

FACTUAL HISTORY

On September 14, 2013 appellant, then a 52-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed post-traumatic stress disorder as a result of working in a hostile work environment.²

In a September 12, 2013 duty status report (Form CA-17), Dr. Kathleen Salvatore, a Board-certified psychiatrist, diagnosed post-traumatic stress disorder, major depression, and anxiety. Dr. Salvatore opined that appellant's conditions were causally related to psychological trauma and long-term harassment.

In an October 10, 2013 letter, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted a November 6, 2013 narrative statement indicating that his psychological trauma began on or about January 10, 2008 and developed into post-traumatic stress disorder and reached a level to where he was no longer able to function. He stated that Postmaster Jeff Jenkins arrived at his duty station in 2007 when he was either the chief steward or branch president and alleged that he had to meet with Postmaster Jenkins several times a week to discuss and attempt to resolve either disciplinary actions or contract violations issued by him. Appellant alleged that their first two meetings lasted over two hours and Postmaster Jenkins tried to convince appellant to help him discipline the city carriers he represented. He stated that a letter of warning and a 7-day suspension were falsified and used against him and, subsequently, a 14-day suspension and a proposed removal was issued against him. Appellant alleged constant harassment, belittlement, and shouting. He filed several grievances against Postmaster Jenkins for his behavior on the work floor. The grievances were either filed for himself or for other employees. Appellant also filed Equal Employment Opportunity (EEO) Commission complaints for himself and he represented several other employees with their complaints. He alleged that in 2008 and 2009 the union filed 225 grievances with about 95 percent being forwarded to Step B teams. Appellant indicated that he was not given time to work on his grievances and due to time limits he was forced to complete grievance filings at home. He alleged that Postmaster Jenkins would also refuse to schedule meetings and failed to meet with him regarding well over 40 grievances. Appellant formed an informational picket in 2008 to shed some light on their plight and alleged in June 2009 he suffered a heart attack due to the stress in the workplace. Concerning his leave requests, he alleged that management would delete his requests, even those covered by the Family and Medical Leave Act (FMLA). Appellant alleged that his emotional condition began in 2008 and had progressed since then. He had sleepless nights, anxiety, depression, and dreams of being harassed by Postmaster Jenkins and his staff.

In a September 29, 2010 report, Dr. Salvatore reiterated her diagnoses and opined that appellant's emotional condition was aggravated by his federal employment. She indicated that he "had a prior episode of depression and anxiety [in] approximately 2002." Appellant had transferred to his duty station and underwent increased stress at work. Dr. Salvatore opined that

² Appellant also submitted wage-loss compensation claims for intermittent periods commencing September 21, 2013. In a December 31, 2013 letter, OWCP notified appellant that no action could be taken on these claims or any future claims for wage-loss compensation until his occupational disease claim had been adjudicated.

the stress continued to increase and appellant eventually had a myocardial infarction. After that, appellant resigned from union work hoping to decrease his stress level and obtain better rapport with management. However, Dr. Salvatore notes the hostility continued in spite of appellant's efforts. On December 16, 2013 she opined that appellant's post-traumatic stress disorder was "caused by his employment." Dr. Salvatore indicated that this was not appellant's original diagnosis or reason for seeking treatment, but it evolved over time from about January 10, 2008 until present. Since resigning from his union position, she indicated that appellant continued to be harassed and it even carried over to her office "where the employer demand[ed] 'incapacitated' written on work excuses and needless paperwork from [her] staff."

In duty status reports (Form CA-17s) dated October 1 and November 14, 2013, Dr. Salvatore reiterated her diagnoses and opinions.

By decision dated January 6, 2014, OWCP denied appellant's claim on the basis that he failed to establish fact of injury.

On January 17, 2014 appellant, through counsel, requested reconsideration and submitted a January 10, 2014 duty status report (Form CA-17) from Dr. Salvatore who reiterated her diagnoses and opinions.

Appellant also submitted over 100 pages in documentation related to his EEO complaints and grievances. An August 7, 2008 letter indicated that he submitted requests under FMLA for sick leave on March 22, 2008 and annual leave on July 5, 2008 and these requests were deleted by his supervisors, Christina Hampton and Antonio Cosio. On December 4, 2008 appellant was issued a notice of 14-day suspension for unacceptable performance for failing to follow instructions resulting in absence without leave (AWOL) on the basis that he went, without prior authorization, on October 30, 2008 to talk with a carrier on steward time. When he was asked who authorized the steward time, he stated that his supervisor, Postmaster Jenkins, was creating a hostile work environment. Postmaster Jenkins took appellant and his union steward into his office to address the issue. Once in the office appellant refused to answer some of the questions and he was instructed to return to work. In a Step B decision dated February 9, 2009, the employing establishment found that management "did violate the contract when they issued the Notice of Fourteen-Day Suspension" and agreed to remove the suspension from appellant's records. On December 26, 2008 appellant was issued a proposed notice of removal from the employing establishment, noting that the decision would be deferred until after the Step B decision was rendered.

The record contains a letter of no confidence dated October 2, 2008 signed by a number of employees, including appellant, against Postmaster Jenkins and supervisors, Antonio Cosio and Benjamin Rodriguez contending that they were creating a hostile work environment.

In a February 14, 2014 letter, Postmaster Jenkins responded to appellant's allegations, indicating that appellant had not been the chief steward or branch president since 2007, but he was at certain points in time and when appellant did hold those positions they met infrequently, not several times a week as alleged. He did not remember the first two meetings he had with appellant, but found it difficult to believe they each lasted over two hours with the many operations going on. Postmaster Jenkins contended that he never asked appellant to help him

discipline carriers. He asked appellant to assist in helping carriers with performance issues by talking to them. Postmaster Jenkins explained that as the postmaster he was a secondary supervisor to most employees and rarely issued any discipline, which was handled by the frontline supervisors. He indicated that he never reviewed appellant's file to know if he did or did not have any discipline. Postmaster Jenkins stated that he never harassed, belittled, or shouted at appellant. He indicated that he did not know the number of grievances or the percentage of those that were appealed. Postmaster Jenkins indicated that there were disagreements about how much time was needed for appellant to prepare and submit grievances and that he chose to do them at home without management's knowledge or approval. He stated that he did not refuse to schedule meetings, nor did he fail to meet with appellant in over 40 grievances. Postmaster Jenkins further indicated that appellant's allegation that his supervisors deleted his leave requests was misleading as his "clock rings would have to be corrected because [the electronic] eRMS [system] would not let management process the requested leave because of an error by [appellant]" and management worked to correct his timesheet to make sure he was paid correctly.

By decision dated April 16, 2014, OWCP modified its January 6, 2014 decision to reflect that appellant established fact of injury, but his case remained denied on the basis that the evidence submitted was not sufficient to establish that he was injured in the performance of duty. It found that the evidence did not establish an emotional condition arising from a compensable factor of employment. OWCP accepted that the following events occurred, but were not factors of appellant's federal employment: (1) appellant stated that he was issued a 14-day suspension and a proposed removal; and (2) the employing establishment stated that appellant was issued a 14-day suspension and a proposed removal. It found that the following event did not occur: (1) appellant's psychological trauma began on or about January 10, 2008 and developed into posttraumatic stress disorder; (2) since Postmaster Jenkins arrived at the duty station in 2007, appellant acted as the chief steward or branch president; (3) appellant's first two meetings with Postmaster Jenkins lasted over two hours and he tried to convince appellant to help him discipline the city carriers he represented; (4) appellant received a falsified letter of warning of seven-day suspension which was used to meet progressive discipline; (5) appellant filed several grievances against Postmaster Jenkins on behalf of himself and other employees based on constant harassment, belittlement, and shouting and there were 19 grievances he had filed against local management for their inappropriate behavior; (6) appellant filed several EEO complaints for himself and represented several other employees with their complaints and he also notified the Office of Inspector General (OIG) of allegations of illegal activity; (7) in 2008 and 2009 the union filed 225 grievances with about 95 percent being forwarded to the Step-B teams; (8) appellant was not given time during work to prepare and submit the grievances and was forced to complete them at home; (9) Postmaster Jenkins refused to schedule meetings and failed to meet with appellant in over 40 grievances; (10) appellant contacted Manager Postal Operations Mary Martinez, District Director Manny Arguello, Postmaster General Potter, National Association of Letter Carriers (NALC) President William Young, NBA Gene Goodwin, and Congressman Solomon Ortiz; (11) appellant formed an informational picket in 2008 to shed light on his plight; (12) in June 2009 appellant suffered a heart attack due to stress; and (13) management deleted appellant's leave request, even though it was covered by FMLA.

On June 16, 2014 appellant, through counsel, requested reconsideration and submitted reports dated April 22 through May 16, 2014 from Dr. Salvatore who reiterated her diagnoses and opinions.

By decision dated September 16, 2014, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

In providing for a compensation program for federal employees, Congress did not contemplate an insurance program against any and every injury, illness, or mishap that might befall an employee contemporaneous or coincidental with his or her employment. Liability does not attach merely upon the existence of an employee-employer relation. Instead, Congress provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.³ The phrase while in the performance of duty has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers' compensation law of arising out of and in the course of employment.

In *Lillian Cutler*,⁴ the Board noted that workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are situations when an injury or illness has some connection with the employment but nonetheless does not come within the coverage of workers' compensation as they are found not to have arisen out of the employment. When an employee experiences emotional stress in carrying out her employment duties, or has fear and anxiety regarding her ability to carry out her duties, and the medical evidence establishes that the disability resulted from her 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 resulted from her emotional reaction to her day-to-day duties. The same result is reached when the emotional disability resulted from the employee's emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of the work.⁵

In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of FECA. Thus, disability is not covered when it results from an employee's fear of a reduction-in-force, unhappiness with doing inside work, desire for a different job, brooding over the failure to be given work she desires, or the employee's frustration in not being permitted to work in a particular environment or to hold a particular position.⁶ Board case precedent demonstrates that the only requirements of employment which will bring a claim within the

³ See 5 U.S.C. § 8102(a).

⁴ 28 ECAB 125 (1976).

⁵ *Id.* at 130.

⁶ See *supra* note 4.

scope of coverage under FECA are those that relate to the duties the employee is hired to perform.⁷

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.⁸ 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.⁹

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.¹⁰ 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.¹¹ 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.¹²

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.¹³ This burden includes the submission of a detailed 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.¹⁴

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 work 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 compensable factors of employment and may not be considered.¹⁵ If a claimant does implicate a

⁷ See *Anthony A. Zarcone*, 44 ECAB 751 (1993).

⁸ See *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁹ See *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁰ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹¹ See *William H. Fortner*, 49 ECAB 324 (1998).

¹² See *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹³ See *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹⁴ See *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹⁵ See *Dennis J. Balogh*, 52 ECAB 232 (2001).

factor of employment, OWCP should then consider whether the evidence of record substantiates that factor. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim; the claim must be supported by probative evidence.¹⁶ Where the matter asserted is a compensable factor of employment and the evidence of record established the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.¹⁷

The Board has held that a variety of work factors are compensable under FECA. Among them, overwork is a compensable factor of employment if appellant submits sufficient evidence to substantiate this allegation.¹⁸ Also, in certain circumstances, working overtime is sufficiently related to regular or specially assigned duties to constitute a compensable employment factor.¹⁹ Additionally, conditions related to stress resulting from situations in which an employee is trying to meet his or her position requirements are compensable.²⁰

ANALYSIS

Appellant alleged that he developed an emotional condition due to a hostile work environment. OWCP found that the evidence did not establish a compensable factor of employment. Therefore, the Board must review whether the alleged incidents are covered employment factors under FECA.²¹ The Board notes that appellant's allegations do not pertain to his regular or specially assigned duties under *Cutler*.²² Rather, appellant has alleged harassment by his supervisors.

OWCP accepted that the following events occurred, but were not factors of appellant's federal employment: (1) appellant stated that he was issued a 14-day suspension and a proposed removal; and (2) the employing establishment stated that appellant was issued a 14-day suspension and a proposed removal. The record establishes that appellant was issued a 14-day suspension on December 4, 2008 and a proposed removal on December 26, 2008. However, in a Step B decision dated February 9, 2009, the employing establishment found that management "did violate the contract when they issued the Notice of Fourteen-Day Suspension" and agreed to remove the suspension from appellant's records. The Board has held that investigations are an administrative function of the employing establishment that do not involve an employee's regularly or specially assigned employment duties and are not considered to be employment factors.²³ The evidence is insufficient for the Board to find any improper motive to warrant error

¹⁶ See *Charles E. McAndrews*, 55 ECAB 711 (2004).

¹⁷ See *Jeral R. Gray*, 57 ECAB 611 (2006).

¹⁸ See *Bobbie D. Daly*, 53 ECAB 691 (2002).

¹⁹ See *Ezra D. Long*, 46 ECAB 791 (1995).

²⁰ See *Trudy A. Scott*, 52 ECAB 309 (2001).

²¹ See *P.E.*, Docket No. 14-102 (issued April 1, 2014).

²² See *supra* note 4.

²³ See *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

or abuse in these matters. Thus, appellant has failed to establish a compensable factor of employment.

OWCP found that the following events did not occur: (1) appellant's psychological trauma began on or about January 10, 2008 and developed into post-traumatic stress disorder; (2) since Postmaster Jenkins arrived at the duty station in 2007, appellant acted as the chief steward or branch president; (3) appellant's first two meetings with Postmaster Jenkins lasted over 2 hours and he tried to convince appellant to help him discipline the city carriers he represented; (4) appellant received a falsified letter of warning of seven-day suspension which was used to meet progressive discipline; (5) appellant filed several grievances against Postmaster Jenkins on behalf of himself and other employees based on constant harassment, belittlement, and shouting and there were 19 grievances he had filed against local management for their inappropriate behavior; (6) appellant filed several EEO complaints for himself and represented several other employees with their complaints and he also notified the OIG of illegal activity; (7) in 2008 and 2009 the union filed 225 grievances with about 95 percent being forwarded to the Step B teams; (8) appellant was not given time during work to prepare and submit the grievances and was forced to complete them at home; (9) Postmaster Jenkins refused to schedule meetings and failed to meet with appellant in over 40 grievances; (10) appellant contacted Manager Postal Operations Martinez, District Director Arguello, Postmaster Potter, NALC President Young, NBA Goodwin, and Congressman Ortiz; (11) appellant formed an informational picket in 2008 to shed light on his plight; (12) in June 2009 appellant suffered a heart attack due to stress; and (13) management deleted appellant's leave request, even though it was covered by FMLA.

The Board finds appellant's assertions that his psychological trauma began on or about January 10, 2008 and developed into post-traumatic stress disorder and that he suffered a heart attack in June 2009 due to stress are a part of his emotional condition claim. Thus, they are not employment factors which the Board must review.

Similarly, the fact that appellant filed grievances and EEO complaints on behalf of himself and other employees, notified the OIG of alleged illegal activity, contacted Manager Postal Operations Martinez, District Director Arguello, Postmaster Potter, NALC President Young, NBA Goodwin, and Congressman Ortiz, and formed an informational picket in 2008 to shed light on his plight are part of the factual history of this case and not employment factors which the Board must review.

Appellant attributed his emotional condition to management's treatment of his leave requests under FMLA. This pertains to an administrative matter. The standard under *McEuen* is whether the evidence of record establishes error or abuse by the employing establishment.²⁴ Appellant alleged that his supervisors deleted his leave requests. In a letter dated February 14, 2014, Postmaster Jenkins indicated that appellant's allegation that his supervisors deleted his leave requests was misleading as his "clock rings would have to be corrected because [the electronic] eRMS [system] would not let management process the requested leave because of an error by [appellant]" and management worked to correct his timesheet to make sure he was paid

²⁴ See *McEuen*, *supra* note 10.

correctly. The Board finds that appellant has not submitted sufficient evidence to support that the employing establishment acted erroneously or abusively regarding his leave requests. Thus, appellant has not established a compensable factor of employment.

Appellant also attributed his emotional condition to harassment by and other incidents involving his supervisors, specifically Postmaster Jenkins. He indicated that, since Postmaster Jenkins arrived at the duty station in 2007, appellant acted as the chief steward or branch president and he refused to schedule meetings and failed to meet with appellant in over 40 grievances. Appellant further indicated that Postmaster Jenkins did meet with appellant on two occasions and these meetings lasted over two hours and he tried to convince appellant to help him discipline the city carriers he represented. In his February 14, 2014 letter, Postmaster Jenkins indicated that appellant had not been the chief steward or branch president since 2007, but he was at certain points in time and when appellant did hold those positions they met infrequently, not several times a week as alleged. He did not remember the first two meetings he had with appellant but found it difficult to believe they each lasted over two hours with the many operations going on. Postmaster Jenkins contended that he never asked appellant to help him discipline carriers. He asked appellant to assist in helping carriers with performance issues by talking to them. Postmaster Jenkins explained that as the postmaster he was a secondary supervisor to most employees and rarely issued any discipline, which was handled by the frontline supervisors. He contended that he never harassed, belittled, or shouted at appellant. Postmaster Jenkins indicated that he did not refuse to schedule meetings, nor did he fail to meet with appellant in over 40 grievances. The Board has held that a manager or supervisor must be allowed to perform their duties and that employees will disagree with actions taken. Mere disagreement or dislike of actions taken by a supervisor will not be compensable absent evidence establishing error or abuse.²⁵ An employee's reaction to an administrative or personnel matter is not covered under FECA, unless there is evidence that the employing establishment acted unreasonably.²⁶ Because appellant has not presented sufficient evidence to establish that Postmaster Jenkins or any other supervisor harassed or intimidated him, acted unreasonably or engaged in error or abuse, he has failed to identify a compensable employment factor.

Actions of a claimant's supervisor which the claimant characterizes as harassment may constitute a compensable factor of employment. However, for harassment to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.²⁷ An employee's charges that he or she was harassed or discriminated against, is not determinative of whether or not harassment or discrimination occurred.²⁸ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by

²⁵ *Linda Edwards-Delgado*, 55 ECAB 401 (2004).

²⁶ *See Alfred Arts*, 45 ECAB 530 (1994).

²⁷ *See J.C.*, 58 ECAB 594 (2007); *Robert G. Burns*, 57 ECAB 657 (2006); *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

²⁸ *See Ronald K. Jablanski*, 56 ECAB 616 (2005); *William P. George*, 43 ECAB 1159 (1992).

supporting his or her allegations with probative and reliable evidence.²⁹ The Board finds that the factual evidence fails to support appellant's allegation of harassment. Further, the record does not contain a final EEO decision regarding this matter. The Board has long held that grievances and EEO complaints by themselves do not establish that workplace harassment or unfair treatment occurred.³⁰ The Board finds that appellant has not established a factual basis for his allegation that he was harassed. Therefore, he has failed to establish a compensable factor of employment.

Appellant also attributed his emotional condition to his allegations that in 2008 and 2009 the union filed 225 grievances with about 95 percent being forwarded to the Step-B teams and he was not given time during work to prepare and submit the grievances and was forced to complete them at home. The Board has held that mere allegations, in the absence of factual corroboration, are insufficient to meet a claimant's burden of proof.³¹ Appellant's perceptions must be construed to be self-generated. In his February 14, 2014 letter, Postmaster Jenkins indicated that there were disagreements about how much time was needed for appellant to prepare and submit grievances and that he chose to do them at home without management's knowledge or approval. Appellant's allegations are not corroborated by evidence of record. As he failed to provide evidence to establish a compensable factor of employment, the Board finds that appellant has not met his burden of proof.

Lastly, appellant attributed his emotional condition to his allegation that he received a falsified letter of warning of a seven-day suspension which was used to meet progressive discipline. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.³² Appellant did not submit probative evidence, such as documentation certifying that the letter of warning was falsified, corroborating his allegation. The absence of such documentation diminishes the validity of appellant's contentions in this case, where there is no evidence to document that he received a falsified letter of warning from the employing establishment. Thus, he has failed to establish a compensable factor of employment.³³

Furthermore, it is unnecessary to address the medical evidence of record as appellant has failed to establish a compensable factor of employment.³⁴

On appeal, counsel contends that OWCP's decision was contrary to fact and law. Based on the findings and reasons stated above, the Board finds the attorney's arguments are not substantiated.

²⁹ See *G.S.*, Docket No. 09-764 (issued December 18, 2009); *C.S.*, 58 ECAB 137 (2006); *Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

³⁰ See *W.B.*, Docket No. 12-1369 (issued May 1, 2013).

³¹ See *Bonnie Goodman*, 50 ECAB 139 (1998).

³² *Supra* note 13.

³³ See *H.C.*, Docket No. 12-457 (issued October 19, 2012).

³⁴ See *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

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 appellant has not met his burden of proof to establish he sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the September 16, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 16, 2015
Washington, DC

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

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

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