

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

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**B.R., Appellant**

**and**

**DEPARTMENT OF HOMELAND SECURITY,  
TRANSPORTATION SECURITY  
ADMINISTRATION, Vandalia, OH, Employer**

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**Docket No. 11-1223  
Issued: January 24, 2012**

*Appearances:*  
*Alan J. Shapiro, Esq.,* for the appellant  
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 26, 2011 appellant, through his attorney, filed a timely appeal from a March 28, 2011 decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for an emotional condition. 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.

On appeal, appellant's attorney contends that OWCP's decision is contrary to fact and law.

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

## **FACTUAL HISTORY**

On June 23, 2010 appellant, then a 43-year-old transportation security officer (screener) filed an occupational disease claim alleging depression and anxiety as a result of his federal employment. He alleged that he was treated poorly and was a lesser person since a prior injury. Appellant felt alienated and would sit alone for 40 hours a week doing nothing but watching his coworkers through a glass wall do the job he loved. The employing establishment controverted the claim.

Appellant submitted a statement that he enjoyed his work but was injured in 2007. His life took a dramatic turn and he was unable to perform his assigned duties due to his medical limitations. Over time, appellant's peers and supervisors began to treat him differently due to their frustration with his limitations and the perception that he was a burden and not a team player. He became the butt of jokes, talked about as if he did not want to work and that he was treated as less of a person. Appellant was told by the lead transportation security officer (LTSO) that he was "unimportant to the mission." On occasion, the LTSO asked another LTSO to send someone to help with a job-related task, the response was, "[appellant] ... or someone who can actually do something?" Appellant noted an instance when a team coordinator stated to a supervisory transportation security officer that appellant was supposed to go on his break with the team and his reply was, "[Appellant] will go to break when I say he goes to break." He contended that this type of behavior was never directed at the security officers on the exit lane and that they get to go on break with their team as scheduled. Appellant contended that, although he occasionally would be part of Playbook activities that are within his medical limitations, the vast majority of his time is spent in a hallway by himself behind a large piece of glass in the exit lane at the airport. He stated that he sits alone for 40 hours a week at a podium with a stool. Appellant stated that some passengers will jokingly ask, "what did you do wrong?" He noted that his placement is about 10 feet from the bathroom doors and that there is an overwhelming smell of bathroom cleaner on a regular basis. Appellant noted that while he was monitoring the exit lane he would have to watch his coworkers do the job he had been trained for and would prefer doing. He stated that the passengers would frequently ask questions and he felt like more of an information person than a security officer. Appellant stated that he was frequently forgotten for breaks or was made to wait during personnel shortages, and that this was degrading. He noted that sometimes, to give him something to do, he was given the assignment of standing in front of the checkpoint yelling at passengers as to what needed to be taken out of their bags before placing them through x-ray, a position supervisors jokingly referred to as "circus caller." Appellant also was asked to sit at a table and hand out plastic bags for passengers. He stated that he has been told by his physician that his medical condition will never allow him to do required duties with the employing establishment, and that once it accepts this, he will no longer have a job. Appellant contended that, as a result of all of these factors, he was depressed.

By decision dated August 24, 2010, OWCP denied appellant's claim. It found that there was insufficient factual evidence to establish that the alleged work event incidents happened or contributed to his depression.

In a letter dated August 10, 2010 and received by OWCP on August 25, 2010, appellant reiterated his allegations. He listed names of persons who he stated were aware of the incidents.

Appellant also added specific dates that he alleged the incidents occurred, with particular emphasis on the dates that he went on late breaks and comments made to him about the breaks.

In a statement by the employing establishment dated August 19, 2010, they indicated that they attempted to accommodate appellant in various positions within his medical restrictions, but within a short period of time he would state that his arm was hurting so he was removed from those functions and that the exit lane monitoring allows him to work within his medical restrictions. The employing establishment stated that the exit lane monitor is an important function of airport security. It noted that appellant brought to the supervisor's attention that he was not getting timely breaks and the issue was addressed immediately. The employing establishment indicates that the supervisor denied saying that appellant was unimportant and that there was no evidence that he was being treated poorly and alienated.

Appellant requested an oral hearing before an OWCP hearing representative. At the hearing held on December 15, 2010, he testified that in 2007 he injured his forearm, and that he eventually had surgery for radial tunnel syndrome. Appellant stated that, when he returned to work, he was limited in the duties he could do and the employing establishment found things for him to do like sitting at a table and vocalizing things to passengers. He noted that he was currently working as the exit lane monitor and that prior to that he was a baggage screener. Appellant noted that he worked every day but that he felt "like a nothing right now." He noted that he was very lonely and sometimes cried on the way home. Appellant noted that the position was supposed to be rotated but that he was not rotated. He discussed problems getting breaks. Appellant testified that coworkers called him "exit Rowe," called him the "circus caller" and that on one occasion as a joke someone put a sticker on the other side of the glass where he worked that said "please do not feed the animals." He did not recall if he reported this incident to management.

In a February 2, 2011 statement, Michael Perkins noted that he was a coworker of appellant for two years. During most of that time, appellant had been on restricted duty manning the exit lane area and unable to perform many basic functions due to physical pain on a daily basis. The exit lane post was near the bathrooms and was unpleasant due to odors and isolation from other coworkers. Mr. Perkins stated that appellant told him that he felt left out, was accidentally left when others went on breaks and that he has been depressed about his limitations. In a February 4, 2011 statement, Bill O'Brien, a coworker, noted that, because appellant was light duty, he can only work two positions: travel document checker and exit lane monitor. On appellant's days off the workers took turns on the exit lane for 30 minutes at a time, but when he was on duty, he was the primary exit lane monitor. Mr. Brien noted that appellant was there to physically deter a breach of security, which was an important job but was very boring. He was unaware of any incidents or less-than-favorable attitudes or statements made by the managers regarding appellant. Appellant had not told him of any such remarks, nor did he witness any. In a February 1, 2011 statement, William Horn, a coworker, noted that, while working as a law enforcement officer, he observed appellant sitting at the exit lane for two hours. He noted that numerous times appellant did not have a break, usually when things were very busy.

In a decision dated March 28, 2011, OWCP's hearing representative affirmed the August 24, 2010 decision denying appellant's claim finding no compensable factor of employment had been established.

### **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.<sup>2</sup>

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*,<sup>3</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.<sup>4</sup> There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.<sup>5</sup> 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 by the employing establishment or by the nature of the work.<sup>6</sup> In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of FECA. Thus disability is not covered when it results from an employee's fear of a reduction-in-force, or is disability covered when it results from such factors as an employee's frustration in not being permitted to work in a particular environment or to hold a particular position.<sup>7</sup>

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.<sup>8</sup> Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable

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<sup>2</sup> *George H. Clark*, 56 ECAB 162 (2004); *L.H.*, Docket No. 10-2045 (issued July 14, 2011).

<sup>3</sup> 28 ECAB 125 (1976).

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> See *Robert W. Johns*, 51 ECAB 136 (1999).

<sup>6</sup> *Cutler*, *supra* note 3.

<sup>7</sup> *Id.*

<sup>8</sup> *Charles D. Edwards*, 55 ECAB 258 (2004).

employment factor.<sup>9</sup> A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>10</sup>

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.<sup>11</sup> However, for harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under FECA.<sup>12</sup>

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.<sup>13</sup> This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.<sup>14</sup>

If a claimant does implicate a factor of employment in an emotional condition case, OWCP should then determine whether the evidence of record substantiates those factors. When the matter asserted is a compensable factor of employment and the evidence of the matter establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.<sup>15</sup>

### ANALYSIS

Appellant claimed that he suffered from an emotional condition causally related to various factors. The Board must initially review whether the claimed incidents or activities constitute compensable factors under the provisions of FECA.

Appellant made allegations of harassment and a hostile work environment. Specifically, he alleged numerous instances wherein he was treated as a "lesser person" by management and by coworkers, including various instances where insulting comments were directed at him. Vague or general allegations of perceived harassment, abuse or difficulty arising in the

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<sup>9</sup> *Kim Nguyen*, 53 ECAB 127 (2001). See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>10</sup> *Roger Williams*, 52 ECAB 468 (2001).

<sup>11</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>12</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>13</sup> *Pamela Rice*, 38 ECAB 838, 841 (1987).

<sup>14</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>15</sup> *Norma L. Blank*, 43 ECAB 384, 389-90 (1992); *L.Q.*, Docket No. 11-66 (issued September 28, 2011).

employment are insufficient to give rise to compensability under FECA.<sup>16</sup> Appellant did not submit any evidence that the alleged harassment or hostile comments were made. None of the witness statements indicate an awareness of such incidents, and the employing establishment denies that they occurred. Accordingly, appellant has not submitted sufficient evidence to support his claims of harassment.

Many of the factors alleged by appellant concern the assignment of work. He contended that he worked the exit lane, where he was made to sit all day and to watch others do the work he loved. Appellant also noted that he would work making announcements to passengers and handing out plastic bags. The Board has held that the assignment of work is an administrative function of the employer and the manner in which a supervisor exercises his or her discretion falls outside the ambit of FECA.<sup>17</sup> Absent evidence establishing an error or abuse, a claimant's disagreement or dislike of such a managerial action is not a compensable factor of employment.<sup>18</sup> There is no evidence of abuse or error in this case. The assignments of work for appellant were made to accommodate his physical restrictions. The jobs were a very necessary part of the mission of the employing establishment. Accordingly, appellant did not establish a compensable factor of employment with regards to the assignment of his work duties. Furthermore, he has provided no evidence that the employing establishment acted abusively with regards to the assignment of breaks. Although there is some evidence that appellant had late breaks on occasion, the employing establishment stated that, when this was brought to their attention, it was dealt with immediately. Accordingly, appellant has not established a compensable factor with regard to the assignment of breaks.

Appellant stated that he was fearful of losing his job due to his inability to perform some work assignments. The Board has held that disability is not compensable when it relates to the fear of losing one's job or job insecurity.<sup>19</sup> Appellant has not met his burden of proof in establishing compensable factors of employment in this regard.

Appellant contends that his workstation was near the airport bathrooms and he was exposed to the smell of bathroom cleaner. Mr. Perkins also noted that appellant was exposed to unpleasant odors from the bathrooms. These vague assertions are not sufficient to establish a compensable factor of employment, such as harassment or discrimination by the employing establishment.

Consequently, appellant has not established his claim for an emotional condition as he has not established any compensable employment factors.<sup>20</sup>

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<sup>16</sup> *R.P.*, Docket No. 08-1064 (issued November 26, 2008).

<sup>17</sup> *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

<sup>18</sup> *Id.*

<sup>19</sup> *See Lillian Cutler*, *supra* note 3; *see also Purvis Nettles*, 44 ECAB 623, 628 (1993).

<sup>20</sup> 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).

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 met his burden of proof to establish that he 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 March 28, 2011 is affirmed.

Issued: January 24, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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

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