

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

C.D., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Hartford, CT, Employer)

**Docket No. 12-486
Issued: July 19, 2012**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 4, 2012 appellant filed a timely appeal from a September 7, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his emotional condition claim. Pursuant to the Federal Employees' Compensation Act¹ (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 sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On March 8, 2011 appellant, then a 40-year-old clerk, filed an occupational disease claim alleging that he experienced stress and anxiety as a result of the postmaster creating a "very

¹ 5 U.S.C. § 8101 *et seq.*

hostile atmosphere” in the course of his federal employment.² He stopped work on February 26, 2011.

In a statement dated March 10, 2011, Hilda Christy, the postmaster, related that she was unaware that appellant had problems with her. She noted that he repeatedly expressed concern over his job given the recent changes in the employing establishment. Appellant asked Ms. Christy about a change in a transportation schedule and whether he would now have a two-hour lunch. Ms. Christy replied that she had just received the message about the schedule change. On February 26, 2011 coworkers told her that appellant indicated that if his hours changed he would “quit the job or go out on stress.” Appellant left work with a sore throat. Ms. Christy noted that his allegations were vague and thus difficult to address. She related, “At no time did I ever have any conversation with [appellant] that could have led to these accusations of stress, anxiety and [a] hostile atmosphere.”

In a statement dated March 10, 2011, a coworker related that six months earlier the employing establishment informed them that the office would begin using flat automation sorting.³ Appellant was worried that he would be “excessed” as he had the least seniority. He started asking the postmaster and coworker for any news. Appellant became upset when he heard that his schedule might be changed. He informed the coworker that “if his schedule changes or he gets excessed then he will go on stress leave or quit....”

By letter dated March 23, 2011, OWCP requested additional factual and medical information from appellant, including a detailed statement regarding the work factors to which he attributed his emotional condition.

In a statement dated March 27, 2011, Randall Huntington, a coworker, related that he experienced stress due to harassment by Ms. Christy. He criticized her management and leadership skills and indicated that she was mean, lied and tried to fire people. Mr. Huntington maintained that Ms. Christy had repeatedly been fired or transferred and should be removed from her position.

In a March 30, 2011 statement, appellant attributed his stress to supervisors repeatedly instructing him to do other tasks before he had completed his current assignment, yelling at him and his coworkers almost every day and speaking poorly about his coworkers. He denied that he believed that his job was at risk. Appellant did not file a grievance or Equal Employment Opportunity (EEO) complaint because he feared reprisals.

On April 29, 2011 Ms. Christy related that she was unable to respond to appellant’s allegations that she had cases filed against her given the general nature of his “sweeping derogatory statements.” She disagreed that the workstation was disorganized and asserted that she treated her employees “with dignity and respect....” Ms. Christy noted that appellant sometimes took a short lunch in order to get overtime or to leave early. She indicated that

² Appellant submitted medical evidence in support of his claim.

³ The name of the coworker is not legible. In a statement dated March 29, 2011, a coworker indicated that appellant had not mentioned that the postmaster created a hostile work environment.

Mr. Huntington had multiple disciplinary actions against him. Ms. Christy maintained that she had not been “fired three times” but instead had accepted “higher level assignments outside this facility....”

In an undated statement received on May 3, 2011, appellant asserted that Ms. Christy had lost multiple cases filed against her. He maintained that the office was “in disarray” and that the postmaster lied and “used fear tactics.” Appellant stated, “[Ms. Christy] yells at me out loud and in front of coemployees and customers making me very anxious and uncomfortable. Ms. Christy yells at other workers as well giving me the same feelings.” Appellant indicated that all the employees knew the difficulties caused by Ms. Christy. A coworker told Ms. Christy that he could not stay to get all the work done and she told him that appellant would work overtime. Appellant told her he could only work a little overtime that day and she yelled that he did not help out and it was “all about you.” The coworker told him that Ms. Christy wanted revenge and stated that he was a “horrible worker” and was giving him a two-hour lunch. Appellant maintained that Ms. Christy’s supervisor was also scared of her.

A leave analysis for 2010 and 2011 shows that on several occasions appellant either did not take lunch and left work early or took a short lunch and worked overtime.

A May 6, 2011 police incident report indicated that Ms. Christy called the police after her car was “keyed.”⁴ Ms. Christy provided the names of three employees who had “either filed charges against her or she has written them up in the past for work performance.” The police officer spoke with appellant, one of the listed employees, who denied vandalizing the vehicle.

In a statement received May 19, 2011, appellant related that on May 6, 2011 a police officer asked if he had vandalized Ms. Christy’s car. He alleged that the questioning was in retaliation as he was the only employee questioned about the incident. Appellant stated that his short lunches benefited the postmaster because they were short of workers in the middle of the day. He noted that he worked many of his off days. Appellant named individuals who had won harassment cases against Ms. Christy. He asked the postmaster’s supervisor if he could be transferred. Appellant provided a list of short statements and signatures from employees generally supporting hostility or intimidation by Ms. Christy.

In an August 16, 2011 statement, a coworker agreed that Ms. Christy created “a hostile, threatening, terrible work condition and cause[d] fear and intimidation to most all employees.”

On August 16, 2011 a union steward related that Ms. Christy treated employees disrespectfully “talking down to them or publically berating them.” He indicated that he had not witnessed the incidents that led others to file EEO complaints but could “imagine there would be validity to the allegations.” Ms. Christy threatened to get even with employees, took matters personally and disregarded the labor contract.

⁴ The record also contains an April 21, 2010 police report indicating that Ms. Christy’s car was vandalized repeatedly over the past four months.

By decision dated September 7, 2011, OWCP denied appellant's emotional condition claim on the grounds that he did not sustain an injury in the performance of duty. It found that he had not alleged any compensable employment factors.

On appeal, appellant argued that Joe Mazola, a supervisor, lied when he told him that Ms. Christy would be transferred. He maintained that Ms. Christy was "hateful and abusive."

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.⁵ 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.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 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.⁸ 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.⁹

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.¹⁰ 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.¹¹ The issue is whether the claimant has submitted sufficient evidence

⁵ *Supra* note 1; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁷ *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

⁸ *See William H. Fortner*, 49 ECAB 324 (1998).

⁹ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁰ *See Michael Ewanichak*, 48 ECAB 364 (1997).

¹¹ *See Charles D. Edwards*, 55 ECAB 258 (2004); *Parley A. Clement*, 48 ECAB 302 (1997).

under FECA to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹² 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 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.¹³

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.¹⁴ 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.¹⁵

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. OWCP denied his emotional condition claim on the grounds that he did not establish any compensable work factors. The Board must, therefore, initially review whether these alleged incidents and conditions of employment 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. He related that supervisors instructed him to do other tasks before he had completed his current task. The assignment of work, however, is an administrative function of the employing establishment and not a duty of the employee. 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.¹⁶ Appellant has not submitted any evidence of error or abuse by the employing establishment in the assignment of work and thus has not established a compensable employment factor.

Appellant further alleged that Ms. Christy, the postmaster, frequently required him to take a short lunch, work on his day off or work overtime. A leave analysis indicates that he periodically worked a short lunch or did not take lunch and either left early or worked overtime.

¹² See *James E. Norris*, 52 ECAB 93 (2000).

¹³ *Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁴ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁵ *Id.*

¹⁶ *Lori A. Facey*, 55 ECAB 217 (2004).

Ms. Christy related that appellant requested short lunches so that he could either leave early or work overtime. While appellant maintained that she required him to work overtime or take a short lunch for her convenience, he has not factually established that it was at her instruction rather than at his request. Further, he has not attributed his stress to overwork or the performance of his work duties. Appellant instead alleged that the change in his work assignments was for Ms. Christy's benefit rather than his own. However, the manner in which a supervisor exercises her discretion falls outside the coverage of FECA. This principle recognizes that supervisors must be allowed to perform their duties and at times employees will disagree with their supervisor's actions.¹⁷ Mere dislike or disagreement with certain supervisory actions will not be compensable absent proof of error or abuse on the part of the supervisor.¹⁸ Appellant has not factually established that taking short lunches and working overtime was imposed by Ms. Christy rather than at his request and, additionally, has not demonstrated error or abuse on the part of the employing establishment in assigning overtime and allowing or requiring short lunches.

Appellant primarily attributed his stress to harassment, discrimination and verbal abuse by Ms. Christy, the postmaster. If disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from the employee's performance of his regular duties, these could constitute employment factors.¹⁹ The evidence, however, must establish that the incidents of harassment or discrimination occurred as alleged to give rise to a compensable disability under FECA.²⁰ Additionally, verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.²¹

Appellant generally alleged that Ms. Christy criticized him to coworkers, lied and used fear to control her subordinates. He asserted that she had lost numerous cases filed against her and that the office was chaotic. Appellant maintained that Ms. Christy repeatedly yelled at him and others and created a hostile work environment. One day when he told her that he could only work a little overtime that day she yelled that it was "all about you." Appellant asserted that Ms. Christy told a coworker that he was a "horrible worker" and that she was going to change the duration of his lunch. In a statement dated April 29, 2011, Ms. Christy denied that the office was disorganized and maintained that she treated subordinates respectfully. She related that appellant's assertions that she had claims filed against her were too vague to address.

In support of his allegation, appellant submitted statements from coworkers. In a statement dated March 27, 2011, Mr. Huntington maintained that Ms. Christy was a poor manager, lied and wanted to fire employees. On August 16, 2011 another steward related that

¹⁷ See *Donney T. Drennan-Gala*, 56 ECAB 469 (2005); *Beverly R. Jones*, 55 ECAB 401 (2004).

¹⁸ See *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

¹⁹ *Janice I. Moore*, 53 ECAB 777 (2002).

²⁰ *Id.*

²¹ *Marguerite J. Toland*, 52 ECAB 294 (2001).

she berated employees publically. Appellant also submitted a list of signatures and statements from other coworkers supporting that Ms. Christy was hostile and intimidating. The witness statements, however, are general in nature and do not describe specific instances of harassment or discrimination taken by Ms. Christy against appellant.²² They are thus insufficient to demonstrate harassment or discrimination. Further, while appellant alleged that Ms. Christy yelled at him that it was “all about you” on one occasion, he has not factually supported this allegation or shown how this one instance would rise to the level of verbal abuse.

Appellant further argued that Ms. Christy discriminated against him by informing police officers that he may have vandalized her vehicle. He indicated that he was the only employee questioned by the police and that he believed Ms. Christy was retaliating against him. A police report dated May 6, 2011 indicates that Ms. Christy called the police and told them that her car had been “keyed.” Ms. Christy told the police the names of three of her subordinates who had filed a complaint against her or had performance issues. The police spoke with appellant, who was one of the three named employees. Appellant denied vandalizing Ms. Christy’s vehicle. While he alleged that he was the only employee interviewed by the police, there is no evidence that she discriminated against him in providing the police with the names of workers who had filed claims against her or been the subject of disciplinary action. Additionally, investigations, which are an administrative function of the employing establishment, do not involve an employee’s regular or specially assigned employment duties and are not considered to be an employment factor where the evidence does not demonstrate error or abuse on the part of the employing establishment.²³ As appellant has not submitted evidence supporting either discrimination or error or abuse by Ms. Christy in reporting the vandalism of her car to the police, he has not established a compensable work factor.

On appeal, appellant contended that Ms. Christy was a hateful and abusive manager. As noted, however, such allegations must describe specific instances of harassment or abuse and be supported by a factual basis.²⁴ Appellant also argued that Mr. Mazola erroneously informed him that Ms. Christy would be transferred. Again, however, he has not shown any error or abuse by the employing establishment in an administrative action.

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.

²² See *Cyndia R. Harrill*, 55 ECAB 522 (2004).

²³ *Beverly A. Spencer*, 55 ECAB 501 (2004); *Linda K. Mitchell*, 54 ECAB 748 (2003).

²⁴ See *Michael Ewanichak*, 48 ECAB 364 (1997) (unsubstantiated allegations of harassment and discrimination are not determinative of whether such harassment or discrimination occurred).

ORDER

IT IS HEREBY ORDERED THAT the September 7, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 19, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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