

a result of harassment by a coworker, a March 25, 2011 removal of duties and information that the employing establishment was considering terminating his employment. In a letter dated May 11, 2011, OWCP requested additional factual and medical evidence from appellant in support of his emotional condition claim.

In a letter dated May 31, 2011, appellant submitted a letter from counsel regarding an Office of Special Counsel claim. On December 10, 2010 he reported that Ronda Jackson, an interior designer, had been using her private-sector business for government work and not reporting for work. Lynn Carrier, Associate Director, informed appellant on December 13, 2010 that he had ruined his career. As the project manager for the Emergency Department Renovation Building 500, appellant had required Ms. Jackson to order lockers. On February 9, 2011 he met with Marcos Tubola, his supervisor, and informed Mr. Tubola of his request for reassignment. Mr. Tubola allegedly was going to downgrade appellant's performance evaluation and allegedly told appellant's coworkers that he stated that they were not doing a good job. On March 21, 2011 appellant reported that a contractor being used in the project LM2 Construction Company did not appear in the database for veteran-owned small business companies as required by statute. On March 25, 2011 he reported that LM2 had the same supervisor and construction crew working concurrently on two separate projects. Appellant alleged that, as retaliation, Delia A. Adams, the Director SAO West, implied a relationship between a competitor of LM2 and appellant and recommended the termination of appellant's status as Contracting Officer Technical Representative (COTR) due to these conflicts of interest. His COTR responsibilities were terminated on March 30, 2011. Daniel Spencer, employee relations specialist, informed appellant that the employing establishment was "trying to figure out how to fire" him. Appellant also alleged that on May 10, 2011 Robert Benkeser, a coworker, suggested that appellant had gone beyond his job duties as a control point clerk and certified an invoice for Target Engineering Corporation. On May 19, 2011 Mr. Benkeser recommended removal of appellant from employment and on May 26, 2011 barred him from entering the employing establishment.

On February 8, 2011 appellant reported to the Equal Employment Opportunity Commission that Andrew Gevanthor, a coworker, had sexually harassed him by sharing stories of his gay sex life, making sexual jokes and making unwelcome comments about appellant's sexuality. Mr. Gevanthor allegedly stated, "You [are] secretly gay and you should come out of the closet." He also allegedly stated that on March 25, 2011 "Mr. Benkeser is out to get you" and that "you [have] gotten yourself into more than you can chew now. I [am] not going to help you on this one. Shoshana Boehm, [a coworker] is no longer your friend. You [are] buying yourself a world of trouble." Appellant was supposed to be transferred, but was moved to a different office down the hall but continued to work near his coworker. On March 25 and April 8, 2011 he reported the conduct of this coworker to his supervisors. On June 2, 2011 appellant alleged that he used 495 hours of leave due to the stress caused by his coworker since July 10, 2008 listing the dates and hours of leave.

In a note dated April 12, 2011, Dr. Ronald C. Hamm, a family practitioner, diagnosed anxiety and stress and sleep disorder which appellant attributed to job stress caused by a coworker. Dr. Stephanie Canale, a family practitioner, completed a form report on April 26, 2011 and diagnosed anxiety disorder and panic attacks. She indicated with a checkmark "yes" that this condition was caused or aggravated by appellant's employment activities and stated, "coworkers."

On June 27, 2011 counsel responded to the employing establishment's proposed removal of appellant. On September 20, 2011 appellant alleged that, after he received the mandatory authorized absence, he was told to telephone Mr. Tubola, who threatened that, if appellant did not call, he would be found absent without leave. On January 13, 2011 when Mr. Tubola told appellant that he needed to come to the office to pick up a letter, appellant experienced an anxiety attack and used sick leave. Appellant stated that Mr. Tubola informed him that the authorized absence had been revoked, but Mr. Spencer disagreed. On August 2, 2011 the employing establishment issued a letter of removal stating that appellant's last day was August 12, 2011. Appellant contended that he was not being removed for failure to maintain his COTR certification, but because he reported fraud.

By decision dated October 28, 2011, OWCP denied appellant's claim finding that he had not substantiated a compensable factor of employment. It noted that he had not provided evidence of error abuse in the mandatory authorized absence or proposed termination.

LEGAL PRECEDENT

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*,² the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.³ 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 by the employing establishment or by the nature of the work.⁵ 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, nor 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.⁶

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.⁷ Where the evidence

² 28 ECAB 125 (1976).

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Robert W. Johns*, 51 ECAB 136 (1999).

⁵ *Cutler*, *supra* note 2.

⁶ *Id.*

⁷ *Charles D. Edwards*, 55 ECAB 258 (2004).

demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.⁸ 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.⁹

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. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹⁰

ANALYSIS

Appellant did not attribute his emotional condition to any inability to perform his regular or specially assigned duties as a general engineer. He alleged that the employing establishment erred or acted abusively in certain personnel matters. Appellant alleged that the employing establishment erroneously placed him in a mandatory authorized absence, that he was improperly removed from employment on August 12, 2011, error in removing his COTR responsibilities, and that he had difficulty reaching Mr. Tubola in regards to use of leave during the mandatory authorized absence. He alleged that Mr. Tubola incorrectly stated that appellant's mandatory authorized absence had been revoked and that his performance appraisal would be downgraded. The Board has held that handling of evaluations and leave requests are administrative functions of the employer and not duties of the employee.¹¹ Allegations involving work assignments, transfer requests and demotions involve administrative matters that generally do not fall within coverage of FECA.¹² The Board has characterized supervisory discussions of job performance and reprimands as administrative or personnel matters of the employing establishment which are covered only when a showing of error or abuse is made.¹³ As appellant's claim is based on these administrative actions, he must submit evidence of error or abuse on the part of the employing establishment.¹⁴ He has not submitted sufficient evidence to establish that his manager

⁸ *Kim Nguyen*, 53 ECAB 127 (2001). See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁹ *Roger Williams*, 52 ECAB 468 (2001).

¹⁰ *Alice M. Washington*, 46 ECAB 382 (1994).

¹¹ *C.S.*, 58 ECAB 137 (2006).

¹² *D.L.*, 58 ECAB 217 (2006).

¹³ *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

¹⁴ *Peter D. Butt*, 56 ECAB 117 (2004).

committed error or abused the alleged administrative or personnel actions. Appellant has not substantiated a compensable factor of employment in regard to these actions.¹⁵

Appellant alleged that, on March 25, 2011, Mr. Gevanthor stated “Mr. Benkeser is out to get you” and that “you [have] gotten yourself into more than you can chew now. I [am] not going to help you on this one. Shoshana Boehm is no longer your friend. You [are] buying yourself a world of trouble.” While the Board has recognized that verbal altercations when sufficiently detailed by the claimant and supported by evidence may constitute compensation employment factors, appellant has provided no evidence to establish that this statement occurred.¹⁶ Not every statement uttered in the workplace will give rise to coverage under FECA.¹⁷ As appellant has not established a factual basis for his claim, he has not established a compensable factor of employment.

Appellant alleged retaliation, harassment and discrimination by his manager and Mr. Gevanthor. He alleged that he was subjected to sexual comments and jokes by Mr. Gevanthor but the Board has held that specific incidents of harassment must be described in order to meet the burden of proof.¹⁸ Appellant provided insufficient evidence, such as witness statements, to establish that the statements were made. He has not established a compensable employment factor regarding the alleged general comments and jokes by Mr. Gevanthor.

Appellant reported that Mr. Gevanthor stated, “You [are] secretly gay and you should come out of the closet.” Again he submitted insufficient evidence to establish that this statement was made as alleged. The Board had held that, when an employee alleges harassment and cites specific incidents, OWCP must determine the truth of the allegations. The issue is whether sufficient evidence has been submitted to factually support the claimant’s allegations.¹⁹ As appellant has submitted no evidence, the Board finds that he has not met his burden of proof in regards to this statement.

The Board finds that appellant did not submit evidence to the record in support of his allegations of harassment discrimination or retaliation. Without witness statements or other evidence to substantiate the alleged incident he failed to meet his burden of proof. Where a claimant has not established any compensable employment factors, the Board need not consider the medical evidence of record.²⁰

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.

¹⁵ *Alberta Dukes*, 56 ECAB 247 (2005).

¹⁶ *T.G.*, 58 ECAB 189 (2006).

¹⁷ *V.W.*, 58 ECAB 428 (2007).

¹⁸ *Charles D. Gregory*, 57 ECAB 322 (2006).

¹⁹ *Supra* note 14.

²⁰ *A.K.*, 58 ECAB 119 (2006).

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish that he developed an emotional condition due to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the October 28, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 9, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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