

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On February 12, 2013 appellant, a 57-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 11, 2013 he sustained depression, anxiety, chest pain and a panic attack as a result of being informed by the employing establishment that there was asbestos and lead contamination in the building where he was to work. He submitted documentation in support of his claim, including maps of locations of lead and asbestos in his future work building.

On February 11, 2013 Dr. John D. Ramirez, a cardiologist, noted that appellant presented with complaints of chest wall tingling while at work, a feeling of flushing about the head, very anxious and apparently suffering from panic attacks. Appellant described "his feelings associated with his stress he [was] undergoing in the workplace as well as retirement proceedings." Dr. Ramirez diagnosed dyspnea, chest tingling, anxiety neurosis, panic attacks, status post anterolateral wall myocardial infarction, status post bare-metal stent, status post ventricular fibrillation and hyperlipidemia. He advised that appellant's anxiety and panic attacks would directly affect his ischemic heart disease and placed him at high risk of increased cardiovascular events such as myocardial infarction.

In a February 21, 2013 letter, OWCP notified appellant of the deficiencies of his claim. It afforded him 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted a February 25, 2013 letter from his representative and additional documentation regarding the lead and asbestos in his future work site.

By decision dated March 25, 2013, OWCP denied appellant's claim. It found that the evidence submitted was not sufficient to establish that he was injured in the performance of duty.

On April 1, 2013 appellant, through his representative, requested an oral hearing before an OWCP hearing representative. He submitted a July 30, 2013 treatment report from Dr. Ramirez, who indicated that appellant presented with increased stress and anxiety concerning employment issues and retiring. Dr. Ramirez diagnosed ischemic heart disease and noted that appellant's anxiety related to his employment as the fact that he would be working in a building contaminated with lead and asbestos had triggered episodes of chest wall tingling, a flushing feeling about the head, shortness of breath, anxiety, panic attacks and insomnia. Dr. Ramirez stated that the medical literature demonstrated that increased mental stress such as anxiety and panic attacks would exacerbate underlying cardiovascular disease and would be a direct cause of appellant's worsening of his already diagnosed cardiovascular disease.

A telephonic hearing was held before an OWCP hearing representative on August 5, 2013. Appellant noted that he had not worked since February 11, 2013 and had retired on an OPM disability. He submitted a September 4, 2013 letter from his representative and additional documentation regarding lead and asbestos.

The employing establishment responded on August 30, 2013 that appellant was released to return to work under claim No. xxxxxx753 as of February 11, 2013. Further, there was no actual hazard present at the work site to which appellant was assigned nor did he begin work.

By decision dated November 13, 2013, OWCP's hearing representative affirmed the March 25, 2013 decision.

### **LEGAL PRECEDENT**

In providing for a compensation program for federal employees, Congress did not contemplate an insurance program against any and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with his or her employment. Liability does not attach merely upon the existence of an employee-employer relation. Instead, Congress provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>2</sup> The phrase while in the performance of duty has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers' compensation law of arising out of and in the course of employment.

In *Lillian Cutler*,<sup>3</sup> the Board noted that workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are situations when an injury or illness has some connection with the employment but nonetheless does not come within the coverage of workers' compensation as they are found not to have arisen out of the employment. When an employee experiences emotional stress in carrying out her employment duties, or has fear and anxiety regarding her ability to carry out her duties, and the medical evidence establishes that the disability resulted from her 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 resulted from her emotional reaction to her day-to-day duties. The same result is reached when the emotional disability resulted from the employee's emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of the work.<sup>4</sup>

In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a personal 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, unhappiness with doing inside work, desire for a different job, brooding over the failure to be given work she desires, or the employee's frustration in not being permitted to work in a particular environment or to hold a particular position.<sup>5</sup> Board case precedent demonstrates that the only requirements of employment which will bring a claim within the scope of coverage under FECA are those that relate to the duties the employee is hired to perform.<sup>6</sup>

---

<sup>2</sup> See 5 U.S.C. § 8102(a).

<sup>3</sup> 28 ECAB 125 (1976).

<sup>4</sup> *Id.* at 130.

<sup>5</sup> See *supra* note 3.

<sup>6</sup> See *Anthony A. Zarcone*, 44 ECAB 751 (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 work 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 compensable factors of employment and may not be considered.<sup>7</sup> If a claimant does implicate a factor of employment, OWCP should then consider whether the evidence of record substantiates that factor. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim; the claim must be supported by probative evidence.<sup>8</sup> Where the matter asserted is a compensable factor of employment and the evidence of record established the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.<sup>9</sup>

### ANALYSIS

In the present case, appellant has not attributed his emotional condition to his regular duties as a letter carrier or his scheduled tour of duty. His allegations do not relate to such potential compensable factors as overwork or any claim of his inability to perform the duties required in his position under *Cutler*.<sup>10</sup> Rather, appellant attributed his emotional reaction to actions taken by the employing establishment on February 11, 2013, including being informed during plant safety training that there was a potential asbestos and lead contamination in the building where he was to work. The employing establishment advised that there was no actual hazard at the work site nor did appellant ever begin his job at the site.

The Board finds that appellant's allegations pertaining to February 11, 2013 relate to administrative and personnel matters of the employing establishment involving the dissemination of safety information concerning safety training and of potential lead and asbestos contamination at his future work site. Generally, an employee's emotional reaction to administrative or personnel matters is not covered under FECA. However, when the evidence of record demonstrates that the employing establishment erred or acted unreasonably in a personnel

---

<sup>7</sup> See *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>8</sup> See *Charles E. McAndrews*, 55 ECAB 711 (2004).

<sup>9</sup> See *Jeral R. Gray*, 57 ECAB 611 (2006).

<sup>10</sup> See *Reco Roncaglione*, 52 ECAB 454 (2001) (disagreement with the associate warden held not compensable, whether viewed as a disagreement with supervisory instructions or as perceived poor management); *Robert Knoke*, 51 ECAB 319 (2000) (where the employee attributed his emotional injury to the manner in which his supervisor spoke to him about undelivered mail, the Board found that a reaction to the instruction itself was not compensable, as work assignments given by supervisors in the exercise of supervisory discretion are actions taken in an administrative capacity and, as such, are outside the coverage of FECA); *Frank A. Catapano*, 46 ECAB 297 (1994) (supervisory instructions, with which the employee disagreed, held not compensable in the absence of evidence of managerial error or abuse); *Rudy Madril*, 45 ECAB 602 (1994) (where the employee questioned his supervisor's instructions to move from belt number five to belt number six and unload mail, and became upset because he felt he was being pushed and picked on, the Board found that the incident was not a compensable factor of employment).

matter, coverage may be afforded.<sup>11</sup> The Board finds that the evidence of record does not establish that the employing establishment acted unreasonably or erred by informing him with regard to the condition of his future workplace. The Board noted that the safety training was in compliance with OSHA requirements and that there was no actual hazard at the work site.<sup>12</sup> Therefore, appellant's allegations do not constitute compensable factors of employment.

The evidence of record does not establish appellant's allegations that the February 11, 2013 incident to which he attributes his conditions arose from the performance of his regular or specially assigned work duties. Rather his emotional reaction to the personnel and administrative matters can be described as self-generated and not arising in the performance of duty but due to his personal frustration in not being permitted to work in a particular work environment. Thus, he has not met his burden of proof to establish a claim.<sup>13</sup>

On appeal, appellant's representative contends that the evidence of record establishes that appellant's conditions were aggravated by receiving information from the employing establishment regarding asbestos and lead contamination in the building where he was to work. For the reasons stated above, the Board finds the representative's arguments are not substantiated.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP, pursuant to 5 U.S.C. § 8128(a).

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury on February 11, 2013 while in the performance of duty.

---

<sup>11</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Norman A. Harris*, 42 ECAB 923 (1991).

<sup>12</sup> See *Kathi A. Scarnato*, 43 ECAB 220 (1991) (the Board noted that the employing establishment retains the right to preserve an environment in which the performance of work is an essential goal). See also *Anthony A. Zarcone*, *supra* note 6; *Drew A. Weissmuller*, 43 ECAB 745 (1992).

<sup>13</sup> As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record. *Marlon Vera*, 54 ECAB 834 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 13, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 6, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees' Compensation Appeals Board

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

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