

The employing establishment controverted the claim by letter dated August 20, 2012 noting that appellant's alleged emotional condition was not due to his assigned work duties.

By letter dated August 24, 2012, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the factual and medical evidence necessary to establish his claim. He was asked to describe in detail the conditions or incidents of employment which he believed caused his condition. Appellant was advised that the record would be kept open for 30 days for submission of additional evidence.

In response to OWCP's request, appellant submitted a July 27, 2012 medical report from Dr. Marvin Poston, a licensed psychologist, who stated that appellant's mental conditions were related to coping with chronic pain from injuries that occurred during his military service dating from 1995 to 1999. He diagnosed appellant with major depression as well as panic disorder with agoraphobia.

By decision dated October 3, 2012, OWCP denied appellant's claim on the grounds that the medical evidence was insufficient to establish that he sustained an emotional condition in connection with the August 7, 2012 employment incident.

LEGAL PRECEDENT

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 an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.² 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 or her frustration from not being permitted to work in a particular environment or to hold a particular position.³

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 employment factors.⁴ 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.⁵

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

² See *Lori A. Facey*, 55 ECAB 217 (2004); *id.*

³ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Pamela R. Rice*, 38 ECAB 838 (1987).

⁵ *Effie O. Morris*, 44 ECAB 470 (1993).

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.⁶ If a claimant does implicate a factor of employment, OWCP 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, OWCP must base its decision on an analysis of the medical evidence.⁷

ANALYSIS

The Board finds that appellant has not established that he sustained an emotional condition due to a compensable August 7, 2012 work incident.

As noted above, to establish a compensable emotional condition claim, appellant must first submit a detailed description of the employment factors which he believes caused or adversely affected his condition. The Board notes that appellant's handwritten statement on the CA-1 form dated August 9, 2012 is difficult to read, but appears to allege that he sustained an anxiety attack after being told that he was being watched by "people" during breaks and while he was working. On August 24, 2012 OWCP asked that appellant provide a more detailed description of the alleged incident, but appellant did not respond to this request. It is also noted that the report from Dr. Poston, dated July 27, 2012, did not relate any history relating to appellant's employment on August 7, 2012, but rather referenced his earlier military service. As such, appellant's allegation lacks probative detail to establish a factor of employment.

While OWCP stated in the October 3, 2012 decision that the alleged incident occurred as alleged, the Board finds that appellant's allegation is insufficient in detail to establish a specific incident. The Board also finds that, as alleged, the incident does not constitute a compensable factor of employment.

Appellant has not established any compensable employment factors under FECA and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.⁸

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.

⁶ See *Norma L. Blank*, 43 ECAB 384 (1992).

⁷ *Id.*

⁸ If appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Kryzcki*, 43 ECAB 496 (1992). In the present case, appellant has not submitted any medical evidence to establish that he sustained an emotional condition at work on August 7, 2012.

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 on August 7, 2012.

ORDER

IT IS HEREBY ORDERED THAT the October 3, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 5, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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