



May 3, 2011. Appellant's supervisors disputed his claim noting that the implicated coworkers denied her allegations and that the employing establishment had relocated personnel so that there was no interaction with appellant.

In his narrative statement, appellant alleged that he was harassed through assaults by Erinn Brown on May 3, 2011 and Charlie Richardson on February 10, 2011. He stated that on May 3, 2011 he approached Mr. Brown's duty station in order to turn the air conditioner off. Mr. Brown moved his chair to prevent appellant from reaching the switch and then jumped out of his chair and pushed appellant. When appellant told Mr. Brown not to push him, Mr. Brown allegedly put his hand on appellant's chest and asked what appellant was going to do, referring to him as an old man. He stated that, a few weeks prior to this incident, Mr. Brown ran over his foot with his chair when appellant approached to turn off the air conditioner. Mr. Brown also bumped into appellant's shoulder when they were both going through the door.

Appellant submitted medical evidence diagnosing stress from fear of violence at the workplace.

In a letter dated September 8, 2011, OWCP requested additional factual and medical evidence in support of appellant's emotional condition claim. Appellant described the incident on February 10, 2011. He stated that the heater was on high in his office and that the noise was such that he could not hear his clients. Appellant opened the door and Mr. Richardson slammed the door closed. Mr. Richardson and appellant engaged in a pushing and shouting match. Appellant alleged that Mr. Richardson stated, "I know why you are doing this because you do n[o]t want to testify on my behalf because of my pending [Equal Employment Opportunity] complaint." He stated that he feared for his safety and requested that management move him to another work area.

In a statement dated February 11, 2011, the employing establishment noted that appellant and Mr. Richardson had an ongoing dispute regarding workload distribution. Appellant alleged that Mr. Richardson physically threatened him. In a statement dated February 11, 2011, Mr. Richardson stated that he and appellant could not agree on anything in the office, the heat, the door and the routing of the workload. He stated that there were general disagreements and they requested separate offices. Appellant alleged that Mr. Brown and Mr. Richardson were good friends and that the incidents were planned, like a plot.

By decision dated September 5, 2012, OWCP denied appellant's claim on the grounds that he did not substantiate that the alleged assaults and harassment occurred as alleged.

### **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*,<sup>2</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.<sup>3</sup> There are situations where an injury or

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<sup>2</sup> 28 ECAB 125 (1976).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

illness has some connection with the employment but nevertheless does not come within coverage under FECA.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> Where the evidence 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.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup>

### ANALYSIS

Appellant has alleged that he developed an emotional condition as the result of harassment in the form of physical assaults by two coworkers. As noted above, he is required to establish a factual basis for his claim of harassment through probative and reliable evidence.

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<sup>4</sup> See *Robert W. Johns*, 51 ECAB 136 (1999).

<sup>5</sup> *Cutler*, *supra* note 2.

<sup>6</sup> *Id.*

<sup>7</sup> *Charles D. Edwards*, 55 ECAB 258 (2004).

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

<sup>9</sup> *Roger Williams*, 52 ECAB 468 (2001).

<sup>10</sup> *Alice M. Washington*, 46 ECAB 382 (1994).

While appellant has submitted detailed narrative statements describing physical and verbal altercations with coworkers, Mr. Brown and Mr. Richardson, he has not provided any witness statements, police reports or other documentation supporting that the events occurred as alleged. The employing establishment disputed appellant's claim on the grounds that both Mr. Brown and Mr. Richardson denied his allegations of physical or verbal altercations or harassment. Without the necessary evidence corroborating and substantiating that the events occurred as he alleged, appellant has failed to meet his burden to prove a compensable employment factor and OWCP properly denied his emotional condition claim.

Where a claimant has not established any compensable employment factors, the Board need not consider the medical evidence of record.<sup>11</sup>

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.

### **CONCLUSION**

The Board finds that appellant did not submit the necessary factual evidence to establish that the alleged events occurred and did not therefore meet his burden of establishing a compensable factor of employment necessary to establish his emotional condition claim.

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<sup>11</sup> A.K., 58 ECAB 119 (2006).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 5, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 12, 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