



## **FACTUAL HISTORY**

On May 11, 2015 appellant, then a 55-year-old human resources generalist (principal), filed an occupational disease claim (Form CA-2), alleging that his depression, anxiety, and other conditions were caused by management actions when he was placed on administrative leave until completion of an internal investigation regarding his conduct. The employing establishment indicated that appellant was placed on paid administrative leave from December 14, 2012 through May 14, 2014 and has controverted the claim.

The record includes a job description for a human resources generalist (principal). A December 14, 2012 memorandum, signed by appellant, provided that he was placed in a nonduty status with pay effective that day, until an internal investigation regarding his conduct was completed.

In a July 18, 2014 note, Dr. Fernando J. Cabrera, Jr., a Board-certified psychiatrist, advised that he first evaluated appellant on January 14, 2013 for anxiety and depression secondary to labor problems. He diagnosed major depression and prescribed medication. Appellant's request for family and medical leave, to begin March 23, 2015, was approved on March 30, 2015.

In correspondence dated May 18, 2015, Juan Delgado, human resources manager at the employing establishment, advised that appellant was placed on paid administrative leave commencing December 14, 2012 and was returned to work without restrictions or limitations on May 14, 2014. He indicated that the investigation was regarding appellant's conduct, that there was no investigation report, and that he was returned to duty with the understanding that there were no negative findings regarding his conduct.

In a June 2, 2015 letter, OWCP informed appellant of the evidence needed to support his claim, including a personal statement regarding claimed employment factors and supportive medical evidence. Appellant was afforded 30 days to respond. OWCP also asked the employing establishment to provide information regarding his claim, including comments from a knowledgeable supervisor.

On July 7, 2015 Mr. Delgado responded that appellant was placed on administrative leave to investigate allegations that he had been bypassing a required step in the hiring process. He reiterated that appellant was returned to duty with the understanding that there were no negative findings regarding his conduct. Mr. Delgado added that appellant's job did not include significant stress and that he had performed his duties in a satisfactory manner since his return from administrative leave.

By decision dated July 8, 2015, OWCP denied the claim. It noted that appellant did not respond to the June 2, 2015 letter and denied the claim because fact of injury had not been established.

In correspondence dated and received on July 13, 2015 appellant requested reconsideration. In a statement dated July 7, 2015, he repeated that on December 14, 2012 he was placed off duty with pay because of an internal investigation. Appellant asserted that he was

not told the reason for the investigation and that employing establishment management refused to explain or provide details of the investigation. He reported that no grievance or Equal Employment Opportunity action had been taken and maintained that being off work for no cause for 17 months without explanation caused his emotional condition.

In a July 6, 2015 psychiatric report, Dr. Cabrera described appellant's treatment, noting a diagnosis of mixed adjustment disorder with depression and anxiety in partial remission, and additional conditions of noninsulin-dependent diabetes mellitus, obstructive sleep apnea, hypertension, low back pain, cervical strain, hyperlipidemia, bronchial asthma, and left foot phlebitis. He recounted that appellant was placed in nonduty status with pay on December 14, 2012 due to an investigation and was placed back in his position on May 13, 2014 without explanation. Dr. Cabrera advised that, after appellant's removal, he became anxious, depressed, and could not sleep well. He indicated that appellant had improved, but was still worried that he could be fired. Dr. Cabrera opined that appellant's adjustment disorder diagnosis was secondary to his labor difficulties at the employing establishment.

Also submitted was correspondence dated May 13, 2014 in which Mr. Delgado informed appellant to report for training in Miami, Florida, on May 19, 2014. In a letter dated June 13, 2014, he informed appellant that his nonduty status with pay was rescinded effective May 14, 2014. Mr. Delgado welcomed appellant back to the employing establishment.

In a merit decision dated September 16, 2015, OWCP denied modification of the prior decision.

### **LEGAL PRECEDENT**

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*,<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.<sup>6</sup> Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with

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<sup>3</sup> 28 ECAB 125 (1976).

<sup>4</sup> See *Robert W. Johns*, 51 ECAB 137 (1999).

<sup>5</sup> *Lillian Cutler*, *supra* note 3.

<sup>6</sup> *J.F.*, 59 ECAB 331 (2008).

probative and reliable evidence.<sup>7</sup> Personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>8</sup>

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA.<sup>9</sup> 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.<sup>10</sup>

To establish his claim that he sustained an emotional 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.<sup>11</sup> If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.<sup>12</sup> 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.<sup>13</sup>

### ANALYSIS

The Board finds that appellant did not establish an employment-related emotional condition. 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*.<sup>14</sup> Rather, his claim pertains to his allegation that being placed on paid administrative leave from December 14, 2012 to May 14, 2014, while an investigation took place, caused stress, anxiety, and depression. Appellant asserted that he was not told the reason for the investigation, that employing establishment management refused to explain or provide details of the investigation, and that the administrative leave was rescinded and he was returned to full duty.

As to the investigation itself, investigations are considered to be an administrative function of the employing establishment and are not considered to be an employment factor

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<sup>7</sup> *M.D.*, 59 ECAB 211 (2007).

<sup>8</sup> *Roger Williams*, 52 ECAB 468 (2001).

<sup>9</sup> *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>10</sup> *Kim Nguyen*, 53 ECAB 127 (2001).

<sup>11</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>12</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>13</sup> *Id.*

<sup>14</sup> *Supra* note 3; see *James E. Norris*, 52 ECAB 93 (2000).

where the evidence does not disclose error or abuse on the part of the employing establishment.<sup>15</sup> The employing establishment retains the right to investigate an employee if wrongdoing is suspected or as part of the evaluation process. An employee's fear of being investigated is not covered under FECA.<sup>16</sup> The record supports that the employing establishment had a legitimate reason to investigate appellant's job performance. In correspondence dated May 18 and July 7, 2015, Mr. Delgado, human resources manager, advised that appellant was being investigated for bypassing a required step in the hiring process. He indicated that there was no investigation report and that appellant was returned to duty with the understanding that there were no negative findings regarding his conduct. Appellant did not submit evidence to show that employing establishment management or another employing establishment acted unreasonably or abusively during the investigation.<sup>17</sup>

As to being placed on paid administrative leave, allegations of unfair disciplinary actions and leave matters also relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within coverage of FECA.<sup>18</sup> The mere fact that personnel actions are later modified or rescinded, as in this case, does not, in and of itself establish error or abuse.<sup>19</sup> Appellant did not submit any evidence that postal management erred in this action. He did not establish a compensable factor of employment with respect to these administrative matters.<sup>20</sup>

For the foregoing reasons, appellant has not established a compensable factor of employment under FECA and, therefore, has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

As appellant has not established a compensable employment factor, the Board need not consider the medical evidence of record.<sup>21</sup>

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.

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<sup>15</sup> See *L.C.*, 58 ECAB 493 (2007).

<sup>16</sup> *Jeral R. Gray*, 57 ECAB 611 (2006).

<sup>17</sup> *Id.*

<sup>18</sup> *Robert Breeden*, 57 ECAB 622 (2006) (disciplinary actions); *David C. Lindsey, Jr.*, 56 ECAB 263 (2005) (leave matters).

<sup>19</sup> *C.T.*, Docket No. 08-2160 (issued May 7, 2009).

<sup>20</sup> *Robert Breeden*, *supra* note 18.

<sup>21</sup> See *Katherine A. Berg*, 54 ECAB 262 (2002).

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish an emotional condition in the performance of duty causally related to factors of his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 16 and July 8, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 19, 2016  
Washington, DC

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

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

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