

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

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**R.P., Appellant**

**and**

**U.S. POSTAL SERVICE, HOWELL POST  
OFFICE, Howell, NJ, Employer**

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**Docket No. 12-1125  
Issued: December 11, 2012**

*Appearances:*  
*Pat Perreca*, for the appellant  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 30, 2012 appellant, through his representative, filed a timely appeal of the February 8, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 established that he sustained an emotional condition while in the performance of duty.

On appeal, appellant's representative contends that appellant's emotional condition and resultant disability for work were caused by his federal employment.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

### **FACTUAL HISTORY**

On December 5, 2011 appellant, then a 41-year-old clerk, filed an occupational disease claim alleging that on December 1, 2010 he first became aware of his depression, inability to manage stress, anxiety, forgetfulness, impaired judgment, sleep disruption, isolation and lack of concentration. He further alleged that on November 4, 2011 he first realized that his conditions were caused by stress placed on him by his supervisor who continuously assigned him tasks that could not be completed within established timeframes. Appellant contended that his supervisor was not receptive to discussing this matter with him. He felt like he was being punished and constantly threatened with the loss of his job and employment cuts. Appellant was last exposed to the conditions alleged to have caused his injury on December 2, 2011.

In a November 30, 2011 medical report, Dr. Marina Kharaz, a psychiatrist, obtained a history of appellant's medical background which included treatment for anxiety and personality disorders not otherwise specified and recurrent severe major depressive disorder without psychotic features. She advised that his alleged abusive relationship with a supervisor and resultant stress were a major source of his psychiatric symptoms.

In a December 5, 2011 letter, John Rasmussen, a supervisor, contended that appellant's anxiety and depression were not work related. Instead, they were caused by personal family issues.

By letter dated January 4, 2012, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested a description of the tasks assigned to him by his supervisor that could not be completed in the allotted timeframes, his constantly changing tasks and all sources of stress outside his federal employment including, recent personal or family situation such as, substance abuse, divorce, death or illness of loved ones. OWCP also requested that appellant provide an explanation with supportive evidence as to why he believed that he was being punished by his supervisor. It further requested that he submit medical evidence, including a rationalized medical opinion from an attending physician describing a history of injury and dates of examination and treatment, findings, test results, a diagnosis together with an explanation regarding the cause of his emotional condition. Appellant was afforded 30 days to submit the requested evidence. He did not respond.

In a February 8, 2012 decision, OWCP denied appellant's claim, finding that he did not sustain an emotional condition in the performance of duty. It explained that he failed to submit sufficient evidence to establish that the incidents occurred as alleged.

### **LEGAL PRECEDENT**

A claimant 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 factors of his federal employment.<sup>2</sup> To establish that he sustained an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his

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<sup>2</sup> Pamela R. Rice, 38 ECAB 838 (1987).

condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.<sup>7</sup> 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.<sup>8</sup>

### ANALYSIS

The Board finds that appellant has failed to establish that he sustained an emotional condition in the performance of duty. OWCP's January 4, 2012 developmental letter specifically requesting that he submit a description of the tasks assigned to him by his supervisor that could not be completed in the allotted timeframes and his constantly changing tasks and provide an explanation with supportive evidence as to why he believed that he was being punished by his supervisor. As part of his burden of proof, appellant must provide a detailed description of the employment factors or conditions that he believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>9</sup> He did not submit such evidence. The Board

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<sup>3</sup> See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>4</sup> 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>6</sup> See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>7</sup> See *William H. Fortner*, 49 ECAB 324 (1998).

<sup>8</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>9</sup> *Janet L. Terry*, 53 ECAB 570, 577 (2001).

finds, therefore, that appellant failed to establish a factual basis for his allegations or any compensable factor of employment.<sup>10</sup> Appellant failed to meet his burden of proof.

On appeal, appellant's representative contended that appellant's emotional condition and resultant disability were casually related to his employment. However, for his emotional condition claim to be accepted under FECA, appellant must first establish a compensable factor of employment and then provide rationalized medical evidence establishing that his emotional condition was caused by the compensable employment factor.<sup>11</sup> As the Board found above, he failed to submit any factual evidence establishing that a compensable factor of employment was causally related to a diagnosed emotional condition. Appellant submitted new evidence after issuance of the February 8, 2012 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.<sup>12</sup> However, appellant may submit this or any other new evidence or argument as part of 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 failed to establish that he sustained an emotional condition while in the performance of duty.

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<sup>10</sup> See *D.A.*, Docket No. 07-2398 (issued April 15, 2008).

<sup>11</sup> *Richard Yadron*, 57 ECAB 207 (2005).

<sup>12</sup> 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 8, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 11, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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