United States Department of Labor
Employees' Compensation Appeals Board

PreDENNIS PHELPS, Appellant **and** **DEPARTMENT OF HOMELAND SECURITY, BUREAU OF IMMIGRATION & CUSTOMS ENFORCEMENT, Long Beach, CA, Employer**	)	**Docket No. 06-454** **Issued: April 18, 2006**

Appearances:
PreDennis Phelps, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 23, 2005 appellant filed a timely appeal from the April 7, 2005 merit decision of the Office of Workers' Compensation Programs, which denied his claim that he sustained an injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of his claim. The Board also has jurisdiction to review the Office's June 9, 2005 nonmerit decision denying his request for reconsideration.[1]

ISSUES

The issues are: (1) whether appellant sustained an injury in the performance of duty on or about January 10, 2005; and (2) whether the Office properly denied his May 23, 2005 request for reconsideration.

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[1] Appellant indicated that he was appealing an Office decision dated September 14, 2005, but no such decision appears in the record.

FACTUAL HISTORY

On January 11, 2005 appellant, then a 42-year-old special agent, filed a claim for compensation alleging that he sustained a traumatic injury in the performance of duty on January 10, 2005. He stated:

> "On January 10, 2005 I was informed that I would be made to teach classes in [enforcement and identification] even after I was asked if I was available and I replied no. I never requested, volunteered or even wanted to be an instructor. My name was submitted without my knowledge. And I also did not participate in any of the follow up training because I did not want to be a trainer. After hearing this news I developed a severe migraine headache and this continued through the night. On the morning of January 11, 2005 I still had the migraine along with chest pain."

A January 17, 2005 attending physician's form report indicated that appellant's diagnosis of work stress and atypical chest pain was caused or aggravated by employment: "Stress appears to be work related."

In a decision dated April 7, 2005, the Office denied appellant's claim on the grounds that an employee's reaction to the employer's assignment of work is not covered.

On May 23, 2005 appellant requested reconsideration and submitted copies of medical records. He argued that the assignment was given to him as a reprisal for his Equal Employment Opportunity (EEO) complaint, and he alleged that he was being set up for failure.

In a decision dated June 9, 2005, the Office denied a merit review of appellant's claim on the grounds that it raised neither substantive legal questions nor included new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act provides compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."[3] To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration. "In the course of employment" relates to the elements of time, place and work activity. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in his employer's business, at a place where he may reasonably be expected to be in

[2] 5 U.S.C. § 8102(a).

[3] This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

connection with his employment, and while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto.[4]

Workers' compensation, however, does not cover each and every injury or illness that is somehow related to employment.[5] An employee's emotional reaction to an administrative or personnel matter is generally not covered. Specifically, the Board has held that the assignment of work is an administrative or personnel matter of the employing establishment, and coverage can only be afforded where there is a showing of error or abuse.[6] Perceptions alone are not sufficient to establish entitlement to compensation. To discharge his burden of proof, a claimant must establish a factual basis for his claim by supporting his allegations with probative and reliable evidence.[7]

ANALYSIS -- ISSUE 1

The kind of injury appellant described in his January 11, 2005 claim is not that which is generally covered by workers' compensation. He attributed his stress, migraine and atypical chest pain to the news that he was going to be an instructor or trainer and that he was going to teach a class in enforcement and identification. Absent proof that this administrative action was erroneous or unreasonable, the Act will not cover resulting emotional reactions or somatic symptoms. Appellant alleged reprisal and that he was being set up for failure, but he has offered no proof. With no evidence of error or abuse in the assignment, his claim is not compensable.

Appellant argues on appeal that the Office did not have all of the medical documentation. But it was not a lack of medical documentation on which his claim was denied. Appellant did not describe a claim that the Office could accept, not without proof that the direction to teach a class was erroneous or abusive. So it was never necessary for the Office to process his claim further by developing the medical evidence or adjudicating whether it was sufficient to establish a causal relationship between what appellant alleged and what his doctors diagnosed. The fatal deficiency arose earlier, when appellant alleged an injury that is not generally covered by workers' compensation.

LEGAL PRECEDENT -- ISSUE 2

The Act provides that the Office may review an award for or against the payment of compensation at any time on its own motion or upon application.[8] The employee shall exercise

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[4] *See Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

[5] *Lillian Cutler*, 28 ECAB 125 (1976).

[6] *Ernest St. Pierre*, 51 ECAB 623 (2000); *Alice M. Washington*, 46 ECAB 382 (1994). *See generally Thomas D. McEuen*, 42 ECAB 566 (1991), *reaffirming Thomas D. McEuen*, 41 ECAB 387 (1990).

[7] *Ruthie M. Evans*, 41 ECAB 416 (1990).

[8] 5 U.S.C. § 8128(a).

this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."[9]

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[10]

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.[11] A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[12]

ANALYSIS -- ISSUE 2

Appellant sent his May 23, 2005 request for reconsideration in a timely manner, less than two months after the Office's April 7, 2005 merit decision denying his claim. The question for determination, therefore, is whether this request meets at least one of the three standards for obtaining a merit review of his case.

Appellant's request does not show that the Office erroneously applied or interpreted a specific point of law. He is not entitled to a merit review of his case under the first standard.

Appellant argued that the teaching or training assignment was a reprisal and that he was being set up for failure. He previously alleged on his claim form that the assignment was improper: he did not request, volunteer or even want to be an instructor; his name was submitted without his knowledge; he did not participate in any of the follow up training. The Office considered this in its April 7, 2005 merit decision denying his claim. Additional argument on the propriety of the assignment is essentially repetitive. Appellant is not entitled to a merit review of his case under the second standard.

Appellant supported his request for reconsideration with medical documentation, but as the Board explained earlier, medical documentation is not relevant to the grounds upon which the Office denied his claim. The submitted medical documentation does not constitute relevant

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[9] 20 C.F.R. § 10.605 (1999).

[10] *Id*. § 10.606.

[11] *Id*. § 10.607(a).

[12] *Id*. § 10.608.

and pertinent new evidence. Appellant is not entitled to a merit review of his case under the third standard.

Because appellant's May 23, 2005 request for reconsideration does not meet at least one of the three standards for obtaining a merit review of his case, the Board will affirm the Office's June 9, 2005 decision denying that request.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty on or about January 10, 2005, as alleged. His reaction to an administrative matter is not covered by the Act, as there is no proof that the assignment was erroneous or unreasonable. The Board also finds that the Office properly denied appellant's May 23, 2005 request for reconsideration. The request did not meet at least one of the three standards for obtaining a merit review of his case.

ORDER

IT IS HEREBY ORDERED THAT the June 9 and April 7, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 18, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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