

FACTUAL HISTORY

On May 11, 2010 appellant, then a 65-year-old administrative clerk, filed an occupational disease claim (Form CA-2) alleging that on April 29, 2010 he suffered an aggravation of an emotional injury. He indicated that he was previously diagnosed with major panic, anxiety and depressive disorders and was rated as a 100 percent service-connected disabled veteran. Appellant alleged that Louis Anderson, a director of the employing establishment, entered a meeting, looked right at him with an angry and disgusted expression and shouted, "What are you doing?" in front of the entire office. He replied that he was listening to his supervisor, Verna Bone, give instructions. Mr. Anderson gestured with his index finger for appellant to follow him down a hall where he then blocked appellant's path and unleashed a barrage of insults and frightening threats. Fearing that he might strike him appellant tried to get around him, but was unable to return to his desk until Mr. Anderson finished repeatedly suggesting that appellant "sign [his] 308 and get out" Mr. Anderson then finally allowed appellant to pass. Appellant immediately completed a Form 308 time sheet and submitted it along with his badge to his supervisor. He drove away from the premises and had to stop driving because he was having a near full-blown panic attack. Appellant called his wife and son who drove him home. His wife made him an appointment with his mental health doctor for the next day. Appellant took extra medication and rested for the remainder of the day.

In an April 30, 2010 report, Jerome G. Die, Ph.D., a clinical psychologist, reported that he had been treating appellant since April 26, 2007 for major depressive disorder and panic disorder. He reported that these conditions were initially documented when appellant separated from the military in 1967. Dr. Die reported that appellant had responded well to treatment and his depression and anxiety were under good control until he experienced an acute exacerbation of his symptoms as a consequence of a major environmental stressor on April 29, 2010. Appellant was unexpectedly accosted by his supervisor's superior in a manner that appellant described as baffling, entirely unwarranted, extremely humiliating and demeaning. As he was unable to remain in the suddenly highly stressful work environment, he signed out and left the building. Dr. Die opined that the result of this experience was the immediate exacerbation of appellant's preexisting anxiety and mood disorders. He found that appellant was unable to return to work secondary to the exacerbation of his anxiety and depression.

In a statement dated May 10, 2010, O'Mont Wiley, a former coworker reported that on April 29, 2010 appellant was singled out by Mr. Anderson for no reason whatsoever. He stated that, listening to Ms. Bone, Mr. Anderson asked appellant what he was doing and appellant replied that he was listening to Ms. Bone. Mr. Anderson asked appellant again and Mr. Wiley heard appellant reply: "I'm listening to the supervisor like you informed us to do, what are you doing?" After that, he told appellant to come with him and from there Mr. Anderson "was all in [appellant's] personal area talking at him in a foul manner while putting his finger in his face." Mr. Wiley stated that, while observing the actions that were taking place, "[Mr. Anderson] was actually blocking [appellant] from returning back to his [workstation] stepping in the path [appellant] was attempting to move in." He further noted that "[Mr. Anderson] was talking to [appellant] as if he was a child, [Mr. Anderson] is [four] times larger than [appellant], it seems as if he was trying to intimidate him with his size and loud talking."

In a May 17, 2010 statement, Mr. Anderson indicated that upon entering the work area he observed appellant leaning back and having his arms folded and looking away from his work area and computer screen. He asked appellant what he was doing and he stated that he was doing nothing. Mr. Anderson asked again for clarification and appellant's retort was very belligerent. In a disrespectful manner and in a demeaning fashion, appellant responded that he was doing nothing and looked away. Mr. Anderson told him to come out of the work area into a private area and asked him again what he was doing. Appellant replied that he was listening to Ms. Bone, who was holding a meeting. Mr. Anderson stated that appellant was agitated and hostile and spoke sharply with a tone. He told appellant that he was not aware of a meeting going on and just needed an explanation. Appellant became agitated and asked why he was singled out, at which point Mr. Anderson told him that he was the first person he saw and did not know that there was a meeting. He challenged Mr. Anderson for talking to him and calling him aside. Mr. Anderson was incredulous at what he perceived to be appellant's irrational comment and the increasing volume of his conversation and pointed out that he was whispering while appellant's voice kept getting louder. He explained again that he merely required an explanation of appellant's "doing nothing" and now that he had it Mr. Anderson was satisfied. Mr. Anderson stated that appellant calmed down right away and apologized for blowing up like that and stated that he had been having a bad time of it. He stated that he shook appellant's hand twice and he returned directly to the work and his attendance in the meeting after the 30-second conversation ceased.

Later, Mr. Anderson was informed that appellant completed a Form 308 time sheet, turned in his name badge and walked out of the room without comment to his supervisor or the manager of the department. He concluded that appellant had quit or abandoned his job, for some reason, perhaps related to a personal matter but hardly believed it could have been as a result of the previously detailed conversation.

By letter dated July 9, 2010, OWCP informed appellant that the evidence of record was insufficient to support his claim. It requested that he provide additional factual and medical evidence within 30 days.

Subsequently, OWCP received diagrams of the work area and a July 29, 2010 narrative statement by appellant indicating that everyone in the meeting was doing nothing but sitting at their desks listening to Ms. Bone. No physical labor was taking place at all. Appellant also contended that he was about the fourth person Mr. Anderson saw as he entered the area. Mr. Anderson passed Mr. Wiley and a few others before he singled out appellant. Appellant denied shaking Mr. Anderson's hand and apologizing for blowing up. He alleged that Mr. Anderson took his hand and ordered him back to work, which appellant took as further mockery and abuse. Mr. Anderson stormed out and fired Mr. Wiley on the spot.

In a June 24, 2010 report, Dr. Richard Owings, a Board-certified psychiatrist, indicated that appellant was generally anxious, but it was worse than usual on that day. Appellant stated that his boss had been verbally abusive to him and he felt intimidated and ashamed. Dr. Owings was afraid to allow appellant to go back to work. He stated that appellant became stressed and tense when talking about abuse at work.

In a July 16, 2010 statement, Ms. Bone indicated that she did not witness the exchange between appellant and Mr. Anderson. After the morning staff meeting, she came upstairs to the work area and called a meeting with all of the administrative clerks. Appellant, Mr. Wiley and Mr. Emerson were sitting to Ms. Bone's right and everyone else was gathered around the tables in her area. They were able to see and hear Ms. Bone as she spoke. About halfway through the meeting, appellant came over and placed a time sheet and his badge on Ms. Bone's desk and walked out. Ms. Bone called his name a couple of times and asked what was going on. Appellant never responded. Mr. Emerson told Ms. Bone that he would explain later, so she completed the meeting.

In a statement received by OWCP on July 22, 2010, Mr. Emerson indicated that Mr. Anderson asked appellant to come into the passage/walkway between the workstations and the ramp to the lower level. It was a private area and was out of view of most of the other employees who were in the meeting with Ms. Bone. Mr. Emerson did not see Mr. Anderson blocking appellant's path. Mr. Wiley was the only employee on the same side of the workstation as the passage/walkway at the time of the incident and was therefore closest to Mr. Anderson when the conversation began. He was the closest employee within earshot of the discussion, although he would have had to turn around sideways to actually see the discussion, according to Mr. Emerson, who was the next closest and had a clearer view of the passage/walkway as his chair actually faced that direction. Mr. Wiley also had a disagreement with Mr. Anderson later that same day and was dismissed.

In a September 15, 2010 report, Dr. Die reiterated that appellant suffered acute exacerbations of both anxiety and depressed mood precipitated by his encounter with a superior on April 29, 2010 while working at the employing establishment. He reported that appellant continued to experience heightened anxiety levels, marked dysphoria, disturbed sleep and frequent nightmares.

On October 6, 2010 appellant submitted comments to the statements from Mr. Emerson, Ms. Bone and Mr. Anderson. He indicated that the statement from Mr. Anderson was dubious at best and noted that Mr. Anderson had not signed or dated the statement. Appellant stated that the conversation lasted more than 30 seconds.

By decision dated November 30, 2010, OWCP denied appellant's claim finding that the evidence did not establish an emotional condition arising from a compensable factor of employment.

On December 30, 2010 appellant requested a review of the written record by an OWCP hearing representative and submitted a December 30, 2010 narrative statement in support of the claim.

By decision dated August 18, 2011, OWCP's hearing representative affirmed the November 30, 2010 decision.

LEGAL PRECEDENT

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion evidence establishing that compensable employment factors are causally related to the claimed emotional condition.² There must be evidence that acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.³

Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of FECA.⁴ On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of FECA.⁵

Workers' compensation does not cover an emotional reaction to an administrative or personnel action unless the evidence shows error or abuse on the part of the employing establishment.⁶ As a rule, however, a claimant's allegations alone are insufficient to establish a factual basis for an emotional condition claim.⁷ Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.⁸ The primary reason for requiring factual evidence of 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.⁹

² See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

³ See *Ruth C. Borden*, 43 ECAB 146 (1991).

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Id.*

⁶ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon*, 42 ECAB 566, 572-73 (1991).

⁷ See *Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

⁸ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

⁹ See *Paul Trotman-Hall*, 45 ECAB 229 (1993) (Groom, Alternate Member, concurring).

The Board has recognized the compensability of verbal altercations or abuse when sufficiently detailed by the claimant and supported by the record. This does not imply, however, that every statement uttered in the workplace will give rise to compensability.¹⁰

ANALYSIS

Appellant did not attribute his emotional condition to his regular or specially assigned duties under *Cutler*.¹¹ Rather, he attributed his emotional condition to an incident which allegedly occurred on April 29, 2010. Appellant's primary allegation was that he suffered an aggravation of a preexisting emotional injury in the form of a panic attack when his supervisor's superior, Mr. Anderson, took him down to a passage/hallway into a private area, verbally abused him, physically threatened him and blocked his path. The Board has characterized disciplinary actions as administrative matters of the employing establishment, which are only covered under FECA when a showing of error or abuse is made.¹² In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹³ To support such a claim, appellant must establish a factual basis by providing probative and reliable evidence that the employing establishment had engaged in the alleged conduct and that, if factually established, that the employer's conduct was erroneous or abusive.¹⁴ The Board has held that not every ostensibly abusive or threatening statement uttered in the workplace will give rise to coverage under FECA.¹⁵

The record establishes that on April 29, 2010, Mr. Anderson asked appellant what he was doing, directed him to a private area in a passage/walkway and had a discussion. The evidence of record and witness statements indicate that appellant became upset after speaking with Mr. Anderson and immediately thereafter turned in his identification badge and time card and left work.

In his May 10, 2010 statement, Mr. Wiley characterized the April 29, 2010 encounter differently. He believed that Mr. Anderson was in appellant's personal area, "speaking to him in a foul manner and "talking to [appellant] as if he was a child." Mr. Wiley also generally stated that "[Mr. Anderson] was actually blocking [appellant] from returning back to his workstation stepping in the path [appellant] was attempting to move in." Appellant stated that it seemed as if Mr. Anderson had been trying to intimidate appellant with his size and loud talking. Other than the characterization of the tone and behavior used by Mr. Anderson, Mr. Wiley failed to provide any details about the content of the discussion. Mr. Emerson claimed that Mr. Wiley was the

¹⁰ See *David C. Lindsey*, 56 ECAB 263 (2005). The mere fact that a supervisor or employee may raise his or her voice during the course of an argument does not warrant a finding of verbal abuse. *Joe M. Hagewood*, 56 ECAB 479 (2005).

¹¹ See *supra* note 4.

¹² *Roger W. Robinson*, 54 ECAB 846 (2003).

¹³ See *supra* note 4.

¹⁴ See *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

¹⁵ See *K.D.*, Docket No. 11-841 (issued September 29, 2011); *Fred Faber*, 52 ECAB 107, 109 (2000).

closest to the discussion and would have been within earshot. Further, he disputed that Mr. Anderson had blocked appellant's path. Mr. Emerson noted that his position was directly across from the area of the conversation and he could clearly see what occurred. Mr. Wiley, on the other hand, had his back to the area but was closer to the conversation. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.¹⁶ An employee's reaction to an administrative or personnel matter is not covered under FECA, unless there is evidence that the employing establishment acted unreasonably.¹⁷ Because appellant has not presented sufficient evidence that Mr. Anderson acted unreasonably in speaking with him to determine whether he was engaged in work or what he was doing at the time, he has failed to identify a compensable work factor.

The Board has held mere disagreement or dislike of actions taken by a supervisor will not be compensable absent evidence establishing error or abuse.¹⁸ The record establishes that appellant completed a Form 308 time sheet and submitted it to his supervisor, Ms. Bone, who noted that he stated nothing to her when he submitted it and did not respond when she attempted to ascertain if something was wrong. Although appellant contends that he submitted the Form 308 as a consequence of Mr. Anderson's actions, the Board finds that there is no evidence to support that he improperly forced or coerced appellant to fill out the form and leave work. Mr. Anderson stated that he did not know why appellant either completed the form or left work suddenly. Thus, there is no evidence that he acted inappropriately.

Appellant has not demonstrated that Mr. Anderson was verbally abusive towards him on April 29, 2010. Although Mr. Wiley claims generally that Mr. Anderson was "trying to intimidate [appellant] with his size and loud talking," no specifics of the conversation were mentioned by Mr. Wiley. Mr. Emerson disputed the allegation that Mr. Anderson had attempted to block appellant's passageway. The witness statements of record do not support a finding of verbal abuse or physical threat. Appellant's allegations that Mr. Anderson physically threatened him and blocked his path are unsubstantiated. Mere perceptions of harassment are not compensable under FECA.¹⁹

The Board has held that mere allegations, in the absence of factual corroboration, are insufficient to meet a claimant's burden of proof.²⁰ While his physician referred to the exchange with Mr. Anderson on April 29, 2010, he was not present during this encounter and his depiction relies on appellant's representations. Moreover, it is unnecessary to address the medical evidence of record as appellant has failed to establish a compensable factor of employment.²¹ As

¹⁶ See *supra* note 8.

¹⁷ See *Alfred Arts*, 45 ECAB 530 (1994).

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

¹⁹ See *Cyndia D. Harrill*, 55 ECAB 522 (2004).

²⁰ See *Bonnie Goodman*, 50 ECAB 139 (1998).

²¹ See *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

appellant failed to provide sufficient evidence to establish a compensable factor of employment, OWCP properly denied his claim for an emotional condition.

On appeal, appellant argues that the evidence he submitted was sufficient to establish that he was in the performance of duty on April 29, 2010 when he suffered an emotional condition. For the reasons stated above, the Board finds his argument is not substantiated.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 and 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty on April 29, 2010.

ORDER

IT IS HEREBY ORDERED THAT the August 18, 2011 Office of Workers' Compensation Programs' decision is affirmed.

Issued: March 15, 2013
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