

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

W.L., Appellant

and

**GOVERNMENT PRINTING OFFICE,
Washington, DC, Employer**

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**Docket No. 14-393
Issued: May 22, 2014**

Appearances:
Richard A. Daniels, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 12, 2013 appellant, through his representative, filed a timely appeal from a June 26, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 has established an emotional condition causally related to compensable work factors.

FACTUAL HISTORY

On June 1, 2012 appellant, then a 45-year-old power truck operator, filed an occupational disease claim (Form CA-2) alleging that he sustained emotional conditions causally related to his

¹ 5 U.S.C. § 8101 *et seq.*

federal employment. He stated on the claim form that his employment had been “under attack” for several years and he had been threatened with disciplinary actions.

In a statement dated May 23, 2012, appellant alleged that he was subject to a hostile work environment and retaliation for filing Equal Employment Opportunity (EEO) complaints.² He alleged that, a supervisor, Mr. Dudley, hid himself in order to observe appellant doing something “that he could write me up for” and pursue a disciplinary action. According to appellant, he had been escorted off the property twice by police without provocation and had been “written up for removal” three or four times. He stated that in February 2005 he had been involuntarily transferred to the bindery division, and a supervisor, Mr. Brinkley, kept a log of his activities in a file. Appellant alleged that he was denied overtime, and when he was given overtime, his supervisors would try to move him into a “lesser grade position.”

Appellant cited incidents in 2007 and 2008 when he was written up and the action was later rescinded. According to him, there was a July 11, 2007 meeting where, a supervisor, Mr. Crawford, explained that Mr. Brinkley had made a mistake in reducing appellant’s grade during overtime. Appellant asserted that on October 31, 2007 he had received a 30-day suspension because he had complained to his supervisors about working without a lunch break. He stated that he did not want to return to work where he had gotten the suspension, and he started working in a different section in November 2007. Appellant alleged that, a supervisor, Mr. Sussan, cursed at him regarding listening to music and he filed an EEO complaint in this regard. According to him, management attempted to make him work in the area where he had gotten the 30-day suspension, but he transferred to night hours, and then Mr. Brinkley again became his supervisor and harassed appellant. Appellant alleged that Mr. Brinkley had stalked him and threatened to fire him. He referred to an April 8, 2012 meeting, stating that Mr. Brinkley accused appellant of pointing at him, and approached appellant in a threatening manner.

In a statement dated June 29, 2012, appellant indicated that he had filed an EEO complaint with respect to the April 8, 2012 meeting and several EEO complaints were still pending. He asserted that management had intentionally put Mr. Brinkley on the night shift to attack his employment, and reiterated that Mr. Brinkley harassed him and tried to get him fired. Appellant submitted a witness statement from a coworker with respect to the April 8, 2012 meeting. The coworker stated that Mr. Brinkley told appellant to stop pointing at him, and then told appellant to get out of his office. According to the coworker, Mr. Brinkley came toward appellant and insisted that he leave, an argument occurred and “things got out of hand.” The coworker stated that Mr. Brinkley went to his desk to apparently telephone security and appellant left the office.

By letter dated August 20, 2012, OWCP requested that the employing establishment provide comments from a “knowledgeable supervisor” with respect to appellant’s allegations. There is no indication that the employing establishment responded.

In a decision dated December 10, 2012, OWCP denied the claim for compensation. It found no compensable work factors were established.

² Appellant indicated that he had filed an EEO complaint based on discrimination and reprisal/retaliation.

Appellant requested a hearing before an OWCP hearing representative, which was held on April 11, 2013. At the hearing, he discussed a 2004 incident in which he alleged that a coworker yelled and screamed at him with a screwdriver in his hand. Appellant alleged that the coworker moved toward him with the screwdriver and the police were called.³ He also discussed the April 8, 2012 meeting with Mr. Brinkley.

By decision dated June 26, 2013, the hearing representative affirmed the denial of the claim. The hearing representative found that no compensable work factors were established.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment.⁴ 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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁵

ANALYSIS

In the present case, appellant has alleged that he was subject to harassment and retaliation at the employing establishment. He has discussed specific incidents involving, a supervisor, Mr. Brinkley. OWCP sent a letter to the employing establishment requesting information from a "knowledgeable supervisor," which in this case would clearly include Mr. Brinkley.

The record contains no evidence of a response from the employing establishment. OWCP regulations provide that an employer who has reason to disagree with a factual allegation of a claim for compensation shall submit evidence to support its position.⁶ Its own procedures note that in emotional condition claims, "a statement from the employing [establishment] is

³ The Board notes that appellant's representative submitted an April 12, 2013 letter stating that a medical report dated January 18, 2013 was enclosed, as well as a witness statement regarding the alleged 2004 incident. The record contains the medical report received on April 15, 2013, but the witness statement is not contained in the record.

⁴ *Pamela R. Rice*, 38 ECAB 838 (1987).

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ 20 C.F.R. § 10.117(a).

imperative to properly develop and adjudicate the claim.”⁷ The Board has concurred that evidence from the employing establishment regarding specific allegations of error or abuse is critical to a proper adjudication of the claim.⁸

In the absence of any response from the employing establishment regarding the allegations in this case, the case will be remanded to OWCP to properly adjudicate the claim. Although appellant bears the burden of proof to establish the claim, OWCP is not a disinterested arbiter, but shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.⁹ On return of the case record, OWCP should properly develop the factual evidence to adjudicate the claim. After such development, it should issue an appropriate decision.

CONCLUSION

The Board finds the case is not in posture for decision and is remanded to OWCP to secure relevant evidence from the employing establishment necessary to properly adjudicate the claim.

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7(a)(2) (June 2011).

⁸ *See L.B.*, Docket No. 13-552 (issued November 21, 2013).

⁹ *S.P.*, Docket No. 11-1271 (issued April 19, 2012).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 26, 2013 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: May 22, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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