

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

K.G., Appellant

and

**DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE, STATUE OF
LIBERTY, New York, NY, Employer**

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**Docket No. 10-1806
Issued: April 5, 2011**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 29, 2010 appellant filed a timely appeal of a June 7, 2010 merit decision of the Office of Workers' Compensation Programs denying his claim for traumatic injury. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he sustained an emotional condition and an episode of high blood pressure due to an April 29, 2001 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 6, 2010 appellant, then a 51-year-old audiovisual specialist, filed a traumatic injury claim alleging on April 29, 2010 during the performance of his job, he was surrounded by a Special Weapons and Tactics (S.W.A.T.) team and park police officers with guns threatened with arrest and interrogated. He alleged that he was racially profiled and his civil rights were violated. Appellant asserted that he developed high blood pressure and traumatic, physical and psychological damage.

In a letter dated May 7, 2010, the Office requested additional factual and medical information in support of appellant's claim and allowed 30 days for a response. Appellant responded and submitted an authorization for examination and/or treatment, (Form CA-16) diagnosing post-traumatic stress disorder and hypertension due to "traumatic experience...." Dr. Sam S. Parsla, a physician, completed a note on March 13, 2010 and stated that appellant suffers from high blood pressure and that after a "traumatic personal episode in his workplace on April 29, 2010" appellant measured blood pressure levels that were dangerously high.

By decision dated June 7, 2010, the Office denied appellant's claim on the grounds that he had not submitted sufficient factual evidence to establish that the employment incident occurred as alleged.

LEGAL PRECEDENT

A employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury."² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³ The Office defines a traumatic injury as, "[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected."⁴

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁴ 20 C.F.R. § 10.5(ee).

The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁵ In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.⁶ An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.⁷ A consistent history of the injury as reported on medical reports to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.⁸

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*,⁹ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Act.¹⁰ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.¹¹ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an 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 or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.¹² In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act. Thus, disability is not covered when it results from an employee's fear of a reduction-in-force, nor is disability covered when it results from such factors as an employee's frustration in not being permitted to work in a particular environment or to hold a particular position.¹³

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.¹⁴ Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its

⁵ *Elaine Pendleton*, *supra* note 2.

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

⁸ *Id.* at 255-56.

⁹ 28 ECAB 125 (1976).

¹⁰ 5 U.S.C. §§ 8101-8193.

¹¹ *See Robert W. Johns*, 51 ECAB 136 (1999).

¹² *Cutler*, *supra* note 9.

¹³ *Id.*

¹⁴ *Charles D. Edwards*, 55 ECAB 258 (2004).

administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹⁵ A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹⁶

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.¹⁷

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹⁸

ANALYSIS

Appellant alleged that he sustained an emotional condition and incident of high blood pressure on April 29, 2010 in the performance of duty. He did not submit a factual statement in response to the Office's request for information and the only description of his employment incident is on his notice of traumatic injury. Appellant alleged that he was surrounded by a SWAT team and park police officers with guns, threatened with arrest and interrogated. He also stated that he was racially profiled and his civil rights were violated. Appellant did not explain how this situation arose, how this was connected with his employment and has not submitted any witness' statements, police reports or other documentation to support that the alleged employment incident occurred as described. The medical reports in the record indicate that he experienced a traumatic incident, but do not provide any further description. Due to the absence of necessary factual evidence explaining the nature and circumstances of the events on April 29, 2010 and the relationship of these events to appellant's employment, the Board finds that he did not submit the necessary factual evidence to meet his burden of proof of establishing a traumatic injury through a compensable and substantiated factor of his employment causing or contributing to his alleged emotional and physical conditions.

¹⁵ *Kim Nguyen*, 53 ECAB 127 (2001). See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹⁶ *Roger Williams*, 52 ECAB 468 (2001).

¹⁷ See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

¹⁸ *James Mack*, 43 ECAB 321 (1991).

The Office, however, did not specifically address the issue of appellant's entitlement to medical expenses. It is required by section 8103 of the Act¹⁹ to provide all medical care necessary as a result of an employment injury. The Office has broad discretionary authority in the administration of the Act and must, in fact, exercise such discretion to achieve the objective of section 8103. Ordinarily, when an employee sustains a job-related injury which may require medical treatment, the designated agency official shall promptly authorize such treatment by giving the employee a properly executed Form CA-16 authorizing medical treatment and expenses within four hours.²⁰ In this case, the employing establishment provided appellant with a Form CA-16 and the Office failed to address whether this was a situation in which compensation for medical expenses was appropriate. The circumstances of the case warrant additional development of this issue. Therefore the case shall be remanded to the Office for further development consistent with this decision of the Board, followed by an appropriate decision.

CONCLUSION

The Board finds that while the evidence does not establish that appellant sustained a traumatic physical or emotional injury on April 29, 2010 the issue of whether he is entitled to medical expenses due to his authorized medical treatment *via* Form CA-16 has not been adequately addressed by the Office and that the case must be remanded for the Office to issue an appropriate decision in this regard.

¹⁹ 5 U.S.C. § 8103.

²⁰ 20 C.F.R. § 10.300(b).

ORDER

IT IS HEREBY ORDERED THAT the July 7, 2010 decision of the Office of Workers' Compensation Programs is affirmed. The case is remanded for further development consistent with this decision of the Board.

Issued: April 5, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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