

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

A.K., Appellant)	
)	
and)	
)	Docket No. 13-79
U.S. POSTAL SERVICE, POST OFFICE,)	Issued: April 15, 2013
Orange, 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
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On October 12, 2012 appellant filed a timely appeal from a June 22, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 December 30, 2011 appellant, then a 62-year-old city carrier, filed a traumatic injury claim alleging that on December 27 and 28, 2011 visiting postmasters harassed him on his route. He stopped work on December 29, 2011.

¹ 5 U.S.C. § 8101 *et seq.*

By letter dated January 11, 2012, OWCP requested that appellant submit additional factual and medical information.

In a statement dated February 8, 2012, appellant related that he believed that the employing establishment discriminated against him due to his age. He asserted that on December 21, 2011 two postmasters told him that they had been observing him and questioned why he took more than the expected time at two locations. Appellant explained that both locations had a lot of certified mail. On December 27, 2011 two postmasters again went with him on his route. One told appellant that he should not take more than 10 seconds before delivering mail. He tried to explain his system to the postmasters but neither would listen and told him to stop wasting time. Appellant stated:

“This questioning/ridicule happened at every deliver point. ‘[Appellant] just go, you are too slow.’ They stuck to me like a shadow, giving me orders. When I followed orders, they continually repeated ‘no, you are too slow.’ At times, I told them they were confusing me and that [I] was under stress. I told them that if they keep doing this, I can have [an] accident and that my safety would be in jeopardy.”

Appellant related that he felt like “a horse being jockeyed with [a] stick.” On December 28, 2011 his supervisor told him that he needed to take an extra hour loop, Route 6705, because his route was under time and that two postmasters would accompany him on his deliveries. Appellant received a map of the new route “which did not show streets, numbers and was generally unreadable.” He delivered his last three loops first as instructed by the postmasters. Appellant then began to deliver to Route 6705. He could not find one of the streets on the map so had to call his supervisor, which took extra time. Appellant had to repeatedly call the employing establishment to find the locations of streets that were not on the map. One postmaster kept telling him that he was wasting time. The postmasters got frustrated and told appellant to stop delivering Route 6705 and deliver his own route by 4:00 p.m. even though he did not begin his route until 12:15 p.m. Appellant called the employing establishment and told his supervisor that he could not finish his route before 6:00 p.m. and that he had not had lunch or his scheduled break. The postmaster was angry that appellant could not finish his route by 4:00 p.m. and constantly criticized him. Both postmasters repeatedly “changed their statements and instructions.” Appellant stated, “At one time, [one postmaster] took a handful of mail from each of the three trays, in order to demonstrate how to do fast fingering while delivering mail. The postmaster was so flustered that he put the mail in wrong trays, causing the entire sequence to be messed up.” The postmasters threatened to rewrite appellant’s route description to make it a walking route.

By decision dated June 22, 2012, OWCP denied appellant’s claim after finding that he had not established any compensable employment factors. It determined that he had not established that the postmasters harassed him or committed error in an administrative action.

On appeal, appellant contends that the supervising officials belittled him and created such a stressful work environment that he was fearful for his safety and well being. He related that the postmasters gave confusing orders, shouted and were “rude and offensive.” Appellant further stated, “I was forced to carry one hour of extra work and ordered to finish my route in the

same amount of time, despite my opposition and concern.” He noted that OWCP should accept that his statement as it was not challenged in any significant way by the employing establishment. Appellant related that he experienced stress because “supervisory officials took mail out of the locations I placed, and then returned that mail to places I could not understand....” He maintained that the officials were 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 or her 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 or her frustration from not being permitted to work in a particular environment or to hold a particular position.³

OWCP’s procedures provide:

“An employee who claims to have had an emotional reaction to conditions of employment must identify those conditions. The [claims examiner] must carefully develop and analyze the identified employment incidents to determine whether or not they in fact occurred and if they occurred whether they constitute factors of the employment. When an incident or incidents are the alleged cause of disability, the [claims examiner] must obtain from the claimant, agency personnel and others, such as witnesses to the incident, a statement relating in detail exactly what was said and done. If any of the statements are vague or lacking detail, the responsible person should be requested to submit a supplemental statement clarifying the meaning or correcting the omission.”⁴

ANALYSIS

Appellant has not alleged that his emotional condition was due to his regular assigned duties. Rather, he alleged that he sustained an emotional condition primarily from harassment and abuse by postmasters accompanying him on his route on December 27 and 28, 2011. While

² 5 U.S.C. § 8101 *et seq.*; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

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

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, 2.804.17(j) (July 1997).

appellant filed a traumatic injury claim, as he attributed his condition to events occurring over more than one duty shift, OWCP properly considered his claim as an occupational disease.⁵

On January 11, 2012 OWCP requested that appellant submit factual and medical information in support of his claim. Appellant submitted a detailed statement dated February 8, 2012 describing the events to which he attributed his condition. He alleged that he experienced stress due to harassment and abuse by postmasters accompanying him on his route. Appellant further maintained that they gave him conflicting instructions and required him to deliver a route with a map that was illegible. Even though many of the incidents described by him related to administrative actions of the employer, he contended that the actions were abusive and, therefore, were compensable work factors. OWCP did not obtain a statement from the employing establishment addressing appellant's allegations. Its procedures require that, in development of an emotional condition claim, it must obtain statements from witnesses, coworkers and supervisors, among others, before it makes a determination of whether the incidents alleged by a claimant occurred and whether such incidents or factors constitute compensable factors of employment.⁶ OWCP's procedures further provide, "In certain types of claims, such as a stress claim, a statement from the employer is imperative to properly develop and adjudicate the claim."⁷

Although it is a claimant's burden to establish his or her claim, OWCP is not a disinterested arbiter but, rather, shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source. It shares responsibility to see that justice is done.⁸ OWCP's regulations provide that an employer who has reason to disagree with an aspect of the claimant's allegation should submit a statement that specifically describes the factual argument with which it disagrees and provide evidence or argument to support that position.⁹ If the employer does not submit a written explanation to support its disagreement, OWCP may accept the claimant's report of injury as established.¹⁰

The case will, consequently, be remanded to OWCP to further develop the factual evidence and, thereafter, to make appropriate findings on appellant's allegations. OWCP shall request that the employing establishment address the assertions set forth in appellant's

⁵ A traumatic injury is defined as a "condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift." 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift." 20 C.F.R. § 10.5(q).

⁶ See *supra* note 14; see also *Sandra Price*, Docket No. 95-3012 (issued January 15, 1998).

⁷ Federal (FECA) Procedure Manual, *supra* note 4, *Initial Development of Claims*, Chapter 2.800.5(d)(1) (June 2011).

⁸ See *S.P.*, Docket No. 11-1271 (issued April 19, 2012).

⁹ 20 C.F.R. § 10.117(a).

¹⁰ *Id.*; see *Alice F. Harrell*, 53 ECAB 713 (2002).

statements. Following this and such further development as OWCP deems necessary, it should issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the June 22, 2012 decision of the Office of Workers' Compensation Programs is set aside and remanded for further proceedings consistent with this opinion of the Board.

Issued: April 15, 2013
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