

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

M.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
McDonough, GA, Employer**

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**Docket No. 15-1221
Issued: September 14, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 6, 2015 appellant filed a timely appeal from a March 27, 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 met his burden of proof to establish an emotional condition on May 3, 2013 in the performance of duty causally related to factors of his federal employment.

FACTUAL HISTORY

On May 9, 2013 appellant, then a 56-year-old rural carrier, filed a traumatic injury claim alleging that on May 3, 2013 he was relieved of his duties as acting supervisor at the

¹ 5 U.S.C. §§ 8101-8193.

McDonough, Georgia, Post Office and this caused anxiety issues. He indicated that he had a stress claim accepted in 2004. Appellant stopped work on May 3, 2013.

In support of his claim, appellant submitted May 7, 2013 reports from David W. Aycock, Ph.D., a licensed psychologist, who noted that he had treated appellant for a work-related injury from 2004 to 2006, and that he recently had a recurrence and could not work until further notice. Dr. Aycock diagnosed anxiety disorder.

The employing establishment controverted the claim, relating that appellant was told by a supervisor to return to his duty station. In a May 10, 2013 statement, Rebecca Spivey, the postmaster at the Hampton, Georgia, Post Office, related that on May 6, 2013 appellant reported that he was going to the doctor because he did not understand why he was being blamed for events, and that on May 7, 2013 appellant presented a recurrence claim.²

By letter dated May 22, 2013, OWCP informed appellant of the information needed to support his claim. In a May 24, 2013 response, appellant related that after his accepted 2004 emotional condition, he returned to work in 2005 and had worked as an acting supervisor in several postal installations, including at the Hampton Post Office in 2012, where Jerry Sparks was postmaster, and that when Mr. Sparks became postmaster was assigned to the McDonough Post Office in July 2012, appellant went there on a detail as an acting supervisor. Appellant stated that Mr. Sparks accepted another postmaster position in April 2013, and Carolyn Carter took charge of the McDonough Post Office. He reported that he was the subject of an investigation by the Office of Inspector General (OIG) regarding delay of mail and an investigational interview took place on May 3, 2013. Appellant indicated that later that day Ms. Carter told him to report back to his assigned delivery unit, and that while driving home he realized he had been “fired” from a job without cause he had held for eight months, and this caused increased stress. In an undated portion of an Equal Employment Opportunity (EEO) complaint, appellant related that as a result of the adverse relief of duties without cause by Ms. Carter on May 3, 2013, he had a serious relapse of stress and anxiety. He stated that he originally filed a recurrence claim, but was informed by Ms. Spivey to file a traumatic injury claim. The EEO complaint described additional issues, not relevant to the instant claim.

In an attending physician’s report dated May 7, 2013, Dr. Aycock noted a history of injury that appellant was suddenly demoted and this caused anxiety, sleep disturbance, concentration and memory deficits, appetite disturbance, low motivation, lethargy, reliving workplace trauma, and reliving previous trauma. He opined that this was a recurrence of a severe anxiety disorder that disabled appellant previously, and the disability would be long-standing.

By decision dated June 27, 2013, OWCP denied that appellant sustained a traumatic injury on May 3, 2013. It accepted as factual that appellant was assigned as a rural carrier associate at the Hampton and McDonough locations, with additional duties and reassignments.

² The record indicates that the 2004 claim was adjudicated by OWCP under file number xxxxxx966, and that appellant also filed a recurrence claim under that file for the events of May 3, 2013. The instant case was adjudicated under file number xxxxxx842.

OWCP denied the claim because the medical evidence was insufficient to establish that he sustained an emotional condition causally related to the accepted employment factor.

In correspondence dated April 7, 2014 received by OWCP on April 14, 2014, appellant requested reconsideration. He stated that he returned to work in September 2013 but relapsed in October 2013 as a result of adverse actions by management at the Hampton Post Office, for which he had filed an occupational disease claim.³ Appellant maintained that the employing establishment improperly controverted his claim. He described the events of May 3, 2013. Appellant related that Ms. Carter took over management of the McDonough Post Office on or about April 30, 2013 and improperly relieved him of duties there on May 3, 2013, and this caused an acute anxiety disorder. He reasoned that this was because he was being accused of delaying mail. Appellant stated that he had filed both an EEO claim and a claim before the Merit Systems Protection Board (MSPB), which were both settled. He submitted evidence regarding his occupational disease claim and postal policies. The acceptance letter for his 2004 claim, and May 15, 2013 correspondence informing appellant of an investigative interview was scheduled on May 21, 2013 with Ms. Carter.

Also submitted were medical records from Dr. Aycock dated September 23, 2013 to January 7, 2014. He advised on December 17, 2013 that appellant's employment injury of May 3, 2013 was clearly debilitating and brought about a recurrence of his 2004 accepted injury. Dr. Aycock stated that the circumstances of injury and appellant's symptoms were very similar to the previous injury, and that the causative link between the May 3, 2013 injury and appellant's diagnosed disability was very clear. On January 5, 2014 he diagnosed a serious anxiety disorder. Dr. Aycock stated that he had been treating appellant weekly for a traumatic relapse on May 3, 2013 and also discussed events regarding appellant's occupational disease claim.

An MSPB settlement agreement dated July 18, 2013 indicated that appellant would not be disciplined for events addressed in a May 15, 2013 report of investigation regarding delay of mail at the McDonough Post Office, and that appellant would withdraw MSPB appeals and an EEO complaint. In a March 20, 2014 statement, John D. Snow, a coworker, described how the events at the McDonough Post Office in May 2013 affected him. In a March 31, 2014 statement, Mr. Sparks explained that appellant worked as an acting supervisor while he was postmaster at both Hampton and McDonough Post Offices. He stated that appellant was highly knowledgeable of postal and rural delivery operations and at no time was he found to be unsuitable for the supervisory position.

An OIG report of investigation dated May 15, 2013 described events from April 29 to May 15, 2013. The investigation was conducted regarding delay of mail at the McDonough Post Office. The report stated that a confidential source had reported that appellant and Mr. Snow had been hiding mail in a vault. A number of employees were interviewed, some of whom reported seeing undelivered mail in the vault at the employing establishment. Appellant was interviewed on May 3, 2013. He indicated that he did not always have the resources to get out the mail every day and would go through the mail that was left to make sure no first class mail was undelivered before placing the mail in the vault.

³ The occupational disease claim is adjudicated by OWCP under file number xxxxxx079.

In a May 6, 2014 statement, Ms. Spivey, postmaster at the Hampton Post Office, stated that she knew Ms. Carter sent appellant back to Hampton, his home office, because of an investigation at McDonough.

In a June 12, 2014 statement, Ms. Carter, postmaster at McDonough, stated that she arrived at McDonough on April 29, 2013 and that on April 30, 2013 she was informed by OIG that they would be investigating a telephone call that first class mail was being hidden in the walk-in vault. She related that she and the OIG investigator walked into the vault and found two tubs of first class mail, which was contrary to postal standards. Ms. Carter stated that an investigation was conducted and appellant, who was on a detail to McDonough, was then relieved of his supervisor duties, was told why, and was returned to his primary assignment at the Hampton Post Office. She related that she consulted with the district labor manager regarding how to proceed and, following this, sent appellant a directive to come in for an investigative interview. However, after appellant provided a physician's statement that he could have no contact with the postal office, all communications ceased. Ms. Carter attached a copy of appellant's May 3, 2013 interview conducted by an OIG investigator and a sworn statement, signed by appellant on May 3, 2013 regarding mail not delivered at the end of the day. Appellant stated that, since his arrival at McDonough in July 2012, undeliverable mail was collected in a tub and placed in the vault. He stated that he did not always have time to go through this mail to make sure that first class mail was not delayed and explained that first class mail for rural delivery could be delayed because it was not properly sequenced, sorted, or sent. Appellant stated that he lacked control because his hands were tied by higher management who held him accountable for different standards.

In a merit decision dated July 3, 2014, OWCP modified the July 10, 2013 decision to find no compensable factors of employment and thus appellant had failed to establish an employment-related emotional condition.

By correspondence dated January 12, 2015, appellant requested reconsideration. He asserted that his due process rights were violated when he was adversely terminated at McDonough Post Office on May 3, 2013. Appellant attached duplicates of evidence previously of record, copies of employing establishment policies, an EEO complaint that does not specifically address the events of May 3, 2013, copious materials regarding his 2004 injury, adjudicated under file number xxxxxx966, and regarding his occupational disease claim, adjudicated under file number xxxxxx079. In identical reports dated October 5 and November 5, 2013, Dr. Aycock noted that appellant had a very serious relapse of his anxiety disorder on May 3, 2013, and that he had been treating him for this since May 7, 2013. He related that this was caused when appellant was adversely relieved of his duties as an acting supervisor at the McDonough Post Office, stating that this was without just cause, noting that an investigation was being conducted. Dr. Aycock stated that appellant was sent back to his primary job at the Hampton Post Office before the investigation had been completed and this reinforced appellant's prior distrust of the employing establishment's management. He indicated that appellant briefly returned to work but, after mistreatment by management, he again took appellant off work because he had regressed.

On March 27, 2015 OWCP denied modification of the prior decisions, finding that appellant had not established an emotional condition in the performance of duty.

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.⁴ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.⁵ 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.⁶

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*,⁷ 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.⁸ 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.⁹ Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.¹⁰ Where the claimant alleges compensable factors of employment, he must substantiate such allegations with probative and reliable evidence.¹¹ Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹²

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially

⁴ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁵ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁶ *Id.*

⁷ 28 ECAB 125 (1976).

⁸ *See Robert W. Johns*, 51 ECAB 137 (1999).

⁹ *Lillian Cutler*, *supra* note 7.

¹⁰ *J.F.*, 59 ECAB 331 (2008).

¹¹ *M.D.*, 59 ECAB 211 (2007).

¹² *Roger Williams*, 52 ECAB 468 (2001).

assigned work duties of the employee and are not covered under FECA.¹³ 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.¹⁴

ANALYSIS

The Board finds that appellant did not establish an employment-related emotional condition based on the events of May 3, 2013.

Appellant has not attributed his emotional condition to the performance of his regular work duties or to any special work requirement arising from his employment duties under *Cutler*.¹⁵ Rather, his claim pertains to events that occurred on May 3, 2013 when he was relieved of a detail position as acting supervisor at the McDonough Post Office and returned to his regular job as a rural carrier at the Hampton Post Office.

Although the handling of job transfers, the management of work assignments, and scheduling are generally related to the employment, they are administrative functions and are not an employment factor where there is no error or abuse on the part of the employing establishment.¹⁶ On May 3, 2013 appellant was on a work detail at the McDonough Post Office. His regular duty station was the Hampton Post Office.

As to the investigation itself and appellant's interview with an OIG agent on May 3, 2013, investigations too are an administrative function of the employer. The employing establishment retains the right to investigate its employee when specific wrongdoing is suspected or as part of an evaluation process. An employee's fear of being investigated is not covered under FECA.¹⁷ The record supports that the employing establishment had a legitimate reason to investigate why first class mail was inappropriately kept in a vault. Appellant acknowledged this in a written statement. He did not submit evidence that the supervisor, OIG staff, or other official acted unreasonably or abusively during the investigation.¹⁸

Although the record contains an MSPB settlement agreement dated July 18, 2013, the agreement stated that the terms were mutually dependent and inseparable and thus does not establish error or abuse.

¹³ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁴ *Kim Nguyen*, 53 ECAB 127 (2001).

¹⁵ *Supra* note 7. See *James E. Norris*, 52 ECAB 93 (2000).

¹⁶ See *L.C.*, 58 ECAB 493 (2007).

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

¹⁸ *Id.*

The Board finds that appellant has not established a compensable factor of employment under FECA and has not established an emotional condition in the performance of duty.¹⁹ As appellant has failed in his burden to establish a compensable factor of employment the Board is not required to analyze the medical evidence of record.²⁰

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 meet his burden of proof to establish an emotional condition on May 3, 2013 in the performance of duty causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the March 27, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 14, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁹ As appellant has not established a compensable employment factor, the Board need not consider the medical evidence of record. *See Katherine A. Berg*, 54 ECAB 262 (2002).

²⁰ *See supra* note 5.