

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

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**J.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Baltimore, MD, Employer**

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**Docket No. 14-1233  
Issued: December 22, 2014**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge

**JURISDICTION**

On May 5, 2014 appellant filed a timely appeal from the April 9, 2014 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 over the merits of the case.

**ISSUE**

The issue is whether appellant has met his burden of proof to establish an emotional condition in the performance of duty.

**FACTUAL HISTORY**

On September 29, 2013 appellant, then a 60-year-old customer service manager, filed an occupational disease claim alleging an emotional condition as a result of not being able to properly manage his office due to the actions of upper management, that he was threatened and intimidated by upper management, and because letter carriers were forced to work overtime. He

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

became aware of his condition and realized it was causally related to his employment on September 9, 2013. Appellant stopped work on September 9, 2013.

Appellant was treated by Dr. Kiumarce Kashi, a Board-certified psychiatrist, from September 9 to 23, 2013 for work-related stress. Dr. Kashi diagnosed generalized anxiety disorder, depression and mild hypertension. In a certificate of health care provider, he diagnosed anxiety disorder, depression, and opined that appellant was incapacitated for six months.

The employing establishment submitted an October 1, 2013 statement from James B. Gaphardt, manager of customer service operations. Mr. Gaphardt noted that on September 9, 2013 he was instructed by the postmaster to inform all managers to remain in their office until the last carrier returned to the building at which time the postmaster would conduct a telecom to discuss the carriers who were still out on their route. Appellant advised that he could not stay for the telecom because a carpet company was coming to his home at 4:00 p.m. Mr. Gaphardt indicated that appellant lived 5 to 10 minutes from the employing establishment office and instructed him to go home to meet with the carpet person and return to the employing establishment by 7:00 p.m. for the telecom. Appellant subsequently indicated that he had a physician's appointment at 3:30 p.m. Mr. Gaphardt advised appellant to attend his appointment and then report back to the employing establishment for the 7:00 p.m. telecom. He noted that appellant later called and informed him that his physician found him totally disabled until September 23, 2013. Appellant presented a physician's slip but Mr. Gaphardt indicated that the slip was invalid because it did not meet the requirements showing that appellant was incapacitated from performing his job and requested that appellant provide an updated medical slip. Mr. Gaphardt advised appellant that he would be in absent without leave status until he provided updated medical information. On September 23, 2013 appellant informed Mr. Gaphardt that his physician determined that he continued to be disabled until mid-October. Mr. Gaphardt requested proper documentation of appellant's physician visit and condition with an explanation as to whether appellant was totally incapacitated. He informed appellant that he would be in absent without leave status until additional medical information was received.

On October 8, 2013 OWCP asked appellant to submit evidence to support his claim, to include a detailed description of the employing establishment incidents that contributed to his claimed illness.

The employing establishment filed an October 16, 2013 letter of controverting the claim asserting that appellant had not established his claim.

In a December 11, 2013 decision, OWCP denied appellant's claim for an emotional condition as the evidence did not support that the events occurred as alleged.

On January 2, 2014 appellant requested reconsideration. In a December 30, 2013 statement, he asked for sick leave reinstatement asserting that he provided adequate medical documentation establishing that he was absent due to stress, operations, and other conditions. Appellant stated that, on Monday, September 9, 2013, he arrived at work at 6:00 a.m. to assist the clerks with the mail. He was informed by upper management that he was required to participate in a telecom at his office at 7:00 p.m. to discuss carriers who were out on their route past 7:00 p.m. Appellant informed his boss that he had plans that evening and his boss replied that "[appellant] had his orders." He asserted that he was being punished because carriers were

out on their route past 7:00 p.m.; however, he had no control over the matter and noted that there were positions that could not be filled, open routes daily and problems with staffing. Appellant indicated that the situation “got to him” and he felt like he was going to hurt someone so he contacted his physician for an appointment. He informed his boss that he had a physician’s appointment at 2:00 p.m. Despite notice of the appointment, appellant’s boss continued to instruct appellant to be in his office at 7:00 p.m. for the telecom.

Appellant reported being treated by his physician and a psychologist who advised him not to return to work. He contended that there was a lot of stress at work, that he was threatened and intimidated by upper management, he had no real control over managing his office, and could not make a decision without approval. Appellant indicated that his managers expected him to be in nine different places at the same time and if he failed he was threatened with discipline. He further noted that any shop failures could not be disciplined because of the union. Appellant indicated that upper management required that he discipline coworkers when postal items were not properly scanned, but many times there was no way of identifying who scanned an item. He indicated that upper management also required him to discipline carriers who ran over their delivery time, but many carriers were given more work than they could handle. Appellant indicated that on September 7, 2013 he informed his supervisor they were short on clerks so he went into the office on his day off to assist but he was not thanked for his effort. He indicated that on another occasion he was helping out in Baltimore at the request of his postmaster and was later cursed at by the same postmaster.

Appellant submitted reports from Dr. Kashi dated October 17 to December 9, 2013, who diagnosed generalized anxiety disorder, depression, mild hypertension, and inguinal hernia. A computerized tomography scan of the pelvis dated October 18, 2013 revealed a right inguinal hernia. An October 24, 2013 echocardiogram revealed mild mitral valve regurgitation. Appellant submitted a November 12, 2013 operative report from Dr. Christopher You, a Board-certified surgeon, who performed a laparoscopic right inguinal hernia repair with mesh and diagnosed right inguinal hernia. He was treated by Dr. Harvey L. Gewanter, a psychologist, on December 4, 2013 for acute depressive symptoms and loss of emotional control and stability, and Dr. Gewanter opined that appellant was totally disabled.

In a decision dated April 9, 2014, OWCP denied appellant’s claim. It found that he failed to establish any compensable work factors as the cause of his claimed condition.

### **LEGAL PRECEDENT**

To establish an emotional condition in the performance of duty, a claimant 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 the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.<sup>2</sup>

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>3</sup> the Board

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<sup>2</sup> *George H. Clark*, 56 ECAB 162 (2004).

<sup>3</sup> 28 ECAB 125 (1976).

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.<sup>4</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>5</sup> Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.<sup>6</sup> Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.<sup>7</sup> Personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>8</sup> 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.<sup>9</sup>

### ANALYSIS

Appellant alleges that he was improperly classified as absent without leave for the period beginning September 9, 2013; appellant alleges that on September 9, 2013 he was improperly required to return to his office after the carriers returned to participate in a telecom at 7:00 p.m.; appellant alleges that he was threatened and intimidated by upper management; appellant alleges that management expected him to be in different places at the same time and if he failed that he was threatened with discipline; appellant asserts that he was required to discipline employees if they failed to properly scan an item or if carriers ran over their delivery time; appellant alleges that his office was understaffed; and appellant asserts that a postmaster cursed at him after he assisted in a Baltimore facility. The Board must thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.

Appellant has asserted that actions of upper management caused his condition and he has not attributed his emotional condition to performing his regular or specially assigned duties of his position. Although he generally alleged that he was overworked and understaffed he provided insufficient corroborating evidence to establish the allegation. On September 7, 2013 appellant informed his supervisor that they were short on clerks so he went into the employing establishment on his day off to assist, on another occasion management asked him to stay until the last person was back from their route after 7:00 p.m. There is no evidence to support this

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<sup>4</sup> See *Robert W. Johns*, 51 ECAB 137 (1999).

<sup>5</sup> *Lillian Cutler*, *supra* note 3.

<sup>6</sup> *J.F.*, 59 ECAB 331 (2008).

<sup>7</sup> *M.D.*, 59 ECAB 211 (2007).

<sup>8</sup> *Roger Williams*, 52 ECAB 468 (2001).

<sup>9</sup> See *Lillian Cutler*, *supra* note 3.

general allegation. Appellant has not identified what aspect of a particular duty caused stress nor has he shown how this is to be considered overwork. Thus, to the extent that he alleged overwork,<sup>10</sup> this is not established by the evidence. Furthermore, appellant did not otherwise attribute his emotional condition to performing a specific regular or specially assigned duty in his job. Therefore, he has not alleged a compensable factor under *Cutler*.<sup>11</sup>

Appellant made several allegations related to administrative and personnel actions. In *Thomas D. McEuen*,<sup>12</sup> the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA as such matters pertain to procedures and requirements of the employing establishment and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under FECA would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>13</sup>

Appellant contends that he was improperly placed in absent without leave status and sought to reinstate his sick leave asserting that he provided adequate medical documentation supporting that he was absent due to stress, operations, and other conditions. The Board notes that, the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employing establishment, and are not duties of the employee.<sup>14</sup> The Board finds that the employing establishment acted reasonably in this administrative matter. As noted, Mr. Gaphardt reviewed the medical slips submitted and informed appellant that they did not meet the requirements showing that he was incapacitated from his job. He requested that appellant provide proper documentation of his physician's visit and condition with an explanation as to whether he was totally incapacitated. Mr. Gaphardt informed appellant that he would be in absent without leave status until additional medical information was received. Appellant presented no corroborating evidence to support that the employing establishment erred or acted abusively in this matter.

Appellant alleged that on September 9, 2013 he was informed by upper management that he was required to participate in a telecom at his office at 7:00 p.m. to discuss carriers who were out on their route past 7:00 p.m. He informed the postmaster that he had plans, but the postmaster replied that appellant "had his orders." Appellant asserted that he had no control over the matter and could not make a decision without management's approval and noted that there were positions that could not be filled, open routes daily and problems with staffing. The Board

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<sup>10</sup> The Board has held that overwork, as substantiated by sufficient factual information to support the claimant's account of events, may be a compensable factor of employment. *Bobbie D. Daly*, 53 ECAB 691 (2002).

<sup>11</sup> See *Lillian Cutler*, *supra* note 3.

<sup>12</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>13</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>14</sup> See *Judy L. Kahn*, 53 ECAB 321 (2002).

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, as a rule, fall outside of the scope of coverage provided by FECA. This principle recognizes that a supervisor or manager in general must be allowed to perform his duties. Employees will at times dislike the actions taken, but mere disagreement or dislike of a supervisory or management action is not actionable, absent evidence of error or abuse.<sup>15</sup> The Board notes that the assignment of work is an administrative function<sup>16</sup> 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.<sup>17</sup> The Board finds that he has not offered sufficient evidence to establish error or abuse. Appellant presented no corroborating evidence to support that the employing establishment acted unreasonably. Mr. Gaphardt noted that on September 9, 2013 he was instructed by the postmaster to inform all managers to remain in their office until the last carrier returned to the building at which time the postmaster would conduct a telecom to discuss the carriers who were still out on their route. He indicated that appellant lived 5 to 10 minutes from the employing establishment and advised him that he could attend his carpet appointment and physician appointment and be back at the employing establishment by 7:00 p.m. for the telecom. Mr. Gaphardt provided a reasonable explanation for his actions and appellant has not established administrative error or abuse in this matter.

Appellant alleged that he was threatened and intimidated by upper management and had no real control over managing his office, claiming that he could not make a decision without management approval. He indicated that management expected him to be in nine different places at the same time and if he failed he was threatened with discipline. Appellant's allegation that the employing establishment improperly threatened to discipline him relates to administrative or personnel matters unrelated to his regular or specially assigned duties and does not fall within the coverage of FECA.<sup>18</sup> Although the handling of disciplinary actions and evaluations are generally related to employment, they are administrative functions of the employing establishment, and not duties of the employee.<sup>19</sup> The record, as noted above, fails to establish that appellant was disciplined. To the extent that he is complaining about the manner in which a supervisor performs his duties as a supervisor, or the manner in which a supervisor exercises his supervisory discretion, his allegations fall outside the scope of coverage provided by FECA. As noted, a supervisor or manager in general must be allowed to perform his duties and mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.<sup>20</sup> The Board finds that appellant has not offered sufficient

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<sup>15</sup> See *Marguerite J. Toland*, 52 ECAB 294 (2001).

<sup>16</sup> *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

<sup>17</sup> 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).

<sup>18</sup> See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

<sup>19</sup> *Id.*

<sup>20</sup> See *Marguerite J. Toland*, *supra* note 15.

evidence to establish error or abuse and the evidence does not establish that the employing establishment acted unreasonably in these matters.

Appellant indicated that he was unable to properly perform his work duties and manage his office because of the actions of upper management. As noted assignment of work is an administrative function and the manner in which a supervisor exercises his or her discretion generally falls outside the ambit of FECA. Appellant alleged that upper management required him to discipline coworkers when postal items were not properly scanned but, many times, there was no way of proving who the scanner was. He also indicated that upper management required that he discipline letter carriers who exceeded their delivery time, but carriers were given more work than they could handle. Appellant has provided no supporting evidence for his general allegations. The Board finds that he has not offered sufficient evidence to establish error or abuse regarding his work assignments.

Appellant generally alleged that he was threatened and intimidated by upper management and cursed at by the postmaster. To the extent that he alleged that management abused or threatened him, the Board has recognized the compensability of verbal abuse and threats in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.<sup>21</sup> The Board finds that the facts of the case do not support any specific incidents of verbal abuse or threats. Appellant provided no corroborating evidence, or witness statements to establish his allegations at a particular time and place.<sup>22</sup> There is no corroborating evidence to support that any verbal interaction with appellant by Mr. Gaphardt or others rises to the level of a compensable employment factor.<sup>23</sup>

Appellant also alleged that he was generally harassed and intimidated as he was unable to manage or make decisions for his office but was controlled by upper management. To the extent that incidents alleged as constituting harassment or a hostile environment by a manager are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.<sup>24</sup> However, for harassment to give rise to a compensable disability under FECA, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under FECA.<sup>25</sup> The evidence does not support appellant's allegation that he was harassed. Appellant submitted no evidence to support that Mr. Gaphardt or the employing establishment acted unreasonably and appellant has not otherwise submitted sufficient evidence to establish that these matters constituted harassment. The evidence is insufficient to show that appellant was singled out or treated disparately with regard to his claim of harassment by Mr. Gaphardt or other management. Appellant has not established a compensable factor of employment in this regard.

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<sup>21</sup> *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>22</sup> *See William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

<sup>23</sup> *See Judy L. Kahn*, *supra* note 14.

<sup>24</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>25</sup> *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence); *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

Consequently, appellant has not established his claim for an emotional condition as he has not attributed his claimed condition to any compensable employment factors.<sup>26</sup> He 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 the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 9, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 22, 2014  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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<sup>26</sup> As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).