

work environment caused anxiety, depression, hypertension and aggravated his post-traumatic stress disorder (PTSD).² He alleged that his supervisor, William Pritchett refused to allow him to file an OWCP claim when he reported his condition. Mr. Pritchett allegedly informed appellant that he was ineligible to file a claim. Appellant also alleged that Mr. Pritchett forced him to seek treatment at the emergency room for his PTSD as a veteran and not as an employee.

By correspondence dated June 22, 2011, OWCP informed appellant that the evidence of record was insufficient to support his emotional condition claim. Appellant was advised as to the medical and factual evidence to submit and given 30 days to provide the requested information.

OWCP received evidence from appellant and the employing establishment, which controverted the claim. Appellant submitted a November 19, 2010 disability note from Dr. James A. Rush, a treating Board-certified psychiatrist, recommending two weeks off work due to mental health reasons.

In a December 10, 2010 e-mail, appellant requested to have his time corrected and to file a workers' compensation claim for a November 19, 2010 incident. In a response e-mail that day, Mr. Pritchett stated that, as appellant was seen at the emergency room as a veteran, the time taken would stand as sick leave. If further discussion was required, he stated that it should be done in person and not by e-mail.

In a July 15, 2011 e-mail to Jennifer J. Smith, a human resources specialist, Mr. Pritchett stated that appellant requested being seen as a veteran and not an employee at the emergency room in order to be seen quickly. He was informed that, if appellant was seeking treatment as an employee, he would have to be seen at employee health and not at the emergency room; but if he sought treatment as a veteran, he would be seen at the emergency room. Mr. Pritchett advised appellant of his options and appellant stated that he wanted to be seen at the emergency room. He informed appellant that he could provide help with filing a compensation claim concerning the November 19, 2010 incident. Appellant did not follow up with Mr. Pritchett or file a claim through ASSIST. Mr. Pritchett provided a copy of appellant's position description and stated that his duties were within the scope of the position with little or no travel and deadlines of five to seven days. He related that appellant had personality conflicts with other services and coworkers. Mr. Pritchett related that allowances were made to reduce appellant's stress and he was able to perform his duties as a supervisor of mailroom and warehouse operations. On January 26, 2011 appellant was issued a letter of instruction and an Administrative Investigation Board looked into allegations of misconduct in January and February 2011.

On January 26, 2011 appellant received a letter of instruction from his supervisor for failing to provide holiday coverage; for failing to get beds out of the hospital into the warehouse as instructed on January 16, 2011; and for not picking up the beds until the next morning. He was advised that any failure to follow supervisory instructions within instructed timelines could result in disciplinary action.

² Appellant resigned from employment with the Amarillo Veterans Administration on March 11, 2011.

By decision dated July 27, 2011, OWCP denied appellant's claim. It found that he had failed to establish fact of injury as he provided no detailed statement describing the incidents or employment conditions he believed contributed to his condition.

On August 12, 2011 appellant requested a telephonic hearing before an OWCP hearing representative, which was held on December 14, 2011. At the hearing, he stated that his PTSD had been aggravated by Mr. Pritchett. Appellant currently worked cleaning toilets in a hospital facility for the government. His representative argued that appellant had been denied due process due to the lack of communication from the employing establishment in assisting him with filing his claim. The representative also argued that his employer denied appellant access to the physician of his choice when it denied him access to OWCP's process. He asserted that Arlene B. Rubin, a workers' compensation manager, provided appellant with an incorrect claim form and failed to submit the medical evidence appellant provided her to OWCP.

Subsequent to the hearing, OWCP received additional medical and factual evidence. On November 19, 2010 Dr. Thomas R. Turner, a treating physician, reported that appellant was treated at the emergency room for extreme anxiety and that had been diagnosed with PTSD.

On July 1, 2011 Hector A. Garcia, a treating clinical psychologist, diagnosed PTSD.

On November 29, 2011 Dr. Rush, a treating Board-certified psychiatrist, reported that appellant denied being depressed or having PTSD symptoms and that time off work has been helpful.

On December 16, 2011 Ms. Rubin related that appellant requested that she provide him a copy of his file and that all she had was a copy of his claim. She informed him that he was responsible for submitting evidence with his claim.

In January 3 and February 4, 2011 progress notes, Dr. Rush diagnosed PTSD and moderate major depressive disorder and job-related stressors.

In a January 14, 2011 report, Paul Dave Whitaker, Ph.D. a clinical psychologist, diagnosed a service-connected major depressive disorder. He reported appellant's symptoms and that appellant had experienced work problems. The problems included dreading going to work, distrust of coworkers and feeling comments from his supervisor were pejorative. Dr. Whitaker recommended that appellant's 10 percent service disability be increased to 30 percent for his service-connected major depressive disorder.

In therapy reports dated January 26 to March 9, 2011, Dr. Whitaker diagnosed recurrent moderate PTSD exacerbated by work stressors. He reported seeing appellant for therapy in which he stated that he was working through having his work integrity challenged on January 26, 2011. On February 16 and March 1, 2011 Dr. Whitaker reviewed e-mails from appellant's supervisor which showed the boss was not responsive to questions or seem to pay attention to what appellant has to say. In a March 9, 2011 report, he noted that appellant decided to resign his position due to pressure at work.

On January 23 and February 6, 2012 OWCP received a February 16, 2011 disability slip from Dr. Whitaker and November 19, 2010 hospital reports.

In a February 13, 2012 decision, an OWCP hearing representative affirmed the July 27, 2011 decision.

LEGAL PRECEDENT

To establish a claim that he or she sustained an emotional condition in the performance of duty, an employee 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 his or her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.³

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.⁴ 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.⁵ 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.⁶ 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.⁷

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.⁸ Mere perceptions of harassment or discrimination are not compensable under FECA.⁹ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.¹⁰ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹¹ A claimant must

³ *V.W.*, 58 ECAB 428 (2007); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

⁵ *A.K.*, 58 ECAB 119 (2006); *David Apgar*, 57 ECAB 137 (2005).

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

⁷ *J.F.*, 59 ECAB 331 (2008); *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁸ *K.W.*, 59 ECAB 271 (2007); *Robert Breeden*, *supra* note 4.

⁹ *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁰ *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, *supra* note 4.

¹¹ *G.S.*, Docket No. 09-764 (issued December 18, 2009); *Ronald K. Jablanski*, 56 ECAB 616 (2005); *Penelope C. Owens*, 54 ECAB 684 (2003).

establish a factual basis for his or her allegations of harassment or discrimination with probative and reliable evidence.¹²

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.¹³ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.¹⁴ 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.¹⁵

ANALYSIS

Appellant alleged an emotional condition as a result of several actions by Mr. Pritchett. He alleged his supervisor refused to allow him to file a workers' compensation claim; forced him to go to the emergency room as a veteran and not as an employee; erroneously issued a letter of instruction on January 26, 2011; denied him access to OWCP and the physician of his choice; and failed to provide information as to correct OWCP process. Appellant also alleged that Ms. Rubin gave him the wrong form to file, did not forward medical reports he submitted or communicate with him. He also generally alleged a hostile work environment. The Board must initially review whether these alleged incidents and conditions of employment are established as compensable employment factors under the terms of FECA. Appellant has not attributed his emotional condition to his regular or specially assigned duties as a warehouse supervisor. Therefore, he has not alleged a compensable factor under *Cutler*.¹⁶

Appellant made allegations related to administrative and personnel actions. In *Thomas D. McEuen*,¹⁷ 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

¹² *Robert Breeden, supra* note 4; *Beverly R. Jones*, 55 ECAB 411 (2004).

¹³ *D.L.*, 58 ECAB 217 (2006); *Jeral R. Gray*, 57 ECAB 611 (2006).

¹⁴ *K.W.*, *supra* note 8; *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

¹⁵ *Robert Breeden, supra* note 4.

¹⁶ *See Lillian Cutler, supra* note 6.

¹⁷ *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁸

Actions taken by the employer regarding the filing of appellant's claim are administrative functions not related to the employee's day-to-day or specially assigned duties.¹⁹ The evidence reflects that prior to going to the emergency room on November 19, 2010 appellant was provided with the option of going to the emergency room as a veteran or going as an employee to the health unit. Appellant chose to be seen as a veteran. The record also shows that his supervisor offered to talk to him in person and not through e-mail about filing a claim, but there is no evidence that he talked to Mr. Pritchett. There is also no evidence in the record supporting appellant's allegations that Mr. Pritchett denied him access to filing a claim under OWCP, that he was denied access to the physician of his choice, that Ms. Rubin gave him the wrong claim form or that medical evidence he provided to Ms. Rubin was not submitted to OWCP. These particular allegations are vague and unsubstantiated. As previously noted, appellant must support his allegations with probative and reliable evidence.²⁰ The Board finds that he failed to establish a compensable factor of employment with respect to these allegations.

The Board further finds that appellant has failed to establish a hostile work environment. Appellant has not submitted any factual evidence to support that he was subjected to a hostile work environment. He provided no statement describing specific incidents or events which he believed constituted a hostile work environment. As such, appellant's allegation of a hostile work environment constitute mere perceptions or generally stated assertions of dissatisfaction with certain superiors at work which do not support his claim for an emotional disability.²¹ The only evidence in the record is a letter of instruction from Mr. Pritchett concerning appellant's failure to following his instructions regarding holiday coverage and the removal of beds. There is no evidence that Mr. Pritchett acted abusively in issuing the letter of instruction. Moreover, although warned of the possibility, no disciplinary action was taken against appellant. For these reasons, OWCP properly determined that these incidents constituted mere perceptions of appellant and were not factually established. Appellant has not submitted evidence sufficient to establish that the employing establishment engaged in a pattern of harassment and intimidation toward him or created a hostile workplace environment.

On appeal, appellant's representative contends that appellant was denied timely access to the employing establishment's response to the hearing transcript as the employing establishment failed to provide appellant with a copy of the response. The Board finds this contention to be without merit as appellant was aware that the employing establishment controverted his claim.

¹⁸ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁹ *G.S.*, *supra* note 11; *David C. Lindsey, Jr.*, *supra* note 14 (administrative or personnel matters are generally unrelated to an employee's regular or specially assigned work duties and do not fall within coverage of FECA absent evidence showing error or abuse on the part of the employing establishment).

²⁰ *Pamela D. Casey*, 57 ECAB 260 (2005) (allegations alone are insufficient to establish a factual basis for an emotional condition claim); *Kathleen D. Walker*, 42 ECAB 603 (1991).

²¹ See *Robert G. Burns*, *supra* note 9; *Curtis Hall*, 45 ECAB 316 (1994); *Kathleen D. Walker*, *supra* note 20.

Moreover, an OWCP hearing representative affirmed the denial of appellant's claim on the grounds that he failed to submit any evidence supporting his allegations.

Consequently, appellant has not established his claim for an emotional condition as he has not attributed his claimed condition to any compensable employment factors.²² He 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 the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 13, 2012 is affirmed.

Issued: December 3, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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

²² As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record. See *L.K.*, Docket No. 08-849 (issued June 23, 2009); *Robert Breeden*, *supra* note 4; *Marlon Vera*, 54 ECAB 834 (2003); *Margaret S. Krzycki*, 43 ECAB 496 (1992).