

FACTUAL HISTORY

On July 27, 2014 appellant, then a 49-year-old teleservice representative, filed a traumatic injury claim alleging that on June 12, 2014 he was required to be present at a meeting with his supervisor, and this caused anxiety, chest pain, respiratory distress, headache, and diminished feeling in his face. He was hospitalized overnight and this resulted in long-term emotional and physical consequences such that he could not return to work.

By letter dated August 12, 2014, OWCP informed appellant of the evidence needed to support his claim. Appended to the letter was a note addressed to the employing establishment stating, "If the employee was treated at the employing establishment medical facility for this injury, the employing establishment must provide the treatment notes directly to OWCP."

In support of his claim, appellant submitted an affidavit indicating that on June 10, 2014 his supervisor, Raymond Leung, called him for a discussion regarding performance. He requested union representation so the discussion was postponed until the next day, but that Mr. Leung was not available the next day. Appellant continued that on June 12, 2014 Mr. Leung interrupted him and told him to go to his cubicle to have the discussion which, appellant maintained, was code for a possible disciplinary action, so he again requested union representation. Mr. Leung refused and appellant claimed that was a violation of his *Weingarten* rights.² Appellant alleged that Mr. Leung criticized his work performance and implicitly indicated an adverse action against him, stating that Mr. Leung would lower appellant's grade. He stated that he continued to ask for union representation, but it was refused. Appellant began to feel stress and his blood pressure was getting high. He told Mr. Leung that he was not feeling well and needed to go to the doctor. Appellant stated that he then went to urgent care for treatment, but was told that his supervisor refused to authorize treatment. He later went to an emergency room and was hospitalized overnight.

Medical evidence includes reports from Glendale Memorial Hospital and Health Center dated June 12 and 13, 2014. Dr. Brigeli P. Westerband, a Board-certified internist, noted seeing appellant in the emergency department for a complaint of chest pain, weakness, and possible stroke. Dr. Mikhail Blinchik, a Board-certified internist, obtained an admission history and examined appellant. He noted that appellant's symptoms began approximately two days prior. Examination findings included a left arm deformity, present since birth. Appellant was admitted with a diagnostic impression of chest pain, etiology unclear; weakness, rule out acute stroke. While hospitalized, he was seen by Dr. Onkarjit Marwah, Board-certified in internal medicine and cardiovascular disease, who noted appellant's complaint of stress at work with shortness of breath, chest pain, and weakness of the right side of the face. Dr. Marwah discussed examination findings and diagnosed chest pain, hypertension, sinus tachycardia on electrocardiogram, shortness of breath, and stress. He ordered additional studies.

On a discharge summary, Dr. Blinchik indicated that appellant was admitted on June 12, 2014 and discharged on June 13, 2014. He noted that acute myocardial infarction was ruled out,

² The *Weingarten* decision gave employees the right to representation during an investigative interview when the employee had the reasonable belief that the interview could lead to discipline. *N.L.R.B. v. Weingarten, Inc.*, 420 U.S. 251 (1975).

and that a stress test was normal. Dr. Blinchik reported that a computerized tomography scan of the brain showed no evidence of intracranial hemorrhage, no large vessel distribution ischemic changes, an old right frontal cortical infarction, and encephalomalacia. A carotid ultrasound showed no evidence of hemodynamically significant carotid arteries, and a magnetic resonance imaging (MRI) scan of the brain showed an old right cerebral infarct and no acute intracranial change. Discharge diagnoses were atypical chest pain, possibly related to anxiety attacks versus musculoskeletal; numbness and tingling sensation of perioral area and right arm, possibly due to anxiety attacks versus transient ischemic attack of the brain; old cerebrovascular accident in right frontoparietal lobe; hypertension; diabetes mellitus type 2; anxiety disorder; and weakness of the left arm from childhood that had not changed recently. Appellant was to follow-up with his primary care physician.

In a report dated June 24, 2014, Dr. Edgar Agvanyan, Board-certified in family medicine, stated that a hostile work environment caused severe panic/anxiety attacks, and that appellant could not have contact with work supervisors or return to work. On August 22, 2014 he found that appellant's altercation at work caused acute anxiety, acute stress reaction, and panic attacks.³

In reports dated September 10, 2014, Dr. Sara Epstein, a Board-certified psychiatrist, noted appellant's description of employment events. She maintained that denying him union representation on June 12, 2014, continuing the discussion when appellant was stressed, and denying him basic medical care put appellant's life in danger. Dr. Epstein diagnosed post-traumatic stress disorder; major depression; high, labile blood pressure; birth injury involving left upper extremity; and occupational, health, and financial stressors. She further indicated that a recent brain scan suggested two strokes, possibly as a direct result of the events of June 12, 2014. Dr. Epstein recommended psychotherapy and medication. She also recommended appellant be seen by a cardiologist and a neurologist, and have a repeat brain MRI scan study. Dr. Epstein advised that he could never return to his prior work unit.

In a September 5, 2014 statement, Charlotte Elmore, a union representative, advised that on June 12, 2014 she received several telephone calls from distressed employees concerning appellant's meeting with Mr. Leung. She stated that many employees would not complete witness statements for fear of reprisal. Lily Monterroso, a coworker, stated that she witnessed the confrontation between appellant and Mr. Leung. She stated that she was unsure why the confrontation was taking place, but witnessed that appellant was becoming very agitated and stressed, and that Mr. Leung denied his request for union representation and to seek medical assistance.

In an e-mail dated July 2, 2014, Eddie Taylor stated:⁴

“The Social Security Administration, in settlement of unfair labor practice charges filed by various Locals of the American Federation of Government Employees, agrees to provide those Locals with advance notice and the opportunity to be represented at any formal discussion between one or more

³ Dr. Agvanyan also discussed orthopedic conditions, which are not at issue in this case.

⁴ The record before the Board does not further identify Mr. Taylor.

representatives of the [employing establishment] and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment.”

In a pleading dated September 11, 2014, counsel maintained that appellant’s *Weingarten* rights and the human instincts doctrine were violated on June 12, 2014.⁵

By decision dated October 20, 2014, OWCP denied the claim. It found that, while appellant had a discussion with his supervisor, Mr. Leung, on June 12, 2014, he did not establish error and abuse by the employing establishment in this administrative function.

LEGAL PRECEDENT

To establish his claim that he sustained a stress-related condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his stress-related condition.⁶ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.⁷ 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.⁸

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*,⁹ 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.¹⁰ 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 emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.¹¹ Allegations alone by a claimant are

⁵ Counsel forwarded a copy of the decision *N.L.R.B. v. Weingarten, Inc.*, *supra* note 2.

⁶ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁷ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁸ *Id.*

⁹ 28 ECAB 125 (1976).

¹⁰ *See Robert W. Johns*, 51 ECAB 137 (1999).

¹¹ *Supra* note 9.

insufficient to establish a factual basis for an emotional condition claim.¹² Where a claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.¹³ Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹⁴

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.¹⁵ 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.¹⁶

ANALYSIS

The Board finds that this case is not in posture for decision. Appellant attributed his stress-related condition to a meeting with his supervisor, Mr. Leung, on June 12, 2014. He submitted supportive statements and medical evidence. Other than a brief mention in a development letter OWCP sent appellant, stating that the employing establishment should forward medical information, OWCP did not request further information from the employing establishment. OWCP procedures, however, require that, in development of an emotional condition claim, it must obtain statements from witnesses, coworkers, and supervisors, among others, before it makes a determination of whether the incidents alleged by a claimant occurred and whether such incidents or factors constitute compensable factors of employment. The procedures specifically provide that, in certain types of claims, such as a stress claim, a statement from the employing establishment is imperative to properly develop and adjudicate the claim.¹⁷ 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.¹⁸

As OWCP did not seek to obtain evidence by sending a development letter to the employing establishment, the case record is incomplete, and the Board cannot render a fully informed adjudication.¹⁹

¹² *J.F.*, 59 ECAB 331 (2008).

¹³ *M.D.*, 59 ECAB 211 (2007).

¹⁴ *Roger Williams*, 52 ECAB 468 (2001).

¹⁵ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁶ *Kim Nguyen*, 53 ECAB 127 (2001).

¹⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7(a)(2) (June 2011).

¹⁸ *L.B.*, Docket No. 13-552 (issued November 21, 2013).

¹⁹ *See. B.D.*, Docket No. 14-1556 (issued December 10, 2014).

Although it is a claimant's burden to establish his or her claim, OWCP is not a disinterested arbiter but, rather, 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. It shares responsibility to see that justice is done.²⁰ OWCP's regulations provide that an employer who has reason to disagree with an aspect of the claimant's allegation should submit a statement that specifically describes the factual argument with which it disagrees and provide evidence or argument to support that position.²¹ If the employer does not submit a written explanation to support its disagreement, OWCP may accept the claimant's report of injury as established.²²

In the absence of information from the employing establishment regarding the allegations in this case, the case will be remanded to OWCP to further develop the factual evidence and, thereafter, to make appropriate findings regarding appellant's allegations. OWCP shall request that the employer address the assertions set forth in appellant's statements and provide any relevant evidence to which it has access. Following this and such further development as deemed necessary, it should issue a *de novo* decision.

CONCLUSION

The Board finds this 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.

²⁰ *R.E.*, 59 ECAB 323 (2008).

²¹ 20 C.F.R. § 10.117(a).

²² *Id.* at § 10.117(b).

ORDER

IT IS HEREBY ORDERED THAT the October 20, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: June 15, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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