United States Department of Labor
Employees' Compensation Appeals Board

S.R., Appellant	)	
and	)	**Docket No. 14-238**
	)	**Issued: May 6, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Nashville, TN, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 6, 2013 appellant, through his attorney, filed a timely appeal from a September 27, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 met his burden of proof to establish an emotional condition causally related to factors of federal employment.

On appeal, appellant's attorney asserts that the medical evidence submitted is sufficient to establish that appellant sustained an employment-related emotional condition.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On January 11, 2013 appellant, then a 52-year-old city carrier, filed an occupational disease claim alleging that he sustained occupational stress caused by employing establishment management and a hostile work environment. He indicated that he first became aware of the condition on December 29, 2011 and its relationship to employment on September 4, 2012. In a January 18, 2013 statement, appellant described events in which he maintained that he was subjected to intimidation, extortion, bullying, manipulation, harassment, retaliation, vindictiveness, lying, dereliction of duty and safety, incompetence, threats and discrimination by employing establishment management from August 1, 2006 to December 27, 2012. He alleged that he was not given overtime; that he was required to work overtime; that his work assignments were improper; that his complaints of safety issues and postal policies were ignored; that leave requests were mishandled; that he was improperly counseled by management regarding pay, safety and leave issues, including when he was sent home because he was not fit for duty. Appellant also generally took issue with the management style of several of his supervisors and indicated that he was subjected to increased stress because he had a route inspection and because there was gunshot activity along his carrier route.

In support of his claim, appellant submitted a list of mental health and stress management appointments with the Employee Assistance Program (EAP) and Veterans Affairs (VA) mental health clinics. In a January 18, 2013 progress note, Dr. Allyson E. Witters, a psychiatry resident physician, and Dr. Dana Deaton Verner, a Board-certified staff psychiatrist with the VA, noted that appellant discussed problems of extreme stress at work and admitted that he was concerned that he could snap if he was forced to return to work. The physicians diagnosed mood disorder, not otherwise specified and historical diagnosis of adjustment and general anxiety disorders. Medication and continued therapy were prescribed. It was recommended that appellant not return to work. The report indicated that appellant had a total 70 percent VA disability for hypertensive vascular disease, residuals of a foot injury, tinnitus, limited ankle and knee motion and traumatic arthritis.

Documentation submitted included a November 2006 timesheet; appellant's report of an unsafe condition on June 27, 2007 and an October 4, 2007 response; April 4, 2008 VA emergency department discharge instructions signed by a registered nurse; May 20, 2008 correspondence from the employing establishment to a church regarding improper placement of flyers; EAP documentation dated March 4, 2010 and January 6, 2012; and a September 4, 2012 memorandum placing him off duty for 14 days due to misconduct on the workroom floor.

In letters dated January 30, 2013, OWCP informed appellant of the evidence needed to support his claim and asked that the employing establishment respond. The employing establishment provided an on-site job analysis regarding the physical demands for a city mail carrier, revised on June 4, 2002 and employing establishment e-mails dated February 4 and 5, 2013, in which Sherry Carr, a manager, acknowledged that there were times when appellant was ordered to work overtime. She indicated that appellant did not like to be questioned about his job performance and that he had made threatening comments about other workers and supervisors in the past and was evaluated by the threat assessment team and sent home.

By decision dated March 1, 2013, OWCP denied the claim on the grounds that appellant had not established a compensable factor of employment. Appellant's attorney requested a hearing and submitted statements dated February 28 and March 1, 2013.[2] In the former statement, appellant discussed problems with leave usage on July 19 and August 9, 2011 that was not corrected immediately and leave taken when his wife was hospitalized in July 2012. In the latter statement, he maintained that the employing establishment improperly ordered overtime and he indicated that his route was in a crime-ridden and unsafe area. In a February 27, 2013 attending physician's report, Dr. Witters noted a history of difficulties and extreme stress at work. She diagnosed mood disorder; a historical diagnosis of adjustment and general anxiety disorders; and possible bipolar disorder. Dr. Witters checked the form box "yes," indicating that appellant's condition was caused or aggravated by work activity, stating that his condition seemed mostly to be related to work. She advised that he was totally disabled since September 4, 2012.

Further, documentation submitted included a July 20, 2012 notice that appellant was placed in emergency off-duty status due to improper conduct on the workroom floor; a July 30, 2012 14-day suspension for improper conduct; a grievance resolution dated August 31, 2012 regarding the emergency off-duty placement indicated that he would receive a payment of $640.56, less standard deductions; a September 4, 2012 request for a fitness-for-duty examination because on September 1, 2012 appellant's wife called the employing establishment stating that appellant had threatened to kill her and a grandchild; a September 4, 2012 emergency placement in off-duty status pending results of a fitness-for-duty examination; a grievance filed on September 6, 2012 regarding the September 4, 2012 emergency placement; an October 18, 2012 memorandum regarding the fitness-for-duty examination stating that the physician requested that appellant provide documentation from his treating psychiatrist but that appellant had not complied; a November 2, 2012 grievance resolution indicating that appellant was 1 of 20 carriers in a class who were compensated for improper overtime status; December 12, 2012 correspondence from the employing establishment to appellant indicating that, to return to work, he would have to present supporting medical evidence; and a January 11, 2013 grievance resolution indicating that the July 30, 2013 14-day suspension was reduced to a letter of warning.

At the hearing, held on July1 5, 2013, appellant testified that he was retired military and had worked for the employing establishment approximately eight years. He stated that his delivery route was in a bad area and commented that there was no employing establishment continuity because there had been approximately 13 managers in eight years and that management did not care about the customer.

Subsequent to the hearing, appellant submitted a May 1, 2013 report, in which Dr. Witters noted that he had been treated at the VA mental health clinic since December 30, 2011. She reiterated his diagnoses and indicated that he spent a great deal of time talking about work-related stress, which continued to be his focus and that he continued to perseverate on what he perceived as a negative work environment that included manipulation, harassment and intimidation. Dr. Witters concluded, "while I cannot say whether there is a

[2] On February 28, 2013 appellant, through his attorney, requested a hearing from a January 30, 2013 decision. In correspondence dated April 8, 2013, OWCP informed him that there was no adverse decision of record dated January 30, 2013, but that the request for a hearing of the March 1, 2013 decision would go forward.

direct cause between [appellant's] experience at the [employing establishment] and his mental illness, his work stress does appear to have exacerbated his symptoms, which may have been long-standing." Appellant also submitted June 28, 2013 grievance resolution indicating that his grievance regarding enforced leave was being held in abeyance pending his OWCP appeal and that the parties agreed that postal and union policies would be followed.

In a September 27, 2013 decision, an OWCP hearing representative affirmed the March 1, 2013 decision as modified. She found that appellant established one compensable factor of employment, that he was overworked and forced to work overtime, but that the medical evidence was insufficient to establish that his claimed emotional condition was caused by the accepted employment factor.

LEGAL PRECEDENT

To establish his or her claim that he or she sustained an emotional 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 or her 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 the truth of the matter asserted, it 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

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

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

[5] *Id.*

[6] 28 ECAB 125 (1976).

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

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

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 employing establishment 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]

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.[14] 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 coemployees or workers. Mere perceptions and feelings of harassment will not support an award of compensation.[15]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[16] The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[17] Neither the mere fact that a disease or condition manifests itself during a period

[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).

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

[14] *James E. Norris*, 52 ECAB 93 (2000).

[15] *Beverly R. Jones*, 55 ECAB 411 (2004).

[16] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[17] *Leslie C. Moore*, *supra* note 3; *Gary L. Fowler*, 45 ECAB 365 (1994).

of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[18]

ANALYSIS

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

The hearing representative found that appellant established overwork as a compensable factor of employment.

Appellant's remaining allegations pertain to administrative actions that began in 2006 and to allegations that he was harassed and treated in an abusive manner by employing establishment management. Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of FECA.[19] Absent evidence establishing error or abuse, a claimant's disagreement or dislike of such a managerial action is not a compensable factor of employment.[20] The Board finds that appellant's allegations that his work assignments were improper, that his complaints regarding safety issues and the employing establishment policies were ignored and that his leave requests were mishandled pertain to administrative functions. While the record contains extensive documentation, none of it indicates error or abuse in these matters and they are therefore not compensable factors of employment.

Generally, complaints about the manner in which a supervisor performs his or her duties or the manner in which a supervisor exercises his or her discretion fall, as a rule, outside the scope of coverage provided by FECA. This principle recognizes that a supervisor or manager in general must be allowed to perform his or her duties and employees will, at times, dislike the actions taken. Mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent evidence of error or abuse.[21] While appellant noted his dislike of management at the employing establishment, the record contains no evidence that any employing establishment supervisor or manager committed error or abuse in discharging management duties, this allegation is not compensable.[22]

Regarding appellant's contention that he was subjected to intimidation, extortion, bullying, manipulation, retaliation, harassment, etc. by employing establishment management, mere perceptions of harassment or discrimination are not compensable under FECA[23] and unsubstantiated allegations of harassment or discrimination are not determinative of whether

[18] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[19] *J.C.*, 58 ECAB 594 (2007).

[20] *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

[21] *Id*.

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

[23] *James E. Norris, supra* note 14.

such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.[24] While appellant submitted several grievance resolutions, none indicated that the employing establishment erred.[25] He submitted nothing to show a persistent disturbance, torment or persecution, *i.e.*, mistreatment by employing establishment management.[26] Appellant has not established a factual basis for his claim of harassment by probative and reliable evidence.[27]

Nonetheless, as the hearing representative accepted overwork as a compensable factor of employment, the medical evidence must be addressed. On January 18, 2013 Dr. Verner and Dr. Witters diagnosed mood disorder, not otherwise specified and historical diagnosis of adjustment and general anxiety disorders and indicated that appellant reported severe stress at work. Dr. Witters also completed an attending physician's report on February 27, 2013 in which she stated that his diagnosed condition was mostly related to work. On May 1, 2013 she reiterated the diagnoses and indicated that appellant spent a great deal of time talking about work-related stress, which had continued to be his focus and continued to persevere on what he perceived as a negative work environment that included manipulation, harassment and intimidation. Although Dr. Witters concluded that she could not say there was a direct cause between his experience at the employing establishment and his mental illness and that his work stress appeared to have exacerbated his symptoms, the Board finds that this conclusion is couched in equivocal terms. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[28] Moreover, Dr. Witters merely alluded to stress at work and did not discuss any specific employment factors, including the accepted factor of overwork. The opinion must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[29]

Appellant has the burden of proof to establish that the conditions for which he claims compensation were caused or adversely affected by his federal employment.[30] Part of this burden includes the necessity of presenting rationalized medical evidence, based on a complete factual and medical background, establishing a causal relationship. An award of compensation may not be based upon surmise, conjecture or upon appellant's belief that there is a relationship between his medical conditions and his employment. Thus, contrary to appellant's assertion on

[24] *Id.*

[25] *See W.B.*, Docket No. 12-1369 (issued May 1, 2013).

[26] *Beverly R. Jones, supra* note 15.

[27] *See Robert Breeden*, 57 ECAB 622 (2006).

[28] *Ricky S. Storms*, 52 ECAB 349 (2001).

[29] *Leslie C. Moore, supra* note 3.

[30] *See Calvin E. King*, 51 ECAB 394 (2000).

appeal, he has not submitted sufficient probative medical evidence to establish that his emotional condition was caused by the accepted compensable factor of employment. He therefore failed to discharge his burden of proof.

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 causally related to the accepted employment factor.

ORDER

IT IS HEREBY ORDERED THAT the September 27, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 6, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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