

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

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R.C., Appellant )  
and ) Docket No. 12-584  
U.S. POSTAL SERVICE, POST OFFICE, ) Issued: August 23, 2012  
Colorado Springs, CO, Employer )  
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*Appearances:*  
Tom Perez, for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On January 23, 2012 appellant filed a timely appeal from an October 14, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his emotional condition 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.

**FACTUAL HISTORY**

On June 7, 2011 appellant, then a 20-year-old rural route carrier, filed a traumatic injury claim alleging that he experienced acute stress due to constant harassment by his supervisor, Heidi Cassuben. OWCP developed his claim as an occupational disease claim, as he claimed

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

that his condition was due to employment-related incidents occurring over a period over more than one day.<sup>2</sup>

The employing establishment controverted appellant's claim, asserting that his allegations were vague and unfounded. In a May 31, 2011 memorandum, Supervisor Cassuben stated that appellant had been sent home that date because he did not have access to a vehicle for his route and the employing establishment was unable to accommodate his light-duty request based upon a nonwork-related injury.

In a letter dated June 17, 2011, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. It advised him to provide details regarding incidents that he believed contributed to his claimed condition. Appellant was also instructed to provide a medical report, with a diagnosis and an opinion as to the cause of the diagnosed condition.

In a letter dated June 20, 2011, the employing establishment denied appellant's allegation of harassment by his supervisor. It noted that the denial of his request for a reduced work schedule was an administrative matter. As rural carriers were not entitled to light-duty assignments, there had been no showing of error or abuse.

In a July 8, 2011 letter, Supervisor Cassuben denied that she had harassed appellant, noting that the employer had tried to accommodate appellant by moving him to four different routes. She stated that, while his performance had been poor, the only active discipline he had received was for poor attendance. Supervisor Cassuben noted that appellant had acknowledged that the injury for which he sought light duty was not work related.

The record contains medical reports, unsigned duty status reports, prescription slips and notes from physician assistants, for the period June 7, 2010 through February 23, 2011.

In a letter dated July 8, 2011, appellant stated that he filed two grievances alleging that management refused to accommodate his request to work a 9-hour day, rather than a 12-hour day and failed to provide written notice removing his restriction.

On July 11, 2011 appellant again asserted that management refused to provide him with reasonable accommodations and constantly harassed him. On his first day at the job, he returned to the employing establishment to obtain extra advertisements to complete his route. Supervisor Lori Covey asked appellant what he was doing wandering around and told him to get back to his case immediately. When appellant tried to explain that he needed more ads, she shouted, "I do n[o]t care. I said to get back to your case now!" On his second day on route 32, he again returned to the station to retrieve additional advertisements. Station Manager Karen Little stated, "Are you kidding me?! You [a]re going to get me fired. I want to go home already." Appellant stated, "All I get from Supervisor Covey and Manager Little for my efforts ... is bullying, harassment and intimidation."

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<sup>2</sup> OWCP's treatment of appellant's claim as an occupational disease claim was proper. Its procedures provide that it is not proper to deny a claim merely because a claimant submitted an improper form. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.4(b) (January 2003); see H.M., Docket No. 09-1548 (issued March 5, 2010).

On appellant's third day, Manager Little informed him that there had been complaints of undelivered mail on his route. She told him that she was really disappointed in him and instructed him to attend training the following day. When appellant advised the manager that he was not available, Manager Little "lost it" and yelled at him, stating that he "will be available when [she] call[s] him to come in.

On May 4, 2010 Supervisor Covey yelled at appellant for failing to answer his cell phone while he was on his route. She accused him of leaving a mailbox unsecured in an area she believed to be on his route. Supervisor Covey later apologized after discovering that the unsecured box was not on appellant's route.

Appellant alleged that he was singled out for a 30-day review on May 26, 2010. On October 23, 2010 he received a letter of warning, which he refused to sign. On April 9, 2011 another frivolous investigation was allegedly conducted regarding a package appellant supposedly failed to scan as delivered.

Appellant stated that, on May 31, 2011, he provided his supervisor with medical restrictions limiting him to a nine-hour day. He alleged that he was depressed when he was told that the employing establishment is not required to accommodate rural carriers and that he must leave the building and must not return until he no longer had restrictions.

Appellant alleged that on June 3, 2011 Manager Little was verbally abusive. On that day, he reported to work because he was informed that he was still on the schedule. Manager Little telephoned appellant and yelled, "Who said you could come back to work?" She stated:

"I told you to never come back to the [employing establishment] and I do n[o]t care what the schedule says, my word is over everything, including the schedule. Do you understand this?"

Appellant submitted a statement dated December 29, 2010 from Sue Wood, assistant state steward, who indicated that he was the only rural carrier called in for a 30-day review.

In a letter dated July 9, 2011, appellant disputed the employing establishment's claim that he requested light duty, contending that working a nine-hour shift does not constitute light duty.

The record contains notes from a physician's assistant, dated October 23, 2010 through July 7, 2011. On February 24, 2011 N. Koren recommended that appellant should work no more than a nine-hour shift.

In an October 25, 2010 statement, appellant alleged that he was harassed on October 23, 2010 by Supervisor Cassuben, who behaved in an unprofessional and aggressive manner. Supervisor Cassuben reportedly told him that she was done with him and that he had disappointed her, used profanity and exhibited behavior suggesting that she was intoxicated, such as licking her lips, slurring her words, stuttering slightly and smelling like alcohol. After she handed him a letter of warning, she harassed him again by asking if he was okay to drive.

Appellant submitted a May 4, 2010 statement from Coworker Bernice Baker, who related his claims that Supervisor Cassuben had mistakenly accused him of leaving a postal box unsecured and had harassed him and treated him unfairly.

In a letter dated August 22, 2011, Supervisor Cassuben controverted appellant's claims of harassment and denied that she had acted abusively or unreasonably in her role as a supervisor. She stated that management had tried to hold him accountable for frequent misdeliveries, not delivering all mail, cursing on the workroom floor and that he frequently threw temper tantrums when efforts were made to talk to him. Supervisor Cassuben also stated that 30-day reviews were conducted with all new rural carriers, she denied that she had acted aggressively or that she had harassed appellant on October 23, 2010. She noted that he was reprimanded for failing to deliver two tubs of hold mail on that date.

Supervisor Cassuben stated that postal regulations precluded the use of a postal route for a light-duty assignment; therefore, the employing establishment was unable to accommodate a nine-hour per day restriction.<sup>3</sup> She stated that appellant had been given several opportunities, by way of reassignments, to show he was capable of doing his job, but had failed to perform well. Supervisor Cassuben denied abusing him, as alleged, when she received a report that he had failed to secure a postal box on his route. She stated that she had tried repeatedly to reach appellant on his cell phone, but that he had failed to answer. When appellant finally arrived at the station, Supervisor Cassuben addressed the customer complaint with him. After discovering that the unsecured box was not on his route, she apologized for the misunderstanding.

Supervisor Cassuben denied acting abusively regarding the events of May 31 and June 3, 2011. Due to postal regulations, she informed appellant upon receipt of his work restrictions, that he would not be allowed to return to work until his restrictions were lifted. Appellant failed to follow Supervisor Cassuben's instructions and returned to work although another carrier had been assigned to his route. When told to leave the building, he began to argue.

In an August 23, 2011 statement, Manager Little denied ever yelling at appellant. She also stated that management did not bully or harass him.

In an undated statement, Laura Cady denied raising her voice to appellant or indicating that she did not care. Rather, she indicated that she tried to assist him when he was looking for "extras" and explained that not all customers received the flyers.

In an October 14, 2011 decision, OWCP denied appellant's claim, finding that he had not established a compensable factor of employment. It determined that he had not established discrimination or harassment or that the employing establishment acted improperly regarding administrative matters.

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<sup>3</sup> Supervisor Cassuben noted that rural carriers are required to work up to 12 hours per day.

## **LEGAL PRECEDENT**

To establish a claim that an emotional condition arose in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he 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.<sup>4</sup>

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 illness has some connection with employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to his regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of FECA. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of his work or his fear and anxiety regarding his ability to carry out his work duties.<sup>5</sup> By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>6</sup> An employee's emotional reaction to an administrative or personnel matter is generally not covered by workers' compensation. The Board has held, however, that error or abuse by the employing establishment in an administrative or personnel matter may afford coverage.<sup>7</sup>

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.<sup>8</sup>

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<sup>4</sup> *D.L.*, 58 ECAB 217 (2006).

<sup>5</sup> *Ronald J. Jablanski*, 56 ECAB 616 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>6</sup> *Id.*

<sup>7</sup> *Margreate Lublin*, 44 ECAB 945 (1993). See generally *Thomas D. McEuen*, 41 ECAB 387 (1990), reaff'd on recon., 42 ECAB 566 (1991).

<sup>8</sup> *D.L.*, *supra* note 4; *T.G.*, 58 ECAB 189 (2006); *C.S.*, 58 ECAB 137 (2006); *A.K.*, 58 ECAB 119 (2006).

The Board has held that allegations, alone, by a claimant are insufficient to establish a factual basis for an emotional condition claim but must be substantiated by the evidence.<sup>9</sup> Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must establish such allegations with probative and reliable evidence.<sup>10</sup>

With regard to claims under FECA, the Board has held that the determination of an employee's rights or remedies under other statutory authority does not establish entitlement to benefits under FECA. To establish disability, an employee's injury must be shown to be causally related to an accepted injury or accepted factors of his or her federal employment. For this reason, the determinations of other administrative agencies or courts, while instructive, are not determinative with regard to disability arising under FECA. Findings made by the MSPB or Equal Employment Opportunity Commission may constitute substantial evidence relative to a claim to be considered by OWCP and the Board.<sup>11</sup>

### ANALYSIS

Appellant does not attribute his emotional condition to any specially assigned job requirement or duty arising from his status as an employee under *Cutler*. Rather, he contends that he experienced stress as a result of discriminatory and abusive actions on the part of his supervisors. Having considered the evidence and argument presented, the Board finds that appellant has failed to establish a compensable employment factor. Therefore, appellant failed to meet his burden of proof to establish that he sustained an emotional condition causally related to factors of his federal employment.

Appellant alleged that management refused to modify his work schedule to accommodate restrictions that provided a nine-hour workday; that he was sent home on May 31, 2011 due to his restrictions; and that he was reprimanded for returning to work when he was informed he was on the schedule. The Board finds that these allegations relate to administrative or personnel matters, unrelated to his regular or specially assigned work duties and, therefore, do not fall within the coverage of FECA.<sup>12</sup> Although the handling of disciplinary actions and leave requests, the assignment of work duties and the monitoring of work activities are generally related to the employment, they are administrative functions of the employer and not duties of

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<sup>9</sup> *Charles E. McAndrews*, 55 ECAB 711 (2004); see also *Arthur F. Hougens*, 42 ECAB 455 (1991) and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence established such allegations).

<sup>10</sup> *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (it was found that the employee failed to establish the incidents or actions characterized as harassment).

<sup>11</sup> See *Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>12</sup> See *Lori A. Facey*, 55 ECAB 217 (2004). See also *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). See also *Jimmy B. Copeland*, 43 ECAB 339 (1991) (An investigation by the employing establishment is an administrative matter).

the employee.<sup>13</sup> The Board has also found that an administrative or personnel matter will be considered to be 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 has examined whether the employing establishment acted reasonably.<sup>14</sup>

Appellant alleged that on May 31, 2011 he provided his supervisor with medical restrictions limiting him to a nine-hour day. He alleged that he became depressed when he was told that the employing establishment was not required to accommodate rural carriers and to leave the building and not return until he no longer had restrictions. Appellant contended that working a nine-hour shift does not constitute light duty. Supervisor Cassuben, however, stated that rural carriers are required to work up to a 12-hour day and that postal regulations precluded the use of a postal route for a light-duty assignment; therefore, the employing establishment was unable to accommodate a nine-hour-per-day restriction. The supervisor noted that appellant had acknowledged that the injury for which he sought light duty was not work related. In this case, appellant has not submitted sufficient evidence to show that the employing establishment committed error or abuse with respect to this administrative matter.

Appellant alleged that he was singled out for a 30-day review on May 26, 2010. He submitted a letter from a union representative, who stated that he was the only rural carrier called in for a 30-day review. Supervisor Cassuben, however, indicated that 30-day reviews were conducted with all new rural carriers. In any event, the Board finds that the manager's decision to conduct a 30-day review of a new employee was a reasonable exercise of her administrative duties.

Appellant alleged that while issuing him a letter of warning on October 23, 2010 Supervisor Cassuben behaved in an unprofessional and aggressive manner, used profanity and exhibited behavior suggesting that she was intoxicated, such as licking her lips, slurring her words, stuttering slightly and smelling like alcohol. Supervisor Cassuben reportedly told him that she was done with him and that he had disappointed her. After she handed appellant a letter of warning, she purportedly harassed him again by asking if he was okay to drive. Appellant, however, submitted no evidence to support his allegations of aggressive or drunken behavior on the part of the supervisor. On the other hand, Supervisor Cassuben denied his allegations and stated that appellant was reprimanded for failing to deliver two tubs of hold mail. Appellant has not shown that his supervisor's actions constituted error or abuse.

Appellant alleged that on May 4, 2010 Supervisor Cassuben falsely accused him of leaving a mailbox unsecured in an area she believed to be on his route and yelled at him for failing to answer his cell phone while he was on his route. Supervisor Cassuben, however, denied abusing him, stating that when she received a report that he had failed to secure a postal box on his route, she tried repeatedly to reach him on his cell phone but that he had failed to answer. When appellant finally arrived at the station, she addressed the customer complaint with him. After discovering that the unsecured box was not on his route, Supervisor Cassuben

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<sup>13</sup> *Id.*

<sup>14</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

apologized for the misunderstanding. Appellant submitted a statement from Ms. Baker, who repeated his allegation that he had been falsely accused of leaving a postal box unsecured. Ms. Baker's statement is not evidence of abuse or error on the part of management. The Board finds that Supervisor Cassuben's action of investigating the customer complaint was reasonable and appropriate.

Appellant alleged that he was verbally abused by management. For example, on his first day on the job, Supervisor Covey asked him what he was doing wandering around the station and told him to get back to his case immediately. When appellant tried to explain that he needed more ads, she allegedly shouted, "I do n[o]t care. I said to get back to your case now!" On his second day, Station Manager Little observed him looking for advertisements in the station and stated: "Are you kidding me?! You [a]re going to get me fired. I want to go home already." On appellant's third day, she told him that she was really disappointed in him and instructed him to attend training the following day. When appellant advised Manager Little that he was not available, she "lost it" and yelled at him, stating that he "will be available when [she] call[s] him to come in. On May 4, 2010 Supervisor Covey reportedly yelled at him for failing to answer his cell phone while he was on his route. On June 3, 2011 Manager Little allegedly yelled at appellant when he returned to work after being told to go home and stated: "Who said you could come back to work? I told you to never come back to the [employing establishment] and I do n[o]t care what the schedule says, my word is over everything, including the schedule. Do you understand this?"

A verbal altercation, when sufficiently detailed by the claimant and supported by the evidence, may constitute a compensable employment factor.<sup>15</sup> This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.<sup>16</sup> In this case, appellant provided no evidence to substantiate his allegation and his supervisors denied ever yelling at or acting abusively towards him. He has not shown how his supervisors' actions rise to the level of verbal abuse or otherwise fall within coverage of FECA.<sup>17</sup> The Board finds that his emotional reaction to the coworker's behavior must be considered self-generated in that it resulted from his perceptions regarding her supervisor's statements.<sup>18</sup>

Appellant made additional allegations of harassment and discrimination on the part of his supervisors. To the extent that incidents alleged as constituting discrimination and harassment are established as factual, these could constitute employment factors.<sup>19</sup> However, for harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that it did, in fact, occur. Mere perceptions of harassment or discrimination will not support an award of compensation.<sup>20</sup> His general allegations are insufficient to establish that he was

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<sup>15</sup> *C.S.*, *supra* note 8.

<sup>16</sup> *J.C.*, 58 ECAB 594 (2007).

<sup>17</sup> *Harriet J. Landry*, 47 ECAB 543, 547 (1996); see *Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991).

<sup>18</sup> See *David S. Lee*, 56 ECAB 602 (2005).

<sup>19</sup> *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>20</sup> *Charles E. McAndrews*, 55 ECAB 711 (2004).

harassed or discriminated against by her supervisors at any time. Appellant has not established a compensable employment factor with respect to these general allegations.

Appellant stated that he filed two grievances alleging that management refused to accommodate his request to work a 9-hour day, rather than a 12-hour day and failed to provide written notice removing his restriction. As noted above, findings made by the MSPB or EEO Commission may constitute substantial evidence relative to a claim to be considered by OWCP and the Board.<sup>21</sup> In this case, however, the record does not contain a final EEO Commission decision finding that the employing establishment committed error or abuse. Therefore, appellant has not established entitlement to benefits under FECA in this regard.

The Board finds that appellant failed to establish a compensable factor of employment; therefore, he failed to establish that his emotional condition arose in the performance of duty.<sup>22</sup>

On appeal, appellant reiterates his arguments regarding alleged harassment and discrimination by the employing establishment. He disagrees with OWCP's October 14, 2011 decision, contending that the employing establishment committed errors that resulted in his emotional condition. For reasons stated, the Board finds that appellant failed to establish a compensable factor of employment.

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 not established that he sustained an emotional condition in the performance of duty.

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<sup>21</sup> See *Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>22</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. See *L.K.*, Docket No. 08-849 (issued June 23, 2009); *Margaret S. Krzycki*, 43 ECAB 496 (1992). *Marlon Vera*, 54 ECAB 834 (2003).

**ORDER**

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

Issued: August 23, 2012  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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