

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

R.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Seattle, WA, Employer**

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**Docket No. 11-362
Issued: October 24, 2011**

Appearances:
Jeremy Venable, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 30, 2010 appellant filed a timely appeal from a September 9, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)¹ 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 has established that he suffered from an emotional condition causally related to an alleged February 3, 2010 employment incident.

FACTUAL HISTORY

On February 9, 2010 appellant, then a 54-year-old mail handler, filed a traumatic injury claim alleging that on February 3, 2010 his supervisor caused him stress and that he wanted to hurt his supervisor and could not be around him. He alleged that he suffered from post-traumatic

¹ 5 U.S.C. § 8101 *et seq.*

stress disorder (PTSD) and stress as a result thereof. On the claim form, the employing establishment indicated that it was controverting appellant's claim and that his meeting with his supervisor concerned an attendance issue. In an accompanying statement, the employing establishment stated that appellant's reaction to the identified incident is self-generated and self-limiting. The employing establishment also alleged that he has not established the essential elements of his claim.

In a February 8, 2010 statement, Art Foster stated that, on February 3, 2010, he observed appellant walking and that Chuck Howell, Administrative Supervisor, made a slight turn in his direction and that at that time appellant told Mr. Howell that he was leaving and did not want to talk about it. He stated that, instead of respecting what appellant said, Mr. Howell pursued appellant and that he could tell by appellant's body language that he was upset.

On March 15, 2010 OWCP denied appellant's claim as the evidence did not establish that he sustained an injury relating to emotion/stress condition as defined by FECA.

Appellant submitted two statements, one mistakenly dated February 4, 2012 and one dated March 23, 2010, wherein he described the events of February 3, 2010. He stated that, on the night of February 3, 2010, Mr. Howell called him into his office for either an attendance review or an investigative interview and was told to sign some papers. Appellant stated that he asked for his union steward but he was not provided one, so he told Mr. Howell that he could not participate without his steward. He stated that Mr. Howell became agitated and used a loud tone and kept pressing him and trying to intimidate him. Appellant noted that he walked out of the office because he had to separate himself from this threat. He noted that he was a disabled veteran with a 50 percent disability rating for PTSD and a total rating of 80 percent. Appellant stated that Mr. Howell followed him halfway through the building, caught him in the middle of the work floor and began pointing and yelling at him. He told him to stop yelling and that he had PTSD, but that Mr. Howell continued yelling so much that spit struck his face. Appellant stated that his health was not affected by a dispute regarding leave usage, rather Mr. Howell was attempting to conduct a review/interview meeting regarding his attendance and Federal Medical and Leave Act without providing a steward. He stated that the issue was that Mr. Howell becoming agitated, irate, loud, disrespectful and kept following yelling, pointing and finally spitting on him.

In a March 23, 2010 memorandum by appellant's union steward, David Dillard, he indicated that he interviewed Carl Smith on February 22, 2010 with regard to appellant's removal from the facility on February 3, 2010. He attached a copy of his notes from his interview, wherein he indicated that Mr. Smith, a supervisor, stated that Supervisor Howell told him on February 3, 2010 that he needed to talk to appellant about some important things about discipline and wanted a witness that was impartial. Mr. Dillard alleged that Mr. Howell then told appellant to clock out and leave. He stated that the only thing he heard appellant say was, "Chuck I have PTSD and I don't want to talk to you." Mr. Dillard stated that appellant turned and headed the other way. He noted that the conversation had reached the point where no further progress was being made and that he told Mr. Howell that it was time to let it go because appellant was not listening anymore but that Mr. Howell still wanted to "say it one more time."

On June 21, 2010 appellant, through his union representative, filed a request for reconsideration.

Appellant submitted a statement by Layne Harper stating that he observed Mr. Howell pointing and walking behind appellant with another supervisor. Mr. Harper stated that Mr. Howell was almost on appellant's back. He stated that Mr. Smith held Mr. Howell back because it seemed that Mr. Howell was going to touch appellant. Mr. Harper also stated that appellant told him earlier in the day that Mr. Howell kept harassing him about his medical documentation.

By decision dated September 9, 2010, OWCP affirmed the denial of appellant's claim for the reason that he had not submitted evidence to establish a compensable factor of employment.

LEGAL PRECEDENT

To establish an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.²

Workers' compensation 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 of coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.³ 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 frustration from not being permitted to work in a particular environment or to hold a particular position.⁴

It is well established that administrative of personnel matters, although generally related to employment, are primarily administrative functions of the employer and not duties of the employee and are therefore not covered under FECA.⁵ However, the Board has held that where evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.⁶ In determining whether the

² *L.H.*, Docket No. 10-2045 (issued July 14, 2011); *George H. Clark*, 56 ECAB 162 (2004).

³ 5 U.S.C. §§ 8101-8193.

⁴ *See Lillian Cutler*, 28 ECAB 126 (1976).

⁵ *Charles D. Edwards*, 55 ECAB 258 (2004).

⁶ *See William H. Fortner*, 49 ECAB 324 (1998).

employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁷

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.⁸ However, for harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under FECA.⁹

Appellant 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 employment factors.¹⁰ This burden includes the submission of a detailed description of the employment factors or conditions, which he believes caused or adversely affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.¹¹

In cases involving stress conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when proving an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.¹² If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. 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.¹³

ANALYSIS

Appellant attributed his emotional condition to a confrontation with his supervisor, Mr. Howell, that took place on February 3, 2010. He alleged that Mr. Howell treated him in a disrespectful fashion on that date. Appellant indicated that he had a meeting with Mr. Howell on that date with regard to either an attendance review or an investigative review, that he requested and was denied union representation and that at that point Mr. Howell became agitated and tried

⁷ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁸ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁰ *Pamela Rice*, 38 ECAB 838, 841 (1987).

¹¹ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹² *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹³ *Id.*

to intimidate him. He also indicated that he walked out of Mr. Howell's office but that Mr. Howell followed him and that he caught him in the middle of the work floor and began pointing and yelling at him. Appellant stated that he told Mr. Howell that he had PTSD but that Mr. Howell continued to engage in the yelling, pointing and finally spitting on him.

Mr. Howell and appellant's encounter on February 3, 2010 appeared to have involved issues regarding attendance and discipline. Although personnel matters are generally administrative functions of the employer and not covered under FECA, 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.¹⁴ In this case, appellant has submitted sufficient evidence that Mr. Howell did not act reasonably in his treatment of appellant on February 3, 2010. Mr. Foster noted that he observed Mr. Howell pursue appellant on the floor and that when appellant stated that he did not want to talk, Mr. Howell pursued appellant. Notes from an interview that appellant's union steward had with Mr. Smith, another supervisor, indicated that Mr. Smith noted that he observed appellant telling Mr. Howell that he had PTSD and that appellant tried to head away from Mr. Howell. According to the union steward's notes, Mr. Smith told Mr. Howell that no further progress was being made and that he should let it go but that Mr. Howell still wanted to "say it one more time." Mr. Harper also stated that he observed Mr. Howell pointing and walking behind appellant with another supervisor, that Mr. Howell was almost on appellant's back and that Mr. Smith held Mr. Howell back because it seemed that Mr. Howell was going to touch appellant.

The Board finds that, although the initial discussion on February 3, 2010 may have regarded an administrative matter, the evidence tends to support that Mr. Howell did not act reasonably in dealing with this matter. The record supports that Mr. Howell followed appellant onto the workroom floor and continued to discuss in a loud voice matters with appellant in an area where other employees could easily overhear. The evidence reflects that appellant told Mr. Howell that he had PTSD and that appellant attempted to walk away from the confrontation, but that Mr. Howell continued to pursue appellant and was in close physical contact with appellant during the confrontation. The Board finds that this evidence uncontroverted by the employing establishment, supports the allegation that Mr. Howell did not deal with appellant in a reasonable matter and therefore the confrontation between Mr. Howell and appellant on the workplace floor constituted a compensable factor of employment.

As appellant has established a compensable employment factor, OWCP must base its decision on an analysis of the medical evidence. As OWCP found that there were no compensable employment factors, it did not analyze or develop the medical evidence. The case will be remanded to OWCP for this purpose.¹⁵ After such further development as deemed necessary, OWCP should issue an appropriate decision on this matter.

¹⁴ See *Ruth S. Johnson*, *supra* note 7.

¹⁵ See *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

CONCLUSION

The Board finds that this case is not in posture for decision. Appellant has substantiated a compensable factor of employment necessitating review of the medical evidence by OWCP. On remand, OWCP will consider the medical evidence and issue a *de novo* decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 9, 2010 is set aside and remanded for further development consistent with this decision of the Board.

Issued: October 24, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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