

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

K.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Alexandria, VA, Employer**

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**Docket No. 15-1600
Issued: November 6, 2015**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 20, 2015 appellant filed a timely appeal from a June 4, 2015 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 met his burden of proof to establish an emotional or a physical condition while in the performance of duty.

FACTUAL HISTORY

On April 19, 2015 appellant, then a 55-year-old supervisor, filed an occupational disease claim (Form CA-2) alleging that on March 26, 2015 he first realized that constant yelling and pressure from his office manager made his headaches worse and it was hard to deal with. He stopped work on April 13, 2015.

¹ 5 U.S.C. § 8101 *et seq.*

In an April 22, 2015 letter, the employing establishment challenged appellant's claim, contending that he had preexisting migraines.

In an April 7, 2015 medical report, Dr. Janice Soliven, a Board-certified family practitioner, provided appellant's history of severe migraines that had worsened and were aggravated by work-related stress. She reported physical examination findings and diagnosed work-related stress and migraine. Dr. Soliven opined that appellant's illness was aggravated by his current employment situation. She noted his increased use of medications for this condition and that he had brought stress to his home environment.

By letter dated April 24, 2015, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. It requested factual and medical evidence. OWCP also requested that the employing establishment respond to appellant's allegations and submit medical evidence, if he had been treated at its medical facility.

An April 23, 2015 letter from the employing establishment informed appellant about its leave buyback policy. A document addressed an employee's rights and responsibilities related to the filing of a Form CA-2.

In a June 4, 2015 decision, OWCP denied appellant's claim. It found that he failed to submit sufficient evidence to establish that he actually experienced the alleged employment incident(s). OWCP further found that the medical evidence failed to establish a diagnosis in connection with the incident(s).

LEGAL PRECEDENT

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 factors of his or her federal employment.² To establish that he or she sustained an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.³

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.⁴ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.⁵

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.⁶ 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.⁷ 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.⁸

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.⁹ 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.¹⁰

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish an emotional or a physical condition causally related to factors of his federal employment.

Appellant has alleged in general and broad terms that his office manager constantly yelled and pressured him which worsened his headaches and made it difficult to deal with them. However, he has not submitted any evidence to establish his assertions as factual. Appellant did not provide a description of specific incidents or sufficient supporting evidence to substantiate his allegations. Further, there are no statements from any witnesses to the manager's alleged conduct directed towards appellant.¹¹ In addition, the employing establishment contended that

⁵ *Gregorio E. Conde*, 52 ECAB 410 (2001).

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

⁷ See *William H. Former*, 49 ECAB 324 (1998).

⁸ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁹ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁰ *Id.*

¹¹ See *Joel Parker, Sr.*, 43 ECAB 220 (1991) (the Board held that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

appellant had preexisting headaches. As such, appellant's allegations constitute mere perceptions or generally stated assertions of dissatisfaction with a certain superior at work and do not establish his claim for an emotional disability.¹² Mere perceptions of harassment or discrimination are not compensable; a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.¹³ The Board finds that appellant has not established a compensable employment factor.

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 has not met his burden of proof to establish an emotional or a physical condition while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the June 4, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 6, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹² See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

¹³ *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).