



lightheadedness, severe disorientation, cold sweats, duress and stress-induced back, knee and heart pain during an April 28, 2009 incident review. The employing establishment controverted the claim on the grounds that appellant did not provide medical evidence.

Appellant specified in a May 8, 2009 e-mail that he was “going through a tremendous amount of stress that has affected my health.” He had finished an eight-hour shift on April 28, 2009 when he was asked to attend a meeting “to sign some papers and answer questions relating to my work and personal life.” During the three-hour meeting, appellant experienced lightheadedness, cold sweats, disorientation and severe back pain. Thereafter, he was admitted to a hospital and intermittently missed work until May 8, 2009. Appellant remarked, “I am concerned that my health has been affected by an increase in stress that has put limitations on my physical condition[,] adding a level of pain that is at times unbearable.”

OWCP informed appellant in a June 22, 2009 letter that additional evidence was needed to establish his claim. It gave him 30 days to submit a statement describing the employment factors that contributed to his stress and a physician’s report offering a reasoned opinion explaining how these factors caused the condition.

Appellant furnished medical records from Dr. John C. Steck, a Board-certified neurosurgeon. In a May 14, 2009 report, Dr. Steck related that appellant experienced increased stress and pain in his chest, back and right leg. On examination, he observed complete foot drop and decreased sensation to pinprick of the right foot and preexisting atrophy of the quadriceps. Dr. Steck noted magnetic resonance imaging (MRI) scan findings for the lumbar spine and continued submitting reports regarding appellant’s spine condition.

In e-mails dated June 15 to 23, 2009 and a June 28, 2009 statement, appellant detailed that his stress emanated from his work environment, citing frequent office relocations, uncomfortable metal folding chairs, time-sensitive projects and management’s lack of direction and long-term planning.<sup>2</sup> On June 16, 2009 he asserted that, while stress was a major factor in his condition, he also sustained a traumatic back injury caused by sitting and driving. Appellant stated that his job required him to spend many hours driving and long periods of sitting in front of a computer. He asserted that he worked long hours as high as 160 hours.<sup>3</sup> Over the course of three years, appellant’s job responsibilities deteriorated his back condition and created severe stress to his right leg. He worked at home “off the clock” and his work was always time sensitive with working conditions being poor due to poor office furniture and changing office space periodically which created more stress and pain. Appellant advised that his employer never provided solid direction as to the strategic plan and that the New Orleans office of the employer had been completely overhauled due to poor work ethic and employee relations.

In a July 10, 2009 e-mail, appellant’s supervisor, Cynthia Teeter, advised that appellant occasionally worked overtime at his discretion and that travel was required in his job but was not a daily activity. She responded that appellant was in charge of his own work schedule and that

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<sup>2</sup> Appellant added that his job duties, which entailed prolonged periods of driving and sitting, aggravated his preexisting back and right leg injuries.

<sup>3</sup> Appellant did not specify the length of the period over which he claimed that he worked 160 hours.

his assignments were not intense. Ms. Teeter stated that she was not aware of any conflict between appellant and other employees. While appellant filed a complaint against her, he later dropped the complaint. Ms. Teeter stated that appellant had one deadline over the previous eight months, preparing a spreadsheet of contact information and suggestions, but that he had not yet provided the information. She advised that the employing establishment had staffing shortages but this had no impact on appellant's responsibilities as he was able to set his own schedule and conduct meetings at his convenience. Ms. Teeter stated that appellant performed his duties within expectations. She noted that appellant's computer and mobile device had been confiscated as he was in the process of being investigated.<sup>4</sup> Ms. Teeter did not concur with appellant's allegations and he did very little traveling within the period that he claimed as he was under investigation. After the investigation began, appellant was mainly delegated to conduct work from his desk.

By decision dated July 29, 2009, OWCP denied appellant's claim, finding the evidence insufficient to establish that an emotional condition resulted from a compensable factor of employment.

Appellant's counsel requested reconsideration on July 26, 2010, arguing that the factual and medical evidence established aggravation of a preexisting lumbar condition due to hours of driving and sitting on a nonergonomic chair. Alternatively, he contended that the evidence warranted further development. Counsel emphasized that appellant did not allege a psychiatric or stress disorder.

On October 25, 2010 OWCP denied modification of the July 29, 2009 decision. It noted that the present claim was based on appellant's allegation of stress causing his claimed conditions. OWCP noted that, on September 1, 2010, appellant filed a separate occupational disease claim for a back condition, with the same date of injury.<sup>5</sup>

### **LEGAL PRECEDENT**

To establish a claim that he or she sustained an emotional or stress-related condition in the performance of duty, an employee must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) medical evidence establishing that he or she has an emotional or stress-related disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the condition. If a claimant implicates a factor of employment, OWCP should determine whether the evidence of record substantiates that factor. Allegations alone are insufficient to establish a factual basis for an emotional condition claim and must be supported with probative and reliable evidence. If a compensable factor of employment is established, OWCP must then base its decision on an analysis of the medical evidence.<sup>6</sup>

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<sup>4</sup> Ms. Teeter advised that she was not aware of the reasons for the investigation.

<sup>5</sup> The claimed back condition is not before the Board on the present appeal. OWCP File No. xxxxxx656.

<sup>6</sup> See *G.S.*, Docket No. 09-764 (issued December 18, 2009).

Workers' compensation law does not apply to each and every injury or illness that is somehow related to a claimant's employment. In the case of *Lillian Cutler*,<sup>7</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition under FECA. When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that a disability resulted from this emotional reaction, the disability is generally regarded as due to an injury arising out of and in the course of employment. This holds true when the disability results from an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work. On the other hand, there are disabilities that have some causal connection with the claimant's employment but nonetheless fall outside FECA's coverage because they are found not to have arisen out of employment, such as when a disability results from a fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.<sup>8</sup>

Administrative and personnel matters, although generally related to the claimant's employment, are administrative functions of the employer rather than the regular or specially-assigned work duties of the claimant and are not covered under FECA.<sup>9</sup> However, the Board has held that an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.<sup>10</sup>

### ANALYSIS

Appellant claimed that he experienced stress-induced conditions that included high blood pressure, lightheadedness, disorientation, cold sweats and back pain as a result of his federal employment. The Board must initially review whether the claimed incidents or activities constitute compensable factors under the provisions of FECA.

Appellant's June 28, 2009 statement generally alleged that he had stress due to many hours driving, working at home off the clock, sitting for long periods in front of a computer, time sensitive projects and working as many as 160 hours during an unspecified period. As noted, when an employee experiences emotional stress in carrying out his or her employment duties, any resulting disability from an emotional reaction is generally compensable. However, appellant did not provide a sufficient factual basis for his allegations. He did not provide any detail as to the specific times, places and duration of the driving that he claimed or specify the precise periods and amounts of time in which he worked at home off the clock or the precise duties he performed when he experienced stress. Appellant also did not explain why sitting in front of a computer caused stress, identify the duties he was performing at the computer and state

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<sup>7</sup> 28 ECAB 125 (1976).

<sup>8</sup> *William E. Seare*, 47 ECAB 663 (1996).

<sup>9</sup> *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *M.C.*, Docket No. 10-1628 (issued June 8, 2011).

<sup>10</sup> *M.D.*, 59 ECAB 211 (2007); *Ruth S. Johnson*, 46 ECAB 237 (1994). *See also Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

the precise times that he performed such duties. He did not identify particular time sensitive projects that he performed at specific times and he did not identify the precise periods in which he worked an excessive hours. In contrast, Ms. Teeter disputed appellant's allegations advising that, while he occasionally worked overtime and had to travel, overtime was at his discretion, deadlines were rare and travel was not a daily activity as he was in charge of his own schedule. She explained that, while the employing establishment had staffing shortages, this had no impact on appellant since he was able to set his own schedule for his convenience. The Board finds that appellant has not established a compensable employment factor under *Cutler*.<sup>11</sup>

Appellant also attributed his emotional reaction to administrative matters. He claimed that he experienced symptoms during a three-hour April 28, 2009 meeting, after his workday ended, "to sign some papers and answer questions relating to my work and personal life." The employing establishment confirmed that the purpose of the meeting was investigatory, pointing out that appellant's computer and mobile telephone had been confiscated. It is well established that investigations and disciplinary actions are administrative functions of the employer rather than duties of the employee. Unless the evidence discloses error or abuse on the part of the employer, they are not compensable employment factors.<sup>12</sup> Appellant offered insufficient evidence to establish that the employer acted in error in conducting the investigatory meeting or in taking any disciplinary action as a result of the meeting. As the factual evidence of record does not demonstrate that the employing establishment acted erroneously or abusively, the April 28, 2009 meeting was not a compensable factor of employment.

Appellant also asserted that aspects of his work environment also caused stress, identifying in particular frequent office relocations and use of metal folding chairs. The Board has found that dissatisfaction with workspace transfers<sup>13</sup> and assignment of office equipment<sup>14</sup> are administrative matters and are not compensable, absent evidence of error or abuse. Appellant submitted no evidence supporting that the employing establishment erred in these administrative matters. He also attributed his stress to poor management noting that the employing establishment lacked a solid strategic plan and that there was a poor work ethic. This relates to appellant's dissatisfaction with perceived poor management and constitutes frustration from not being able to work in a particular environment or to hold a particular position and is not compensable under FECA.<sup>15</sup> As noted, allegations alone are insufficient to establish a factual

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<sup>11</sup> See *supra* note 7.

<sup>12</sup> *McEuen*, *supra* note 10; *G.S.*, Docket No. 09-764 (issued December 18, 2009); *C.F.*, Docket No. 08-2160 (issued May 7, 2009).

<sup>13</sup> *Dan F. Bennett*, Docket No. 05-60 (issued March 7, 2005) (claimant did not show that he established an employment factor with respect to the administrative aspects of office space transfers).

<sup>14</sup> *Gloria L. Rolon*, Docket No. 01-1344 (issued May 9, 2003). See also *Essie J. Baker*, Docket No. 03-945 (issued February 17, 2004) (employing establishment's denial of an ergonomic chair following appellant's back surgery 20 years earlier did not constitute a compensable employment factor without evidence of error or abuse). By comparison, the Board has found the deprivation of essential equipment to be a compensable factor of employment. See, e.g., *Martha B. Holcomb*, Docket No. 01-1218 (issued February 11, 2002); *Alana A. Vukmir*, Docket No. 95-2983 (issued December 12, 1997).

<sup>15</sup> *Cyndia R. Harrill*, 55 ECAB 522, 529 (2004).

basis for an emotional condition claim. Therefore, appellant has not shown that these matters rise to the level of compensable factors of employment.

Appellant's counsel asserts on appeal that the claim was mistakenly categorized as one for a psychiatric or stress condition rather than an aggravated lumbar injury. The record reflects that appellant claimed a stress-related condition in his May 23, 2009 notice of occupational disease and in his subsequent submissions, such as his June 28, 2009 statement, he alleged certain sources of stress. As OWCP has not adjudicated the issue of whether his federal employment caused or aggravated an orthopedic injury, the Board does not have jurisdiction to review the matter.<sup>16</sup> Counsel also presented several arguments concerning the sufficiency of the medical evidence. Because appellant failed to establish a compensable factor of employment in this emotional condition claim, it is unnecessary to address the medical evidence of record.<sup>17</sup> He also submitted new evidence on appeal. The Board lacks jurisdiction to review evidence for the first time on appeal.<sup>18</sup> However, appellant may submit new evidence or argument as part of a formal 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>16</sup> 20 C.F.R. § 501.2(c). The Board points out that appellant filed a September 1, 2010 occupational disease claim for this condition. *See supra* note 5 and accompanying text. Appellant should contact OWCP regarding the separate back claim if he wishes to pursue that matter.

<sup>17</sup> *Barbara J. Latham*, 53 ECAB 316 (2002); *Garry M. Carlo*, 47 ECAB 299 (1996).

<sup>18</sup> 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 25, 2010 decision of Office of Workers' Compensation Programs be affirmed.

Issued: September 30, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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