United States Department of Labor
Employees' Compensation Appeals Board

B.S., Appellant	)	
and	)	**Docket No. 11-1904**
	)	**Issued: March 26, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Fresno, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 18, 2011 appellant filed a timely appeal from the July 21, 2011 Office of Workers' Compensation Programs' (OWCP) decision which denied his emotional condition claim. Pursuant to the Federal Employees' Compensation Act[1] (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 has met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 6, 2010 appellant, then a 50-year-old rural carrier, filed an occupational disease claim alleging that he sustained job-related stress and depression in the performance of duty. He alleged that he became dysfunctional as a result of negative ridicule of his working habits as described by his previous supervisor, which adversely affected his behavior. Appellant alleged that he first realized the disease or illness was caused or aggravated by his employment on November 15, 2010. He stopped work on November 9, 2010. The employing establishment controverted the claim.

In a separate statement, appellant alleged that, on or about September 2010, he became aware of stress-related anxiety associated with harsh and derogatory comments about his work performance by Kuldip Gill, supervisor.[2] He asserted that Kuldip Chatha told him that "there were people" on his route that wanted him fired, advised him on numerous occasions that he was unable to perform job tasks correctly and mocked appellant by stating that he "never" did "anything wrong." Appellant alleged that his exposure to stress was mainly at the employing establishment and that he had anxiety two to three times a week for one to three hours daily. This caused headaches and stomach uneasiness.

In a November 11, 2010 disability certificate, Dr. Richard K. Elia, a family practitioner, placed appellant off work from November 15 to December 15, 2010. In November 18 and December 17, 2010 treatment notes, he diagnosed depression, insomnia and diabetes.

In a January 31, 2011 e-mail, Mr. Chatha noted that he was the acting station manager at the employing establishment until mid-September 2010. He noted that there were several issues regarding appellant which included that there were many calls from customers that he drove too fast and misdelivered the mail. Mr. Chatha advised that one customer contacted him to inform him that she had a problem with appellant. He indicated that he had a discussion with appellant regarding the customer because she wanted him fired. Mr. Chatha further noted that a California Highway Patrol (CHP) officer came in with a complaint that appellant was stalking his wife in stores and complementing her on her looks. He indicated that he had to call Frank Ducar, postal inspector, who got in touch with the CHP officer. Mr. Chatha noted that this incident happened the day appellant called in sick. He noted that Aaron D. Hudgens, the new station manager, took over around the 12th of September. Mr. Chatha noted that appellant was "working fine" when "he was n[o]t mad at me."

On February 7, 2011 OWCP received an undated statement from Mr. Hudgens who stated that, during the first week in November 2010, appellant called in sick. Mr. Hudgens noted that appellant called and requested a meeting which was held on November 15, 2010. Appellant indicated that he had not been to work because he had trouble sleeping and concentrating after falling and scraping his face. He was not sure what caused the fall. Appellant advised that "the stress he felt at work was too much for him." He related that people at work stressed him out and tried to have him fired, that everyone talked bad about him and he hated coming to work. Appellant referred to a previous injury to his hand which the employing establishment refused to "fix." He advised him that it caused hand and shoulder pain and he did not know how to

[2] The evidence indicates that the person to whom appellant refers to as Kuldip Gill is Kuldip Chatha.

proceed. Mr. Hudgens indicated that, when he asked appellant why he felt stressed, appellant informed him that it was because of the previous manager, Mr. Chatha. Even though Mr. Chatha was gone, appellant felt stress due to the way other employees felt about him and because the employer previously tried to fire him. He informed Mr. Hudgens that he was depressed, that he had found out that he was diabetic and that he had to watch what he ate and drank. Mr. Hudgens noted that he gave appellant information for employee assistance as well as the Family Medical Leave Act paperwork. He noted that appellant provided a physician's note placing him off work until December 15, 2010.

By letter dated February 8, 2011, OWCP advised appellant that the evidence submitted was insufficient to establish his claim and requested that he submit additional supportive factual and medical evidence.

In a February 13, 2011 statement, appellant asserted that, on October 7, 2004, Henry Delatorre, the station manager, and Rudy Almarez, a supervisor, falsely accused him of having injuries outside the scope of employment. He alleged that the accusations were proven in court to be false and unjustified without merit. Appellant alleged that, on October 1, 2006, Soni Sihota, a station manager, falsely accused him "without merit" of a hit and run accident. He indicated that the Fresno Police department was contacted for a report; however, there was no such report. Appellant alleged that this was "clearly a witch hunt on behalf of the [employing establishment] management." On November 3, 2006 Kiran Gill, a rural carrier supervisor and a relative of Kuldip Chatha, issued him a letter of warning and reprimand. Appellant indicated that it was related to an incident in which he alleged that he observed him talking on a cell phone and driving with no hands. He stated that this was proven false and no action was taken. At the time of the accusation, appellant's time sheet documented that he was working in the employing establishment building and not on any public road. On July 18, 2007 Mr. Sihota accused him of stealing a customer's credit card and using the card at a local Home Depot store. Appellant noted incurring over $4,500.00 in attorney fees, being out of work for six weeks but asserted that the employer was proven wrong. On March 15, 2008 Mr. Delatorre and Mr. Chatha accused him of hitting a vehicle on his route but a police report showed that he was not at fault. Additionally, in September 2010, Mr. Chatha accused him of being at fault and insisted that he "admit to guilt." Appellant alleged that in October 2010, Erin Hodges, a supervisor, contacted him on two occasions to discuss customer mail that was misdelivered. He noted that the issues were brought up on a discussion basis only. However, appellant was fearful that he was being targeted and set up for a more serious reprimand and possible punishment. He stated that the employer's previous attacks pertained to issues of misdeliveries or customer complaints. Appellant alleged that the employer routinely and consistently made derogatory statements about his character and professionalism on the job, which were false. He indicated that it took a heavy toll and he would not tolerate further harassment.

In a March 8, 2011 response, Joan Andama, a health and resource manager with the employing establishment, controverted the claim and provided manager and supervisor statements in response to appellant's allegations. She noted that his allegations pertained to administrative matters and self-generated perceptions and he was reacting to corrective actions and the frustration of losing his job. Ms. Andama stated that appellant had performance issues and several customers complained about misdelivered mail and poor service.

In a February 22, 2011 e-mail, Mr. Sihota indicated that he had no knowledge pertaining to an incident on October 1, 2006. He denied contacting the Fresno Police department and indicated that he was the manager at the "WWP' in 2006. Mr. Sihota referred to a grievance settlement that occurred on September 12, 2006 related to a July 18, 2006 incident in which appellant was placed in a nonduty, nonpay status while an investigation was made into a matter related to unauthorized purchases with a customer's credit card. It was determined that appellant's emergency off-duty status was not warranted and that he should be compensated during his nonduty period.

OWCP also received a December 17, 2008 letter from a Mr. Phillips, a customer on appellant's route. Mr. Phillips alleged that in September 2008, his outgoing mail was "misdelivered and lost. He indicated that he had to cancel checks that were written. Furthermore, Mr. Phillips' credit card statement was delivered to his neighbor, which caused him to have to make an auto debit payment by telephone to avoid damaging his credit score and he was assessed a late fee. He advised that he received mail intended for his neighbors and had to deliver it to them. Mr. Phillips indicated that he had to spend extra time and money to undo the damage to his credit caused by appellant. Furthermore, during the seven years he had lived at his residence, he had repeatedly received mail from his neighbors, despite advising his carrier on numerous occasions to be "more careful when delivering mail, and to deliver to the correct address." Mr. Phillips explained that his requests were ignored, he still received his neighbors mail and had to deliver their mail personally. He stated that he ordered medication for his pets, which was supposed to be delivered by November 13, 2008, but never received it although the seller reported that the package was left at his house on November 13, 2008. Mr. Phillips explained that no delivery had occurred. He indicated that he contacted Ms. Gill, the employing establishment manager, who investigated and found the missing package. Mr. Philips expressed concern that appellant was not performing his duties and questioned why he was still employed.

In a February 17, 2011 e-mail correspondence, Mr. DeLaTorre denied knowledge of any allegations pertaining to October 7, 2004. He indicated that he was never given affidavit or subpoena to testify in court. Mr. DeLaTorre noted that he recalled responding to a motor vehicle accident in which appellant was involved; however, he did not recall the date or details.

On March 8, 2011 Mr. Hudgens repeated information from his previous statement. He noted speaking with appellant on two occasions about customer complaints of misdeliveries. Mr. Hudgens noted that he spoke with appellant at his case and the discussions took less than two minutes each time. He noted that the November 15, 2010 meeting was held in his office and concerned various health problems and how to deal with them.

In a July 1, 2011 letter, Ms. Andama noted that, while a grievance was settled regarding the July 18, 2006 matter, this did not mean that appellant was not at fault, it merely corrected his nonpay status. She enclosed a July 1, 2011 e-mail from Ms. Gill who responded to appellant's allegation about the November 3, 2006 incident. Ms. Gill confirmed that she observed appellant talking on the cell phone and driving with no hands. She noted that a grievance was settled and management contended that she did not violate the union contract by doing a street observation. A grievance settlement was attached in which no adverse findings were made.

By decision dated July 21, 2011, OWCP denied appellant's claim. It found that he had not established any compensable factors of employment and thus had failed to establish an emotional condition in the performance of duty.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every illness that is somehow related to an employee's employment. There are situations where an injury or 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 specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA. 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]

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.[4] This burden includes the submission of a detailed description of the employment factors or conditions, which he believes caused or adversely affected the condition or conditions, for which compensation is claimed.[5]

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 the physician when providing an opinion on causal relationship and, which working conditions are not deemed factors of employment and may not be considered.[6] 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 the matter establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.[7]

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of stress related to his position as a rural carrier. The Board must thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA. Appellant has not attributed his emotional condition to the regular or specially assigned

[3] *See Lillian Cutler,* 28 ECAB 126 (1976).

[4] *Pamela R. Rice,* 38 ECAB 838, 841 (1987).

[5] *Effie O. Morris,* 44 ECAB 470, 473-74 (1993).

[6] *See Norma L. Blank,* 43 ECAB 384, 389-90 (1992).

[7] *Id.*

duties of his position as a rural carrier. Therefore, he has not alleged a compensable factor under *Cutler*.[8]

Appellant made several allegations related to administrative and personnel actions. In *Thomas D. McEuen*,[9] 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 notes that these matters are administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of FECA.[10] Although these matters are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.[11] 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 establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[12]

Appellant alleged that he improperly received a letter of warning and reprimand in regard to being observed talking on a cell phone and driving with no hands on November 3, 2006. In a July 1, 2011 e-mail, Ms. Gill confirmed that she observed him on the street talking on a cell phone and driving with no hands. She indicated that her street observation did not violate the union contract. A grievance settlement of the matter did not attribute any error to the employer in this matter. Although appellant alleged that the employing establishment acted abusively, he did not provide sufficient evidence to support such a claim. The employing establishment provided a reasonable explanation and denied any improper motive. Thus, appellant has not established a compensable employment factor under FECA in this respect.

Appellant alleged that, on July 18, 2007, Mr. Sihota accused him of stealing a customer's credit card and using it to buy items at a Home Depot and that he was placed off work without pay, pending an investigation. Mr. Sihota referred to a grievance settlement in this matter in which it was determined that appellant's emergency off-duty status was not warranted and that he should be compensated during his nonduty period. Ms. Andama noted that the grievance settlement corrected appellant's nonpay status and did not find that he was at fault. Although he has made allegations that the employing establishment erred in conducting its investigation, appellant has not provided sufficient evidence to support such a claim. A review of the evidence

[8] *See supra* note 3.

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

[10] *See Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988). *See also Beverly R. Jones*, 55 ECAB 411 (2004) (monitoring work is an administrative function of a supervisor).

[11] *Id.*

[12] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

does not show that the employer's actions in this matter were unreasonable and the grievance settlement corrects appellant's pay status during a particular period but does not find that the employer's reasons for investigating him were erroneous.[13] Thus, appellant has not established a compensable employment factor under FECA in this respect.

Appellant alleged that in October 2010, Mr. Hudgens contacted him and discussed issues regarding the misdelivery of mail. On March 8, 2011 Mr. Hudgens noted speaking with appellant on two occasions to discuss customer complaints of misdeliveries. He noted that the discussions took place at appellant's case, and took less than two minutes. Also submitted was a letter from Mr. Phillips documenting problems with appellant's delivery of his mail. Mr. Chatha's statement also noted customer complaints about appellant's job performance and his discussion with appellant about poor performance. The Board has characterized criticisms of performance,[14] supervisory discussions of job performance[15] and reprimands[16] as administrative or personnel matters of the employing establishment, which are covered only when a showing of error or abuse is made. The record reflects that the employer had received complaints about appellant's mail delivery and reasonably took action that it deemed appropriate. Appellant did not submit evidence showing how it was error for the employer to discuss his performance deficiencies. He has not established a compensable employment factor with respect to this administrative matter.

Appellant also made general allegations that he was harassed in the form of derogatory statements about his character and his professionalism. 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.[17] 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.[18] Appellant stated that Mr. Chatha harassed him by noting that many customers on his route wanted him fired as he did not perform his job tasks correctly, and that he mocked appellant by stating that he never did anything wrong. Mr. Chatha disputed those allegations and asserted that he acted properly. He confirmed that appellant had performance issues, noting customer complaints about driving too fast and misdelivered mail. As noted, one of appellant's customers, Mr. Phillips also confirmed that appellant routinely misdelivered mail. As appellant has not submitted any evidence corroborating that he was harassed, abused or treated disparately,

[13] *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

[14] *O. Paul Gregg*, 46 ECAB 624 (1995).

[15] *Lorna R. Strong*, 45 ECAB 470 (1994).

[16] *Effie O. Morris*, 44 ECAB 470 (1993).

[17] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[18] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

and as the employer has denied acting inappropriately, appellant has not submitted sufficient evidence to establish his allegations of harassment.[19]

Likewise, appellant alleged that he was being targeted for additional accusations or a reprimand. While he may have felt that he was being targeted, his perception is not sufficient to establish a compensable work factor.[20] The record does not establish or support that appellant was being targeted or set up. This allegation is not established as factual.

Further unsubstantiated allegations which are not supported by the record include that, on October 7, 2004, he was accused by Mr. Delatorre and Mr. Almarez of having injuries outside the scope of employment and that, on October 1, 2006, he was falsely accused of a hit and run accident by Mr. Sihota. Mr. Delatorre and Mr. Sihota denied any knowledge of these accusations. Appellant also referred to a March 15, 2008 and September 2010 accident and alleged that Mr. Delatorre and Mr. Chatha accused him of being at fault. However, Mr. Delatorre recalled only that he responded to an accident in which appellant was involved but he did not recall the date or details. The Board notes that these allegations are unsupported and insufficient to establish a compensable factor.

As appellant has not established a compensable employment factor, it is not necessary to address the medical evidence.[21]

Appellant may submit evidence or argument with a written request for reconsideration 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

For the foregoing reasons, as appellant has not established any compensable employment factors under FECA, he has not met his burden of proof to establish an emotional condition in the performance of duty.

[19] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[20] *J.F.*, 59 ECAB 331 (2008); *M.D.*, 59 ECAB 211 (2007).

[21] *Garry M. Carlo*, 47 ECAB 299 (1996); *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the July 21, 2011 decision of Office of Workers' Compensation Programs is affirmed.

Issued: March 26, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board