

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

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S.L., Appellant )

and )

**DEPARTMENT OF THE ARMY, KELLER  
ARMY HOSPITAL, West Point, NY, Employer**)

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**Docket No. 10-1126  
Issued: February 17, 2011**

*Appearances:*

*Thomas S. Harkins, Esq.*, for the appellant  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 18, 2010 appellant filed a timely appeal from a September 25, 2009 merit decision of the Office of Workers' Compensation Programs. 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 September 19, 2007 appellant submitted an occupational disease claim (Form CA-2) alleging that his major depressive disorder, panic disorder and post-traumatic stress disorder were causally related to his federal employment as a medical clerk. On the claim form he reported that he sustained stress from having to be in close contact with a former supervisor from

a July 2004 assault.<sup>1</sup> Appellant also stated “work pressures and demands” caused difficulty and he was moved to three different jobs. On the reverse of the claim form, a supervisor stated that during a counseling session appellant became irate, stormed out of the office, went to the emergency room and refused to return to work.

By decision dated February 21, 2008, the Office denied the claim for compensation. It found that no compensable work factors had been established. On March 18, 2008 appellant requested a review of the written record.

In a statement received on March 26, 2008, appellant stated that he had returned to work on May 14, 2007 and worked for three months. According to him there was a constant anticipation of encountering the 2004 supervisor or his family, and he made numerous requests to be moved to another work area when the former supervisor was near. Appellant stated that his current supervisors did not understand how he was feeling. He stated that the medical clerk job was a “busy and stressful position,” as he had from four to seven physicians that he had to make appointments for, track patient histories and answer telephones. Appellant stated that he checked the appointment book to see if the assailant had an appointment.

The record contains a June 18, 2007 statement from appellant indicating that on that date he experienced anxiety and fear as he knew that the assailant had a scheduled appointment. Appellant stated that he felt he was in a position unprotected from further assaults.

With respect to medical evidence, appellant submitted reports from Dr. James Thrasher, Jr., a psychiatrist. In a report dated March 21, 2007, Dr. Thrasher provided a history that included an assault in July 2004 by a supervisor, who was arrested but returned to work. According to him, appellant was assigned to a separate area but over time the supervisor “gradually began to show up nearby” and a guard was assigned to stand at appellant’s door. Dr. Thrasher diagnosed major depressive disorder, panic disorder and post-traumatic stress disorder.

In a report dated August 22, 2007, Dr. Thrasher stated that appellant reported he was “pressured, harassed, picked on or otherwise maltreated” at work. By report dated August 23, 2007, he stated, “Work pressures and demands have served to destabilize [appellant]. He has had difficulty dealing with supervisors and supervision.”

By decision dated July 9, 2008, the Office hearing representative affirmed the February 21, 2008 Office decision. The hearing representative found appellant had not established a compensable work factor.

In a letter dated July 2, 2009 appellant, through his representative, requested reconsideration of his claim. He indicated that he had an accepted claim based on the July 2004 incident for physical and emotional conditions. Counsel asserted that the employing establishment took no steps on behalf of appellant to avoid contact with the assailant. He argued

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<sup>1</sup> The Office indicated that appellant had filed a traumatic injury claim for an incident on July 8, 2004 involving an altercation with a former supervisor. The claim was accepted for right medial epicondylitis, cervical sprain and L5-S1 herniated disc. On June 22, 2005 the Office accepted major depressive disorder. The 2004 claim has not been administratively combined with the current case file.

that he had met his burden of proof to establish an injury causally related to compensable work factors.

By decision dated September 25, 2009, the Office reviewed the case on its merits and denied modification. It found appellant had not established a compensable work factor.

### **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.<sup>2</sup> 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.<sup>3</sup> A claimant must also submit rationalized medical opinion evidence establishing a causal relationship between the claimed condition and the established, compensable work factors.<sup>4</sup>

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 the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>5</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors 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.<sup>6</sup> 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.<sup>7</sup>

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<sup>2</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>3</sup> *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>4</sup> See *Bonnie Goodman*, 50 ECAB 139, 141 (1998).

<sup>5</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>6</sup> See *Norma L. Blank*, 43 ECAB 389-90 (1992).

<sup>7</sup> *Id.*

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.<sup>8</sup> 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.<sup>9</sup>

## ANALYSIS

Appellant has alleged that he sustained an emotional condition causally related to his federal employment as a medical clerk. The initial question is whether he has alleged and substantiated a compensable work factor. If so, then the medical evidence is reviewed to determine if appellant has established causal relationship between a diagnosed condition and the accepted compensable work factor or factors.

On the reverse of the claim form a supervisor stated that during a counseling session appellant became angry and left the office. It is not clear when this session took place and appellant does not provide a factual statement discussing this incident. In appellant's written statements the primary allegation is that he suffered stress and anxiety from his fear that he would encounter a former supervisor who had assaulted him in 2004. He did not describe a specific incident where he did encounter the former supervisor. As noted above, a compensable work factor includes a reaction to regular or specially assigned work duties. Appellant's reaction to the possibility of an encounter with a former supervisor is not a reaction to the performance of his work duties.<sup>10</sup> To the extent that he is alleging that the employing establishment erred in not moving him to another work area, or in failing to provide adequate security, he did provide any probative evidence of error or abuse.<sup>11</sup> Appellant indicated that he was moved to three different jobs, which presumably was in response to his own requests. The record does not contain a detailed description of specific requests made to the employing establishment, or any supporting evidence sufficient to establish that the employing establishment erred with respect to a specific request. As to security measures, appellant's physician reported that the employing establishment provided a guard at certain times. Appellant did not provide any relevant evidence establishing error or abuse in failing to provide adequate protection.

The Board notes that appellant did briefly refer to his job duties as a medical clerk, which he generally described as "busy and stressful," involving making appointments, tracking patient histories and answering telephones. The performance of job duties would be compensable work factors. Appellant did not provide a detailed description of job duties that he felt contributed to a diagnosed emotional condition.<sup>12</sup> In addition, the medical evidence would have to establish

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<sup>8</sup> See *Brian H. Derrick*, 51 ECAB 417, 421 (2000).

<sup>9</sup> *Margreate Lublin*, 44 ECAB 945, 956 (1993).

<sup>10</sup> The Board also notes that a reaction to the possibility of a future injury is not a compensable work factor. See *Andy J. Paloukos*, 54 ECAB 712 (2003).

<sup>11</sup> An allegation of error or abuse must be supported by probative evidence. See *William E. Seare*, 47 ECAB 663 (1996).

<sup>12</sup> Appellant's burden of proof includes a detailed description of the employment factors alleged to have contributed to an emotional condition. See *Effie O. Morris*, 44 ECAB 470 (1993); *Walter D. Morehead*, 31 ECAB 188 (1979).

causal relationship between a diagnosed condition and the compensable work factors. Dr. Thrasher did not discuss appellant's work duties or provide a rationalized medical opinion on causal relationship. He made only general statements of work pressures, difficulty dealing with supervisors or being "harassed" without providing a complete background discussing any implicated work duties and providing an opinion on causal relationship between a diagnosed condition and a compensable work factor.

On appeal, appellant argued that his July 2, 2009 reconsideration request demonstrated that he sustained a compensable emotional condition. To the extent that he argued that the employing establishment erred in not helping him avoid the assailant, the record contains no probative evidence of error or abuse by the employing establishment. For the reasons noted above, the Board finds appellant did not submit the necessary factual and medical evidence to meet his burden of proof in this case.

### **CONCLUSION**

The Board finds appellant did not establish an emotional condition causally related to compensable work factors.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 25, 2009 is affirmed.

Issued: February 17, 2011  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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