



cover for the shortcomings of others by frequently working 11 or more hours per day, all in the context of a perceived pattern of harassment.

### **FACTUAL HISTORY**

On December 12, 2012 appellant, then a 57-year-old customer service supervisor, filed an occupational disease claim (Form CA-2) alleging that he sustained major depressive and anxiety disorders as a result of the stress of long hours with little help, uncooperative managers, accusations by subordinates and continual demands for more work. The employing establishment noted that he had been undergoing chemotherapy since November 2011 and it had no knowledge that he was under stress or anxiety for a work-related condition.

Appellant submitted a narrative statement and reports dated May 16 through October 29, 2012 from Ilyas Saloom, a nurse practitioner, who diagnosed major depressive disorder and anxiety disorder.

By letter dated December 26, 2012, OWCP informed appellant that the evidence of record was insufficient to support his claim. It afforded him 30 days to submit additional evidence and respond to its inquires.

Appellant submitted a legal brief dated November 19, 2012 in support of his Equal Employment Opportunity (EEO) complaint. A statement dated July 6, 2011 notes that a "Mr. Wasnak used profanity toward [appellant on] Monday," June 5, 2011.

On April 24, 2006 Nancy Keeler, a physician's assistant, reported that appellant had anxiety problems, trouble breathing and sleeping and could not function at his job. In a June 8, 2006 report, Amanda Sweet, a physician's assistant, diagnosed anxiety and insomnia. Appellant advised that his stress and anxiety issues were employment related.

In reports dated November 27, 2012 through January 22, 2013, Dr. Shaheda F. Maroof, a Board-certified psychiatrist, diagnosed major depressive disorder and anxiety disorder. On January 22, 2013 she stated that appellant "reports believing that psychiatric symptoms were precipitated by interferon treatment as well as difficulty with work" and "specifically reported believing that he was asked by his supervisor to go to a part of the city where a man had recently been killed." Appellant also reported having a heart attack during the course of interferon treatment. Dr. Maroof explained that interferon treatment could often cause worsening of depression, in addition to causing depression in otherwise healthy individuals.

The employing establishment submitted a November 11, 2011 EEO investigative report based on appellant's complaints of discrimination in the workplace. It also submitted letters of warning dated August 18, 2003 through September 29, 2011, due to his failure to perform his duties in a satisfactory manner and to follow instructions on intermittent dates from July 1, 2003 to September 9, 2011. The employing establishment submitted letters dated December 28, 2006 through May 20, 2010, which addressed appellant's suspension for 7 or 14 days due to the failure to perform his duties in a satisfactory manner on intermittent dates from December 2, 2006 to May 4, 2010.

By decision dated February 15, 2013, OWCP denied appellant's claim. It found that the evidence did not establish a compensable factor of employment.

### **LEGAL PRECEDENT**

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>2</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>3</sup>

To the extent that disputes and incidents alleged as constituting harassment by coworkers are established as occurring and arising from a claimant's performance of his or her regular duties, these could constitute employment factors.<sup>4</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>5</sup>

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>6</sup> However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.<sup>7</sup> In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.<sup>8</sup>

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.<sup>9</sup> This burden includes the submission of a detailed

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<sup>2</sup> *Id.*; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *See Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>4</sup> *See David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>5</sup> *See Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>6</sup> *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *reaff'd on recon.*, 42 ECAB 556 (1991); *Thomas D. McEuen*, 41 ECAB 387 (1990).

<sup>7</sup> *See William H. Fortner*, 49 ECAB 324 (1998).

<sup>8</sup> *See Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>9</sup> *See Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions, which he or she believes caused or adversely affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.<sup>10</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>11</sup> If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.<sup>12</sup>

### ANALYSIS

Appellant alleged an emotional condition due to several incidents at the employing establishment. He alleged long hours with little help, uncooperative managers, accusations by subordinates and continual demands for more work. As noted, when disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.<sup>13</sup> On appeal, appellant's attorney contends that he developed anxiety and depression from being forced to deliver mail in unsafe areas, ride out on routes when junior managers typically were required to do so and cover for shortcomings of others by frequently working 11 or more hours per day.

The Board has held that overwork, when substantiated by sufficient factual information to corroborate appellant's account of events, may be a compensable factor of employment.<sup>14</sup> The Board finds that he did not submit sufficient evidence to establish a compensable employment factor. The record does not substantiate appellant's contentions that he was overworked or worked in a hostile environment. Rather, one record shows that he was issued letters of warning for either failing to perform his duties in a satisfactory manner or failing to follow instructions, which was followed by an EEO investigation. The Board finds that the evidence is insufficient to establish overwork allegations.<sup>15</sup> Further, there is no evidence from appellant in support of his allegations that he was harassed by his supervisors.

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<sup>10</sup> See *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>11</sup> See *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>12</sup> *Id.*

<sup>13</sup> 5 U.S.C. §§ 8101-8193; *Penelope C. Owens*, 54 ECAB 684 (2003); *Lillian Cutler*, *supra* note 2.

<sup>14</sup> See *Bobbie D. Daly*, 53 ECAB 691 (2002).

<sup>15</sup> See *E.H.*, Docket No. 13-559 (issued August 21, 2013).

The Board has long held that grievances and EEO complaints by themselves do not establish that workplace harassment or unfair treatment occurred.<sup>16</sup> The Board finds that the November 11, 2011 EEO investigative report is not a finding of harassment, nor is the statement dated July 6, 2011 indicating that “Mr. Wasnak used profanity toward [appellant on] Monday,” June 5, 2011. Appellant did not submit sufficient evidence from any coworkers with specific reference to the time, dates or parties involved to establish his allegations of harassment or administration error or abuse in the disciplinary proceedings. The evidence of record is insufficient to discharge his burden of proof. Appellant has not presented sufficient evidence that he was harassed by his coworker, Mr. Wasnak. He has failed to establish a compensable work factor.<sup>17</sup>

Since appellant has not substantiated a compensable factor of employment as the cause of his emotional condition, the Board will not address the medical evidence.<sup>18</sup>

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. §§ 10.606 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.

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<sup>16</sup> See *Parley A. Clement*, 48 ECAB 302 (1997).

<sup>17</sup> See *H.C.*, Docket No. 12-457 (issued October 19, 2012).

<sup>18</sup> See *Karen K. Levene*, 54 ECAB 671 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 15, 2013 Office of Workers' Compensation Programs' decision is affirmed.

Issued: January 24, 2014  
Washington, DC

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

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

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