

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

T.M., Appellant)
and) Docket No. 15-0715
DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Pittsburgh, PA, Employer)
Issued: July 7, 2015

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On February 2, 2015 appellant filed a timely appeal from a November 18, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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 sustained an emotional condition in the performance of duty.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 3, 2013 appellant, then a 57-year-old administrative support clerk, filed an occupational disease claim alleging that he had depressive disorder and hypertension related to a high-stress work environment. He did not stop work.

On his claim form, appellant stated that, since April 2011, he was experiencing short-term memory loss, short temper, irritability, and lack of concentration. He advised that he was in a high-stress work environment, relating that, if he took annual leave, he was subject to call backs. Appellant indicated that he was subjected to “gross multitasking,” working 12-hour shifts, and being overloaded with work assignments to the point that he could not remember “what I had to do next.” He advised that he saw his physician on January 31, 2012 and was diagnosed with memory loss and anxiety. Appellant stated that he was referred for a psychiatric evaluation. He noted that he became aware of his condition on April 1, 2011 and its relation to his employment on January 31, 2012.

By letter dated October 11, 2013, OWCP notified appellant that the evidence was insufficient to establish his claim. Appellant was instructed to complete a questionnaire substantiating the factual basis of his claim and was also advised of the type of medical evidence needed. In another October 11, 2013, letter, OWCP requested that the employing establishment comment on appellant’s assertions.

In a January 31, 2012 report, Dr. Milton Dalbow, Board-certified in internal medicine, assessed memory loss and anxiety. He ordered a psychological evaluation.

In an April 5, 2012 report, Dr. Renata Jurczak, Board-certified in psychiatry, advised that appellant was under treatment related to being in a high-stress environment. She noted that he was experiencing memory loss, irritability, and poor sleep since April 2011. Dr. Jurczak advised that appellant had been a supervisory police officer for the employing establishment, but later switched to a different position where he was not required to carry a weapon. She noted that he related that multi-tasking, a high-stress environment, and lack of sleep contributed to his depression. Dr. Jurczak also noted that appellant reported having short-term memory loss symptoms in the 1990’s when he was a firearms instructor. She assessed major depressive disorder, hypertension, and stressors related to high-stress work. Dr. Jurczak stated that, over the last year, appellant was under a significant amount of stress at work that brought about depressive symptoms. She advised that he could work with accommodations.

In a November 8, 2013 response to an OWCP questionnaire, the employing establishment disputed that there were aspects of appellant’s job that could be perceived as stressful, noting that he worked more in the capacity of a dispatcher providing advice to officers when necessary to successfully complete their assigned duties. It noted that he was accommodated to reduce stress by placing him in a nonuniformed position and then eventually transferring him to human resources. The employing establishment agreed that appellant was subject to call backs when he was on annual leave because of the nature of police work and his position as a supervisor. It noted that he was generally able to perform his required duties and that there were no staff shortages during the period of his employment which affected his workload.

By decision dated March 7, 2014, OWCP denied appellant's emotional condition claim as he failed to establish any compensable work factors within the scope of his employment.

On March 26, 2014 appellant requested an oral hearing. A telephonic oral hearing was scheduled for October 20, 2014. Appellant failed to appear for the hearing. On October 21, 2014 he contacted OWCP and asserted that the telephone number for accessing the hearing did not work for him. Appellant agreed to convert his request to a review of the written record.

By decision dated November 18, 2014, an OWCP hearing representative affirmed the March 7, 2014 decision. She noted that appellant failed to provide specific facts upon which a claim for injury within the performance of duty could be positively adjudicated.

LEGAL PRECEDENT

To establish a claim that he or she sustained an emotional or stress-related condition in the performance of duty, an employee must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) medical evidence establishing that he or she has an emotional or stress-related disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the condition. If a claimant implicates a factor of employment, OWCP should determine whether the evidence of record substantiates that factor. Allegations alone are insufficient to establish a factual basis for an emotional condition claim and must be supported with probative and reliable evidence. If a compensable factor of employment is established, it must then base its decision on an analysis of the medical evidence.²

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.³ 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.⁴

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA.⁵ However, the Board has held that where the evidence establishes error or abuse on the part of the

² G.S., Docket No. 09-764 (issued December 18, 2009).

³ *Supra* note 1; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁵ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

employing establishment in what would otherwise be an administrative matter, coverage will be afforded.⁶ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁷

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of a high-stress work environment. OWCP denied his emotional condition claim because he failed to establish any compensable employment factors. The Board must, therefore, initially review whether the alleged incidents and conditions of employment are covered employment factors under the terms of FECA. The Board notes that appellant's allegations do not sufficiently identify specific work factors or conditions to implicate work factors under *Cutler*. Appellant noted "gross multitasking" working 12-hour shifts, and being overloaded with work assignments. While such matters might be compensable if established by the factual evidence as necessary to meet the demands of his position, he did not specify any particular occurrence on any specific date and time. Such vague allegations are insufficient to establish a compensable employment factor under these circumstances.⁸ Similarly, overwork may constitute a compensable factor of employment if a claimant submits sufficient evidence to substantiate this allegation.⁹ Appellant failed to submit any factual evidence substantiating these allegations. Therefore, these matters are not compensable factors of employment.

Appellant alleged that being subject to call backs when he took annual leave contributed to his emotional condition. Although the handling of leave requests is generally related to the employment, it is an administrative function of the employing establishment and not a duty of the employee and thus only compensable where the evidence discloses error or abuse.¹⁰ The employing establishment agreed that he was subject to call backs when he was on annual leave. It noted that all supervisors and patrol officers alike were subject to call back while on leave due to the nature of police work and the need to call in officers in the unlikely event of a mass casualty, civil disorder, or missing patients. Such actions do not rise to the level of error or abuse by the employing establishment in administrative matters as there is no evidence that these actions were unreasonable.¹¹

On appeal appellant argues that OWCP ignored medical evidence submitted with his claim. However, he must establish compensable work factors any medical evidence becomes

⁶ See *William H. Fortner*, 49 ECAB 324 (1998).

⁷ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁸ See *T.E.*, Docket No. 14-582 (issued December 15, 2014) (allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim).

⁹ See *Bobbie D. Daly*, 53 ECAB 691 (2002).

¹⁰ *C.S.*, 58 ECAB 137 (2006).

¹¹ See *id.*

relevant. As appellant has not established any compensable work factors, the Board need not address the medical evidence.¹²

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.

CONCLUSION

The Board finds that appellant has not established a compensable factor of employment and, therefore, has not met his burden of proof to establish a claim for an emotional condition.

ORDER

IT IS HEREBY ORDERED THAT the November 18, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 7, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹² See *Margaret S. Krzycki*, 43 ECAB 496 (1992).