To establish a claim that he sustained an emotional condition in the performance of duty, an employee must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (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 emotional condition.¹

Workers' compensation law does not apply to each and every injury or 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 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 and 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. 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. 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.⁶

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.⁷ 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.⁸

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

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

⁷ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁸ *Id.*

ANALYSIS -- ISSUE 1

In this case, appellant has not submitted sufficient evidence to establish his allegation that he sustained an emotional condition due to factors of his employment. At the time of the Office's May 30, 2008 decision, he did not provide the Office with a description of work duties or specify with detail any incidents arising from his employment to which he attributes his emotional condition. Appellant noted that he attended a dental appointment where it was determined he needed a root canal and, while on the way to the root canal, he had a nervous breakdown. There is no evidence that he was required to attend dental appointments as part of his regular or specially assigned job duties. Appellant's CA-2 claim form did not contain any specific information pertaining to any details of the employment conditions believed to be responsible for causing his illness.⁹ Further, he failed to submit sufficient medical evidence or findings from any examination supporting that he has a diagnosed emotional condition related to compensable factors of his employment. As appellant has not submitted the necessary factual and medical evidence to establish his claim under the Act, he has failed to satisfy his burden of proof.

An employee must support his or her allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.¹⁰ Furthermore, an employee cannot simply allege that his employment caused or contributed to his emotional condition and, thus, be entitled to compensation; each employment factor alleged must be supported by probative and reliable evidence.¹¹ Accordingly, the Board finds that appellant has failed to submit evidence indicating a specific event or incident at work which established a specific factor of employment, he has not established his claim for an emotional condition.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act,¹² the Office has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,¹³ which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

⁹ *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹⁰ *Roger Williams*, 52 ECAB 468 (2001).

¹¹ *Id.*

¹² 5 U.S.C. § 8128(a).

¹³ 20 C.F.R. § 10.606(b).

“(ii) Advances a relevant legal argument not previously considered by the [Office]; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office].”

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.¹⁴

ANALYSIS -- ISSUE 2

The Office’s August 28, 2008 decision, denied appellant’s reconsideration request, without conducting a merit review, on the grounds that the evidence submitted neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision.

However, with his August 12, 2008 reconsideration request, appellant submitted relevant and pertinent evidence not previously considered by the Office. After the May 30, 2008 decision, which denied his claim because he had not established any compensable employment factors, he submitted a narrative statement which addressed this aspect in his claim. The statement listed specific employment factors and incidents appellant believed caused or contributed to his emotional condition. Appellant asserted that he was diagnosed with acute anxiety and post-traumatic stress related to stabbings at the employing establishment to which he was a first responder and threats on his life by inmates. He also submitted supporting medical evidence that diagnosed his condition. On reconsideration, appellant indicated that his emotional condition was attributable to four threats on his life since 2002 and also to stabbings at the employing establishment to which he was a first responder. This evidence is relevant to the issue decided by the Office in its May 30, 2008 decision as it relates to whether a compensable work factor has been established. The Office did not previously consider this evidence as appellant did not provide a detailed description of the specific employment-related incidents he believed caused or contributed to his illness.

Appellant also submitted reports from Dr. Coutts and Dr. Afzal, who diagnosed appellant with post-traumatic stress disorder and obtained a history consistent with appellant’s statement that his life was threatened by inmates. This evidence is relevant to whether employment factors alleged by appellant caused his claimed condition.

The Board has held that the requirement for reopening a claim for merit review does not include the requirement that a claimant submit all evidence which may be necessary to discharge his or her burden of proof. Instead, the requirement pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not

¹⁴ *Id.* at § 10.608(b).

previously considered by the Office.¹⁵ The Board finds that the evidence submitted by appellant is sufficient to require reopening of his claim for further review on its merits.¹⁶

Therefore, the Office's August 28, 2008 decision improperly refused to reopen appellant's claim for further review on its merits under 5 U.S.C. § 8128. The case will be remanded for a merit review. Following such development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's claim.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty. The Board finds that the Office improperly denied appellant's request for reconsideration without further merit review of his claim.

ORDER

IT IS HEREBY ORDERED THAT the May 30, 2008 decision is affirmed and the August 28, 2008 decision is set aside. The case is remanded to the Office for further development in accordance with this decision.

Issued: August 20, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹⁵ See *Helen E. Tschantz*, 39 ECAB 1382 (1988).

¹⁶ See 20 C.F.R. § 10.606(b)(2)(iii).