

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

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C.Y., Appellant

and

U.S. POSTAL SERVICE, OAK STREET  
STATION, Kissimmee, FL, Employer

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**Docket No. 11-668  
Issued: December 16, 2011**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On January 18, 2011 appellant filed a timely appeal from a July 26, 2010 decision of the Office of Workers' Compensation Programs (OWCP) that denied his claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 causally related to factors of his federal employment.

On appeal, appellant asserts that he was harassed by employing establishment management.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

## **FACTUAL HISTORY**

On June 23, 2008 appellant, then a 46-year-old letter carrier, filed an occupational disease claim alleging that he developed anxiety-induced chest pains as he was constantly harassed by management. He stopped work on May 27, 2008.

By letter dated July 8, 2008, OWCP informed appellant of the evidence needed to support his claim. In separate statements, appellant discussed four incidents. The first occurring on April 24, 2000, when he was harassed by two supervisors, Jenny Merrifield and Linda Phillips. They rudely questioned appellant as to why he could not finish his route before 7:00 p.m. Appellant stated he was threatened with discipline, became upset and left to see a doctor. On May 12, 2000 Ms. Phillips discussed his performance and cursed at him. Appellant stated that on May 18, 2007, a supervisor and Ernesto Gonzalez, customer services manager, told him to be back in eight hours, bullied him and threatened him with discipline. He became upset and saw a doctor. Appellant stated that on May 27, 2008 he became upset after he was singled out and berated by Supervisor Karen Rodriguez, who harassed him because he was on the workroom floor before he clocked in. He asked her to not talk with him and to leave him alone but she ignored his request and continued talking. Appellant related that Manager Aaron Lawson then stood over him and intimidated him. He told Mr. Lawson that he did not want to talk with management. Appellant related that this caused anxiety and chest pain. He was diagnosed with anxiety by two physicians. Appellant submitted information regarding an Equal Employment Opportunity (EEO) precomplaint counseling.

In an undated statement, Bill Bosweld, a coworker, advised that on April 24, 2000 he witnessed Ms. Phillips and Ms. Merrifield talking with appellant and the conversation seemed to get heated. Appellant then left the workroom and did not return. Mr. Bosweld found appellant outside sitting on the steps, shaking. He then informed a union steward. In a statement dated June 20, 2008, Eddie Magallanes, a coworker, advised that on May 27, 2008 he heard appellant request to be left alone to work because someone in management was berating him. Appellant stated that he was nervous, shaking and could not concentrate and asked management to back off. In a June 14, 2008 statement, Daniel C. advised that he heard appellant and Ms. Rodriguez arguing. Appellant asked Ms. Rodriguez to leave him alone because she made him nervous. He requested a leave slip to go home.<sup>2</sup> A statement with an illegible signature advised that on May 27, 2008 appellant was having a discussion with a supervisor that escalated “to the situation that happen[ed] that day.”

A May 18, 2007 treatment note with an illegible signature noted impressions of stress and anxiety. In a May 29, 2008 report, William W. Austin, Psy.D., advised that he had treated appellant, who reported being hospitalized for two days for an assessment of anxiety. In a June 12, 2008 disability slip, Dr. Sonny Joseph, a Board-certified psychiatrist, advised that appellant should not work from May 27 to July 13, 2008 and could return to work on July 14, 2008.

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<sup>2</sup> Appellant also submitted a June 2, 2008 statement in which Albert Ramirez, a coworker, advised that he had observed Ms. Rodriguez’s husband on postal property.

The employing establishment controverted the claim. In an August 21, 2008 statement, Ms. Phillips advised that she had never used profanity with appellant and did not recall the alleged conversation. She stated that she had never spoken with him in a threatening manner or harassed him. In an August 27, 2008 statement, Ms. Merrifield advised that she did not recall any statement made to appellant on April 24, 2000. In an August 25, 2008 statement, Mr. Gonzalez advised that he informed appellant that, because the mail volume was low, he should be able to complete his route by 2:00 p.m., not 4:00 p.m. and then could work relief on another route for 1.5 hours. He related that appellant became upset and stated that he was not getting enough overtime. Mr. Gonzalez told appellant that the workload on his route that day did not support an eight-hour delivery, and appellant told him it would take eight hours. He informed appellant that the supervisor would accompany appellant on his route and appellant stated that he was going home sick.

In a July 2, 2008 statement, Ms. Rodriguez, delivery operations supervisor, discussed the May 27, 2008 incident. She stated that at approximately 7:15 a.m., she observed appellant on the workroom floor and instructed him that he was not to be there until his starting time of 7:30 a.m. Ms. Rodriguez informed him that for safety, liability and workplace rules he could not be on the workroom floor. Appellant told her to leave him alone and not talk to him. Ms. Rodriguez stated that Mr. Lawson observed the incident and addressed the issue with appellant. She then discussed mail route volume and starting and returning times with each carrier and that appellant was the last. Appellant became very aggressive towards Ms. Rodriguez, yelled at her to leave his work area and stated that he did not want to talk with her. Mr. Lawson overheard appellant, and proceeded to talk with him. Appellant went to the restroom and then told Mr. Lawson that he wanted to go home sick. Ms. Rodriguez stated that every time she saw an employee on the workroom floor before being on the clock, she would instruct them to leave. She stated that appellant had not returned to work. In a second statement dated August 22, 2008, Ms. Rodriguez advised that it was her duty to communicate with carriers on a daily basis. She again described the events of May 27, 2008.

By decision dated September 19, 2008, OWCP denied the claim, finding that appellant did not establish that he sustained an emotional condition in the performance of duty.

On October 13, 2008 appellant requested a hearing, and submitted an informal grievance settlement dated August 1, 2008 that indicated that management would treat everybody the same, in a fair manner. In an October 9, 2008 statement, Felix Cruz, a coworker, stated that he had not been asked by a supervisor to leave the workroom floor before his start time. A May 27, 2010 EEO Commission decision dismissed appellant's claim regarding the May 27, 2008 incident and noted that on August 21, 2008 management conducted a practice observation. The case was remanded regarding an August 25, 2008 letter of warning.

An emergency room report with an illegible signature dated May 27, 2008 indicated that appellant stated that he had an argument with a supervisor that caused left chest pain with tightness and shortness of breath. Appellant was admitted to rule-out myocardial infarction. In a June 12, 2008 report, Dr. Joseph advised that on mental status examination appellant was depressed and anxious. He recommended continued counseling. A June 15, 2008 report, with an illegible signature, advised that appellant could not work due to situational anxiety at work and chest pains.

At the hearing held on May 6, 2010, appellant testified regarding the two incidents in 2008. He stated that Ms. Phillips swore at him, and that he filed a grievance about the incident but the union stated it could not be done. Appellant stated that she later became irritated with him and had a rude expression on her face and threatened discipline. Regarding the May 18, 2007 incident, he stated that Mr. Gonzalez bullied him about completing his route and threatened discipline and that on May 27, 2008 Ms. Rodriguez harassed him and unfairly disciplined him for being on the workroom floor before his shift. Appellant stated that after this incident he was hospitalized for two days and had returned to work.

By decision dated July 20, 2010, OWCP's hearing representative affirmed the September 19, 2008 decision, finding that appellant did not establish that he sustained an emotional condition in the performance of duty.

### **LEGAL PRECEDENT**

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his stress-related condition.<sup>3</sup> If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.<sup>4</sup> 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>5</sup>

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>6</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. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.<sup>7</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 by the employing establishment or by the nature of the work.<sup>8</sup> Allegations alone by a claimant

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<sup>3</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>4</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>5</sup> *Id.*

<sup>6</sup> 28 ECAB 125 (1976).

<sup>7</sup> *See Robert W. Johns*, 51 ECAB 137 (1999).

<sup>8</sup> *Lillian Cutler*, *supra* note 6.

are insufficient to establish a factual basis for an emotional condition claim.<sup>9</sup> Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.<sup>10</sup> Personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>11</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>12</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>13</sup>

For harassment or discrimination to give rise to a compensable disability, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations that the harassment occurred with probative and reliable evidence.<sup>14</sup> With regard to emotional claims arising under FECA, the term "harassment" as applied by the Board is not the equivalent of "harassment" as defined or implemented by other agencies, such as the EEO Commission, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers' compensation under FECA, the term "harassment" is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by coemployees or workers. Mere perceptions and feelings of harassment will not support an award of compensation.<sup>15</sup>

### ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that he sustained a stress-related condition in the performance of duty causally related to factors of his federal employment.

Appellant has not attributed his emotional condition to the performance of his regular work duties or to any special work requirement arising from his employment duties under *Cutler*.<sup>16</sup> Rather, his claim pertains to four occasions dating from April 2000 to May 2008 in

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<sup>9</sup> *J.F.*, 59 ECAB 331 (2008).

<sup>10</sup> *M.D.*, 59 ECAB 211 (2007).

<sup>11</sup> *Roger Williams*, 52 ECAB 468 (2001).

<sup>12</sup> *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>13</sup> *Kim Nguyen*, 53 ECAB 127 (2001).

<sup>14</sup> *James E. Norris*, 52 ECAB 93 (2000).

<sup>15</sup> *Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>16</sup> See *James E. Norris*, *supra* note 14.

which he alleged that employing establishment management spoke to him in an abusive manner or otherwise erroneous manner.

Regarding the April 24, 2000 incident, appellant alleged that he was harassed by two supervisors regarding the delivery time-table. The Board has held that verbal altercations, when sufficiently detailed by the claimant and supported by the evidence, may constitute compensable employment factors. Appellant submitted a statement from Mr. Bosweld, who witnessed the conversation and stated that it seemed to get heated. Every statement uttered in the workplace, however, will not give rise to coverage under FECA, and being spoken to in a raised or harsh voice does not of itself constitute verbal abuse or harassment.<sup>17</sup> The witness statement of Mr. Bosweld is not sufficient to establish verbal abuse in this instance. Appellant also alleged that Ms. Phillips cursed at him on May 12, 2000 and that Mr. Gonzalez spoke to him in an abusive manner and threatened him on May 18, 2007. He, however, submitted no factual evidence to corroborate these allegations and therefore did not establish a factual basis of verbal abuse by Ms. Phillips on May 12, 2000 or Mr. Gonzalez on May 18, 2007.<sup>18</sup>

Similarly, appellant failed to establish that Ms. Rodriguez and Mr. Lawson verbally abused him on May 27, 2008. While he submitted several statements from coworkers, Mr. Magallanes merely advised that he heard appellant's request to be left alone and that he became anxious. The unidentified statement merely noted that appellant was having a discussion that day.

Generally, 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 manager in general must be allowed to perform his duties and employees will, at times, dislike the actions taken. Mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent evidence of error or abuse.<sup>19</sup> Here the supervisors and managers explained that discussions held with appellant were regarding such supervisory duties as monitoring the volume of mail and workplace rules. The record contains no evidence that any employing establishment supervisor or manager committed error or abuse in discharging their management duties.<sup>20</sup>

Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of FECA.<sup>21</sup> The Board has long held that the assignment of work is an administrative function of the employer and the manner in which a supervisor exercises his or her discretion falls outside the ambit of FECA. Absent evidence establishing error or abuse, a claimant's disagreement or

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<sup>17</sup> *T.G.*, 58 ECAB 189 (2006).

<sup>18</sup> *C.S.*, 58 ECAB 137 (2006).

<sup>19</sup> *T.G.*, *supra* note 17.

<sup>20</sup> *See David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

<sup>21</sup> *J.C.*, 58 ECAB 594 (2007).

dislike of such a managerial action is not a compensable factor of employment.<sup>22</sup> Appellant's general contention that he was harassed by management on these occasions, constitute perceptions of harassment or discrimination are not compensable under FECA<sup>23</sup> and unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.<sup>24</sup> In the case at hand, while appellant submitted several statements from coworkers, none described specific actions by employing establishment management to show a persistent disturbance, torment or persecution, *i.e.*, mistreatment by employing establishment management.<sup>25</sup> While he submitted a copy of a grievance resolution, this merely advised that management would treat all employees fairly and is thus insufficient to establish abuse on the part of management.<sup>26</sup> Appellant also submitted a final decision in which EEO Commission dismissed his claim with regards to the May 27, 2008 incident. While the EEO case was remanded regarding a letter of warning issued on August 25, 2008, the letter of warning is not part of the instant claim, filed on June 23, 2008. Appellant, therefore, did not establish a factual basis for his claim of harassment by probative and reliable evidence.<sup>27</sup>

The Board concludes that appellant did not meet his burden of proof to establish that he sustained a stress-related condition in the performance of duty causally related to factors of his federal employment.<sup>28</sup> Appellant's emotional reaction must be considered self-generated, in that it resulted from his perceptions about employing establishment management actions.<sup>29</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 establish that he sustained an emotional condition in the performance of duty.

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<sup>22</sup> *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

<sup>23</sup> *James E. Norris*, *supra* note 14.

<sup>24</sup> *Id.*

<sup>25</sup> *Beverly R. Jones*, *supra* note 15.

<sup>26</sup> *Robert Knoke*, 51 ECAB 319 (2000).

<sup>27</sup> *See Robert Breeden*, 57 ECAB 622 (2006).

<sup>28</sup> *Leslie C. Moore*, *supra* note 3.

<sup>29</sup> *See V.W.*, 58 ECAB 428 (2007).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 26, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 16, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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