

and hypertension were due to his work duties. He was diagnosed with Parkinson's disease on September 17, 2010 and he stopped work on September 21, 2010.

By letter dated November 1, 2010, OWCP advised appellant that additional factual and medical evidence was needed to support his claim.

In a November 11, 2010 statement, appellant stated that the constant changing nature of his job requirements was the main reason for his illness. He stated that he must maintain technical specifications and it was tedious knowing whether a responder was being truthful. Appellant stated that there were no specific dates, but indicated that it occurred on an ongoing basis. He stated that the answers to his field questions were highly pertinent as he got micromonitored feedback in the form of a schedule review. Appellant stated that the time constraints limited his ability to obtain correct responses. He indicated that the constant review of his work made him lose confidence and that the numerous schedule reviews were followed up with comprehensive follow-up plans, which caused him to get or feel sick. Appellant stated that his Parkinson's disease made it difficult for him to handle the field computer and hanging the computer around his neck in the field affected his cervical spine. He indicated that he had difficulty getting his work done within the allowable time. Appellant failed his year end performance review and was subject to a performance improvement plan (PIP). He stated that failing his performance review caused major consternation emotionally. Appellant stated that his outside activities were limited by Parkinson's disease, which developed in 2007. He stated that he was diagnosed with bipolar disorder and was under treatment since 1978 and was treated for hypertension since the 1990s.

OWCP received October 1 and November 22, 2010 reports from Dr. Amy Colcher, a Board-certified neurologist, indicating that appellant could not work in his job due to Parkinson's disease. Other evidence included leave analysis sheets and work schedules; a position description; a productivity printout for the economic assistant position; a performance management plan; appellant's description of his job; an October 7, 2010 off work slip from Dr. Alexandra McLean, a Board-certified psychiatrist; a September 17, 2010 report from Dr. Leo McCluskey, a Board-certified psychiatrist; and an undated statement from the employing establishment.

In a supervisor's undated statement regarding appellant's disability retirement application, Gerald Perrins stated that, if appellant was not out on medical leave, he would be on a PIP. It noted that appellant's performance was less than fully successful on the critical element for "Collecting Quality Data" and that his rating period was extended to provide the opportunity to improve performance. The employer verified that errors have been found on review of appellant's work and that the work reviewed was randomly selected. The employer noted that it accommodated appellant's reduced tour of duty hours over the last several years due to various health issues.

On December 21, 2010 OWCP received the employer's response to appellant's allegations. The employer confirmed that appellant's work was randomly sampled, as was the work of others under the Data Collection Quality Program, which began in 1990. Errors were repeatedly found in his work and, over the past three years, performance in the quality element decreased until he failed, resulting in the need for a PIP. The employing establishment advised

that its reviews showed that appellant had problems determining the appropriate authorizing official and maximizing participation as well as difficulty interviewing respondents and using the personal computer. It stated that most of the supervisors and field economists in the region participated in at least some of the validation activities or remedial training and appellant's results were consistently problematic. The employing establishment denied that it "ganged up" on appellant, noting that it was their typical distribution of work that allowed them to reduce the charge of individual bias or shortcoming negatively impacting an employee. Based on appellant's performance, every schedule he completed had to be reviewed. While he alleged that he was given tight timeframes for completing his work, the employing establishment indicated that there was an efficiency standard which provided ranges but it was based on an average range of all work. The employing establishment stated that many stores required extremely little time or interaction and to suggest that every store, regardless of the number of quotes or complexity, was given one hour to complete was absurd and had never been the policy or direction of the employing establishment. It noted that driving was a critical part of the job due to the geographic dispersion of assignments and most, if not all, of those who accompanied appellant on observations and on-the-job training assignments were alarmed at his problematic driving and decision making as he seemed to lack eye-hand coordination and judgment.

By decision dated January 6, 2011, OWCP denied appellant's claim. It found that he did not establish any compensable work factors.

On January 11, 2011 appellant requested an oral hearing, which was held on June 22, 2011. He indicated that his job involved collecting data for the consumer price index and entailed lots of travel and meeting with various respondents. Appellant indicated that he worked 16 to 24 hours a week and, when it got busier, up to 32 hours. He also stated that he worked another job at the Timothy School, averaging 20 to 22 hours weekly, doing bookkeeping. Appellant stated that he could handle the demands of his Department of Labor position but he did not realize the effect it was having on him. He stated that his left arm started to get tight and he noticed a tremor. Appellant noted that he had issues with his neck, left hand and left foot. He noted that he had carpal tunnel surgery and was out of work for a while. Appellant indicated that he became more depressed and that his physiological and psychological problems progressively worsened and his work quality diminished. He found it stressful making sure that he got his work done. Appellant needed time to manage and to travel. He stated that the details required of him became more intense and there were procedures or schedule reviews, where various people would check his work and then send it back.

Appellant stated that it became too much trying to keep up with the various recommendations of whatever he was doing wrong. He noted the areas around Philadelphia that he covered and advised that he might have 30 to 35 stores to visit in that 24- to 32-hour period. While on the road, appellant had to deal with traffic and weather conditions. He stated that there were time restraints on evaluations and he had an hour to do a lot of work. Appellant noted carrying a computer with a strap around his neck that he held like a tray and input information. He noted that many times the respondents were not cooperative or did not have time. Many times appellant had to go back and hope that they changed their minds or he had to pass the information to his supervisors who would have someone else get the information. In addition to data collection and a process called housing, he had to report his whereabouts to his supervisor. Appellant indicated that since 2007 he felt his productivity became deficient and he had trouble

making his demands. He felt that his health was deteriorating and he asked not to work more than 24 hours weekly because he felt something was wrong. Appellant noted that his left side started to drag, his tremors increased and his symptoms affected his ability to do his job such that he did not meet his standards in his last review. His supervisors wanted to place him on a PIP in September 2010 and he stuttered during his performance evaluation. Appellant stated that he was not put on a PIP because he was sick. He stated that he could not work when stress levels rose. Appellant stated that his job at Timothy School was less stressful.

Subsequent to the hearing, OWCP received statements from appellant's attorney dated June 24, July 19 and August 1, 2011 along with a copy of a July 7, 2011 denial of an accommodation request with an attached November 2, 2010 report from Health and Human Services, in which an occupational medicine consultant opined that, from mental and physical health perspectives, appellant would only be able to perform his position part time or 24 hours a week. Also received was a June 21, 2011 report from Dr. Colcher, which indicated that having time constraints on task completion and traveling was stressful for people with Parkinson's disease. She also indicated that appellant had difficulty climbing stairs and reaching for things, which are all aspects of his job. Dr. Colcher opined that the job stress associated with his job exacerbated the Parkinson's symptoms.

By decision dated September 14, 2011, an OWCP hearing representative affirmed the January 6, 2011 decision.

LEGAL PRECEDENT

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

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*,³ 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.⁴ 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

² *George H. Clark*, 56 ECAB 162 (2004).

³ 28 ECAB 125 (1976).

⁴ *See Robert W. Johns*, 51 ECAB 137 (1999).

by the employing establishment or by the nature of the work.⁵ Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.⁶ Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.⁷ Personal perceptions alone are insufficient to establish an employment-related emotional condition.⁸ 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.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 providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered. 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.¹⁰

ANALYSIS

Appellant alleged an emotional condition as a result of the constant changing nature of his job requirements, the technical specifications of his job and the time constraints involved in acquiring responses from interviewees. He asserted that his work was constantly reviewed and he was subjected to numerous scheduled reviews which made him feel sick. Appellant indicated that he failed his year-end performance review and was to be placed on a PIP. The Board must thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA. The Board notes that while appellant generally alleged that the nature of his job, which involved travel, working on a computer and collecting data, was stressful, he has not specifically attributed his emotional condition to the regular or specifically assigned duties of his position as an economic assistant and substantiated such allegations with probative and reliable evidence. Appellant did not note particular time periods and places in which specific work duties affected his claimed condition. He generally complained about the amount of work he needed to complete; whereas the employing establishment refuted appellant's description of his duties. Appellant's concerns about his job were more associated with the results of his poor performance rather than concerns about

⁵ *Lillian Cutler*, *supra* note 3.

⁶ *J.F.*, 59 ECAB 331 (2008).

⁷ *M.D.*, 59 ECAB 211 (2007).

⁸ *Roger Williams*, 52 ECAB 468 (2001).

⁹ *See Lillian Cutler*, *supra* note 3.

¹⁰ *C.S.*, 58 ECAB 137 (2006); *A.K.*, 58 ECAB 119 (2006).

actually doing his job. His performance issues seemed to stem from his deteriorating medical condition. The Board finds that he has not substantiated a compensable factor under *Cutler*.¹¹

Appellant made several allegations related to administrative and personnel actions. In *Thomas D. McEuen*,¹² the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under FECA would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹³

Appellant asserted that the time constraints in his job made it difficult to complete his duties and to meet the time restraints required of his position. The Board notes that the assignment of work is an administrative function¹⁴ and the manner in which a supervisor exercises his or her discretion falls outside the ambit of FECA. Absent evidence of error or abuse, appellant's mere disagreement or dislike of a managerial action is not compensable.¹⁵ The Board finds that appellant has not offered sufficient evidence to establish error or abuse regarding his work assignments. The employing establishment indicated that there was an efficiency standard which provided an average range for all work. It explained that the work requirements and the performance requirements were not consistent with appellant's description. Further, the employing establishment noted that the time frames for the job were average time frames. It denied that appellant was only given one hour in which to complete an assignment and stated that it was never the policy or direction of the employing establishment. The evidence does not establish that the employing establishment acted unreasonably.¹⁶ Appellant has not established administrative error or abuse in the performance of these actions and therefore they are not compensable under FECA.

Appellant asserted that he was subject to constant review of his work and numerous comprehensive follow-up plans that caused him to get sick. He stated that the review of his work resulted in him failing his year end performance review and being subject to a PIP. The employer explained why appellant's performance was less than fully successful, noting that his

¹¹ See *Lillian Cutler*, *supra* note 3

¹² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹³ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁴ *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

¹⁵ See also *Peter D. Butt Jr.*, 56 ECAB 117 (2004); see *Barbara J. Latham*, 53 ECAB 316 (2002); (allegations such as improperly assigned work duties, which relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties do not fall within the coverage of FECA).

¹⁶ *D.L.*, 58 ECAB 217 (2006).

work was randomly sampled, as was the work of others. It noted that the errors were repeatedly found in appellant's work resulting in the need for a PIP. The employing establishment denied treating appellant disparately noting that, based on his performance, every schedule he completed had to be reviewed and the validation activities and remedial training for him were consistently problematic. It advised that appellant's rating period was extended to provide an opportunity to improve performance. Appellant's allegation that the employing establishment improperly monitored or disciplined him relates to an administrative or personnel matter unrelated to his regular or specially assigned duties and does not fall within the coverage of FECA.¹⁷ Although the handling of disciplinary actions and evaluations are generally related to the employment, they are administrative functions of the employing establishment and not duties of the employee.¹⁸ The record, as noted above, fails to establish that appellant was disciplined. While appellant may have failed his year end performance review, he was not actually placed on a PIP as he was on medical leave. To the extent that he is complaining about the manner in which a supervisor performs his duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, is 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, that employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.¹⁹ Absent evidence of error or abuse, appellant's mere disagreement or dislike of a managerial action is not compensable.²⁰ The Board finds that appellant has not offered sufficient evidence to establish error or abuse and the evidence does not establish that the employing establishment acted unreasonably. Appellant has not established administrative error or abuse in the performance of these actions and therefore they are not compensable under FECA.

Consequently, appellant has not established his claim for an emotional condition as he has not attributed his claimed condition to any compensable employment factors.²¹

On appeal, appellant's attorney contends that the employing establishment acknowledged appellant had difficulty accomplishing his assigned duties as well as the stressful nature of his position and, thus, he has provided *prima facie* evidence of his claim. As noted above, appellant made general allegations that his emotional reaction arose from the nature of his work without substantiating such allegations with probative and reliable evidence. His perception of his job duties was not consistent with the job as described by the employing establishment. Thus, appellant has not established a compensable employment factor. He may submit new evidence

¹⁷ 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).

¹⁸ *Id.* See *Peter D. Butt Jr.*, *supra* note 15 (monitoring of work activities is an administrative function of the employing establishment).

¹⁹ See *Marguerite J. Toland*, 52 ECAB 294 (2001).

²⁰ See *Barbara J. Latham*, *supra* note 15.

²¹ As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496 (1992).

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 the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the September 14, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 20, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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