United States Department of Labor
Employees' Compensation Appeals Board

G.C., Appellant	)	
and	)	**Docket No. 13-704**
	)	**Issued: April 4, 2014**
U.S. POSTAL SERVICE, NORTH BILOXI POST OFFICE, D'Iberville, MS, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 2, 2013 appellant filed a timely appeal from an August 6, 2012 decision of the Office of Workers' Compensation Programs (OWCP) that denied his claim. Pursuant to the Federal Employees' Compensation Act[1] (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 sustained an emotional condition in the performance of duty causally related to factors of his federal employment.

On appeal, appellant asserts that his emotional condition was caused by the claimed employment factors.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On November 17, 2011 appellant, then a 46-year-old sales and service distribution clerk and union steward, filed a traumatic injury claim alleging that being called out by name by his supervisor on November 7, 2011 caused employment-related stress. He stopped work on November 29, 2011. The employing establishment controverted the claim.

By letter dated December 13, 2011, OWCP informed appellant that the evidence of record did not establish his claim. It requested that he submit additional factual evidence pertaining to the factors giving rise to his claimed condition and medical evidence to support the causal relationship of his condition to his federal employment.

On December 23, 2011, Shirley Dinkins, a health and resource management specialist, advised that on November 7, 2011 appellant's immediate supervisor was giving a service talk to the employees on the workroom floor over the intercom when appellant shouted from across the room and interrupted the talk. Appellant's supervisor asked him to hold his comments until they could meet and talk in private but he began to speak out in a louder voice. Following the service talk, appellant requested the opportunity to contact the Employee Assistance Program (EAP) counselor.

The employing establishment submitted a November 19, 2011 letter of warning issued to appellant for unsatisfactory performance and failure to follow instructions by Robin Jorden, the station manager, who noted that she spoke to the employees on November 7, 2011 as to why certain mail was not made available to the carriers on Saturday, November 5, 2011 upon their return to the office. Ms. Jorden was on the intercom to address the issue when appellant blurted out from across the workroom floor that she would be speaking to him about the issue. She told him to "shut up." When questioned later by Ms. Jorden, appellant noted that he was aware that there were to be no open discussions during a service talk or management discussions. Ms. Jorden noted that he had been instructed in the past not to be disruptive during talks given by management, but he continued to act in this manner.

Appellant submitted a statement pertaining to the November 7, 2011 talk by Ms. Jorden. He noted that she was on the intercom talking to the carriers about problems with their performance. Appellant stated:

> "I do not recall all that was mentioned but I do remember something about gassing up the LLV's. Then she said something to the fact that she was aware the PM mail Saturday was late being put out and that she was aware that the clerks had plenty of time to do this. She was going to get with [appellant] on this. I respond yes, you are going to get with me on this. She said other things that I did not hear and then stated that if anyone would like to discuss this, they could go behind closed doors in her office to discuss it. I walked to the Carrier Supervisor desk to speak with her. She walked off to a carrier's case. I looked at the Carrier Supervisor (Kathy) and told her I needed to call EAP and would do it now. She said OK."

Appellant noted that he went to the EAP as he was mad and upset. He felt that he had performed the work he was assigned on Saturday as had his coworkers. Appellant stated that he became more upset as he repeated the incident to two other EAP representatives, identified as Luke and Kathy. He noted that he went to Ms. Jorden's office to ask for an EAP referral, but was told she did not do that. Appellant stated that he would go home sick and walked out of the building with his cell phone in order to call the Mississippi District EAP Coordinator. He stated that Ms. Jorden followed him out of the building saying "give it here" as he was leaving a voicemail for more help. Appellant alleged that Ms. Jorden stated that she would get him for failing to follow instructions. He finished the telephone call by leaving a message and returned to work. Ms. Jorden came to appellant's work area and told him to go to lunch from 12:00 p.m. to 1:00 p.m. Appellant was instructed to open the window at approximately 11:30 a.m. and was a little late for lunch due to a long line. When he returned from lunch, he noted that he could not stay focused on the tasks at hand. Appellant ultimately closed the window and was asked by Ms. Jorden to come to her office. She informed him that she needed to have an investigative interview and that he was entitled to union representation. Appellant returned to the workroom floor until time for him to go home. Once there, he spoke to several individuals including an EAP counselor.[2] Appellant alleged that his employer had obstructed his ability to get access to the EAP program.

Janet Davis, a coworker, submitted a November 13, 2011 statement. She noted that Ms. Jorden would discuss various topics over the intercom. Ms. Davis related that on November 7, 2011 the topic of afternoon mail not being put out by the clerks in a timely manner was discussed and "this time [appellant] made a statement and was called to the office." In an undated statement, a coworker with an illegible signature noted that he was at work when Ms. Jorden spoke over the intercom on November 7, 2011. When Ms. Jorden spoke regarding the clerks, appellant interjected with a comment that the coworker did not understand and noted that Ms. Jorden told appellant to "shut up."

On November 29, 2011 appellant filed a grievance contending that management erred by reprimanding him over the intercom and in issuing the letter of warning. A December 12, 2011 grievance settlement reduced the November 19, 2011 letter of warning to an official discussion. It stated that the postmaster would address the issues of conducting service talks over the intercom and reprimanding employees on the workroom floor. The agreement noted that the settlement was reached without prejudice to the merits of either party's position.

By decision dated January 19, 2012, OWCP denied appellant's claim. The claims examiner found a compensable factor of employment: on November 7, 2011 Ms. Jorden gave a service talk over the intercom about mail being put out late and that she would meet with appellant on the matter. Appellant responded, yes you are going to meet with me on this and proceeded to the carrier supervisor's office. Ms. Jorden then told him to "shut up" and that she would take it up with him one on one in her office. The claim was denied as the medical evidence was insufficient to establish causal relation.

[2] Appellant submitted medical evidence from Dr. Joseph A. Jackson, Board-certified in psychiatry, who diagnosed an adjustment disorder with anxiety, secondary to occupational discord.

On February 13, 2012 appellant requested a hearing. At the May 15, 2012 hearing, he testified that his claim was limited to the events of November 7, 2011. Appellant reported that a grievance had been settled in his favor and discussed reports from an EAP counselor and a social worker. The hearing representative informed appellant that a social worker was not considered a physician under FECA and advised him to provide a report regarding his condition from Dr. Jackson. The record was held open for 30 days.

In May 15, 2012 correspondence, appellant again stated that Ms. Jorden inappropriately called out his name over the intercom in front of his coworkers on the workroom floor, about the problem with mail being late the previous Saturday. He asserted that, by identifying him over the intercom, management erred and caused him embarrassment. In a February 10, 2012 report, Sunny R. Lee, a licensed social worker, described appellant's counseling sessions. She noted that he transferred to another employing establishment in January 2012 and his symptoms had diminished. On February 8, 2012 Dr. Jackson described appellant's continued treatment and reiterated the adjustment disorder diagnosis. In a May 21, 2012 report, he described appellant's report of the November 7, 2011 incident. Dr. Jackson stated that appellant was still mildly anxious with a significant degree of insecurity and concerns of possible retaliation by his supervisor but did not meet the criteria for depression. He stated that appellant had an acute reaction to stress, secondary to the work-related verbal altercation.

By decision dated August 6, 2012, an OWCP hearing representative affirmed the denial of appellant's claim. He modified the January 19, 2012 decision of the claims examiner to find that appellant did not establish a compensable factor of employment. The hearing representative noted that, in his statements and at the May 15, 2012 hearing, appellant did not attribute his condition to be told by Mr. Jorden to shut up. Rather, appellant felt that, by stating his name over the intercom that day, he felt that he was being inappropriately disciplined in front of his coworkers. The hearing representative found that the evidence did not support that appellant was disciplined by the service talk and that the statement by Ms. Jorden that she would be meeting with him at a later time did not constitute discipline or error and abuse in an administrative matter. As appellant did not establish a compensable factor of employment, he did not establish that he sustained an emotional condition in the performance of duty.

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 has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his stress-related condition.[3] If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.[4] When the matter asserted is a compensable factor of employment and the evidence of record establishes

[3] *Leslie C. Moore*, 52 ECAB 132 (2000).

[4] *Dennis J. Balogh*, 52 ECAB 232 (2001).

the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.[5]

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*,[6] 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.[7] 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.[8] Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[9] Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.[10] Personal perceptions alone are insufficient to establish an employment-related emotional condition.[11]

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.[12] 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.[13]

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty causally related to his federal employment.

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[5] *Id.*

[6] 28 ECAB 125 (1976).

[7] *See Robert W. Johns*, 51 ECAB 137 (1999).

[8] *Lillian Cutler, supra* note 6.

[9] *J.F.*, 59 ECAB 331 (2008).

[10] *M.D.*, 59 ECAB 211 (2007).

[11] *Roger Williams*, 52 ECAB 468 (2001).

[12] *Charles D. Edwards*, 55 ECAB 258 (2004); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

[13] *Kim Nguyen*, 53 ECAB 127 (2001).

Appellant has not attributed his emotional condition to the performance of his regular work duties or to any special work requirement arising from his employment under *Cutler*.[14] Instead, his claim pertains to a service talk held on November 7, 2011 by his supervisor, Ms. Jorden, who addressed the workroom floor by intercom concerning mail that was not timely made available to carriers the prior Saturday. This pertains to an administrative matter. The standard under *McEuen* is whether the evidence of record establishes error or abuse by appellant's supervisor.

Appellant stated that, during the service talk to employees over the intercom, Ms. Jorden called him out by name when she stated that she would be meeting with him to discuss the matter of late mail the prior weekend. He considered this to be an inappropriate reprimand in front of his coworkers, as noted in the subsequent grievance.

The Board has held that, while verbal abuse may constitute a compensable factor of employment, not every statement uttered in the workplace is a compensable factor.[15] Appellant submitted two coworker statements in support of his allegation. Ms. Davis noted generally that Ms. Jorden would discuss various topics over the intercom and, on November 7, 2011, the topic was mail not being put out for the carriers in a timely fashion. She related that appellant made a statement during the talk and was called to the office. A second statement by a coworker with an illegible signature indicated that, while Ms. Jorden was speaking over the intercom, he interrupted her with a comment and she told him to shut up. As noted by the hearing representative, appellant did not attribute his emotional condition to being told by her to shut up after he interrupted the service talk; rather, he stated that being called out by name constituted a reprimand.

While Ms. Jorden's comments during the service talk may have disturbed appellant, who is a union steward; the record supports that he was not singled out by her for discipline or in reprimand concerning late mail the prior weekend. Rather, the record supports that he disrupted her service talk by speaking in a loud voice across the workroom floor. In the November 19, 2011 letter of warning, Ms. Jorden noted that, in discussing the late mail situation, she stated that she would discuss the matter after the talk with appellant and the clerks. Appellant then blurted a comment across the workroom floor and she told him to shut up. Ms. Jorden noted that he had been instructed in the past not to be disruptive during service talks, but continued to act in such a manner.

Accepting that Ms. Jorden mentioned appellant by name as an individual with whom she would meet and told him to shut up after his interruption, not every ostensibly offensive statement uttered in the workplace will give rise to coverage under FECA.[16] The Board finds that he has not established that he was subjected to verbal abuse on November 7, 2011 or that the service talk constituted a form of oral discipline or a reprimand directed towards him. The evidence reflects that the service talk by Ms. Jorden was addressed to all coworkers and

[14] *See supra* note 5, *James E. Norris*, 52 ECAB 93 (2000).

[15] *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

[16] *See Judy L. Kahn*, 53 ECAB 321 (2002).

managers present that day and addressed the issue of late mail being processed the prior weekend.

Appellant filed a grievance following issuance of the November 19, 2011 letter of warning regarding his behavior on November 7, 2011. An employee's complaint concerning the manner in which a supervisor performs his or her duties as a supervisor or the manner in which a supervisor excises his or her supervisory discretion fall, as a general rule, outside the scope of coverage of FECA.[17] This principle recognizes that a supervisor or manager in general must be allowed to perform his or her duties that at time employees will 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.[18] Although the handling of disciplinary actions is generally related to employment, they are administrative functions of the employing establishment and not duties of the employee.[19] The December 12, 2011 grievance settlement reduced the letter of warning to an official discussion. It also noted that the postmaster would address the issues of conducting service talks over the intercom and reprimanding employees on the workroom floor. The settlement agreement was reached without prejudice to the merits of either party's position. The fact that the letter of warning was reduced to an official discussion does not establish error or abuse on the part of Ms. Jorden in this administrative matter.

Appellant also alleged that the employing establishment obstructed his ability to access the EAP on November 7, 2011. The Board finds, however, that the record establishes that he went to the EAP office and spoke with several individuals, including in follow-up telephone contact. There appears to have been difficulty in reaching the Mississippi District EAP Coordinator for assistance before appellant returned to work, but he was able to leave a message and return to his duties. After finishing work, he went home and left another message with the District EAP Coordinator and spoke to a local EAP counselor. The evidence does not support appellant's assertion that the employing establishment obstructed his access to the EAP program that day.

Regarding appellant's other assertions regarding Ms. Jorden's actions on November 7, 2011 such as overhearing conversations and following him out of the building, the record contains no evidence, such as witness statements, to establish that such actions actually occurred or were in error. As such, he did not establish a compensable factor of employment regarding the allegations.[20]

[17] *C.S.*, 58 ECAB 137 (2006).

[18] *Id*.

[19] *Peter D. Butt, Jr*., 56 ECAB 117 (2004).

[20] *Id*.

For the foregoing reasons, appellant has not established a compensable factor of employment under FECA. He did not establish that he sustained an emotional condition in the performance of duty.[21]

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.

ORDER

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

Issued: April 4, 2014
Washington, DC

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

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

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

[21] As appellant has not established a compensable employment factor, the Board need not consider the medical evidence of record. *See Katherine A. Berg*, 54 ECAB 262 (2002).