

<sup>1</sup> 5 U.S.C. §§ 8101-8193.

## **FACTUAL HISTORY**

On April 1, 2010 appellant, then a 54-year-old letter carrier, filed a claim alleging that he sustained an emotional condition in the performance of duty on March 17, 2010. Regarding the cause of the injury, he stated that on March 17, 2010 his supervisor, Joanne Pacenka, yelled at him across the workroom floor that he was not working and was sitting despite the fact that he had only sat down for 10 seconds to finish drinking his tea after he had worked without a break for two hours. Appellant claimed that Ms. Pacenka's actions exacerbated his post-traumatic stress syndrome condition.<sup>2</sup> He stopped work on March 17, 2010.

In an undated statement, Ms. Pacenka stated that she directed appellant to go home on March 17, 2010 because he had indicated that he felt dizzy and was ill. She stated that she directed him to provide medical documentation if he felt that he was ill and could not work. Appellant submitted several disability slips in support of his claim. Some of the slips indicated that he should not work for various periods due to his post-traumatic stress syndrome.

In a June 7, 2010 decision, OWCP denied appellant's claim on the grounds that he did not establish any compensable employment factors.

In a March 17, 2010 statement received on June 10, 2010, appellant stated that he had been working on his flats and dailies and was about to start on his letters, but that he had some tea left in his mug and that he thought he would finish it. He noted that he sat on his stool for 5 or 10 seconds to drink his tea and that, while he was doing that, he heard his supervisor, Ms. Pacenka, yell out "[appellant] did he get your DPS?" Appellant stated not yet, and asked if she needed him. Ms. Pacenka then stated, "No, I mean you are just sitting there doing nothing." Appellant indicated that he just laughed and continued to work, but that a few minutes later as he was passing her desk he decided to explain what he was doing before and stated that he had only sat down for 5 or 10 seconds to finish drinking his tea, and that there are people who stand around all the time. He alleges that she then stated, "That's it, in the office now" and called over Louis Ferrante, the union steward, saying "Louie you two, in the office now."

Appellant further claimed that, when he was in her office, Ms. Pacenka stated that she was not going to have him undermine her, that he did not want to be there and that he should go home. He stated that he did want to be there but felt that she did not want him there. Appellant stated that Ms. Pacenka told him to take sick leave and go home, but that he told her that he would take administrative leave or workers' compensation leave to go see his doctor, and not sick leave. He stated that, at that point, Ms. Pacenka stated that she would put him on absent without leave (AWOL) status and that he turned to the union steward and told him that she just wanted to hurt him. Appellant stated that she told him to get his stuff and leave, and that she walked ahead of him and commanded him to go to the doctor to get a note. He indicated that he told Ms. Pacenka that he told her not to discuss his personal medical business on the workroom floor. Ms. Pacenka replied "Fine, get his stuff and get out!" and he stated, "Thank you" and got his belongings and left.

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<sup>2</sup> The record reflects that it previously accepted that appellant sustained work-related post-traumatic stress syndrome.

In a May 27, 2010 statement received on June 10, 2010, appellant indicated that he felt that after the conversation in the office on March 17, 2010 that it was unnecessary for Ms. Pacenka to make a scene in front of his peers, that everyone was staring and that he felt belittled in front of his peers. He stated that he later returned and stated to the postmaster that he didn't know "what was wrong with her" and that the postmaster told him "It's you, I don't like your actions and I called the Postal Inspectors on you." Appellant noted his prior stress claim and his diagnosis of post-traumatic stress syndrome. In a February 28, 2011 statement, he again noted his preexisting post-traumatic stress syndrome. Appellant stated that he agreed it was his supervisor's job to supervise and that he respected his supervisor and acted accordingly. He stated that he did not raise his voice or disagree with her instructions in a hostile manner, but noted that she treated him with disrespect and open hostility in front of his peers and was not behaving in a professional manner.

In an undated statement, Mr. Ferrante, appellant's union steward, stated that, on March 17, 2010, he was summoned to Ms. Pacenka's office to represent appellant. He stated that what he gathered from this meeting was that Ms. Pacenka asked appellant what he was doing sitting down and appellant responded that he was finishing his tea and that he had thrown six tubs of flats and helped other carriers set up their routes in Paterson, NJ. Mr. Ferrante noted that appellant then stated that it was hot in the basement of the employing establishment and that he just took his medication and he felt dizzy and anxious. He indicated that Ms. Pacenka told appellant that he was in no shape to work and that he should go home. Appellant stated that he would go home, but not on sick or annual leave time. Rather, he wanted workers' compensation or administrative leave. Ms. Pacenka then told appellant that he would have to use sick leave. Then she ordered him to leave the building. Mr. Ferrante stated that he and Ms. Pacenka escorted appellant to his route to get his things before he left. Ms. Pacenka asked appellant to bring medical documentation before he came back to work. Mr. Ferrante indicated that appellant was civil during the meeting and used no profanity or resistance when asked to leave the building.

In a May 24, 2011 decision, OWCP affirmed its June 7, 2010 decision, noting that appellant did not establish any compensable employment factors. It indicated that he did not establish harassment, discrimination or error and abuse with respect to administrative matters.

Appellant submitted an undated statement in which he requested reconsideration. He claimed that, despite feeling well on March 17, 2010, Ms. Pacenka gave him no choice except to go home. Appellant discussed his post-traumatic stress syndrome condition and generally indicated, without explanation, that he was not adequately accommodated for this condition at work.

In a February 14, 2012 decision, OWCP affirmed its May 24, 2011 decision denying appellant's emotional condition claim. It again indicated that appellant did not establish harassment, discrimination or error and abuse with respect to administrative matters.

### **LEGAL PRECEDENT**

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 regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>3</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 frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>4</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>5</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>6</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>7</sup>

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.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> This burden includes the submission of a detailed description of the employment factors or conditions which appellant 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.<sup>11</sup>

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<sup>3</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>5</sup> *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>6</sup> *William H. Fortner*, 49 ECAB 324 (1998).

<sup>7</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

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

<sup>9</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>10</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

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

In cases involving emotional 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 providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>12</sup> 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.<sup>13</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete and accurate factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>14</sup>

### ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. OWCP denied his emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA. The Board notes that appellant's allegations do not pertain to his regular or specially assigned duties under *Cutler*.<sup>15</sup> Rather, appellant has alleged error and abuse in administrative matters and harassment and discrimination on the part of a manager.

In the present case, appellant alleged that his supervisor, Ms. Pacenka, subjected him to harassment and discrimination on March 17, 2010 by yelling at him harshly, ordering him to leave the premises and attempting to embarrass him in front of coworkers, particularly with regard to his private medical status. The employing establishment denied that he was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by Ms. Pacenka.<sup>16</sup> Appellant alleged that Ms. Pacenka made statements and engaged in actions which he believed constituted harassment and discrimination, but he provided no corroborating evidence, such as witness statements, to

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

<sup>13</sup> *Id.*

<sup>14</sup> *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

<sup>15</sup> See *Cutler* note 3.

<sup>16</sup> See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

establish that the statements actually were made or that the actions actually occurred.<sup>17</sup> In fact, a statement from Mr. Ferrante, appellant's union representative, does not provide any indication that Ms. Pacenka subjected appellant to harassment or discrimination. Although Mr. Ferrante was present for a major portion of the events of March 17, 2010, he did not provide any indication that Ms. Pacenka yelled at appellant or otherwise abused him. Thus, appellant has not established a compensable employment factor under FECA with respect to the claimed harassment and discrimination.

Appellant also alleged that Ms. Pacenka committed wrongdoing with respect to several administrative matters on March 17, 2010. He claimed that, when he told her that he felt dizzy and anxious, she wrongly told him that he had to leave the premises; that he had to use sick leave and that he was required to bring medical documentation when he returned to work. Appellant did not establish work factors with respect to these matters because he did not show that management committed error or abuse with respect to them. He did not present any supporting evidence to show commission of error or abuse with respect to these matters such as a positive finding in a grievance. The Board notes that it appears that Ms. Pacenka's actions were properly carried out as part of her duties as a supervisor.<sup>18</sup> For these reasons, appellant has not established any compensable work factors with respect to administrative matters.

For the foregoing reasons, appellant has not established any compensable employment factors under FECA and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.<sup>19</sup>

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 meet his burden of proof to establish that he sustained an emotional condition in the performance of duty on March 17, 2010.

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<sup>17</sup> See *William P. George*, 43 ECAB 1159, 1167 (1992).

<sup>18</sup> Appellant claimed that management did not adequately accommodate his post-traumatic stress syndrome condition. However, he only made a general allegation in this regard and did not show any wrongdoing in management's actions with respect to this condition.

<sup>19</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992). The Board notes that appellant made frequent mention of his previously accepted post-traumatic stress syndrome condition. It does not appear that appellant has filed a claim alleging that he sustained a recurrence of disability due to this condition and this matter is not currently before the Board.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 14, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 12, 2013  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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