



## **FACTUAL HISTORY**

On August 12, 2010 appellant, then a 47-year-old postmaster, filed a traumatic injury claim alleging that he developed mental stress and anxiety on August 11, 2010 when he was instructed by the labor manager to return two employees to work whom he had sent home. In a letter dated August 30, 2010, OWCP requested additional factual and medical information in support of his claim and allowed 30 days for a response.

On September 14, 2010 appellant noted that he supervised two aggressive and disruptive employees. He described the employees behavior stating that in May 2010 an employee, Philip Hebert, ran a cart into a container from which appellant was lifting mail trays. The tray was knocked out of appellant's hands and he issued Mr. Hebert a suspension. On June 30, 2010 Mr. Hebert made an inappropriate comment about the sexual orientation of a coworker, Guy J. Armond. On July 27, 2010 he engaged in a verbal confrontation with a customer. The customer apologized and a postal inspector found that one customer's statements were not a tangible threat to Mr. Hebert. The employing establishment threat assessment coordinator directed appellant to perform a complete threat assessment. Appellant embarked on this protocol and Mr. Hebert filed a grievance as no action was taken against the customer. He received a complaint regarding a carrier on July 30, 2010. Appellant directed Mr. Armond to complete training on Friday, August 6, 2010 and informed him that he had missed a step while Mr. Armond was in the break room. Mr. Armond informed appellant in an angry voice that he had not finished his break. He followed appellant to the computer to complete the training and told him to leave him alone forcefully pushing two orange mail hampers. Appellant suggested that Mr. Armond seek treatment for his anger issues and Mr. Armond replied that the only thing that would help was getting rid of the postmaster. He began to compose an e-mail to his supervisors regarding an intangible threat from the employees. On August 10, 2010 Mr. Armond spoke in a loud voice and informed appellant that he was not doing his job, that no one had been disciplined for the July 30, 2010 incident and that he was the only one receiving discipline. Appellant directed Mr. Armond to return to work.

Appellant completed his e-mail at 8:45 a.m. on August 11, 2010 detailing his issues with Mr. Armond and Mr. Hebert and stated that within 15 minutes that Avis Beard, Labors Relations Manager, instructed him to call police and take both employees off the clock as well as confiscating their badges and keys. Ms. Beard telephoned him three times in the course of the next hour. Appellant called Mr. Armond and Mr. Hebert separately into his office with police support and collected the badges and keys as instructed.

At 11:00 a.m. Inspector Manuel Rodriguez instructed appellant to meet with him and Ms. Beard. Following the meeting held at 12:00 p.m., Ms. Beard instructed appellant to bring both employees back to work. Appellant was concerned by the employees actions, reactions and upset by the change in position by Ms. Beard. He stated that he developed chest pain, became short of breath and broke into uncontrollable crying. Appellant returned to work, telephoned his supervisor and requested leave. His supervisor agreed and indicated that she would return Mr. Armond and Mr. Hebert to work. Appellant stated that since August 11, 2010 he developed panic attacks and fear that he or someone else would be injured. He stated that he no longer felt that he could rely on his superiors to give him sound and appropriate instruction to properly perform his job. Appellant stated that he attributed his emotional condition to the specific

incident of Ms. Beard first instructing him to remove the employees from work and then reversing her position a few hours later stating that this so unsettled him that he could not operate or operated with great anxiety and fear.

Appellant's supervisor, Gernarda Bailey, stated that appellant notified Ms. Beard that he had two employees that posed a safety hazard resulting in her decision to send the employees home. She stated that upon receiving further information from appellant during the meeting Ms. Beard determined that the action taken was not necessary.

In a report dated September 16, 2010, Dr. Frank J. Guidry, a Board-certified family practitioner, stated that he examined appellant on August 12, 2010 due to stress at work dealing with a certain employee. He stated that appellant's symptoms included headaches, chest pain, forgetfulness, insomnia, increased esophageal reflux, heartburn, indigestion and depression with occasional episodes of crying. Dr. Guidry opined that appellant's symptoms were related to his work environment.

By decision dated October 1, 2010, OWCP denied appellant's claim finding that he had attributed his emotional condition to an administrative or personnel matter which was considered to be a factor of employment. Appellant requested a review of the written record on October 19, 2010. He stated that he was the target of threat and intimidation and was concerned for the safety of his customers, employees and himself. Appellant stated that he was instructed by his supervisor to perform the actions which brought about his emotional strain.

By decision dated February 16, 2011, the Branch of Hearings and Review reviewed appellant's claim and found that he attributed his depression to discrimination and harassment at the employing establishment. The hearing representative found that appellant reacted to an administrative or personnel matter without evidence of error or abuse in the matter. The hearing representative further found that he had not submitted evidence substantiating error or abuse.

### **LEGAL PRECEDENT**

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*,<sup>2</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.<sup>3</sup> There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.<sup>4</sup> 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

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<sup>2</sup> 28 ECAB 125 (1976).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> See *Robert W. Johns*, 51 ECAB 136 (1999).

by the employing establishment or by the nature of the work.<sup>5</sup> In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a person injury sustained in the performance of duty within the meaning of FECA. Thus disability is not covered when it results from an employee's fear of a reduction-in-force, nor is disability covered when it results from such factors as an employee's frustration in not being permitted to work in a particular environment or to hold a particular position.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup> A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>9</sup>

Under FECA, the Board has held that an employee must establish a factual basis for his emotional condition claim and that mere perceptions of harassment or discrimination will not support an award of compensation. The primary reason for requiring factual evidence from the claimant in support of his allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions which in turn may be fully examined and evaluated by OWCP and the Board.<sup>10</sup>

Where a claimant has not established any compensable employment factors, the Board need not consider the medical evidence of record.<sup>11</sup>

### ANALYSIS

Appellant has attributed his emotional condition exclusively to the events of August 11, 2010 clarifying that he deliberately filed a claim for a traumatic injury. Based on appellant's statements, the Board will not consider whether the actions of Mr. Armond and Mr. Hebert constituted compensable employment factors. Appellant limited his claim to actions occurring on August 11, 2010 specifically the instructions he received from Ms. Beard regarding whether or not to remove two employees from the employing establishment as they were an intangible

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<sup>5</sup> *Cutler*, *supra* note 2.

<sup>6</sup> *Id.*

<sup>7</sup> *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>8</sup> *Kim Nguyen*, 53 ECAB 127 (2001). *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>9</sup> *Roger Williams*, 52 ECAB 468 (2001).

<sup>10</sup> *J.F.*, 59 ECAB 331 (2008).

<sup>11</sup> *A.K.*, 58 ECAB 119 (2006).

threat. He has stated that she specifically assigned him the duty of removing two employees that he felt might pose a danger to him, customers or other employees. Ms. Beard directed appellant to remove the employees, collecting their badges and keys and having a police escort available to remove them from the employing establishment. Appellant carried out this duty. To the extent that he attributes his emotional condition to this obligation on August 11, 2010, the Board finds that he has attributed his emotional condition to a specially assigned employment duty and has established a compensable factor of employment under *Cutler*.

Appellant also attributed his emotional condition to the results of the meeting with Ms. Beard and others where she reversed the decision to remove the employees. He stated that he then became concerned by possible repercussions of the removal including the employees' actions and reactions. Appellant's statement attributed his emotional reaction, in part to the result of fear of the employees' possible actions and reactions. As such his emotional condition was the result of a fear of future injury rather than relating to the specific duty actually carried out. The Board has held that the fear of a future injury is not compensable.<sup>12</sup>

To the extent that appellant attributes his emotional condition to Ms. Beard's varying decisions regarding the employees, the Board has held that 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 management must be allowed to perform his or her duties and employees will, at times, dislike the actions taken.<sup>13</sup> Appellant has not established that Ms. Beard's changing opinions regarding the appropriate disciplinary actions for employees constitutes a compensable employment factor.

As appellant established a compensable employment factor, the directive to remove two employees from pay status and from the employing establishment, OWCP must base its decision on an analysis of the medical evidence. OWCP found that there were not compensable employment factors and did not analyze or develop the medical evidence. The case will be remanded to OWCP for this purpose. After such further development as deemed necessary, OWCP should issue an appropriate decision on this claim.<sup>14</sup>

### **CONCLUSION**

The Board finds that appellant has established a compensable factor of employment and that on remand OWCP must develop and analyze the medical evidence before issuing an appropriate decision.

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<sup>12</sup> *L.T.*, Docket No. 10-442 (issued October 20, 2010).

<sup>13</sup> *C.S.*, 58 ECAB 137 (2006).

<sup>14</sup> *Tina E. Francis*, 56 ECAB 180 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 16, 2011 decision of the Office of Workers' Compensation Programs is remanded for further development consistent with this decision of the Board.

Issued: October 18, 2011  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board