

on January 28, 2011. Appellant related that at work he experienced flashbacks and depression due to his treatment by the employing establishment.

On November 31, 2010 appellant requested that the employing establishment provide him with limited duty “pending the outcome of a comprehensive medical assessment and report from a medical examiner.” He related that he could not further discuss the matter “because of a court-ordered confidentiality agreement.”

In a psychological evaluation dated January 17, 2011, Dr. Norman Lavinson, a clinical psychologist, diagnosed depression and PTSD due to appellant’s treatment by the employing establishment. Appellant noted that he was suspended after allegedly pushing a contract worker. He reported for work on the day of his suspension and was removed from his workstation by police. After that appellant’s coworkers avoided him and did not join him for lunch. In an addendum dated January 24, 2011, Dr. Lavinson found that appellant could perform his regular duties. He further advised that appellant experienced stress when working on the seventh floor as his coworkers avoided him and knew about his suspension.

By letter dated January 31, 2011, the employing establishment denied appellant’s request for “temporary placement in limited-duty status” as it had not received medical evidence showing that he was unable to perform his usual employment. It noted that Dr. Lavinson found that appellant could perform his regular employment.

On February 1, 2011 appellant resigned from the employing establishment, citing “personal health issues.”

By letter dated March 2, 2011, OWCP requested that appellant submit additional factual and medical evidence in support of his claim. In a March 18, 2011 response, appellant related that he experienced a hostile work environment after filing Equal Employment Opportunity (EEO) claims. He attributed his PTSD to the employing establishment denying his request for a transfer to another unit as reasonable accommodation. Appellant indicated that he made numerous requests for a transfer for his “psychological well being.” He quoted Dr. Lavinson’s finding that he experienced PTSD when he was forced to work on the seventh floor with coworkers who stopped eating lunch with him, knew about his suspension and had witnessed the police confrontation. Appellant related that he submitted an “unwanted letter of reassignment” on February 1, 2011 but so far had not filed a claim for constructive discharge. He noted that he had two complaints pending in federal court.

In a statement dated April 21, 2011, the employing establishment denied that appellant experienced a hostile work environment. It refused his request for accommodation because the medical evidence indicated that he was able to perform his duties. The employing establishment stated:

“Claimant claims the hostile work environment to which he was subjected consisted of the following: fellow workers avoiding him, fellow workers not going to lunch with him and fellow workers having observed or otherwise known about his suspension and ‘police confrontation.’ Even construing the alleged facts in a light most favorable to the claimant, these facts, if true, would not rise to the level of creating a hostile work environment. I note the claimant implies the

alleged harassment was so egregious or intolerable that quitting was a fitting response.”

The employing establishment advised that appellant received a one-day suspension which he could have contested. It stated:

“Rather than contesting the suspension through the legal avenues of which he was apprised in the decision letter, [c]laimant chose to simply ignore the suspension, and appeared to work on the day of suspension (August 4, 2008). Claimant was told to leave, as he was serving a one-day suspension. Only upon [his] refusal to leave his work area did management seek means to forcefully remove [him] from the premises if necessary. If the aforementioned departure from the premises occurred in the presence of his colleagues, it was only because [c]laimant chose to defy a one-day suspension, and refused to voluntarily depart immediately when told to do so.”

By decision dated August 16, 2011, OWCP denied appellant’s claim after finding that he did not sustain an emotional condition in the performance of duty. It found that he had not established any compensable employment factors. OWCP determined that any emotional reaction by appellant to his coworker’s avoidance of him after witnessing his removal from the premises by police was self-generated. It further found that there was no evidence that the employing establishment acted abusively in denying appellant’s request for reasonable accommodation.

On August 26, 2011 appellant requested a review of the written record by an OWCP hearing representative. In an August 26, 2011 statement, he criticized OWCP’s August 16, 2011 description of his allegations and related, “The essential elements of this case [are] the fact that the employer refused to reassign [me] to another unit, and also ignored and neglected [my] complaints about emotional and psychological well-being....” Appellant challenged the competency of the claims examiner who wrote the August 16, 2011 decision and alleged that the claims examiner misquoted him and relied on inaccurate information from the employing establishment. He asserted that the employing establishment lied when it indicated that he did not challenge the August 4, 2008 suspension. Appellant noted that he had cases pending before a federal judge regarding his suspensions on August 4, 2008 and from January 12 to 25, 2009. He maintained that his suspensions and their subject matter were “not directly relevant” to his claim. Appellant related that the employing establishment acted abusively over the course of three years by failing to reassign him as it prevented him from having a “new start.” He asserted that the employing establishment relied upon Dr. Lavinson’s finding that he could perform his regular duties but ignored his opinion that he was unable to work in his assigned unit.

By decision dated December 12, 2011, OWCP’s hearing representative affirmed the August 16, 2011 decision after finding that appellant had not established any compensable work factors.

On appeal, appellant alleged that he incurred PTSD as a result of abuse by management. He asserted that OWCP’s hearing representative did not fully review the factual evidence and failed to consider the medical evidence. Appellant attributed his condition to a hostile work environment rather than his coworkers refusing to join him for lunch.

LEGAL PRECEDENT

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.² 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 frustration from not being permitted to work in a particular environment or to hold a particular position.³

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.⁴ However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.⁵ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁶

For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.⁷ A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.⁸ The issue is whether the claimant has submitted sufficient evidence under FECA to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁹ The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in

² *Id.*; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁴ *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

⁵ *See William H. Fortner*, 49 ECAB 324 (1998).

⁶ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁷ *See Michael Ewanichak*, 48 ECAB 364 (1997).

⁸ *See Charles D. Edwards*, 55 ECAB 258 (2004); *Parley A. Clement*, 48 ECAB 302 (1997).

⁹ *See James E. Norris*, 52 ECAB 93 (2000).

fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by OWCP and the Board.¹⁰

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.¹¹ 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.¹²

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of the employing establishment failing to transfer him to a different work location and creating a hostile work environment. OWCP denied his emotional condition claim on the grounds that he did not establish a compensable employment factor. The Board must, therefore, initially review whether the incidents and conditions alleged by appellant are covered employment factors under the terms of FECA.

Appellant has not alleged that he developed an emotional condition due to the performance of his regular or specially assigned duties or out of a specific requirement imposed by his employment. Thus he has not alleged a compensable factor under *Cutler*.¹³

Appellant primarily attributed his depression and PTSD to administrative actions by the employing establishment. In *Thomas D. McEuen*,¹⁴ 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 employing establishments 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 in dealing with the claimant. Absent such evidence of error or abuse, the resulting emotional condition must be considered self-generated and not due to employment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether it acted reasonably.¹⁵

¹⁰ *Beverly R. Jones*, 55 ECAB 411 (2004).

¹¹ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹² *Id.*

¹³ See *Lillian Cutler*, *supra* note 2.

¹⁴ See *Thomas D. McEuen*, *supra* note 4.

¹⁵ See *Richard J. Dube*, 42 ECAB 916 (1991).

Appellant alleged that the employing establishment acted abusively in refusing to transfer him to another unit. He referenced a medical report that indicated he experienced stress and PTSD due to working on the same floor as coworkers who had witnessed events surrounding his suspension and removal from work by police. Appellant, however, maintained that the relevant question was not his suspension but rather the refusal of the employing establishment to accommodate his request for a transfer and limited-duty work. The Board has held that denials of a request for a different job, promotion or transfer are not compensable factors of employment under FECA as they do not involve an employee's ability to perform his regular or specially assigned duties but rather constitute a desire to work in a different position.¹⁶ Appellant requested a transfer as reasonable accommodation for a psychological condition. The employing establishment denied his request as he had not submitted any medical evidence showing that he was unable to perform his usual employment. Appellant argued that the employing establishment ignored the medical evidence from Dr. Lavinson, who noted that appellant sustained stress due to working with coworkers, avoided him and had witnessed his suspension, concluded that he could perform his usual work duties. He has presented no corroborating evidence to support his allegation that the employing establishment erred or acted abusively in failing to transfer him to another unit. Thus, appellant has not established a compensable work factor.

Appellant generally alleged that the employing establishment created a hostile work environment. Harassment and discrimination by supervisors and coworkers, if established as occurring and arising from the performance of work duties, can constitute a compensable work factor.¹⁷ A claimant, however, must substantiate allegations of harassment and discrimination with probative and reliable evidence.¹⁸ The employing establishment denied that appellant was harassed or discriminated against and noted that coworkers avoiding him and knowing about his suspension was insufficient to show a hostile work environment. Appellant did not submit any factual evidence in support of his allegation of harassment and thus has not established a compensable work factor.

Appellant alleged that OWCP did not properly adjudicate his claim. Matters involving the processing of workers' compensation claims by the employing establishment or OWCP, however, bear no relation to a claimant's day-to-day duties or specially assigned duties and thus do not constitute a compensable factor of employment.¹⁹

On appeal, appellant maintained that he experienced PTSD due to abusive actions taken by the employing establishment and a hostile work environment. As discussed, however, he has not submitted any evidence supporting his allegation of abuse or harassment by his superiors. Appellant also contended that OWCP erred in failing to review the medical evidence of record. It is well established, however, that in an emotional condition claim a claimant must first

¹⁶ See *Charles D. Edwards*, *supra* note 8; *Donald W. Bottles*, 40 ECAB 349 (1988).

¹⁷ *T.G.*, 58 ECAB 189 (2006); *Doretha M. Belnavis*, 57 ECAB 311 (2006).

¹⁸ *C.W.*, 58 ECAB 137 (2006); *Robert Breeden*, 57 ECAB 622 (2006).

¹⁹ See *Phillip L. Barnes*, 55 ECAB 426 (2004); *George A. Ross*, 43 ECAB 346 (1991); *Thomas J. Costello*, 43 ECAB 951 (1992).

establish a compensable work factor before the medical evidence is considered.²⁰ As appellant has not established any compensable work factors, OWCP did not address the medical evidence.²¹

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 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.

ORDER

IT IS HEREBY ORDERED THAT the December 12 and August 16, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 26, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

²⁰ *Richard Yadron*, 57 ECAB 207 (2005).

²¹ *See Lori A. Facey*, 55 ECAB 217 (2004); *Margaret S. Krzycki*, 43 ECAB 496 (1992).