



## **FACTUAL HISTORY**

On April 8, 2010 appellant, then a 37-year-old accounting technician, filed an occupational disease claim for anxiety disorder and depression. She alleged that she sustained her emotional condition as a result of the daily stress of working in a correctional environment.

By letter dated June 17, 2010, appellant explained the factors of her federal employment that she alleged resulted in her emotional condition. She noted that she was exposed to inmate disease. Appellant noted that working for 12 years as a correctional officer she was in contact with inmates daily in her office, the compound, in the units or on medical trips to the local hospital. She noted that, on one occasion, she escorted an inmate to the local hospital who had Methicillin-Resistant Staphylococcus Aureus (MRSA). Appellant indicated that, on that occasion, she entered the cell wearing latex gloves and began to shackle and cuff the inmate when an inmate companion came in and told her that she should be wearing a mask and gown while in contact with him. She noted that there were no signs outside the cell to indicate that extra precautions were necessary. Appellant also indicated that she performed patrols, responded to emergencies and conducted shakedowns or searches. Next, she noted that she had to supervise inmates. Appellant noted that, on a daily basis while working in the business office, she would supervise the inmate orderlies while they cleaned and that, each time she worked the housing unit, she was responsible for supervising hundreds of inmates at a time during her eight-hour shift. She stated that she had to perform a minimum of five shakedowns during an eight-hour shift. Appellant noted one occasion when an inmate came to her office and told her how he would protect her that night if anything were to happen in the unit that night. The inmate also informed her, while they were in a confined space, that he had witnessed a female staff member at another institution get beat almost to death with a telephone. Appellant also described her work environment, alleging that she worked in confined small spaces with high noise levels and lock down conditions. She noted that the noise levels in the housing units are usually extremely high and at time can get unruly when the inmates argue or fight. Appellant further noted that noise levels in the business office area would also be high as staff members would act unprofessionally and yell across the office at one another. She noted that while doing mail call, one was surrounded by hundreds of anxious inmates waiting to hear their name called. Appellant also described lock down situations where all staff were required to line the entire compound so that separate units could go to the dining hall and also noted that sometimes she was required to go to food service and assist in making sack lunches so they could be delivered to the units. She also indicated that as an accounting technician her work directly impacted the financial status of the institution and the chief executive officer's budget, the region's budget and overall financial status of the employing establishment. Appellant noted that she had to resolve problems with inmate accounts and disbursement made on behalf of the inmates.

In a June 9, 2010 memorandum, Dane Zimmerman, the employing establishment's business administrator, responded to appellant's allegations. He noted that, although inmates do carry communicable diseases, her accounting position is located in the business office, which is physically removed from inmate housing and outside the secured perimeter of the institution. Mr. Zimmerman also noted that appellant had not listed specific exposure incidents, which were required to be reported to the Safety Department to meet record keeping regulations. Although the employing establishment noted that there have been several significant staff and inmate assaults while she worked for the employing establishment, she had not submitted any statement

indicating that she was assaulted by an inmate or actually witnessed a staff or inmate assault. With regard to responding to emergencies, the employing establishment noted that although business office staff do respond to such emergencies, typically run approximately 200 yards from the business office to the secured perimeter compound entrance and that they hold this position as a “show of force” they typically do not respond to the actual location of the emergency. Mr. Zimmerman also noted that appellant did not submit any information with regard to any specific incidents. With regard to confined spaces, he indicated that she, as an accounting technician, is not authorized or trained to enter permit-required confined spaces nor has she submitted any specific details to support these allegations. With regard to noise levels, Mr. Zimmerman noted that the only work areas or tasks which exceed OSHA standards are in the landscape area during lawn mowing activities and during annual firearms qualifications by staff. He noted that appellant does not mow lawns and that although she does qualify annually with firearms, earplugs and earmuffs are required during this activity. Mr. Zimmerman stated that there have been no institutional wide lock downs during her employment. He also stated that appellant does not supervise inmates as a part of her daily accounting technician duties and that although she may have supervised inmates as a correctional officer and during occasional relief posts, she has not submitted any details of specific instances. Mr. Zimmerman noted that she has not submitted any details regarding shake downs, visual searches and manning posts. In a supplemental statement dated June 28, 2010, he stated that appellant’s contact with inmates was minimal. Mr. Zimmerman noted that she did come in contact with inmates who performed cleaning duties in the office twice a day for 10 minutes each session, but that there were 12 other people who shared responsibility for supervising these inmates and her exposure to higher security classified inmates housed within the secured fence perimeter position of the institution was limited. He further noted that in the last 2½ years appellant has worked a correctional post approximately 20 times, of which 14 of those times were voluntary work or overtime at local hospitals.

Appellant also submitted medical evidence in support of her claim.

By decision dated December 10, 2010, OWCP denied appellant’s claim as it found that the work events claimed did not rise to the scope of the performance of her work duties.

On April 12, 2011 appellant, through counsel, filed a request for reconsideration. In support thereof, she submitted an April 7, 2011 letter to her from the employing establishment wherein it indicated that she had been absent from her job since February 24, 2010. The employing establishment noted that all positions within a correctional institution are considered hazardous duty law enforcement officer positions and every position requires the individual to be able to perform correctional work safely and successfully, including the ability to respond effectively to emergencies. Appellant also submitted a copy of the position description for accounting technician. In addition to accounting duties, the position description noted that specific correctional responsibilities include custody and supervision of inmates, responding to emergencies and institution disturbances, participating in fog and escape patrols and assuming correction officer post when necessary. The position also required appellant to shakedown inmates, conduct visual search of inmate work and living areas and be responsible for immediately responding to any institution emergencies. The position required that she maintain security at the institution and noted, “The staff correctional activities are paramount and precede other duties and responsibilities required by this position.” The position description also noted

that appellant would have direct and frequent daily contact with inmates and that security concerns were a regular and recurring part of the job. The position description noted that she was regularly subject to physical hazards and dangerous conditions such as assaults and hostage situations and that the level of risk for hazardous and stressful working conditions was very high and that consequently the position was also “designated as a law enforcement position.”

By decision dated July 28, 2011, OWCP denied modification of the December 10, 2010 decision.

### **LEGAL PRECEDENT**

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment.<sup>2</sup> 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.<sup>3</sup> 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 FECA.<sup>4</sup> 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.<sup>5</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP 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, OWCP should then determine whether the evidence of record substantiates that factor.<sup>7</sup> When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.<sup>8</sup>

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<sup>2</sup> *L.D.*, 58 ECAB 344 (2007).

<sup>3</sup> *A.K.*, 58 ECAB 119 (2006).

<sup>4</sup> 5 U.S.C. §§ 8101-8193. *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> *J.F.*, 59 ECAB 331 (2008); *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>6</sup> *D.L.* 58 ECAB 217 (2006).

<sup>7</sup> *K.W.*, 59 ECAB 271 (2007); *Matilda R. Wyatt*, 52 ECAB 421 (2001).

<sup>8</sup> *Robert Breeden*, 57 ECAB 622 (2006).

## ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of various employment incidents and conditions. OWCP denied her claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered or compensable employment factors under the terms of OWCP.

Appellant alleged that she was exposed to inmate disease. She specifically alleged an incident that occurred while she was shackling an inmate to take him to the hospital and she was exposed to MRSA. Appellant's allegation is not specifically detailed in that she did not indicate a specific date that it occurred. Furthermore, she did not submit any evidence in support of her allegation such as a witness statement or a copy of a report made to the employing establishment. The employing establishment denied that the exposure took place, noting that no report was filed as was required. The Board finds that appellant did not establish that she was exposed to inmate disease.

Appellant alleged that her job duties required her to perform patrols, respond to emergencies, conduct shakedown, supervise inmates and escort inmates on medical trips. She also noted behavior by an inmate that she interpreted as threatening. The employing establishment disagreed with many of appellant's assertions, noting that she was physically removed from inmate housing and worked outside the secured perimeter of the institution. It noted that she shared responsibility with 12 other persons for supervising the inmates cleaning the office twice a day for 10 minutes each session. There is some evidence that appellant's contact with prisoners as well as responsibilities in corrections were greater than the employing establishment indicated. The job position noted daily stress and exposure to potentially dangerous situations such as physical attack are an inherent part of the position and that it was therefore designated a law enforcement position. However, the evidence that appellant was placed in such dangerous situations was minimal and lacking further evidence such as evidence of specific incidents or official records or reports, the Board finds that the evidence was not sufficient to establish a compensable factor under *Cutler*.<sup>9</sup> With regard to the incident wherein the prisoner allegedly made comments to her that she perceived as threatening, the employing establishment noted that she never filed a report. Appellant never submitted any statement in support of this incident by another person nor did she provide any evidence that she did report the incident. Accordingly, the Board finds that this factor was not established. With regard to work environment, appellant submitted no evidence in support of her allegations that she worked in noisy conditions or small spaces, allegations that were denied by the employing establishment.

Consequently, appellant has not established her claim for an emotional condition as she has not attributed her claimed condition to any compensable employment factors.<sup>10</sup> She may submit new evidence or argument with a written request for reconsideration to OWCP within one

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<sup>9</sup> *Lillian Cutler*, *supra* note 4; *see also M.V.*, Docket No. 10-293 (issued December 22, 2010).

<sup>10</sup> As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).

year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty due to factors of her federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 28, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 19, 2012  
Washington, DC

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

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

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