

FACTUAL HISTORY

On February 14, 2012 appellant, then a 38-year-old enforcement and removal assistant, filed an occupational disease claim alleging that he sustained employment-related PTSD because Charles Edwards admitted to felony violations when he would not sign a Form CA-2 claim.² He first realized that he had an emotional condition and of its relationship to employment on April 25, 2007. Angelita Vargas, enforcement and removal assistant supervisor, stated that she had no prior knowledge of the claimed injury.

In correspondence dated February 17, 2012, OWCP noted that no additional documentation was received with appellant's claim form. It advised him of the requirements needed to accept his claim and advised him to submit a physician's diagnosis with an opinion as to how his employment activities caused, contributed to or aggravated the claimed condition. OWCP also requested that the employing establishment respond to appellant's claim.

The record contains one page of a claim form with a hand-written notation by appellant, copies of e-mails regarding employing establishment policies and his claim and disciplinary letters dated April 6 and December 5, 2011 with his response. There is also correspondence from appellant to the Secretary of the Department of Homeland Security regarding his allegations of illegal activities at the agency and correspondence regarding an unidentified coworker.

By decision dated March 23, 2012, OWCP denied the claim. It found that appellant had not provided a statement sufficiently identifying claimed employment factors.

In a March 15, 2012 statement, received by OWCP on March 23, 2012, Ms. Vargas noted that she had been appellant's supervisor from January 17 through April 2009, April 26 through December 31, 2010 and again commencing January 1, 2012. She stated that she was unable to provide or substantiate any information in regard to his claim. Ms. Vargas provided a position description for an enforcement and removal assistant.

Dr. Henry H. Calderoni, Board-certified in family medicine, provided a January 30, 2008 report, prepared for the employing establishment. A medical history prepared by appellant stated that he was seeking treatment for flying issues. Dr. Calderoni provided findings on examination and diagnosed stable diabetes, no evidence of tremor and an otherwise stable examination. On February 1, 2008 Dr. Lynn J. Soffer, a Board-certified internist, advised that appellant should have a psychiatric evaluation.

In a February 29, 2008 report, Dr. Robert G. Zenner, a Board-certified psychiatrist, advised that appellant was being seen for anxiety regarding air travel and to determine if he could perform all the duties of a weapon-carrying position without restriction. He reported a history of diabetes and migraines and described appellant's complaints of anxiety when he travelled by air that began at the age of 13 after he saw a plane going down. Dr. Zenner performed a mental status examination and diagnosed specific phobia, situational type

² Appellant did not clearly identify Mr. Edwards' position. From the context of the evidence of record, it appears that Mr. Edwards works for the employing establishment inspector general's office.

(airplanes), diabetes, migraines and psychosocial stressors within the last six months of current job pressures. He reported that appellant had been diagnosed with PTSD several years prior when he witnessed two airplane incidents but he did not appear to have the condition any longer.³ Dr. Zenner stated that appellant's phobia was restricted to flying only and recommended cognitive therapy. In an April 2, 2008 report, prepared for the employing establishment, Dr. Kenneth Gaarder, a Board-certified psychiatrist, noted that he had evaluated appellant's records. He advised that, while appellant was free of other psychiatric illness, insofar as flying was a requirement of his position, he was not fit for duty due to his specific phobia, fear of flying.

On April 2, 2012 appellant, through counsel, requested a hearing that was held on July 16, 2012. He testified that he had military service-related tremors and migraines. Appellant described his employment history, stating that his problems began in 2007, after he alleged, illegal activities were being conducted at the employing establishment. He stated that proper procedures were not being followed and alleged that J.J. Bandanza, a supervisor, performed illicit activities, made disparaging remarks to appellant about being Hispanic, discussed his medical condition with coworkers and generally harassed him. Appellant stated that he was fired from an officer position due to his PTSD. He complained that Mr. Bandanza's wife was his secretary, an example of an environment of nepotism that worsened his condition and that an agency attorney, Robert Erbe, sabotaged any attempts to get promoted to other positions for which he applied. The record was left open for 30 days for the submission of additional evidence.

By decision dated August 31, 2012, an OWCP hearing representative affirmed the March 23, 2012 decision, finding that appellant did not establish a compensable factor of employment. The hearing representative noted that he submitted no evidence following the hearing to substantiate any allegations of wrong doing or harassment.

LEGAL PRECEDENT

To establish his claim that he sustained a stress-related condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he or she has an emotional or stress-related 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 stress-related condition.⁴ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.⁵ When the matter asserted is a compensable factor of employment and the evidence of

³ Dr. Zenner referenced records that are not contained in the record before the Board.

⁴ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁵ *Dennis J. Balogh*, 52 ECAB 232 (2001).

record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.⁶

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*,⁷ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.⁸ 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.⁹ Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.¹⁰ Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.¹¹ Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹²

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.¹³ 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.¹⁴

For harassment or discrimination to give rise to a compensable disability, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. 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 that the harassment occurred with probative and reliable evidence.¹⁵

⁶ *Id.*

⁷ 28 ECAB 125 (1976).

⁸ See *Robert W. Johns*, 51 ECAB 137 (1999).

⁹ *Lillian Cutler*, *supra* note 7.

¹⁰ *J.F.*, 59 ECAB 331 (2008).

¹¹ *M.D.*, 59 ECAB 211 (2007).

¹² *Roger Williams*, 52 ECAB 468 (2001).

¹³ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁴ *Kim Nguyen*, 53 ECAB 127 (2001).

¹⁵ *James E. Norris*, 52 ECAB 93 (2000).

With regard to emotional claims arising under FECA, the term “harassment” as applied by the Board is not the equivalent of “harassment” as defined or implemented by other agencies, such as the Equal Employment Opportunity Commission, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers’ compensation under FECA, the term “harassment” is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by co employees or workers. Mere perceptions and feelings of harassment will not support an award of compensation.¹⁶

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that he sustained an aggravation of PTSD causally related to factors of his federal employment.

The record notes that appellant was diagnosed with PTSD and anxiety prior to 2008. Appellant has not attributed his PTSD to the performance of his regular work duties or to any special work requirement arising from his employment duties under *Cutler*.¹⁷ Rather, his claim pertains to allegations of illegal activities, including nepotism, at the employing establishment beginning in 2007 and to allegations that he was harassed by employing establishment management, was sabotaged and discriminated against because of whistle-blowing and because he is Hispanic, that he was spoken to in an abusive manner and that his medical condition was inappropriately discussed. Appellant also testified that he was inappropriately fired from an officer position.

As noted, administrative or personal functions of the employer, rather than the regular or specially assigned work duties of the employee are not covered under FECA unless the evidence demonstrates that management either erred or acted abusively in discharging its administrative or personnel responsibilities.¹⁸ The record before the Board, however, contains insufficient evidence regarding appellant being “fired.” Appellant submitted no evidence to establish that individuals at work acted illegally or improperly in any administrative matter. The evidence does not establish error or abuse.

Appellant also submitted insufficient evidence, such as witness statements, regarding his allegation that Mr. Bandanza or other supervisors, spoke to him in a disrespectful manner or inappropriately discussed his medical condition. He did not establish a factual basis for these allegations.¹⁹

Regarding appellant’s contention that he was harassed by Mr. Bandanza or other employing establishment managers, mere perceptions of harassment or discrimination are not compensable under FECA.²⁰ Unsubstantiated allegations of harassment or discrimination are not

¹⁶ *Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁷ *See James E. Norris*, *supra* note 15.

¹⁸ *Kim Nguyen*, *supra* note 14.

¹⁹ *See T.G.*, 58 ECAB 189 (2006).

²⁰ *James E. Norris*, *supra* note 15.

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.²¹ In this case, appellant did not submit evidence to support specific actions by Mr. Bandanza, the attorney Mr. Erbe or other employing establishment personnel to show a persistent disturbance, torment or persecution, *i.e.*, mistreatment by employing establishment management.²² Appellant therefore did not establish a factual basis for his claim of harassment by probative and reliable evidence.²³

The Board finds that appellant did not meet his burden of proof to establish that he sustained an aggravation of PTSD in the performance of duty causally related to factors of his federal employment.²⁴ Appellant's emotional reaction must be considered self-generated, in that it resulted from his perceptions about employing establishment management actions.²⁵

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 establish that he sustained an emotional condition in the performance of duty.

²¹ *Id.*

²² *Beverly R. Jones, supra* note 16.

²³ *See Robert Breeden, 57 ECAB 622 (2006).*

²⁴ *Leslie Moore, supra* note 4.

²⁵ *See V.W., 58 ECAB 428 (2007).* As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Katherine A. Berg, 54 ECAB 262 (2002).* The Board, however, notes that the record does not contain any medical evidence diagnosing PTSD. While Dr. Zenner mentioned a previous diagnosis of PTSD and in his February 29, 2008 report diagnosed a specific phobia, fear of flying, he also advised that appellant did not currently have PTSD.

ORDER

IT IS HEREBY ORDERED THAT the August 31, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 15, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board