

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

J.A., Appellant

and

**DEPARTMENT OF THE AIR FORCE,
LACKLAND AIR FORCE BASE, TX, Employer**

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**Docket No. 10-2353
Issued: July 11, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 20, 2010 appellant filed a timely appeal from a September 3, 2010 decision of the Office of Workers' Compensation Programs (OWCP) that denied his claim. 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 met his burden of proof to establish that he sustained a stress-related condition in the performance of duty on December 21, 2009.

On appeal appellant asserts that his supervisor falsified statements.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

In January 2010 appellant, then a 52-year-old boiler plant equipment mechanic, filed a traumatic injury claim alleging that he sustained a mini-stroke on December 21, 2009 when his supervisor, Staff Sergeant Kevin Murphy, singled him out and harassed him when he asked to leave work because he was not feeling well. Sgt. Murphy stated that he did not feel that appellant's injury was employment related. He noted that appellant went home after duty hours and did not seek medical attention until later that evening.

In letters dated January 20 and February 1, 2010, OWCP informed appellant of the type of evidence needed to support his claim, and asked that the employing establishment respond. Appellant submitted a diary describing events from August 19, 2009 to January 13, 2010. In the December 23, 2009 statement, he alleged that at 3:30 p.m. on December 21, 2009 Sgt. Murphy called him into his office where he was told he should not be in the shop break room and should return to work. Appellant noted that others were taking breaks there, but he left and returned to work. He stated that, about 30 minutes later, he became light-headed and had weak legs and right arm numbness. Appellant returned to the shop and told Sgt. Murphy he was not feeling well and was leaving, and maintained that Sgt. Murphy refused to let him leave and told him that, if he left, he would be absent without leave (AWOL). He stated that he went and sat with coworkers in the break room until about 4:10 p.m. when he tried to call a lieutenant colonel to get permission to go home, but she was in a meeting. Appellant stated that he then waited in the break room until 4:45 p.m. when he left for the day. At home, he took his blood pressure, which was very high, and his wife drove him to the hospital where he was told he had a mild stroke.

Appellant also submitted evidence regarding medical appointments, a grievance regarding denial of leave, and a letter of concern from Sgt. Murphy regarding appellant's use of unscheduled leave. A December 3, 2009 memorandum from Sgt. Murphy advised appellant that he should provide appropriate medical documentation regarding recommended restrictions. Hospital instructions dated December 22, 2009, signed by a nurse, noted that appellant was discharged with a diagnosis of transient ischemic attack, advised that he could return to work on December 29, 2009 and that he should follow-up with his primary care provider. Dr. Dawn T. Langeland, an internist, advised that appellant was excused from work due to a medical illness until December 29, 2009. By report dated February 5, 2010, Dr. Pedro Calzada, a family practitioner, noted appellant's report that he had a transient ischemic attack on December 21, 2009. He diagnosed an acute stress response and advised that appellant was physically and psychologically able to work without restrictions.

Sgt. Murphy submitted an undated statement in which he advised that he was in total disagreement with the accuracy of appellant's statements, asserting that appellant did not tell him or anyone that he was not feeling well, that he completed his entire shift with no complaints and went home. He maintained that the injury did not happen during duty hours.

By decision dated February 26, 2010, OWCP denied the claim on the grounds that appellant did not establish that he sustained an injury in the performance of duty.² On March 10,

² OWCP found that all alleged events from August 19 to December 21, 2009 did not occur as alleged.

2010 appellant requested a hearing that was held telephonically on June 2, 2010. At the hearing, he stated that he was claiming that his stress-related condition was solely caused by the events of December 21, 2010. Appellant testified regarding the events that day, asserting that Sgt. Murphy singled him out. He admitted that it was not break time when Sgt. Murphy told him to return to work. Appellant stated that he was admitted to the hospital on December 21, 2010, and that he had filed an Equal Employment Opportunity (EEO) claim but had not received a final decision.

Subsequent to the hearing, appellant submitted a statement describing events of December 17 to 21, 2009 in which he asserted that Sgt. Murphy lied on the claim form. He also submitted information regarding his EEO claim and hospital records dated December 21 and 22, 2009. Dr. Langeland noted that appellant was discharged on December 22, 2009 with diagnoses of possible transient ischemic attack, poorly controlled hypertension, morbid obesity and obstructive sleep apnea. She advised that his presenting symptoms had resolved, and that a carotid ultrasound showed no significant disease. In treatment notes dated December 7, 2009 to February 3, 2010, Michele Clements-Thompson, Ph.D., a clinical psychologist, noted seeing appellant for depression. She stated that he was distressed about the way he was being treated by his supervisor at work.

By decision dated September 3, 2010, OWCP's hearing representative found that appellant did not establish that he sustained an employment-related injury in the performance of duty on December 21, 2009 and affirmed the February 26, 2010 decision.

LEGAL PRECEDENT

To establish his claim that he sustained a stress-related condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his stress-related condition.³ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.⁴ 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.⁵

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁶ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within

³ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁴ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁵ *Id.*

⁶ 28 ECAB 125 (1976).

coverage under FECA.⁷ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such 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 results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁸ Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.⁹ Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.¹⁰ Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹¹

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.¹² Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹³

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that he sustained a stress-related condition in the performance of duty on December 21, 2009.

In the present case, appellant has not attributed his emotional condition to the performance of his regular duties or to any special work requirement arising from his employment duties under *Cutler*.¹⁴ His claim pertains to allegations of abuse and disparate treatment by Sgt. Murphy on December 21, 2009. There is, however, insufficient evidence to establish that the incidents of December 21, 2009 occurred as alleged.

Regarding appellant's assertion that Sgt. Murphy improperly asked him to leave the break room and return to work, generally, complaints about the manner in which a supervisor performs his or her duties or the manner in which a supervisor exercises his or her discretion fall, as a rule, outside the scope of coverage provided by FECA. This principle recognizes that a supervisor or manager in general must be allowed to perform his duties and employees will, at

⁷ See *Robert W. Johns*, 51 ECAB 137 (1999).

⁸ *Lillian Cutler*, *supra* note 6.

⁹ *J.F.*, 59 ECAB 331 (2008).

¹⁰ *M.D.*, 59 ECAB 211 (2007).

¹¹ *Roger Williams*, 52 ECAB 468 (2001).

¹² *Charles D. Edwards*, 55 ECAB 258 (2004).

¹³ *Kim Nguyen*, 53 ECAB 127 (2001).

¹⁴ See *James E. Norris*, 52 ECAB 93 (2000).

times, dislike the actions taken.¹⁵ Mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent evidence of error or abuse, and there is no evidence of error or abuse regarding these matters.¹⁶ By his own admission, it was not break time when appellant was in the break room. There is no evidence that Sgt. Murphy acted unreasonably in ordering appellant to return to work. This incident would therefore not be compensable.

Regarding his contention that Sgt. Murphy's actions on December 21, 2009 constitute harassment, because he felt he was "singled out," mere perceptions of unfair treatment, harassment or discrimination are not compensable under FECA,¹⁷ and unsubstantiated allegations are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.¹⁸ Appellant acknowledged that he was with coworkers in the break room late in the workday on December 21, 2009 but did not submit a corroborative statement regarding his allegations that he became sick at work and was threatened with AWOL by Sgt. Murphy. While he submitted evidence regarding an EEO claim, the record does not contain a final EEO decision, and appellant submitted no evidence to show a persistent disturbance, torment or persecution, *i.e.*, mistreatment by Sgt. Murphy on December 21, 2009.¹⁹ The Board therefore finds that he did not establish a factual basis for his claim of harassment by probative and reliable evidence.²⁰

There is no affirmative evidence of record to establish that the events of December 21, 2009 rose to the level of error or abuse or otherwise came within the coverage of FECA. Appellant's reaction would be considered self-generated and not a compensable factor of employment.²¹ As the record lacks probative evidence to support appellant's claim, the Board finds that he has not established a compensable employment factor of employment. He therefore did not establish that he sustained a stress-related condition in the performance of duty on December 21, 2009 as alleged.²²

Appellant may submit new evidence or argument with a written request for reconsider 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.

¹⁵ *T.G.*, 58 ECAB 189 (2006).

¹⁶ *Id.*

¹⁷ *James E. Norris*, *supra* note 14.

¹⁸ *Id.*

¹⁹ *Beverly R. Jones*, 55 ECAB 411 (2004).

²⁰ *See Robert Breeden*, 57 ECAB 622 (2006).

²¹ *V.W.*, 58 ECAB 428 (2007).

²² As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Katherine A. Berg*, 54 ECAB 262 (2002).

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a stress-related condition in the performance of duty on December 21, 2009.

ORDER

IT IS HEREBY ORDERED THAT the September 3, 2010 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: July 11, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board