

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

C.V., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Columbia, SC, Employer)

**Docket No. 13-2004
Issued: February 10, 2014**

Appearances:
Appellant, pro se
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 August 29, 2013 appellant filed a timely appeal from a June 18, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 has established an emotional condition in the performance of duty.

FACTUAL HISTORY

On May 1, 2013 appellant, then a 55-year-old manager of distribution operations, filed an occupational disease claim (Form CA-2) alleging severe stress in the performance of duty. He

¹ 5 U.S.C. § 8101 *et seq.*

first became aware of his condition on June 19, 2012 and of its relationship to his employment on April 24, 2013.

Appellant submitted a number of progress notes dating from January 2, 2012 prepared by Dr. Brabham M. Hester, Jr., a Board-certified family physician, who diagnosed appellant with severe stress and stated that appellant was unable to work.

By letter dated May 13, 2013, OWCP requested additional factual and medical evidence from appellant. It afforded him 30 days to submit additional evidence. On the same date, OWCP requested information from the employing establishment regarding appellant's allegations, duties and accommodations provided to reduce his stress.

On May 14, 2013 the employing establishment challenged appellant's claim. It stated that, based upon its investigation, he did not sustain his condition in the performance of duty.

In a letter dated August 21, 2012, the employing establishment noted that appellant had submitted medical notes indicating that he was unable to work due to severe stress. Appellant was requested to report for an investigative interview on August 29, 2012 with regards to his continued absence from work. The interview was later rescheduled for September 4, 2012.

In a record of an interview dated September 4, 2012, appellant stated that the severe stress diagnosis in excuse notes dated June 21, July 11 and August 7, 2012 was not related to his work. He could not give an answer as to whether he planned to return to his position, because Dr. Hester continued to recommend that he not work.

On October 26, 2012 the employing establishment responded to questions from appellant about voluntary early retirement.

In a record of an interview dated January 28, 2013, appellant noted that he had plans of returning to his position and that he would retire in September 2013.

In an undated statement, appellant responded to OWCP's inquiries. He explained that his condition was related to his manager's conduct, citing specific examples. Appellant explained that when Mr. Veal became acting plant manager in October or November 2011, he did not relay his expectations to the supervisors/managers, appellant included, but he continually threatened to fire or demote the supervisors to craft positions. He stated that someone was brought in to take his position and he was reassigned to another position, without explanation. When appellant underwent a knee replacement in January 2012, he was placed on absence without leave (AWOL) for one week. He related that Mr. Veal called him after his shift was over one day during January 2012, stated that he had abandoned his job and asked him to report to his office at 7:30 a.m. Appellant noted that he had been asked to report for investigative interviews dealing with his work attendance. He also alleged that his manager had used inappropriate language on two occasions in November 2011 and January 2012. Appellant stated that he had no stresses outside of his federal employment and that he had not been to counseling or taken medicine for an emotional condition before his manager's arrival, but now he experienced lack of sleep, anxiety and grinding of teeth as a result of his condition. He explained that his last day of work was January 26, 2012, when he requested AWOL for one week due to knee replacement surgery and his manager would not accept his doctor's note as written.

On June 5, 2013 the employing establishment further explained its challenge of appellant's claim. It noted that he had been out of work since January 26, 2012 and that the medical evidence had not established that his condition was work related. The employing establishment stated that appellant was not working as of the date he first became aware of his condition.

By decision dated June 18, 2013, OWCP denied appellant's claim. It found that he had not established that his stress arose in the course of employment and within the scope of compensable work factors.

LEGAL PRECEDENT

To establish a claim that he or she sustained an emotional condition in the performance of duty, an employee 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 his or her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.²

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.³ 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.⁴ 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.⁵ 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.⁶

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA.⁷ 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.⁸ In determining whether the employing establishment has erred or acted abusively, the

² V.W., 58 ECAB 428, 431 (2007); *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

³ L.D., 58 ECAB 344, 350 n.8 (2007); *Robert Breeden*, 57 ECAB 622, 625 (2006).

⁴ A.K., 58 ECAB 119, 121 (2006); *David Apgar*, 57 ECAB 137, 140 (2005).

⁵ 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309, 314 (2001); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁶ J.F., 59 ECAB 331, 338 (2008); *Gregorio E. Conde*, 52 ECAB 410, 411-12 (2001).

⁷ See *Matilda R. Wyatt*, 52 ECAB 421, 423 (2001); *Thomas D. McEuen*, 41 ECAB 387, 391-92 (1990).

⁸ See *William H. Fortner*, 49 ECAB 324, 325 (1998).

Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁹

The Board has held that the manner in which a supervisor exercises his or her discretion falls outside the coverage of FECA. This principle recognizes that a supervisor or manager must be allowed to perform their duties and that employees will, at times, disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.¹⁰ Although the handling of leave requests and attendance matters are generally related to employment, they are administrative matters and not a duty of the employee.¹¹

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.¹² Mere perceptions of harassment or discrimination are not compensable under FECA.¹³ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.¹⁴ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹⁵ A claimant must establish a factual basis for his or her allegations of harassment or discrimination with probative and reliable evidence.¹⁶

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.¹⁷ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.¹⁸ When the matter asserted is a compensable factor of employment and the evidence of

⁹ *Ruth S. Johnson*, 46 ECAB 237, 241 (1994).

¹⁰ *S.M.*, Docket No. 09-2290 (issued July 12, 2010); *Linda J. Edwards-Delgado*, 55 ECAB 401, 405 (2004).

¹¹ *C.T.*, Docket No. 08-2160 (issued May 7, 2009); *Jeral R. Gray*, 57 ECAB 611, 615-16 (2006).

¹² *K.W.*, 59 ECAB 271, 276 (2007); *Robert Breeden*, *supra* note 3.

¹³ *M.D.*, 59 ECAB 211, 216-17 (2007); *Robert G. Burns*, 57 ECAB 657, 661 n.14 (2006).

¹⁴ *J.F.*, 59 ECAB 331, 339 (2008); *Robert Breeden*, *supra* note 3.

¹⁵ *G.S.*, Docket No. 09-764 (issued December 18, 2009); *Ronald K. Jablanski*, 56 ECAB 616, 620 (2005); *Penelope C. Owens*, 54 ECAB 684, 686 (2003).

¹⁶ *Robert Breeden*; *supra* note 3; *Beverly R. Jones*, 55 ECAB 411, 416 (2004).

¹⁷ *D.L.*, 58 ECAB 217, 220 (2006); *Jeral R. Gray*, *supra* note 11.

¹⁸ *K.W.*, 59 ECAB 271, 277 (2007); *David C. Lindsey, Jr.*, 56 ECAB 263, 269 (2005).

record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.¹⁹

ANALYSIS

Appellant has not alleged that his emotional condition is related to his regular duties as a manager of distribution operations. Rather, he attributed his emotional condition to actions taken by his manager. The Board must review whether the alleged incidents are established as compensable employment factors under the terms of FECA.

Appellant made several allegations related to administrative and personnel matters. In *Thomas D. McEuen*,²⁰ the Board held that an employee's emotional reaction to most administrative or personnel matters is not covered under FECA because those matters pertain to procedures and requirements of the employer and do not bear a direct relation to the employee's work. The Board noted, however, that coverage under FECA would attach if the facts showed error or abuse by the employing establishment's supervisor in the administrative or personnel action dealing with the claimant. Absent such evidence of error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.²¹

Appellant has alleged that several administrative or personnel actions taken by his new supervisor, Mr. Veal, led to his emotional condition. Regarding appellant's allegation that he was reassigned to a different position, he has not explained how this reassignment was made in error or was abusive.²² Appellant reported that his supervisor called him after his shift was over and asked him to report to his office at 7:30 a.m. and questioned him about his work attendance.²³ He stated that his supervisor did not accept his doctor's notes as an excuse for a period of absence due to knee surgery and placed him in AWOL status.²⁴ These administrative matters are not compensable without a showing of error or abuse by the employing establishment. While appellant contended that his supervisor undertook these actions and that they resulted in his emotional condition, he has not substantiated these allegations through documents or witness statements to demonstrate that the employing establishment acted unreasonably in undertaking these actions.

¹⁹ *Robert Breeden*, *supra* note 3.

²⁰ *Supra* note 7.

²¹ *See S.M.*, *supra* note 10; *David C. Lindsey, Jr.*, *supra* note 18; *Richard J. Dube*, 42 ECAB 916, 921 (1991); *Thomas D. McEuen*, *supra* note 7.

²² The assignment to a different position is an administrative function that is not compensable absent error or abuse. *D.L.*, 58 ECAB 594 (2007).

²³ *See K.W.*, 59 ECAB 271 (2007). Investigations and interviews are considered to be an administrative function of the employing establishment as they are not related to an employee's day-to-day duties or specially assigned duties.

²⁴ *See T.G.*, 58 ECAB 189 (2006).

Appellant contended that his supervisor used inappropriate language. Harassment by a supervisor may be a compensable factor of employment. However, for harassment to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did occur. Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.²⁵ An employee's allegations that he or she was harassed or discriminated against is not determinative of whether or not harassment or discrimination occurred.²⁶ To establish entitlement to benefits, a claimant must show a factual basis for his or her claim by supporting his or her allegations with probative and reliable evidence.²⁷ Appellant specifically referred to an incident of use of inappropriate language in early January 2012, and also stated that his supervisor's abusive language was constant. He did not articulate these alleged statements or submit witness statements in support of his claim and did not support his allegations with other probative and reliable evidence. The Board finds that appellant has failed to establish that he was harassed or otherwise subjected to abuse by the employing establishment.

Consequently, appellant has not established his claim for an emotional condition, as he has not attributed his claimed condition to any compensable employment factors.²⁸ He 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 the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

²⁵ *G.S.*, *supra* note 15; *J.C.*, 58 ECAB 594 (2007); *Robert G. Burns*, *supra* note 13.

²⁶ *See C.T.*, *supra* note 11; *K.W.*, *supra* note 12; *Ronald K. Jablanski*, *supra* note 15.

²⁷ *See G.S.*, *supra* note 15; *C.S.*, 58 ECAB 137, 142 (2006); *Frankie McDowell*, 44 ECAB 522, 526 n.4 (1993); *Ruthie M. Evans*, 41 ECAB 416, 425 (1990).

²⁸ As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record. *See L.K.*, Docket No. 08-849 (issued June 23, 2009); *V.W.*, 58 ECAB 428, 435 n.29 (2007); *Alberta Dukes*, 56 ECAB 247, 250 (2005); *Margaret S. Krzycki*, 43 ECAB 496, 503 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 18, 2013 is affirmed.

Issued: February 10, 2014
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