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

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| **B.R., Appellant** | ) | |
| **and** | ) | **Docket No. 12-1943** |
| | ) | **Issued: July 24, 2013** |
| **U.S. POSTAL SERVICE, POST OFFICE, Oklahoma City, OK, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

### ***JURISDICTION***

On September 21, 2012 appellant filed a timely appeal from the April 19, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his emotional condition claim. 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 met his burden of proof to establish that he sustained an emotional condition in the performance of duty on June 10, 2009.

### ***FACTUAL HISTORY***

On July 7, 2009 appellant, then a 45-year-old supervisor, filed a traumatic injury claim File No. xxxxxx450 alleging that he developed an emotional condition as a result of a June 6,

[1] 5 U.S.C. § 8101 *et seq.*

2009 incident in which his life was threatened by a coworker.[2] His July 7, 2009 claim was initially accepted for post-traumatic stress disorder and panic disorder, with agrophobia. The acceptance of this claim was rescinded on October 23, 2009. By decision dated October 7, 2010, OWCP's hearing representative reversed the rescission of the claim and accepted the claim for mild anxiety disorder, resolved. Appellant received wage-loss benefits pursuant to this claim for the period June 26, 2009 through January 27, 2010.

This appeal involves appellant's January 6, 2011 traumatic injury claim.[3] In a January 26, 2011 statement, appellant indicated that his claim for the June 10, 2009 incident was accepted under another claim number as an on-the-job injury, but that he was no longer receiving compensation for the injury.

In a letter dated January 28, 2011, OWCP informed appellant that the information and evidence submitted was insufficient to establish his claim and requested additional factual and medical evidence.

Appellant submitted medical evidence in support of his claim. On February 12, 2011 he contended that witness statements and medical evidence of record proved that he developed post-traumatic stress syndrome and anxiety as a result of the claimed incident.

On February 28, 2011 the employing establishment controverted the claim, contending that no incident had occurred on June 10, 2009. Rather, the claimed threat by a coworker had actually occurred on June 6, 2009 and had already been addressed under File No. xxxxxx450.

By decision dated March 2, 2011, OWCP denied appellant's claim on the grounds that he had failed to establish the fact of injury. The claims examiner found that the claim in the instant case was duplicative of the claim filed in File No. xxxxxx450 and that appellant had not submitted any evidence to indicate that he experienced a new incident.

Appellant filed an appeal with the Board.

In an order dated January 12, 2012, the Board set aside the March 2, 2011 decision and remanded the case for consolidation with File No. xxxxxx450.[4]

In a January 22, 2012 statement, appellant indicated that when he returned to work on June 10, 2009 he went to the west dock and asked coworker Charlotte Harvey if she had provided a statement to supervisor Cheryl Williamson concerning another coworker's threats to "blow [his] f… head off" which occurred on June 6, 2009. Ms. Harvey reportedly acknowledged that she had provided the witness statement. She then stated that "the man is right over there." and pointed over her shoulder to a man who was standing nearby. At that point, appellant turned

[2] The coworker allegedly told appellant that he would blow his head off.

[3] The claim was initially filed as an occupational disease claim and was converted to a traumatic injury claim due to the fact that a single incident was alleged.

[4] Docket No. 11-1196 (issued January 12, 2012). On remand, the files were consolidated with File No. xxxxxx450 serving as the master file.

and saw the man who threatened his life on June 6, 2009. He then went directly to his supervisor, told her that he could not work in that hostile and stressful environment and requested leave.

By decision dated April 19, 2012, OWCP denied appellant's claim for injury on June 10, 2009 finding that the evidence was insufficient to establish fact of injury. The claims examiner stated that the mere fact that he saw the man who had previously threatened him does not establish a traumatic event.

On May 17, 2012 appellant filed a Form CA-7, alleging disability from January 27 to December 8, 2010 due to the June 6, 2009 injury, in a consolidated claim File No. xxxxxx450. On August 21, 2012 OWCP issued a letter advising him that he could not claim an additional period of disability in a stress claim, once his condition had resolved.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her 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, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[5] When an employee claims that he or she sustained a traumatic injury in the performance of duty, he or she must establish the "fact of injury," namely, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged and that such event, incident or exposure caused an injury.[6]

To establish a claim that an emotional condition arose 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.[7]

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 employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to his or her regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability

[5] *Robert Broome*, 55 ECAB 339 (2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *See Paul Foster*, 56 ECAB 208 (2004). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term "injury" as defined by FECA, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q), (ee).

[7] *D.L.*, 58 ECAB 217 (2006).

comes within coverage of FECA. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of his or her work or his or her fear and anxiety regarding his or her ability to carry out his work duties.[8] By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.[9] An employee's emotional reaction to an administrative or personnel matter is generally not covered by workers' compensation. The Board has held, however, that error or abuse by the employing establishment in an administrative or personnel matter may afford coverage.[10]

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. 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.[11]

## ***ANALYSIS***

The Board finds that appellant has failed to establish that he sustained an emotional condition in the performance of duty on June 10, 2009. By decision dated November 1, 2010, OWCP had previously accepted his claim in File No. xxxxxx450 for being verbally threatened by his coworker on June 6, 2009.

In a January 22, 2012 statement, appellant indicated that when he returned to work on June 10, 2009 he went to the west dock and asked Ms. Harvey if she had provided a statement to Ms. Williamson concerning another coworker's threats to "blow [his] f… head off" which occurred on June 6, 2009. Ms. Harvey reportedly acknowledged that she had provided the witness statement. She then stated that "the man is right over there," and pointed over her shoulder to a man who was standing nearby. At that point, appellant turned and saw the man who threatened his life on June 6, 2009. He then went directly to his supervisor, told her that he could not work in that hostile and stressful environment and requested leave.

[8] *Ronald J. Jablanski*, 56 ECAB 616 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[9] *Id.*

[10] *Margreate Lublin*, 44 ECAB 945 (1993). *See generally Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[11] *D.L., supra* note 7; *T.G.*, 58 ECAB 189 (2006); *C.S.*, 58 ECAB 137 (2006); *A.K.*, 58 ECAB 119 (2006).

The Board finds that appellant has not related his disability to the performance of his regular work duties on June 10, 2009, but rather to his concern about seeing the individual who had previously threatened him. Appellant's concern that he was working in a hostile work environment was based on his anticipation of danger after discovering that he was working in the same vicinity as the coworker who had previously threatened his life. The Board has stated that fear of future injury is not a compensable factor of employment.[12] This is true even if the employee is found to be medically disqualified to continue employment because of the anticipated employment factors. The fear that one might sustain further injury is self-generated and is not a compensable factor.[13]

As appellant has failed to establish a compensable factor of employment, the Board finds that he has failed to meet his burden of proof to establish an emotional condition in the performance of duty on June 10, 2009.

On appeal, appellant argues that he was advised by OWCP to file this claim pertaining to the June 10, 2009 incident. He explained that his claim was actually that he had continuing disability after January 27, 2010, due to the June 6, 2009 accepted incident. Appellant requested that the Board review his claim for disability pursuant to both of the consolidated case files.

Upon review of the consolidated case record, the Board finds that on May 17, 2012 appellant did file a Form CA-7 for continuing disability in File No. xxxxxx450. By letter August 21, 2012, OWCP advised him that he could not file a claim for continuing disability benefits for a resolved stress claim. This letter was in effect a final adverse decision; however, it did not provide him with findings of fact and a statement of reasons, accompanied by appeal rights, as required by regulations.[14] Following return of the consolidated case record, OWCP shall apply the law, the regulations and its procedures to the facts presented by appellant on his May 17, 2012 Form CA-7, pursuant to regulations and issue an appropriate decision.[15]

## ***CONCLUSION***

The Board finds that appellant has not established that his emotional condition arose in the course of his federal employment.

[12] *A.B.*, Docket No. 13-558 (issued June 19, 2013); *Mary A. Geary*, 43 ECAB 300 (1991).

[13] *Joseph G. Cutrufello*, 46 ECAB 285 (1994).

[14] 20 C.F.R. § 10.126.

[15] *Id.* at § 10.125

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the April 19, 2012 decision of the Office of Workers' Compensation Programs is affirmed in part and remanded in part consistent with this decision.

Issued: July 24, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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