

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

R.C., Appellant

and

U.S. POSTAL SERVICE, LINTHICUM
INCOMING MAIL FACILITY, Linthicum, MD,
Employer

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**Docket No. 13-1075
Issued: December 23, 2013**

Appearances:
Stanley C. Mason, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 3, 2013 appellant, through his representative, filed a timely appeal from a December 13, 2012 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 established that he sustained an emotional condition in the performance of duty.

On appeal, appellant contends that he has established a compensable factor of employment and entitlement to compensation benefits.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 13, 2012 appellant, then a 69-year-old supervisor, filed a traumatic injury claim alleging that on January 4, 2012 he sustained severe chest pains, difficulty breathing, stress and elevated blood pressure as a result of being yelled at by a supervisor regarding mail processing.²

Appellant submitted disability slips, diagnostic tests a hospitalization report and a factual statement. He related that Herbert Owens, the plant manager, appeared agitated while instructing him to run a particular zone of mail on the machines. Appellant informed Mr. Owens that the mail he requested to be run was not processed on tour one and that he did not have the equipment to run the mail. He alleged that Mr. Owens responded loudly in a hostile manner “that he was tired of that being an excuse.” Appellant alleged that the machine would not work without proper equipment to process the mail and that the mail would be processed at a later time when the equipment became available. He alleged that Mr. Owens became angry, yelled at him and instructed him to shut the entire operation down and move his employees to sit in the cafeteria. As a result of being yelled at by Mr. Owens, appellant began to have difficulty breathing, felt faint and had chest pain. He was seen by paramedics and taken to a local hospital and admitted. At the hospital, appellant was diagnosed with exacerbation of chronic obstructive pulmonary diseases.

In a February 20, 2012 report, Dr. Ruchira Thakor, a treating Board-certified family practitioner, opined that the January 4, 2012 work incident aggravated appellant’s preexisting chronic obstructive pulmonary disease and hypertension. He related that appellant became stressed due to the January 4, 2012 work incident which led to difficulty breathing and chest pains and being taken to the hospital by an ambulance.

In a letter dated February 23, 2012, OWCP informed appellant that the evidence of record was insufficient to establish his claim. Appellant was advised as to the medical and factual evidence required to support his claim and given 30 days to provide such information.

On March 8, 2012 OWCP received a January 22, 2012 statement from Mr. Owens regarding the January 4, 2012 incident. Mr. Owens denied that he yelled, threatened or was disrespectful toward appellant during their interaction. While walking through the workroom floor on January 4, 2012, he noticed three containers of flat mail with a code indicating a delivery due date of January 5, 2012. Mr. Owens called for appellant to report to him and informed appellant that the three containers needed to be incorporated with the mail being worked on to ensure no delayed mail. Appellant responded that he could not process the mail contained in the three containers as he did not have the equipment. Mr. Owens informed appellant that he would get appellant the equipment required to process the mail so that it was not delayed in the morning. He walked away from appellant, who stated that he could not run the four mail schemes and the mail Mr. Owens wanted sorted at the same time. In response, Mr. Owens jokingly told appellant to “shut down all the machines and take you and your employees to the Lunch Room and just sit.” At no time during their discussion was there any

² Appellant retired from the employing establishment effective February 29, 2012.

yelling, disrespectful statements or threatening conduct by either party. Mr. Owens also denied creating a hostile work environment toward appellant or any other employee. He related that appellant had previously experienced similar symptoms of severe chest pain, feeling faint and trouble breathing the last time he was ill.

In a March 17, 2012 statement, appellant alleged that the instructions given by Mr. Owens on January 4, 2012 regarding the processing of additional mail was a special assignment as he rarely processed this type of sort plan mail. Mr. Owens informed appellant of the requirements for sorting the mail. Appellant noted that there was a limited number of flat tubs. According to appellant, Mr. Owens responded in an angry tone and loud manner that he was “tired of hearing that as an excuse.” Appellant believed the work request to be unrealistic and he was stunned at the tone, demeanor and manner of Mr. Owens. He stated that there was no equipment available to comply with his request. Appellant informed Mr. Owens that he “would try to process the mail later based upon the availability of flat tubs.” He alleged that Mr. Owens began yelling at him, became irate and instructed him to shut the flat sorter operation down, process no mail and move his employees to the cafeteria to sit. Appellant contended that Mr. Owens created a hostile environment, was very threatening and that he become apprehensive. After this interaction, appellant approached George J. Askew, a clerk, and informed of chest pains, feeling faint and difficulty breathing. Appellant’s supervisor called the paramedics and he was taken to the hospital.

On March 20, 2012 OWCP received the following statements. In a February 6, 2012 statement, Vivian Casey, a manager in distribution operations, stated that appellant called her on January 4, 2012 and told her he was not feeling well due to being stressed out by Mr. Owens. She noted that just prior to this incident and prior to Christmas, he had been ill with a stomach virus and a cold. In a March 14, 2012 statement, Mr. Askew, a coworker, related that appellant approached him on January 4, 2012 and appearing upset. Appellant related the instructions by Mr. Owens regarding sorting some mail. He alleged that Mr. Owens abused him, spoke in an irate tone, told appellant that “he was tired of hearing excuses” and that he should take his employees off the work floor to the cafeteria to sit. Mr. Agnew related that appellant appeared stressed.

By decision dated March 29, 2012, OWCP denied appellant’s claim. It found that he failed to establish that the alleged January 4, 2012 incident occurred as alleged. OWCP found that the evidence was insufficient to establish that appellant’s supervisor yelled at him regarding the processing of mail and there was insufficient evidence from people who had witnessed the incident.

On April 26, 2012 appellant requested an oral hearing before an OWCP hearing representative. A telephonic hearing was held on September 20, 2012 at which he was represented and testified.

In an April 26, 2012 statement, appellant reiterated his accusations regarding Mr. Owens. While he was being transported to the hospital his stress increased as he recalled a supervisor who died while being transported from work to the hospital.

By decision dated December 13, 2012, OWCP's hearing representative affirmed the March 29, 2012 denial of appellant's claim.

LEGAL PRECEDENT

To establish a claim that he or she sustained an emotional condition in the performance of duty, an employee must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.³

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.⁴ 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.⁵ 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.⁶ 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.⁷

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA.⁸ 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.⁹ 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.¹⁰

The Board has held that the manner in which a supervisor exercises his or her discretion falls outside the coverage of FECA. This principal recognizes that a supervisor or manager must

³ *V.W.*, 58 ECAB 428 (2007); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

⁵ *A.K.*, 58 ECAB 119 (2006); *David Apgar*, 57 ECAB 137 (2005).

⁶ 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *J.F.*, 59 ECAB 331 (2008); *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁸ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

⁹ See *William H. Fortner*, 49 ECAB 324 (1998).

¹⁰ *Ruth S. Johnson*, 46 ECAB 237 (1994).

be allowed to perform their duties and that employee's will, at times, disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.¹¹ Although the handling of leave requests and attendance matters are generally related to employment, they are administrative matters and not a duty of the employee.¹²

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.¹³ Mere perceptions of harassment or discrimination are not compensable under FECA.¹⁴ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.¹⁵ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹⁶ A claimant must establish a factual basis for his or her allegations of harassment or discrimination with probative and reliable evidence.¹⁷

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.¹⁸ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.¹⁹ 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.²⁰

ANALYSIS

Appellant attributed his severe chest pains, difficulty breathing, stress and elevated blood pressure due to being yelled at in a loud voice, treated in a demeaning and derogatory manner

¹¹ *S.M.*, Docket No. 09-2290 (issued July 12, 2010); *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

¹² *C.T.*, Docket No. 08-2160 (issued May 7, 2009); *Jeral R. Gray*, 57 ECAB 611 (2006).

¹³ *K.W.*, 59 ECAB 271 (2007); *Robert Breeden*, *supra* note 4.

¹⁴ *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁵ *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, *supra* note 4.

¹⁶ *G.S.*, Docket No. 09-764 (issued December 18, 2009); *Ronald K. Jablanski*, 56 ECAB 616 (2005); *Penelope C. Owens*, 54 ECAB 684 (2003).

¹⁷ *Robert Breeden*, *supra* note 4; *Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁸ *D.L.*, 58 ECAB 217 (2006); *Jeral R. Gray*, *supra* note 12.

¹⁹ *K.W.*, 59 ECAB 271 (2007); *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

²⁰ *Robert Breeden*, *supra* note 4.

and threatened by Mr. Owens on January 4, 2012. He alleged that Mr. Owens harassed him and created a hostile work environment. The Board must initially review whether the alleged incidents and conditions of employment are covered employment factors under the terms of FECA. The Board notes that appellant's allegations do not pertain to his regular or specially assigned duties under *Cutler*.²¹ Rather, appellant has alleged harassment on the part of management and error and abuse in administrative matters.

The employing establishment denied that appellant was subjected to harassment and he has not submitted sufficient evidence to establish that he was harassed by Mr. Owens on January 4, 2012.²² The Board has recognized the compensability of physical threats or verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.²³

Appellant stated that Mr. Owens instructed him to process mail which was not normally processed on his shift. He contended that he did not have the equipment to process the mail. During their interaction on January 4, 2012, Mr. Owens spoke to appellant in a loud voice with a threatening demeanor. The Board has found that an employee's complaints concerning the manner in which a supervisor performs his duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, is outside the scope of coverage provided by FECA. This principle recognizes that a supervisor or manager in general must be allowed to perform his or her duties, that employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.²⁴ The Board notes that the assignment of work is an administrative function²⁵ and the manner in which a supervisor exercises his or her discretion falls outside the ambit of FECA. Absent evidence of error or abuse, appellant's mere disagreement or dislike of a managerial action is not compensable.²⁶ The Board finds that he has not offered sufficient evidence to establish error or abuse regarding his work assignments. The evidence does not establish that the employing establishment acted unreasonably.²⁷ Appellant presented no corroborating evidence to support that the employing establishment acted unreasonably in assigning work. He has not established administrative error or abuse in the performance of these actions and therefore they are not compensable under FECA.

²¹ See *Cutler*, *supra* note 6.

²² See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment with probative and reliable evidence).

²³ *L.K.*, Docket No. 08-849 (issued June 23, 2009); see also *Donney T. Drennon-Gala*, 56 ECAB 469 (2005); *Charles D. Edwards*, 55 ECAB 258 (2004).

²⁴ See *Marguerite J. Toland*, 52 ECAB 294 (2001).

²⁵ *Donney T. Drennon-Gala*, *supra* note 23.

²⁶ See *Barbara J. Latham*, 53 ECAB 316 (2002); see also *Peter D. Butt Jr.*, 56 ECAB 117 (2004) (allegations such as improperly assigned work duties, which relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties do not fall within the coverage of FECA).

²⁷ *D.L.*, 58 ECAB 217 (2006).

Appellant alleged that Mr. Owens created a hostile work environment on January 4, 2012 when he spoke to him in a loud voice, threatened him and treated him in a demeaning and derogatory manner. To the extent that appellant alleged Mr. Owens verbally abused and threatened him on January 4, 2012, the Board has recognized the compensability of verbal abuse in certain circumstances. However, the Board has generally held that being addressed in a raised or harsh voice does not of itself constitute verbal abuse or harassment.²⁸ The Board finds that the evidence of record is not sufficient to support verbal abuse. While the record contains witness statements from Ms. Casey and Mr. Askew, neither actually witnessed the January 4, 2012 incident. They both stated that they saw appellant on January 4, 2012, that he appeared upset and that he told them he was stressed out due to a recent interaction with Mr. Owens. Neither mentioned actually witnessing the interaction or heard Mr. Owens yelling, threatening or being disrespectful to appellant that day. Appellant provided no corroborating evidence or witness statements from people who actually witnessed the event to establish his allegation regarding the January 4, 2012 incident.²⁹ There is no corroborating evidence to support that Mr. Owens yelled at appellant, threatened him or treated him in a disrespectful manner, which would rise to the level of a compensable employment factor.³⁰ Mr. Owens submitted a statement denying any yelling, disrespect or threat. As the factual evidence does not support appellant's allegations that Mr. Owens yelled or threatened or treated him in a disrespectful manner, appellant has not established a compensable factor of employment with respect to these allegations.

For the reasons set forth above, appellant has not established any compensable employment factors under FECA and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.³¹

On appeal, appellant contends the instructions given by Mr. Owens were unreasonable as were the screaming and yelling he was subjected to. As found above, the record is devoid of corroborating evidence establishing that Mr. Owens yelled or screamed at him or that instructions given constituted abuse or error. Thus, appellant failed to establish any compensable work factor.

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.

²⁸ *T.G.*, 58 ECAB 189 (2006); *Charles D. Edwards*, 55 ECAB 258 (2004).

²⁹ *See William P. George*, 43 ECAB 1159 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

³⁰ *See C.S.*, 58 ECAB 137 (2006); *Judy L. Kahn*, 53 ECAB 321 (2002).

³¹ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *See E.R.*, Docket No. 09-599 (issued June 3, 2009); *Robert Breeden*, *supra* note 4; *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an emotional condition while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs' dated December 13, 2012 is affirmed.

Issued: December 23, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board