

On appeal, appellant contends that he sustained an emotional condition causally related to his current supervisor's comment regarding his work environment and his former supervisor's actions.

FACTUAL HISTORY

On July 1, 2015 appellant, then a 43-year-old ammunition quality assurance specialist, filed an occupational disease claim (Form CA-2) alleging that he had anxiety and panic disorder as a result of a hostile work environment created by his immediate supervisor. His conditions had increased to a level where his medication was no longer helpful. Appellant became aware of his conditions on June 20, 2015 and of their relationship to his employment on June 25, 2015. No evidence was submitted.

In a July 6, 2015 letter, OWCP informed appellant of the deficiencies of his claim and requested that he respond to its inquiries. It also requested that the employing establishment respond to his allegations and submit treatment notes if he was treated at an employing establishment medical facility.

In a July 16, 2015 attending physician's report (Form CA-20), Dr. Edwin E. Gatewood, III, an attending Board-certified psychiatrist and neurologist, noted that appellant experienced a dramatic increase in the frequency and intensity of his anxiety/panic attacks due to a hostile work environment. He diagnosed severe anxiety/panic attacks and indicated by checking a box marked "yes" that this condition was caused or aggravated by an employment activity. Dr. Gatewood explained that appellant's condition was greatly aggravated due to a hostile, unprofessional, and inconsiderate work environment. He noted that appellant was totally disabled from his date of injury through August 31, 2015 and could resume his regular work on September 1, 2015.

In a June 29, 2015 narrative statement, appellant related that he first started having anxiety/panic disorder symptoms in October 2010. In May 2011, he was treated by his physician, which improved his condition. Appellant claimed that his condition deteriorated due to a hostile environment created by T.L., his immediate supervisor. He was exposed to unprofessional behavior, belittled, and accused of lying and there was a lack of understanding. In addition, there was an attempt to catch appellant lying. As a result, appellant had daily anxiety/panic attacks, severe headaches, chest and nerve pain, and an upset stomach.

In a narrative statement also dated June 29, 2015, T.L. noted that he only became aware of appellant's claimed condition when he read his June 29, 2015 statement. He emphatically denied his allegation of displaying unprofessional behavior and aggression, belittling him, and creating a hostile work environment.

In an August 5, 2015 letter, M.T., a human resources specialist, challenged appellant's claim. He noted that until the filing of his claim, appellant had not once mentioned a hostile work environment. M.T. contended that appellant's preexisting condition was not caused or aggravated by his current employment activities. He noted that, other than Dr. Gatewood's Form CA-20 report, appellant had not submitted any other evidence such as a witness statement, a

record of disciplinary action, or proof of other egregious offense, which established a hostile work environment.

In response to OWCP's questions directed to the employing establishment, T.L. noted that, prior to commencing his employment, appellant had not disclosed any previous health conditions. He noted appellant's concern about the amount of leave he would earn per pay period, how to obtain disability insurance, and how sick leave was earned. T.L. related that appellant was given 10 days of administrative leave to search for new housing in the area. He provided appellant's job description and stated that appellant's work duties did not vary from the description. T.L. believed that appellant was fully capable of performing his job. Appellant was not required to work overtime and he departed daily at the end of his work schedule. There were no demands placed on him relative to deadlines, quotas, or assignments. There were no reported conflicts between appellant and his coworkers and supervisor. He received many hours of online training and in February 2015 he attended and completed a training course in Reston, VA. Appellant successfully used his training to perform audits of a contractor quality program. T.L. related that there were no issues regarding appellant's attendance at or completion of this course.

There were no staffing shortages impacting appellant's workload. He was placed in rotational assignments as part of his introduction to varied aspects of the employing establishment's quality program. No additional demands were placed on appellant as he was a new hire that required mentoring by other staff until he had reached his full potential. T.L. noted that appellant's performance and attitude regarding his work had declined recently. Appellant constantly complained to his colleagues, supervisors, and contractor personnel about hazardous working conditions which created discontent. He disobeyed direct instructions from his supervisor on more than one occasion. T.L. related that appellant's work schedule was accommodated to support the needs of his family. Appellant had not contended that he was exposed to a hostile work environment before the filing of his claim. T.L. stated that, in fact, he was appreciative of a special arrangement to work a 10-hour day, four-day-a-week schedule until his family relocated to the employing establishment's commuting area. Appellant lived 45 minutes away from the facility with his parents and commuted to his home in Poquoson, VA, on weekends. His work attendance had started to become an issue as he was late on numerous occasions, usually on Monday mornings due to his long commute from Poquoson, VA. Appellant telephoned T.L.'s office late numerous times to report that he would be late or not coming to work at all.

An April 3, 2015 mid-point performance review indicated that appellant received an above average performance rating because of his improved skills, abilities, knowledge, ideas, resourcefulness, and good judgment.

In an undated letter, appellant contended that he had a difficult time with his new manager T.L., who was polarizing and partisan and displayed an aggressive nature. The manager stirred up disagreements and insulted employees who disagreed with his position. He yelled at, intentionally talked down to, and belittled employees in front of their colleagues. The manager slammed his fist on his desk on a daily basis. He even referred to himself as the devil and the people under him as fallen angels. When anyone made a mistake, the manager would immediately call the person out on it along with letting everyone else know about it. He intentionally went behind the employees' work to see if he could find something wrong with it

and keep records of mistakes. Appellant felt physically threatened. He also felt persecuted because of his religious and personal beliefs and his service to his country and felt the need to defend them. Appellant noted that several of his coworkers had gone to D.E., executive to the commander, about the way his supervisor treated people.

An August 26, 2015 employing establishment health record noted that appellant had a preexisting illness that had been controlled enough for him to have full and functional employment at work. His introduction to an abusive supervisor led to a decompensation and recurrence of his symptoms. The removal of this provocation would likely allow appellant to reach his prior functionality. He was examined and diagnosed with, among other things, anxiety not otherwise specified.

By letter dated September 3, 2015, OWCP requested that the employing establishment respond to appellant's latest allegations.

In a September 29, 2015 letter, M.T. reiterated that appellant's claim should be denied as he has not submitted sufficient evidence to establish that his claimed condition occurred while in the performance of duty.

In an undated memorandum, D.E. contended that appellant's assertion of a hostile work environment by his supervisor was unfounded and arose out of a personal conflict with his supervisor. He noted that when appellant first reported to work, T.L. had trained him and they had an amicable and friendly relationship. No complaints had been filed against T.L. for his behavior. His leadership style involved coaching, mentoring, and teaching. T.L. applied the same approach to his other employees and did not disrespect any employee. He rated appellant as above average on his April 2015 mid-point performance review and noted that appellant was an effective team player. Subsequently, issues arose regarding appellant's attendance as his use of sick leave in conjunction with a weekend became more common. T.L. became frustrated with appellant's leave usage and began to document his attendance. Appellant then became agitated with him. On April 16, 2015 T.L. documented his failure to validate shipping documents and appellant ignored his request to discuss the matter with him that day. Appellant began to show a lack of respect for T.L. who requested that his staff document their weekly workload, as required by his commander who wanted to know what his staff was doing on a daily basis. This request was not made to track or evaluate appellant's performance. D.E. denied that T.L. pounded his desk with his fists on a daily basis. He neither witnessed these incidents nor received a complaint from appellant about them until he received appellant's letter regarding his claim. T.L. was extremely dedicated to his job and often voiced frustration with appellant's performance and attendance issues.

D.E. did not witness or receive complaints regarding appellant's allegation of religious persecution. Appellant never referenced his religious beliefs during discussions with D.E. D.E. denied that T.L. went behind appellant's work to find something wrong or keep records on it. Appellant was not receptive to T.L. signing off on his work. D.E. stated that he never witnessed T.L. yell at or belittle his staff. T.L. recognized his staff's contributions and presented them to management for awards. He had a high standard for work and recognized work performance that went beyond normal expectations. D.E. noted that the staff had an opportunity to meet with an inspector general on June 25, 2015, but appellant failed to present any formal complaint at that

time. D.E. indicated that, after appellant notified him on June 29, 2015 about a hostile work environment, he immediately made plans to move appellant directly under his supervision and to provide appellant with support. Appellant was given 40 hours of administrative leave due to his claim of stress and anxiety.

In an October 29, 2015 decision, OWCP denied appellant's claim for an emotional condition because he had not established any compensable employment factors.

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.³ 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.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 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.⁵ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁶

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.⁷ 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.⁸ In determining whether the employing establishment has erred or acted abusively, the Board will

³ *Pamela R. Rice*, 38 ECAB 838 (1987).

⁴ *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁵ *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁷ *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 556 (1991).

⁸ *See William H. Fortner*, 49 ECAB 324 (1998).

examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁹

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.¹⁰ 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.¹¹

ANALYSIS

The Board finds that appellant failed to meet his burden of proof to establish an emotional condition causally related to factors of his federal employment. The Board notes that he did not attribute his emotional condition to the performance of his regular or specially assigned duties, as an ammunition quality assurance specialist, under *Lillian Cutler*.¹²

Rather, appellant has alleged in general and broad terms that his supervisor, T.L., created a hostile work environment by displaying unprofessional behavior, belittling him, accusing him of lying and trying to catch him lying, lacking understanding, pounding his fist on his desk daily, yelling at him, stirring up disagreements, insulting and ridiculing employees, and persecuting him based on religion and military service. He asserted that this increased his anxiety/panic attacks and caused severe headaches, chest and nerve pain, and an upset stomach. However, appellant has not submitted any evidence to establish his assertions as factual nor did he provide a description of specific incidents. Further, while he noted that, a coworker had reported T.L.'s behavior to management, there is no statement from him or any other witnesses to the supervisor's alleged conduct directed towards appellant.¹³ In addition, T.L. and D.E. both denied the above-noted allegations. They responded that appellant had been granted accommodation for his weekly long-distance travel to see his family by allowing him a 10-hour-a-day, four-day a week work schedule. Appellant was not overworked and he received an above average performance rating. As such, his allegations constitute mere perceptions or generally stated assertions of dissatisfaction with a certain superior at work and do not establish his claim for an

⁹ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁰ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹¹ *Id.*

¹² *Supra* note 5.

¹³ 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).

emotional disability.¹⁴ Mere perceptions of harassment or discrimination are not compensable. Rather, a claimant must establish a basis in fact for the claim by supporting his or her allegations with probative and reliable evidence.¹⁵ The Board finds that appellant has not established a compensable employment factor.

As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record.¹⁶

On appeal, appellant contends that he sustained an emotional condition causally related to his current supervisor's comment regarding his work environment and his former supervisor's actions. For the reasons stated above, the Board finds that appellant did not establish a compensable work 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 condition in the performance of duty.

¹⁴ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

¹⁵ *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

¹⁶ *Katherine A. Berg*, 54 ECAB 262 (2002).

ORDER

IT IS HEREBY ORDERED THAT the October 29, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 21, 2016
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