



## **FACTUAL HISTORY**

On May 11, 2010 appellant, then a 41-year-old factory recovery technician, filed an occupational disease claim alleging severe anxiety disorder, stress, bipolar disorder and major depressive disorder as a result of exposure to high levels of metals in Federal Prison Industries (trade name UNICOR) buildings, the conditions in UNICOR buildings and not knowing if he would have a job in the future. He first became aware of his condition and realized it resulted from his employment on May 5, 2010.

On May 10, 2011 OWCP advised appellant that no evidence was submitted to establish that he actually experienced the employment factors as alleged or that he sustained any diagnosed condition as a result of his employment. It requested that he answer specific questions related to the conditions he believed contributed to his claim, identify relevant dates and locations of the alleged exposures, and describe how often and the duration of the alleged exposures. OWCP also requested that appellant provide a narrative medical report from a physician which included an accurate history of injury, description of examination findings, a firm medical diagnosis and the physician's opinion regarding the cause of his alleged emotional condition. No additional evidence was received.

In a decision dated August 23, 2011, OWCP denied appellant's claim finding insufficient evidence to establish that he was exposed to any compensable factors of employment.

On August 30, 2011 appellant submitted a request for a telephonic hearing, which was held on December 19, 2011. He was represented by counsel. Appellant worked for the employing establishment for almost 15 years and realized that he had psychiatric conditions in 2005 when he was transferred to work in the UNICOR buildings. He stated that inmates were involved in electronics recycling and industrial processes and he alleged exposure to lead, cadmium and beryllium inside cathode ray tubes that inmates broke out of computers. The inmates wore dust masks but he did not and there was no air ventilation in the warehouse. Appellant alleged that an air test revealed cadmium levels 450 times higher than the federal safety limits and that the recycling warehouse was shut down because a report indicated that the levels at UNICOR were very unfavorable. He stated that he did not test positive for any heavy metals in his blood, but he was informed they could lay dormant in his liver and kidneys. The hearing representative advised appellant to provide additional factual evidence to establish that he was exposed to heavy metals at work and a medical report from a physician explaining how any exposure at work caused or contributed to a diagnosed medical condition. Appellant was informed that the record would remain open for 30 days to allow for submission of additional evidence. He did not respond.

On January 13, 2012 the employing establishment addressed the hearing transcript. It stated that OSHA air tests were within permissible exposure limits. The employing establishment explained that one reading was conducted during a filter change out procedure. A noncompliant inmate slammed the filter on the floor, which caused the high reading. A later reading revealed that the levels were well below permissible exposure limits. The employing establishment maintained that appellant could not have been exposed to high levels of metals because he did not perform any glass breaking work and was never directly over the breakage working area but only supervised the recycling process. It reported that he and other staff

members completed weekly fire and safety sheets and did not note any issues arose. Staff working in the area had extensive blood work and heavy metals were not detected. The employing establishment also refuted that OSHA never requested them to terminate their recycling operation.

By decision dated March 28, 2012, an OWCP hearing representative affirmed the August 23, 2011 decision denying appellant's occupational disease claim. He found that the factual evidence was insufficient to support appellant's exposure allegations. Further, no medical evidence was submitted to establish psychological conditions causally related to factors of his employment.

### **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 specifically 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 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>

A claimant 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 employment factors.<sup>6</sup> This burden includes the submission of a 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>7</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>8</sup> If a claimant does implicate a factor of

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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> *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> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>7</sup> *Effie O. Morris*, 44 ECAB 470 (1993).

<sup>8</sup> *D.L.*, 58 ECAB 217 (2006).

employment, OWCP should then determine whether the evidence of record substantiates that factor.<sup>9</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>10</sup>

### ANALYSIS

Appellant alleged that he developed stress, anxiety and major depressive disorders due to exposure to harmful levels of metals at work and whether he would have a job in the future. OWCP denied his claim finding that he did not establish any compensable employment factors. The Board must review whether the alleged incidents or conditions of employment are established as compensable employment factors.

Appellant alleged that he was exposed to high levels of lead, cadmium and beryllium as a result of the recycling process the inmates participated in at work. He did not, however, specify any dates, duration of exposures or provide a detailed description of how he was exposed to the alleged metals. Appellant's allegation is not adequate to establish that he was exposed to heavy metals at work. He did not submit any evidence such as witness statements or copies of any OSHA or other reports to establish high amounts of heavy metals in the environment. The employing establishment denied that exposure took place because appellant only supervised the inmates and was never directly over the breakage working area or participated in the glass breaking procedure. The employing establishment also explained that testing did not reveal any toxicity above permissible levels. The Board finds that appellant has not established that he was exposed to high levels of heavy metals at work.<sup>11</sup>

Appellant also alleged that he experienced anxiety over worrying about whether he would have a job in the future. As noted, however, factors such as an employee's fear of a reduction-in-force or to hold a specific position are not considered a compensable factor of employment.<sup>12</sup> Consequently, the Board finds that appellant has not established his claim for an emotional condition because he has not established any compensable employment factors.<sup>13</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

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<sup>9</sup> *K.W.*, 59 ECAB 271 (2007); *Matilda R. Wyatt*, 52 ECAB 421 (2001).

<sup>10</sup> *Robert Breeden*, 57 ECAB 622 (2006).

<sup>11</sup> See *D.B.*, Docket No. 11-1932 (issued July 19, 2012).

<sup>12</sup> *J.F.*, *supra* note 5.

<sup>13</sup> As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record. *Margaret S. Krzycki*, 43 ECAB 496 (1992).

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 28, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 3, 2012  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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