

appellant was injured when he resisted the police while being escorted off the property. Appellant stopped work on December 18, 2010. He was removed from his job on March 28, 2011 for failure to follow instructions and leave his place of business when instructed.

In a January 10, 2011 statement, appellant noted that, after he and his wife clocked into work on December 18, 2010, Supervisor Roy Evans notified them that they had been suspended on December 17, 2010. As they were leaving, they were stopped at the front door by Officer Françoise Carter, who told them they were to be escorted off the property. Appellant stated that the Manager of Operations Richard Lopez was watching from a few feet away and had given the instruction to have them escorted off the property. Officer Carter twisted appellant's wife's arm behind her back. While appellant was yelling for her to release his wife and looking for his camera, Officer Carter grabbed his arm and pushed him about 40 yards through the parking lot. He stated that Officer Carter ordered them to stop when they arrived at their car and they were taken back inside the building to wait for Postal Inspectors. They were told to leave after about 15 minutes and were followed off the property. Appellant submitted documents that included November 8, 2010 civil minutes from appellant's wife's claim against Postmaster John E. Potter.

In a December 18, 2010 e-mail, Supervisor Evans related the events of December 16, 2010. He had contacted appellant and his wife on the work floor and informed them that he was instructed to give them different work assignments, but they disagreed with the assignments. When they informed Supervisor Evans that they had submitted a request to be moved to a different area, he stated that he was unaware of the request and that they were to work as assigned until he obtained clarification. Supervisor Evans indicated that appellant stated "we'll leave" and then told his wife to ask for sick leave. Appellant then stated "we'll both take off sick." He demanded the appropriate forms to fill out. Another manager provided the forms which appellant and his wife completed before they left.

In a December 18, 2010 U.S. Postal Inspection Service Security Force Incident Report, Officer Carter and Assisting Officer Eugene Rollins related the events of December 18, 2010 when they were told by Mr. Lopez that appellant and his wife were not allowed to be on the property and were to be escorted out. Officer Carter related that both appellant and his wife were talking loud and at the same time stating that they were not notified they could not be on the employer's property, that they did not need an escort and that they would file a lawsuit. Appellant did not want to walk because it was raining and he called her a liar. Officer Carter gave him and his wife numerous opportunities to walk to their car, but he started yelling at her and waving his hands while stating, "What are you going to do, shoot me, are you going to shoot me?" She placed the wife in a c-clamp and saw the situation escalating when appellant became angry. Appellant started yelling at her and got close to her so she put him in a c-clamp. He resisted and did not walk, despite Officer Carter's order to do so. Appellant claimed that his arms and ankles were injured and tried to twist away. Officer Carter noted that back-up arrived and appellant and his wife were taken to the conference room, which was used as a holding area. She stated that other police officers escorted them to their vehicle and they were followed out in a marked car.

In a January 20, 2011 statement, Roger Quinney, a licensed clinical social worker, stated that appellant and his wife were being seen weekly for post-traumatic stress disorder and were taken off work from December 18, 2010 to February 18, 2011.

In a January 31, 2011 letter, OWCP requested that appellant provide factual and medical evidence along with additional explanation to support his claim. It received material pertaining to his wife; a leave analysis; a February 6, 2011 statement from his wife related the events of December 18, 2010 and a January 13, 2011 investigative interview. On February 24, 2011 a notice of proposed removal was issued for appellant's failure to follow instructions and insubordination on December 16, 2010.

A January 21, 2011 investigative interview related that on December 16, 2010 at approximately 22:00 hours appellant was given an assignment that required him to work apart from his wife. Appellant did not agree with the assignment and advised his wife to request sick leave. He also demanded a leave form. The document related that appellant's response was irrational and his actions violated the regulations. A voice mail was left on his home answering machine informing him of the Emergency Placement and asking him to remain off the premises. The document also detailed the December 18, 2010 incident and requested that appellant respond to several questions (*i.e.*, to explain his reasons for not following Supervisor Evans' instructions on December 16, 2010 why he did not follow postal police instructions to leave the premises on December 18, 2010, to explain his reason for challenging the postal police authority and to provide any additional comments or statements).

In a February 6, 2011 statement, appellant denied that he and his wife refused any assignment on December 16, 2010, that they called in on the automated sick leave system on December 17, 2010. On December 18, 2010 they clocked in and were provided written notification on December 18, 2010 by Mr. Evans of their suspensions. They were stopped by Officer Carter as they were trying to exit the premises. Appellant informed Mr. Evans on December 16, 2010 that he and his wife had requested assignment to another area on December 13, 2010 and had to be reassigned. He alleged that Mr. Evans became argumentative. As they were not feeling well they did not argue and told Mr. Evans that they would take sick leave the rest of the shift. They asked Mr. Evans if they needed to complete forms. Mr. Evans initially replied no and refused to provide such forms. Subsequently, he threatened them with absent without leave (AWOL) if they did not complete the forms and followed them through the building telling them "all hell will break loose" if they left. Appellant denied receiving a telephone message from Mr. Evans and alleged that Mr. Evans forged the signature of Gregory Anderson, Manager Maintenance Operations, on documents. He and his wife filed complaints with various agencies and a law suit for excessive use of force. In a February 24, 2011 statement, appellant alleged that Supervisor Evans lied, forged signatures and falsified both his and his wife's attendance records on December 18, 2010.

In a February 4, 2011 statement, Mr. Anderson controverted appellant's claim. He stated that appellant was escorted off postal premises by uniformed postal police when he refused to cooperate, causing the police to restrain him.

In a March 10, 2010 report, Dr. Rodney D. Collins, a psychiatrist, opined that appellant has post-traumatic disorder and acute stress reaction. He opined that appellant's symptoms existed from the conditions that were placed on him through his employment.

By decision dated March 9, 2011, OWCP denied appellant's claim finding that his allegations were administrative in nature and his claim did not arise within the performance of duty.

On March 16, 2011 appellant requested reconsideration. He alleged that his suspension was illegal. Appellant stated that he reported to work on December 18, 2010 and clocked in as usual, but his attendance record was altered. He was unaware that an action had been taken against him. As appellant left the building, he and his wife were attacked by Officer Carter.

In statements of December 17, 2010 and March 30, 2011, appellant alleged that the employing establishment retaliated against him and his wife because they had filed a complaint with Occupational Safety Health Administration (OSHA) on November 10, 2010. He alleged that, after a safety inspection, his work duties were doubled and Mr. Evans threatened to prohibit him from working with his wife if he submitted notice of missing safety precautions. On December 13, 2010 they requested a reassignment which Mr. Evans refused. On December 16, 2010 they were ordered separated and prohibited from working together and were threatened with AWOL when they requested sick leave. Copies of material concerning the alleged OSHA violations and retaliation allegations were submitted.

A July 29, 2011 decision of the Merit Systems Protection Board (MSPB) found that appellant's March 28, 2011 removal was in error and violated his due process guarantee to notice since it relied upon *ex parte* communications. The decision held that "the agency's error cannot be excused as harmless" and stated that the agency could not attempt to remove appellant for misconduct on December 16 and 18, 2010 until he was afforded a constitutional correct procedure. The employing establishment was ordered to cancel the removal and to retroactively restore appellant effective March 21, 2011.

In a March 21, 2011 attending physician's report, Dr. Collins opined that appellant's post-traumatic stress disorder was caused or aggravated by employment activity.

In an August 18, 2011 decision, OWCP accepted the claim for acute stress reaction. It found that the July 29, 2011 MSPB decision established a compensable work factor, that appellant's March 28, 2011 removal from employment was in error.

By decision dated August 18, 2011, OWCP found that appellant was not entitled to continuation of pay as his disability was not the result of a traumatic injury occurring in a single work shift.

LEGAL PRECEDENT

Section 8118 of FECA² provides for payment of continuation of pay, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to traumatic injury with his immediate supervisor on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title. Section 8122(a)(2) provides that written notice of injury must be given as specified in section 8119. The latter section provides in part that notice of injury

² 5 U.S.C. § 8118.

shall be given in writing within 30 days after the injury.³ A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment over a period longer than a single workday or shift.⁴

Continuation of pay requires the employing establishment to continue the employee's regular pay during any periods of disability, up to a maximum of 45 calendar days. This is paid by the employing establishment, not OWCP. However, the ultimate decision as to whether appellant is eligible for continuation of pay rests with OWCP.⁵

ANALYSIS

On January 12, 2011 appellant filed a claim alleging that he sustained a work-related emotional condition. OWCP denied entitlement to continuation of pay because his disability was not the result of a traumatic injury. On appeal, appellant asserts that he is entitled to continuation of pay for his absence from work as his emotional condition arose out of the traumatic event of December 18, 2010, when he was escorted off premises by police, he had a verbal altercation with the police and he was placed in a "c clamp." He argues that the evidence supports a traumatic injury. Appellant additionally asserts that he was paid administrative leave as a result of this injury.

Although appellant filed a traumatic injury claim for the December 18, 2010 work incident, a review of the record reflects that he and his wife disagreed with a December 16, 2010 work assignment made by Mr. Evans. They were suspended on December 17, 2010 after using sick leave instead of performing the work assignments given by Mr. Evans. These events beginning December 16, 2010 resulted in both the December 18, 2010 incident at work and appellant's subsequent removal on March 28, 2011. Although the only work factor accepted by OWCP was his removal of March 28, 2011, the nature of his claim is that of an occupational disease due to incidents arising over more than one work shift. As appellant's claim involves matter extending beyond a single work shift, it was not a traumatic injury claim and he is not entitled to continuation of pay.⁶ Furthermore, any administrative leave he may have been granted has no bearing on whether he is entitled to continuation of pay.⁷

³ *Id.* at § 8119(a)(c).

⁴ 20 C.F.R. § 10.5(q)(ee); *Brady Fowler*, 44 ECAB 343, 351 (1992).

⁵ *Id.* at § 10.200.

⁶ *Id.* at § 10.220(a); *see also K.P.*, Docket No. 10-294 (issued November 30, 2010); *B.W.*, Docket No. 10-664 (issued October 14, 2010).

⁷ *See Daniel Deparini*, 44 ECAB 657 (1993) (findings of administrative agencies with respect to entitlement to benefits under a specific statutory authority have no bearing on compensation entitlement under FECA). Also, if appellant received administrative leave for the same period in which he seeks continuation of pay, he would not be eligible for continuation of pay, even if he sustained a traumatic injury, as 5 U.S.C. § 8118 contemplates that continuation of pay should only authorized where there is wage loss. *Cf. James A. Zeman*, Docket No. 93-2329 (issued March 27, 1995) (no entitlement to continuation of pay where the claimant had no wage loss as the record showed that he used annual leave for the period at issue).

For these reasons, OWCP properly denied entitlement to continuation of pay.

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 OWCP properly denied appellant's claim for continuation of pay.

ORDER

IT IS HEREBY ORDERED THAT the August 18, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 8, 2012
Washington, DC

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

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

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