



## ISSUE

The issue is whether appellant has met his burden of proof to establish an emotional condition in the performance of duty on June 9, 2015, as alleged.

## FACTUAL HISTORY

On June 17, 2015 appellant, then a 27-year-old corrections officer, filed a traumatic injury claim (Form CA-1) alleging that he sustained an emotional condition on June 9, 2015 when an inmate, S.R., number xxxxx-053, threatened him while in the performance of duty. He explained that on June 9, 2015 at 8:50 p.m., he was conducting a cell search and had ordered the inmate to leave from in front of the cell. Appellant alleged that the inmate reentered the cell, closed the door behind him, advanced towards him and threatened his life. The claim form did not indicate whether appellant stopped work.

In a June 15, 2015 note, William R. Yelen, a registered licensed social worker, noted that appellant was referred to him by his employing establishment's Employee Assistance Program (EAP) for psychological evaluation and treatment following a June 9, 2015 employment incident. He indicated that appellant had acute stress disorder.

In a June 26, 2015 development letter, OWCP requested additional factual and medical information from appellant. Appellant was afforded 30 days to provide the requested information. OWCP also requested additional information from the employing establishment on that same date.

On July 5 and 7, 2015 OWCP received appellant's responses to its questionnaire. Appellant indicated that on June 9, 2015 at approximately 8:50 p.m., he was conducting a cell search of the inmate's cell, when the inmate reentered the cell, closed the cell door, and aggressively ran towards him with a closed fist. He alleged that the inmate looked him in the eye and told him that he was going to kill him. Appellant alleged that the inmate also said that he would break his neck and that he would not get out of the cell alive. He noted that the inmate had blocked the only exit out of the cell. Appellant alleged that he had feared for his life as he was alone in the cell with the hostile inmate and believed that the inmate's threats were genuine. He stated that he pressed his body alarm before the inmate could threaten him further.

Appellant described his symptoms after the incident and related that he had several EAP sessions to help with his anxiety. He noted that he would obtain a copy of an incident report he submitted to the employing establishment on June 17, 2015. Appellant explained that the earliest date he was able to schedule a therapist through the EAP was June 15, 2017. Prior to his first meeting with the therapist he was not clear what the nature of his issues were. Appellant denied stress outside of work or any incidents with that inmate prior to the June 9, 2015 incident. He also denied having an emotional condition or being under the care of a psychiatrist/psychologist prior to the alleged June 9, 2015 work incident.

In a July 20, 2015 report, Carmine Thomas Capone, Ph.D., a clinical psychologist, indicated that he had been seeing appellant weekly since July 14, 2015 following a June 9, 2015 employment incident. He diagnosed acute stress disorder. Dr. Capone also opined that appellant was unable to return to work.

By decision dated July 29, 2015, OWCP denied appellant's emotional condition claim. It found that appellant had not established a factual basis to support his claim. Specifically, appellant did not provide any corroborating evidence to support that he actually experienced the employment incident alleged to have occurred. OWCP further noted that appellant did not submit any medical evidence which diagnosed a medical condition causally related to the alleged employment incident.

Evidence received subsequent to OWCP's July 29, 2015 decision included reports from Dr. Capone dated July 20 and August 5, 2015.

In a September 25, 2015 response to OWCP's questionnaire, an Administrative Lieutenant at the employing establishment, contested that the alleged June 9, 2015 event occurred as alleged. He advised that appellant did not file a Form BP-A0288 as per protocol to report the incident regarding the inmate. Appellant did not call for help or deploy O.C. due to a combative or life threatening situation with the inmate. He also did not document that a shakedown had occurred or that a verbal encounter had taken place. The Administrative Lieutenant advised that the inmate appellant referenced in the incident, S.R. number xxxxx-061, did not arrive at the prison until June 23, 2015, after the alleged incident of June 9, 2015. He also stated that appellant's supervisors received no documentation regarding this or any other incident involving an inmate. The administrator indicated that appellant had no reports of conduct or performance issues and did not demonstrate being stressed or deferred from performing his duties. A copy of appellant's job description was provided.

On July 21 and 27, 2016 OWCP received a July 21, 2016 request for reconsideration from counsel. In his July 21, 2016 brief, counsel alleged that appellant's statement was probative without any corroborative evidence or witness statements. Furthermore the medical evidence supported that appellant had sustained a disabling emotional condition as a result of the claimed June 9, 2015 incident when the inmate threatened appellant in the cell. Counsel also stated that the employing establishment had referenced the wrong inmate number.

Counsel inquired about the claims status on January 26 and April 7, 2017, but no additional evidence was received.

By decision dated April 28, 2017, OWCP denied modification of its prior decision. It found that appellant had not established a compensable factor of employment as his allegation was not supported with probative and reliable evidence.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>3</sup> These are the essential elements of each and every

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<sup>3</sup> *Joe D. Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

To establish a claim for an emotional condition in the performance of duty, an employee must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.<sup>5</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.<sup>6</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>7</sup> 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.<sup>8</sup>

The reaction to assigned work duties is a compensable work factor.<sup>9</sup> The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable.<sup>10</sup>

If a claimant implicates a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.<sup>11</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>12</sup>

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<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989). A traumatic injury is defined as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

<sup>5</sup> *See P.H.*, Docket No. 17-0673 (issued December 19, 2017).

<sup>6</sup> *L.D.*, 58 ECAB 344 (2007).

<sup>7</sup> *A.K.*, 58 ECAB 119 (2006).

<sup>8</sup> *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>9</sup> *Id.*

<sup>10</sup> *A.N.*, Docket No. 15-1220 (issued September 27, 2016); *Trudy A. Scott*, *supra* note 8.

<sup>11</sup> *David C. Lindsey, Jr.*, 56 ECAB 263 (2005); *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>12</sup> *Robert Breeden*, 57 ECAB 622 (2006).

## ANALYSIS

The Board finds that appellant has not met his burden to establish that he sustained an emotional condition in the performance of duty on June 9, 2015, as alleged.

Appellant attributed his claimed emotional condition to his regular or specially assigned duties as a correctional officer under *Cutler*.<sup>13</sup> He alleged an emotional condition as a result of being threatened by an inmate on June 9, 2015 while conducting a search of the inmate's cell. OWCP denied appellant's claim because it determined that he had not established a compensable factor under FECA substantiated by supporting probative and reliable evidence.

On appeal and before OWCP counsel argued that appellant's emotional reaction to the June 9, 2015 inmate incident was a compensable work factor and supported by the medical evidence. The reaction to assigned work duties is a compensable work factor.<sup>14</sup> However, to establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his allegations with probative and reliable evidence.<sup>15</sup> Appellant alleged that on June 9, 2015 an inmate threatened him while he was searching the inmate's cell. However, he failed to substantiate his allegation with probative and reliable evidence.

In his response to OWCP's questionnaire, appellant indicated that he pressed his body alarm before the inmate could advance on him further. He also stated that he wrote an incident report directly after the incident. However, there is no record that appellant's body alarm had been pressed on June 9, 2015. Appellant also failed to provide a copy of the incident report, despite his assertion that he would do so. The employing establishment controverted the claim. It indicated that a Form BP-A0288 had not been filed per its protocol. The employing establishment stated that there was no report that on June 9, 2015 appellant had called for help, the incident shakedown had occurred, or that a verbal encounter had taken place. While discrepancy exists in the factual record as to when the particular inmate involved in the claimed incident was incarcerated at the prison, the employing establishment denied having received any documentation regarding the alleged June 9, 2015 incident or any other incident involving appellant and an inmate.

Thus, under these circumstances, appellant has not presented sufficient evidence to establish a factual basis to support that the alleged incident on June 9, 2015 occurred. He has therefore failed to identify a compensable work factor under *Cutler*.<sup>16</sup>

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<sup>13</sup> See *Lillian Cutler*, *supra* note 8. In *Cutler*, the Board noted that when an employee experiences emotional stress in carrying out his or her employment duties, or has fear and anxiety regarding his or her ability to carry out his or her duties, and the medical evidence establishes that the disability resulted from his or her emotional reaction to such a situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability resulted from his or her emotional reaction to his or her day-to-day duties, a special assignment or requirement imposed by the employing establishment, and/or by the nature of the work. *Id.* at 130.

<sup>14</sup> See *supra* note 8.

<sup>15</sup> See *Pamela D. Casey*, 57 ECAB 260 (2005), *Lillian Cutler*, *supra* note 8 at 130.

<sup>16</sup> *Supra* note 11.

As appellant has not established any compensable work factors, the Board need not consider the medical evidence of record.<sup>17</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.

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish an emotional condition in the performance of duty on June 9, 2015, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 28, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 21, 2018  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>17</sup> *Garry M. Carlo*, 47 ECAB 299, 305 (1996), *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).