United States Department of Labor
Employees' Compensation Appeals Board

M.D., Appellant	)	
and	)	**Docket No. 11-934**
	)	**Issued: November 18, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Plainfield, NJ, Employer	)	

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 February 22, 2011 appellant filed a timely appeal from a December 20, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 emotional or physical condition causally related to a compensable work factor on December 8, 2009.

FACTUAL HISTORY

On December 17, 2009 appellant, then a 44-year-old postmaster, filed a traumatic injury claim (Form CA-1) alleging that on December 8, 2009 he received a "distressing" telephone call regarding a December 1, 2009 incident. According to him, he was submitting 48 pages of

[1] 5 U.S.C. § 8101 *et seq.*

documentation to support his claim of "mistreatment resulting in hospitalization by aggravation [of] preexisting condition."[2] Appellant described the nature of the injury as severe chest pains, heart palpitations, atrial fibrillation and disorientation.

In a statement dated December 17, 2009, appellant stated that there was mistreatment and abuse by upper management that resulted in his hospitalization on December 8, 2009. He stated that on December 8, 2009 he received a telephone call from a supervisor's assistant advising him of a meeting the following day with the supervisor. When appellant inquired as to the nature of the meeting, he was told it was a predisciplinary meeting (PDI) regarding the failure to dispatch collection mail the prior week. He acknowledged that it was his "responsibility to make arrangements to be accompanied by representation if so desired, and the date and time would have to change if no representative was available at the scheduled time of the [p]ostal [s]ervice. These rights were not afforded to me during this conversation." According to appellant, he was told to bring documents to defend himself. He stated that he began to have chest pains, heart palpitations, dizziness and disorientation, requiring hospitalization. Appellant reported that the following day the supervisor stated that he was not disciplining appellant, and was told the PDI was changed to a Performance Improvement Plan (PIP).

The record contains a December 3, 2009 statement from a Mr. Fanelli regarding the discovery of collection mail that should have been dispatched on December 1, 2009. Mr. Fanelli stated that the closing supervisor, a Mr. Trice, failed to check all equipment for remaining mail. A proposed letter of warning was issued to Mr. Trice on December 14, 2009. The record also contains a letter of warning issued to appellant on November 17, 2009, for failure to perform duties in an unrelated matter.

Appellant submitted a portion of the employing establishment's labor relations manual regarding disciplinary procedures. The section highlighted indicated that employees have free choice of representation, and employees may request representation during investigative questioning if the employee had a reasonable belief that disciplinary action may ensue. Another section stated that supervisors are responsible for the day-to-day performance management of subordinates, and performance improvement was a shared concern and effort. In a letter dated April 14, 2010, appellant indicated that he believed OWCP had converted his claim to a CA-2 occupational claim for an emotional condition, but he had filed a traumatic injury claim for physical injuries.

By decision dated June 18, 2010, OWCP denied the claim for compensation. It found that the December 8, 2009 events did not constitute a compensable work factor. In addition, OWCP found that the letter of warning was not a compensable work factor.

Appellant requested a hearing before an OWCP hearing representative, which was held on October 22, 2010. At the hearing, he indicated that he had a new supervisor in November 2009 and had been disciplined for the first time in his career. Appellant stated that he was also assigned to a Mr. Brennan in November 2009. He felt that the telephone call on

[2] The record indicates appellant submitted 25 pages of documents, including the claim form, on December 22, 2009.

December 8, 2009 was intimidation, because Mr. Brennan had told him the next day he was not going to discipline appellant.

By decision dated December 20, 2010, the hearing representative affirmed the denial of the claim. The hearing representative found there was no evidence of error or abuse regarding the December 8, 2009 conversation.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his 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.[3] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the 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.[5]

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.[6] Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.[7]

ANALYSIS

In the present case, appellant filed a traumatic injury claim for an injury resulting from an incident on December 8, 2009. A traumatic injury is an injury resulting from an incident or

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

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

[6] *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

[7] *Margreate Lublin*, 44 ECAB 945, 956 (1993).

incidents occurring within one workday or work shift.[8] The Board notes that appellant had submitted an April 14, 2010 letter stating that he felt that OWCP had converted his claim to an occupational disease or illness claim for an emotional condition, whereas he had filed a traumatic injury for a physical injury. There is some confusion in the record with respect to the traumatic/occupational issue. Appellant cited a December 23, 2009 letter from OWCP stating that it had received a CA-2 (claim for occupational disease or illness). This appeared to be an inadvertent mistake in describing the claim form received, rather than an attempt to convert the claim into an occupational claim. The June 18, 2010 OWCP decision is somewhat ambiguous on the issue, as it makes a finding with respect to error or abuse in the November 17, 2009 letter of warning issued to appellant. This did not occur on December 8, 2009 and there was no indication that appellant was alleging a reaction to the issuance of a letter of warning itself.[9]

The December 20, 2010 OWCP decision appeared to address only the December 8, 2009 incident. Since appellant indicated that his claim was based on the December 8, 2009 incident, the Board will consider the claim as a traumatic injury claim.

Appellant also raised the issue of a claim for physical injuries, rather than an emotional condition. With respect to the distinction between an emotional or physical injury, the issue is whether the December 8, 2009 incident constitutes a compensable work factor. Whether the claimant specifically identifies an emotional condition, or describes physical symptoms resulting from a reaction to an employment incident, the underlying issue remains a question of whether the employment incident is a compensable work factor.[10]

The decision to schedule a predisciplinary meeting with appellant and to notify him by telephone call is an administrative matter.[11] It is not the performance of regularly or specially assigned work duties. Therefore the issue is whether the evidence establishes error or abuse by the employing establishment in the administrative matter.

In this regard, appellant has raised two arguments regarding error or abuse: (1) that the telephone call failed to properly advise him of representation rights; and (2) the telephone call was intimidation. As to the first claim, the record does not contain probative evidence of error or abuse. The employing establishment documents, submitted to the record, indicate that an employee has a right to representation during an investigative questioning that may lead to disciplinary action. There is no evidence that the December 8, 2009 telephone call advised appellant that he could not have representation. Moreover, there is no evidence that the assistant who telephoned appellant was required to advise him of representational rights. No evidence was submitted that established such a requirement, nor was there any finding of error in any

[8] 20 C.F.R. § 10.5(ee). An injury produced by incidents occurring over more than one workday or shift is an occupational disease or illness. 20 C.F.R. § 10.5(q).

[9] At the October 22, 2010 hearing, appellant did refer to being disciplined in November 2009 as part of the background history to the December 8, 2009 telephone call.

[10] *See, e.g., K.G.* (Docket No. 10-1806, issued April 5, 2011); *D.L.* (Docket No. 10-1565, issued March 17, 2011); *M.L.* (Docket No. 10-1439, issued January 20, 2011).

[11] *See C.V.* (Docket No. 07-1724, issued December 28, 2007); *Jimmy Gilbreath,* 44 ECAB 555 (1993).

administrative action filed by appellant. The Board finds no evidence of error or abuse in this regard.

With respect to an allegation of intimidation, there also is no probative evidence to support this allegation. There was an incident on December 1, 2009 regarding pieces of collection mail that were undelivered. The term "predisciplinary" interview suggests that no determination had been made as to whether there would be disciplinary action. A subsequent decision to reduce or eliminate a proposed disciplinary action does not itself establish error or abuse.[12]

The Board accordingly finds that appellant has not alleged and substantiated a compensable work factor in this case. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.[13]

On appeal, appellant states that the employing establishment did engage in abusive and erroneous behavior on December 8, 2009 by scheduling a predisciplinary interview. For the reasons noted above, the Board finds no probative evidence of error or abuse based on the evidence of record. 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 has not established an injury in the performance of duty on December 8, 2009.

[12] *See Paul L. Stewart*, 54 ECAB 824, 829 (2003); *Mary L. Brooks*, 46 ECAB 266 (1994).

[13] *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 20, 2010 is affirmed.

Issued: November 18, 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