

FACTUAL HISTORY

This case was before the Board on a prior appeal with respect to a recurrence of disability claim under OWCP File No. xxxxxx567.² In a January 20, 2011 decision, the Board affirmed OWCP's March 11, 2010 decision finding that appellant did not sustain a recurrence of disability commencing September 11, 2008 causally related to his accepted employment-related lumbar sprain/strain.

On March 29, 2010 appellant, then a 51-year-old letter carrier, filed a traumatic injury claim under OWCP File No. xxxxxx901 alleging that on March 25, 2010 he experienced a severe headache and high blood pressure from stress, anxiety and depression due to a hostile work environment. His work hours had been reduced four times during the past six months which did not give him adequate time to prepare for his current financial situation. On the date of injury, Darryl Jones, an acting postmaster, informed appellant that his work hours would be reduced again because no work was available. Appellant contended that management failed to accommodate his medical restrictions which violated union policies and procedures. He contended that Postmaster Jones combatively argued with him on a daily basis about his restrictions which caused him to constantly feel pressured. Postmaster Jones refused appellant's request for documentation regarding the reduction of his work hours. Appellant tried to complete his work duties and sought medical treatment for his severe headache. He stated that the Equal Employment Opportunity (EEO) complaints he filed against the employing establishment and retaliation by management had taken its toll on him. Appellant stopped work on March 31, 2010.

Medical records dated March 26 and April 1, 2010, found that appellant had anxiety and insomnia. Appellant was totally disabled for work through June 2, 2010.

By letter dated April 26, 2010, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested additional factual and medical evidence.

In a May 17, 2010 letter, appellant alleged that after April 2009 Postmaster Jones became upset and verbally abusive as appellant was not able to physically perform assignments within his restrictions. Postmaster Jones told appellant that he was not needed if he could not perform these assignments. He overrode assignments given to appellant by his supervisor and insisted that appellant perform regular letter carrier duties. Postmaster Jones denied appellant's request for light-duty assignments and continued to provide work outside his restrictions which exacerbated his employment-related back condition. Appellant was the only light-duty employee subjected to harassment and verbal abuse about his daily work performance. He was also the only employee who did not have a daily work schedule. Appellant exhausted his annual leave to receive a full paycheck when his work hours were reduced. He was verbally abused by coworkers who mocked his physical disability as they witnessed management's unprofessional tactics and verbal abuse from Postmaster Jones and Darryl Pryor, a customer service manager, directed towards him. In June 2009, Postmaster Jones approached appellant in a threatening manner and stated that he could not go to his daughter's graduation. Appellant stated that this

² Docket No. 10-1272 (issued on January 20, 2011).

incident was witnessed by a shop steward. On October 5, 2009 he submitted a light-duty work form to Postmaster Jones and was advised to report to work on October 6, 2009 at 2:00 p.m. Appellant begged Postmaster Jones to allow him to finish the week as a full-time employee, but his request was denied. A few days later Postmaster Jones told a Mr. Treadwell, a union representative, that appellant's work hours were reduced because it took him three hours to deliver three express packages. Appellant contended that this was not true. Postmaster Jones allowed a Mr. Bolder, a clerk, to cross crafts and deliver express packages, which was a function removed from appellant's daily work activities that were authorized by supervisors as being within his restrictions. As a result appellant's work hours were reduced while Mr. Bolder, a nondisabled employee, was given additional hours to perform light-duty work. Appellant noted that Mr. Bolder was a white male approximately 50 years old while he was a black male of the same age. Mr. Pryor stated that appellant was an unproductive employee due to his physical disability. He asked Mr. Treadwell, a union representative, why appellant, a nonproductive employee, was on the workroom floor. Several employees and union members stated that they heard Mr. Pryor had a problem with appellant.

When appellant reported to work on several occasions, supervisors left mail for delivery in a U-cart with his name on it in the foyer of the building. He was humiliated as his coworkers questioned him about these incidents.

On October 28, 2009 at 4:40 p.m. appellant and Bruce Greenwood, an employee, were at the time clock when Dharam S. Goraya, a coemployee, yelled that light-duty employees were worthless, not good and needed to stop work. Mr. Greenwood questioned why Mr. Goraya made the comment. Appellant replied that he did not know, but stated that was not the first time Mr. Goraya had directed derogatory comments towards him. He and Mr. Goraya had a heated exchange about whether Mr. Goraya had a problem with him. A Ms. Ford interrupted them and told them to calm down. She stated that they were both at fault. On November 28, 2009 the employing establishment issued a letter to appellant suspending him for 14 days regarding the October 28, 2009 incident. Appellant stated that Mr. Goraya was not disciplined. During an interview with Ms. Ford and Craig Baker, a union representative, appellant explained that Mr. Goraya's conduct provoked the entire incident. He stated that neither a complete investigation nor an interview of Mr. Goraya was conducted. Appellant noted that on April 17, 2010 Mr. Goraya became very upset and disruptive about carrying out a "bump." Management rewarded Mr. Goraya's behavior by allowing someone else to carry out the "bump." Mr. Goraya was loud and very unprofessional when stating that he should leave and go out on stress leave. Appellant contended that Mr. Goraya's comment was a direct reference to him and a personal attack on his current medical situation. Management refused to discipline Mr. Goraya for his comment.

On November 4, 2009 appellant advised a Ms. Strohman that he was unable to report to work due to mechanical problems with his car. He needed to obtain a special part for his car. Ms. Strohman did not request any type of documentation for his absence. When appellant reported for duty, Ms. Ford, a supervisor, asked him for documentation that he purchased the part for his car.

On November 9, 2009 appellant reported to work at 2:00 p.m. and Yolanda Henry, a supervisor, instructed him to deliver mail on Route 24. This would take 1 hour and 45 minutes

to complete which was approximately 45 minutes over his restrictions. Ms. Henry acknowledged to appellant that the assignment exceeded his restrictions. Postmaster Jones approached him in a hostile manner and demanded that he deliver the mail. Appellant responded that the task exceeded his restrictions and that he would carry mail for one hour as advised by his physician. When he returned from delivering the mail, he was told by Ms. Henry that she was instructed by Postmaster Jones to send him home after working two hours because Postmaster Jones was upset that he did not work beyond his restrictions.

On two occasions appellant was not informed about an appreciation luncheon for employees that was sponsored by a company that maintained vending machines at the employing establishment. After the first incident, he approached Postmaster Jones about his exclusion from the luncheon. Postmaster Jones responded that he would inform appellant about the next luncheon. Appellant stated that neither Postmaster Jones nor any other manager informed him about the second luncheon.

Appellant filed several grievances regarding the above-noted incidents eight months ago and there had been no resolutions or restitution. On April 8, 2010 the employing establishment acknowledged and accepted amendments to appellant's EEO complaint. The issues accepted for investigation included his allegation of discrimination based on his African-American race, color, sex, age, physical disability related to his accepted back condition and retaliation for his prior EEO activity when he was subjected to verbal sexual harassment on September 23, 2009, his work hours were reduced on October 8, 2009 and the employing establishment issued its November 28, 2009 letter suspending him for 14 days for unacceptable conduct. The amended issues included appellant's allegation of discrimination based on physical disability related to his accepted back condition and retaliation for prior EEO activity which subjected him to a hostile work environment that resulted in a denial of reasonable accommodation, the reduction of his work hours from six to four hours per day on March 25, 2010, management's failure to provide him with a light-duty assignment within his medical restrictions and placement on leave without pay on March 25, 2010.

Medical records dated December 21, 2009 and March 10 and 16, 2010 noted appellant's complaint of work-related stress and anxiety due to the reduction of his work hours. Appellant was diagnosed as having depression, elevated blood pressure, sleeplessness and cervical radiculopathy. His accepted lumbar condition was exacerbated by working outside his restrictions.

In a May 26, 2010 decision, OWCP denied appellant's claim. It found that the factual evidence was sufficient to establish that incidents occurred as alleged. OWCP, however, found that the medical evidence was insufficient to establish that appellant sustained an emotional condition causally related to the accepted employment factors.

On June 4, 2010 appellant requested reconsideration. Medical records dated June 3 through July 31, 2010, stated that he had employment-related stress, depression and anxiety.

In a September 9, 2010 decision, OWCP modified the May 26, 2010 decision to reflect that appellant did not sustain an emotional condition in the performance of duty as he failed to establish any compensable employment factors.

LEGAL PRECEDENT

A claimant 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 factors of his federal employment.³ To establish that he sustained an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.⁴

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

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

³ *Pamela R. Rice*, 38 ECAB 838 (1987).

⁴ *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

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

⁶ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁷ *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

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

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

providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.¹⁰ 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

Although appellant initially filed a traumatic injury claim for an incident at work on March 25, 2010, he subsequently alleged that he sustained an emotional condition as a result of multiple work incidents and conditions leading up to the March 25, 2010 incident. OWCP denied his emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.

Appellant alleged that Postmaster Jones improperly reduced his work hours by reassigning his light-duty work to Mr. Bolder, a nondisabled employee, not allowing him to finish working as a full-time employee during the week of October 5, 2009 after he submitted a light-duty work form and instructing Ms. Henry to send him home two hours earlier on November 9, 2009 because he refused to fully perform his assigned duties. He stated that he was the only light-duty employee who did not have a daily work schedule. Appellant alleged that Postmaster Jones required him to work outside his physical restrictions by overriding his light-duty work assignments and assigning him regular letter carrier duties which violated union policies and procedures. He contended that he acted unreasonably in not allowing him to attend his daughter's graduation in June 2009. Appellant further contended that supervisors wrongly placed a U-cart containing his work and his name in the building foyer. Ms. Strohman acted unreasonably in requesting documentation for his absence from work on November 4, 2009 due to his need to replace a broken car part. Appellant also contended that Ms. Henry acted unreasonably on November 9, 2009 when she instructed him to deliver mail on a route which exceeded his restrictions by 45 minutes. He asserted that the employing establishment improperly issued a letter of suspension only to him on November 28, 2009 for the verbal confrontation with Mr. Goraya. Appellant filed grievances for the above-stated actions.

Appellant's allegations regarding the reduction of his work hours,¹² the assignment of work,¹³ dislike of a supervisory or managerial action,¹⁴ denial of leave,¹⁵ request for

¹⁰ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹¹ *Id.*

¹² *Janice I. Moore*, 53 ECAB 777 (2002).

¹³ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁴ *See Marguerite J. Toland*, 52 ECAB 294 (2001).

¹⁵ *T.G.*, 58 ECAB 189 (2006).

documentation for his absence from work, issuance of a disciplinary letter¹⁶ and the filing of grievances¹⁷ are administrative matters and not compensable absent a showing of error or abuse on the part of the employing establishment. Although he has alleged error by management, he did not submit any probative evidence establishing error or abuse regarding the above-noted administrative matters. Appellant stated that Postmaster Jones's statement to Mr. Treadwell that his work hours were reduced because he took three hours to deliver three express packages was false. However, he did not submit any evidence to support this contention. Regarding appellant's EEO complaints, the record does not contain a final decision finding that the employing establishment committed error or abuse in handling the above administrative and personnel matters. Appellant did not submit any evidence establishing error or abuse by the employing establishment in the handling of the other administrative and personnel matters. The Board finds, therefore, that he has failed to establish a compensable employment factor.

With regard to the allegation of work outside physical limitation, this could constitute a compensable factor if substantiated by the record.¹⁸ Although appellant stated that Ms. Henry admitted that she assigned him work that exceeded his physical restrictions, he did not submit a statement from her to corroborate his contention. The Board finds that this allegation is not established as a compensable employment factor.

Appellant contended that he was harassed, discriminated against and verbally abused at the employing establishment in the above-noted incidents. Actions of a claimant's supervisor or coworker which the claimant characterizes as harassment may constitute 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, in fact, occur. Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.¹⁹ An employee's charges that he or she was harassed or discriminated against, is not determinative of whether or not harassment or discrimination occurred.²⁰ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.²¹ Appellant contended that Postmaster Jones was verbally abusive and argued with him on a daily basis about his physical restrictions and inability to perform his work duties due to his accepted back condition. Postmaster Jones told appellant that he was not needed if he could not perform his assignments. Appellant stated that he was the only light-duty employee subjected to harassment and verbal abuse regarding his daily work performance. He contended that Postmaster Jones approached him in a threatening manner as he denied his request to attend his daughter's graduation. Appellant asserted that Postmaster Jones and other managers failed to inform him about an employee appreciation luncheon. He further

¹⁶ See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹⁷ *Michael A. Salvato*, 53 ECB 666, 668 (2002).

¹⁸ *David C. Lindsey, Jr.*, 56 ECAB 263 (2005); *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

¹⁹ *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

²⁰ See *William P. George*, 43 ECAB 1159 (1992).

²¹ See *Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

asserted that he was verbally abused by his coworkers regarding his physical disability and treated differently by management. Appellant alleged that Mr. Goraya directed derogatory comments towards him regarding his light-duty status on October 28, 2009 that went unpunished while he was suspended for 14 days for his response to him. He noted that Mr. Goraya's disruptive behavior on April 17, 2010 regarding his refusal to perform an assignment was successful as management assigned someone else to perform the task and he was not disciplined for his action. Appellant alleged that Mr. Pryor referred to him as an unproductive employee due to his physical disability in the presence of Mr. Treadwell. He was humiliated when asked by his coworkers as to why the U-cart was left in the building foyer for him.

Although appellant asserted that employees and union members heard Mr. Pryor's statement that he had a problem with him, the record is devoid of any statement from these witnesses corroborating his version of the noted incidents. Further, he did not submit any witness statements from witnesses to support his allegation of harassment, discrimination and verbal abuse by Postmaster Jones and Mr. Goraya. The Board finds that appellant has not established a factual basis for his allegations that he was harassed, discriminated against and verbally abused by the employing establishment. Therefore, appellant has failed to establish a compensable factor of employment.²²

On appeal, appellant's attorney contended that OWCP's decisions were contrary to fact and law. For reasons noted, the Board finds that appellant did not submit sufficient evidence establishing that he sustained an emotional condition in the performance of duty.

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 has failed to establish that he sustained an emotional condition in the performance of duty, as alleged.

²² As appellant has not substantiated a compensable factor of employment as the cause of his emotional condition, the medical evidence regarding his emotional condition need not be addressed. *Karen K. Levene*, 54 ECAB 671 (2003).

ORDER

IT IS HEREBY ORDERED THAT the September 9 and May 26, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 16, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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