

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

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**B.B., Appellant**

**and**

**U.S. POSTAL SERVICE, PROCESSING &  
DISTRIBUTION CENTER, Little Rock, AR,  
Employer**

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**Docket No. 12-695  
Issued: November 16, 2012**

*Appearances:*

*James W. Stanley, Jr. Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On February 8, 2012 appellant, through his attorney, filed a timely appeal from an October 27, 2011 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 sustained an injury in the performance of duty on December 8, 2010.

**FACTUAL HISTORY**

On December 20, 2010 appellant, then a 54-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on December 8, 2010 he was physically assaulted by a

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

supervisor. On the claim form the nature of the injury was described as “occupational stress not applicable middle back.” In a December 12, 2010 statement, appellant alleged that the supervisor hit him very hard in the back, enough to cause him to lose his balance. He asserted that the supervisor was retaliating against appellant because appellant’s wife had filed a sexual harassment action against the supervisor. According to appellant he had his back to the supervisor and he could have been seriously hurt as he had a prior back injury. He stated that he feared for his life. In another statement dated December 12, 2010, appellant indicated that he had notified the employing establishment inspection service of the incident.

In an undated statement received by OWCP on January 4, 2011, the supervisor stated that on December 8, 2010 he did not touch appellant nor was he within arm’s reach of appellant. He stated that he did not know of any sexual harassment allegation by appellant’s wife until December 16, 2010.

Appellant submitted a brief statement dated December 22, 2010 from Ms. Current, a coworker, who stated that on December 8, 2010 she observed the supervisor behind appellant, but did not see the supervisor touch appellant.

With respect to medical evidence, appellant submitted an attending physician’s report (Form CA-20) dated December 21, 2010 from family practitioner, Dr. Sikander Murad, who reported a history that appellant was struck by a supervisor at work. Dr. Murad diagnosed acute reaction to stress and checked a box “yes” that the condition was causally related to an employment activity. He indicated that appellant was disabled from December 14 to 21, 2010. Appellant also submitted duty status reports (Form CA-17) from Dr. Murad. In a CA-17 form dated March 14, 2011, Dr. Murad diagnosed anxiety.

By decision dated March 22, 2011, OWCP denied the claim for compensation. It indicated that appellant had not established fact of injury.

In a letter dated March 25, 2011, appellant stated that muscle spasms in his upper back still occurred but were less frequent. He requested a hearing before an OWCP hearing representative, which was held on August 11, 2011. Appellant reiterated the allegation that he was struck from behind by the supervisor.

In an undated statement received on April 28, 2011, a witness stated that on December 11, 2010 the supervisor became very agitated with another employee and swung his arms back and forth. In a statement dated January 15, 2011, a coworker, Mr. Swopes, discussed the December 11, 2010 incident. The record contains a December 2, 2010 statement from appellant’s spouse and a December 3, 2010 statement from a coworker regarding a November 27, 2010 incident. Appellant also submitted an April 28, 2011 report from Dr. Larry Clarke, a psychologist, who diagnosed adjustment disorder with anxiety and depressed mood and stated that the “blow” appellant described had produced lasting emotional problems.

By decision dated October 27, 2011, the hearing representative affirmed the March 22, 2011 OWCP decision. The hearing representative found appellant had not established a compensable work factor with respect to the claim.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged.<sup>2</sup> Appellant must also establish that such event, incident or exposure caused an injury.<sup>3</sup> Causal relationship is a medical issue that can generally only be resolved by rationalized medical opinion evidence.<sup>4</sup>

It is well established that workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>5</sup>

### **ANALYSIS**

In the present case, appellant submitted a traumatic injury claim alleging that on December 8, 2010 he was struck from behind by a supervisor. It is not clear from the record whether he was claiming a physical injury. The medical evidence of record referred to anxiety, reaction to stress and adjustment disorder. Appellant referred to muscle spasms in a March 25, 2011 letter, without further explanation. To establish a claim for a physical injury or an emotional condition, he would have to establish that an incident occurred as alleged, and submit medical evidence establishing causal relationship between the incident and a diagnosed condition.<sup>6</sup> With respect to a claim for an emotional condition, the evidence must substantiate that the employment incident was a compensable work factor.<sup>7</sup>

Therefore the analysis in this case must begin with a determination as to whether the December 8, 2010 incident occurred as alleged. In this regard, the Board finds no evidence supporting that the incident occurred as alleged. The supervisor has denied striking appellant in any manner. The witness statements of record regarding incidents other than the alleged December 8, 2010 incident are of little probative value to the factual issue presented in this case. The only witness who appeared to be in a position to have observed the incident on December 8,

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<sup>2</sup> *Sedi L. Graham*, 57 ECAB 494 (2006).

<sup>3</sup> *Id.*

<sup>4</sup> *David Apgar*, 57 ECAB 137 (2006).

<sup>5</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>6</sup> *See, e.g., T.H.*, 59 ECAB 388 (2008) (traumatic injury claim for physical injury); *S.S.*, Docket No. 11-1727 (issued April 5, 2012) (traumatic injury claim for emotional condition).

<sup>7</sup> *M.D.*, Docket No. 11-934 (issued November 18, 2011).

2010 clearly stated that she did not see the supervisor touch appellant. Appellant indicated that employing establishment inspectors had been notified of the incident, but there was no indication that any investigation had occurred and no probative evidence in this regard was submitted. Although physical contact may constitute a compensable work factor, there must be probative factual evidence supporting the claim.<sup>8</sup> In the present case, there is no supporting evidence establishing an employment incident as alleged on December 8, 2010.

The Board accordingly finds that appellant did not meet his burden of proof to establish a claim for an emotional or physical injury. As the factual element of the claim has not been established, the Board will not address the medical evidence.<sup>9</sup>

On appeal, appellant's representative argues that the evidence is sufficient to establish an incident as alleged. Appellant states that no evidence was submitted to rebut his allegations, and there was no need to submit supporting evidence. The Board's review of the record indicates, as noted above, that the supervisor denied the allegation and no supporting witness statements were submitted. It is well established that there must be probative factual evidence supporting the claim for compensation. The Board finds, consistent with Board precedent noted above, that appellant has not established an incident as alleged on December 8, 2010.

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 establish an injury in the performance of duty on December 8, 2010.

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<sup>8</sup> See *Marilyn Jones*, Docket No. 05-382 (issued January 19, 2006); see also *C.G.*, Docket No. 07-1375 (issued November 5, 2007) (no witness statements supported appellant's allegation that she was pushed by a coworker).

<sup>9</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 27, 2011 is affirmed.

Issued: November 16, 2012  
Washington, DC

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

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

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