

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

---

|                                      |   |                              |
|--------------------------------------|---|------------------------------|
| C.T., Appellant                      | ) |                              |
|                                      | ) |                              |
| and                                  | ) | <b>Docket No. 13-602</b>     |
|                                      | ) | <b>Issued: April 9, 2014</b> |
| <b>DEPARTMENT OF THE ARMY, ARMY</b>  | ) |                              |
| <b>DEPOT, Anniston, AL, Employer</b> | ) |                              |

---

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
RICHARD J. DASCHBACH, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On January 15, 2013 appellant filed a timely appeal from an August 6, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

**ISSUE**

The issue is whether appellant met his burden of proof to establish an emotional condition due to factors of his federal employment.

**FACTUAL HISTORY**

On September 30, 2011 appellant, then a 55-year-old ammunition maintenance supervisor, filed an occupational disease claim alleging post-traumatic stress disorder and depression due to the suicide of an employee he formerly supervised. He stated that he first became aware of his condition and related it to his federal employment on April 1, 2011.

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

Appellant stopped work on May 2, 2011. He was released to return to work on September 5, 2011 and subsequently retired on or about October 18, 2011.

In a letter dated October 6, 2011, OWCP requested additional factual and medical evidence in support of appellant's claim. It requested that he submit a statement and evidence to substantiate the factual element of his claim. OWCP also requested medical evidence to support that he sustained an emotional condition due to his federal employment. It allowed 30 days for a response. Appellant did not respond.<sup>2</sup>

Appellant submitted a May 2, 2011 note from Dr. Eddie Huggins, a Board-certified psychiatrist with the Veterans Administration, who diagnosed anxiety. Dr. Huggins advised that appellant was totally disabled for 90 days. On August 22, 2011 he released appellant to return to work as of September 5, 2011. On August 23, 2011 Dr. Huggins stated that appellant's diagnoses were post-traumatic stress disorder and depression.

By decision dated November 10, 2011, OWCP denied appellant's claim. It found that he failed to submit any response to the request for documentary evidence to support the factual basis for his claim. Therefore, the factual component was not established.

The employing establishment controverted appellant's claim. Theresa A. Thomas, a compensation specialist, noted that under an Executive Order of September 15, 1986 disciplinary proceedings were to be initiated against an employee who is found to use illegal drugs. She advised that the employee who committed suicide was hired as an explosives operator at the Munitions Center as a term employee, effective March 26, 2009, subject to random drug testing. On September 10, 2010 the employee was administered a random drug test that was positive for cocaine. The results were referred to the Medical Review Officer who confirmed the results of the test on October 7, 2010. The employing establishment proposed the employee's removal on October 10, 2010 and he moved into a position where he did not work around or handle ammunitions and explosives. The employee elected to resign on February 12, 2011. Ms. Thomas noted that appellant had no control over the actions of the employee and was not the decision official for the proposed removal. She noted that the employee had previously been removed from employment in the private sector for testing positive for drug use.

Ms. Thomas submitted a November 2, 2011 e-mail from Anthony L. Burdell, Deputy to the Commander at the Munitions Center. Mr. Burdell noted that, after the employee's reassignment, a second drug test confirmed the positive result. He described several meetings with legal personnel and the union. The employee was allowed to resign from his employment in February 2011 in order that the incident not follow him into future employment. Approximately two to four weeks later, the employer received word that the former employee committed suicide. Mr. Burdell noted that, even though appellant felt responsible, the employee had been allowed to resign from the employing establishment.

On November 14, 2011 appellant requested an oral hearing before the Branch of Hearings and Review. In a note dated April 18, 2012, Dr. Huggins stated that appellant

---

<sup>2</sup> The employing establishment submitted position descriptions for appellant's work as an ammunition maintenance supervisor and for an explosives operator.

attributed his depression to the fact that he had to terminate an employee who subsequently committed suicide. He diagnosed depression.

Appellant testified at the oral hearing on April 12, 2012. He noted that the subordinate employee had tested positive for illegal drugs. Appellant valued the employee and stated that his supervisor required him to complete the paperwork to remove the employee. He had asked the agency to transfer the employee rather than terminate him, but the request was denied. Appellant completed the paperwork to terminate the employee and the employee committed suicide the next week by gunshot. He stated that he developed nightmares regarding the suicide. Appellant noted that he was a veteran of Desert Storm and that he had previously been diagnosed with post-traumatic stress due to his deployment. He alleged that, while on sick leave, another employee tested positive for illegal drugs and was suspended for two weeks and returned to work. Appellant stated that the decision he made for the government caused the employee to take his life. He also stated that, while on sick leave he did not receive an award granted other employees for outstanding work.<sup>3</sup> Appellant noted that he had since retired.

By decision dated August 6, 2012, a hearing representative affirmed the November 10, 2011 decision denying appellant's emotional condition claim.

### **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>4</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>5</sup> There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.<sup>6</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>7</sup> In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a person 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>8</sup>

---

<sup>3</sup> Submitted to the record was documentation of an individual cash award made to appellant effective June 3, 2011.

<sup>4</sup> 28 ECAB 125 (1976).

<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> See *Robert W. Johns*, 51 ECAB 136 (1999).

<sup>7</sup> *Cutler*, *supra* note 4.

<sup>8</sup> *Id.*

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>9</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>10</sup> A claimant must support his or her allegations with probative and reliable evidence. Perceptions alone are insufficient to establish an employment-related emotional condition.<sup>11</sup>

### ANALYSIS

The Board finds that appellant has not established that he sustained an emotional condition due to factors of his federal employment. Appellant submitted insufficient evidence to establish the factual component of his claim.

Appellant claimed an emotional condition following the suicide of a former employee. The Board notes that on October 6, 2011 OWCP notified him to submit additional evidence in support of his claim. Appellant did not respond to OWCP's request. At the hearing, he stated that his supervisor required him to complete paperwork to terminate the employee; but this allegation is not supported by the evidence of record. Ms. Thomas noted that the employee was removed from his duties as an explosives operator upon testing positive for cocaine. The test result was verified by the Medical Review Officer on October 7, 2010. Mr. Burdell noted that the employee was then reassigned to other duties; however, a second test confirmed the positive result of drug use. He noted that in consultation with the employee's union representatives, the employee was allowed to resign on February 12, 2011. The evidence does not establish that the employee was terminated, as alleged. Ms. Thomas noted that appellant had no control over the actions involving the employee and was not a decision official. Appellant did not submit any documentation pertaining to the former employee or to establish his participation in the investigation or discipline. The evidence of record does not support a compensable factor under *Cutler*.

Appellant stated at the hearing that he had asked the employing establishment to transfer the employee rather than terminate him, but this was denied. The evidence from Ms. Thomas and Mr. Burdell, however, supports that the employee was reassigned to duty other than as an explosives operator upon the positive drug test. Mr. Burdell noted meeting with the employee and his union representatives on several occasions after the employing establishment proposed removal on October 19, 2010. The evidence reflects that, prior to the employee's resignation on February 12, 2011, a second test confirmed the positive results. To the extent that appellant is alleging administrative error in the investigation or reassignment of duty prior to the employee's resignation, the Board notes that he did not submit any documents to the record concerning these matters. Similarly, appellant stated at the hearing that he did not receive an award granted to other employee's while he was on sick leave. The documents submitted by the employing

---

<sup>9</sup> *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>10</sup> *Kim Nguyen*, 53 ECAB 127 (2001). See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>11</sup> *Roger Williams*, 52 ECAB 468 (2001).

establishment, however, include a notification of personnel action in which appellant received an individual cash award effective June 3, 2011.

Allegations alone by a claimant are generally insufficient to establish a factual basis for an emotional condition; the claim must be supported by probative evidence.<sup>12</sup> The primary reason for requiring factual evidence from a claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions.<sup>13</sup> In turn, this allows the allegations to be fully examined and evaluated by OWCP and the Board. Appellant did not submit any evidence to establish a compensable factor of employment.

### **CONCLUSION**

The Board finds that appellant did not establish that he sustained an emotional condition due to factors of his federal employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 6, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 9, 2014  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

---

<sup>12</sup> See *Pamela D. Casey*, 57 ECAB 260 (2005).

<sup>13</sup> See *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).