United States Department of Labor
Employees' Compensation Appeals Board

T.M., Appellant	)	
and	)	**Docket No. 15-1774**
	)	**Issued: January 20, 2016**
U.S. POSTAL SERVICE, INSPECTION SERVICE, Washington, DC, Employer	)	

Appearances:
Capp P. Taylor, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 24, 2015 appellant, through counsel, filed a timely appeal from an April 13, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the issuance of the April 13, 2015 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

On appeal, counsel contends that appellant submitted sufficient factual and medical evidence to establish that he developed post-traumatic stress disorder (PTSD) and severe panic disorder as a result of his regular duties as a postal inspector.

FACTUAL HISTORY

On July 1, 2013 appellant, a 43-year-old postal inspector, filed an occupational disease claim (Form CA-2) alleging that he sustained an emotional condition due to factors of his federal employment.

The employing establishment stated that appellant went on self-initiated sick leave on September 6, 2011. On September 16, 2011 appellant was placed on administrative leave while the employing establishment reviewed his medical documentation regarding his ability to work. The employing establishment determined that he could return to work. On October 13, 2011 prior to returning to work appellant was placed on administrative leave while the employing establishment and inspector general investigated and reviewed his alleged misconduct. Based in part on the investigation of the inspector general, appellant received a notice of proposed adverse action -- removal on December 14, 2012. He was charged with providing false information and demonstrating a lack of candor in connection with filing a complaint with police and a request for orders to stop harassment, and failing to cooperate during an official agency investigation. Appellant attended mediation with the employing establishment on February 20, 2013. The employing establishment indicated that he had not performed any duties since September 6, 2011 and was terminated effective March 15, 2013 for misconduct.

On July 29, 2013 OWCP informed appellant of the evidence needed to establish his claim and afforded him 30 days to submit such evidence. Appellant did not respond.

By decision dated August 29, 2013, OWCP denied appellant's claim because the factual evidence was insufficient to establish a compensable factor of employment as he did not provide any specific work event. Thus, fact of injury was not established.

On November 27, 2013 appellant's counsel requested reconsideration. Appellant submitted a position description indicating that the duties and responsibilities of a postal inspector included: collecting and organizing data, information, and evidence; developing investigative reports; apprehending and arresting suspects; developing materials for conducting prosecutions and hearings; documenting and recording pertinent case activity; providing assistance in the initial response to operational emergencies; serving as a subject-matter expert; and providing guidance to other inspectors. He also submitted a February 20, 2014 brief from his attorney arguing that his disabling emotional condition was attributable to his regular duties and long hours.

In a November 5, 2013 statement, appellant noted being recruited as a postal inspector after being assured that additional postal inspectors would be hired. He stated that his supervisor never hired additional postal inspectors and assigned him the duties equal to that of three inspectors. Appellant alleged that he rarely was able to use leave due to the lack of additional inspectors, which caused him to sell his annual leave back to the employing establishment or obtain a carryover of leave beyond 240 hours for the year. He noted often working 80 to 100

hours a week. This inability to take leave caused appellant great emotional stress and he often went to work never fully recovering from the previous day's work duties. Appellant indicated that he was nominated for multiple performance awards for productivity given that many of his duties were not creditable criteria in an end of the year appraisal. He noted that he repeatedly asked his supervisor to hire additional inspectors, but he stated that the employing establishment had a multiple year hiring freeze due to budget concerns. No other postal inspectors wanted to transfer to his location due to the low locality pay and the high cost of living. Appellant's supervisor put in his retirement notice in February 2011 leaving appellant "as the only postal inspector within hundreds of miles with hundreds of thousands of persons to service." Appellant requested additional postal inspectors to assist or respond to incidents on multiple occasions from supervisors, managers, and an executive only to be told, "We are working on it." He stated that he became severely depressed and never went to work "refreshed" from the previous day.

Appellant provided a June 11, 2013 report from Dr. Jana Price-Sharps, a licensed clinical psychologist, who diagnosed severe PTSD and panic disorder due to work stress. Dr. Price-Sharps noted first seeing appellant on December 5, 2011 when he was very distressed about his work situation. Appellant stated that he was on vacation when his supervisor drove three hours to his home on Labor Day weekend in 2011. The supervisor allegedly came through the privacy gate and broke appellant's window by pounding on it. The next week appellant had a meeting with his supervisor which he reported was "very hostile" and "the supervisor had literally blocked [appellant] from leaving the office." He "said he feared for his life." Appellant requested a temporary restraining order from a state court which was granted. He then requested Family and Medical Leave Act (FMLA) leave because he did not feel safe, but the same supervisor denied his request. Appellant noted being subsequently placed on administrative leave by his supervisor. He was on administrative leave for several months by the time he was initially seen by Dr. Price-Sharps and described his feelings about these events. Appellant had anxiety and was concerned about his safety. A federal court dropped the temporary restraining order and his anxiety increased. Appellant filed a complaint with the employing establishment and remained on administrative leave. He attended mediation with the employing establishment in February 2013 and then had nightmares, panic attacks, and severe anxiety. Appellant stated that "one of his biggest fears is that he didn't know who would be in the meeting but knew that they would be armed and that he would not be" and that he was "very afraid to walk into a meeting where he could once again be barred from leaving, knowing that he could not defend himself." Dr. Price-Sharps opined that the meeting left appellant traumatized and his anxiety level was at its highest intensity since she first saw him. She concluded that appellant could not perform his regular duties due to his emotional condition. Dr. Price-Sharps continued to submit reports noting appellant's status and indicating that his condition was employment related.

The employing establishment submitted a March 14, 2013 letter indicating that, on November 28, 2012, it issued appellant a notice of proposed adverse action proposing to remove him from employment. Appellant was charged with providing false information and demonstrating a lack of candor in connection with filing a police complaint and a "[r]equest for [o]rders to [s]top [h]arassment," and for failing to cooperate in an official agency investigation. The employing establishment found that the charges were fully supported and warranted appellant's immediate removal from employment. It noted that the supervisor's actions on September 4, 2011 were "well within the scope of his employment" and appellant's assertion that by knocking on the doors of his residence he was somehow acting in a manner contrary to

agency policy was "simply baseless, without any foundation, and [did] not violate any Inspection Service policy or practice." The employing establishment further noted appellant's refusal to disclose his whereabouts and the identity of his neighbor who he claimed reported a "strange black male" banging on his door on September 4, 2011. Such disclosures, if provided, would have allowed for the verification of his otherwise unsubstantiated allegations of his supervisor's behavior. Instead appellant failed to cooperate during the official agency investigation of the matter. It was undisputed that the supervisor attempted to contact appellant at home on September 4, 2011 but the employing establishment rejected appellant's characterization of his behavior as an attempt to enter his house. Neighborhood canvases were conducted in an attempt to locate the neighbor who appellant claimed made a report, but no one reported the events as he described. The employing establishment found that the only identified witness was postal inspector, J.V., who described the events in a manner quite different from appellant, indicating that the supervisor was not knocking loudly on the front door and did not hear anything when he walked around the side of appellant's house. Appellant did not provide a reason which would serve to discredit J.V.'s account of the events. During the course of the investigation into his conduct, appellant repeatedly claimed that he was not at home, but refused to provide any verifiable details regarding his whereabouts. Appellant claimed that while he was on sick leave he continued to receive work-related telephone calls, after-hours duty call weekly assignments, and e-mail correspondence from his supervisor. The employing establishment found that he had not provided any support of details regarding these allegations and did not explain why he would be reviewing e-mail messages, if he was unable to work due to some incapacitation for which he was approved sick leave.

In a January 24, 2014 letter, the employing establishment indicated that appellant's work conditions were "neither unique nor unusual" as it maintained in excess of two dozen "one inspector domiciles" that were often isolated and without ready access to supervisors or support staff. It stated that appellant's domicile was staffed with appellant, a supervisor, and a general analyst. The employing establishment asserted that appellant was able to use both annual and sick leave and submitted leave records indicating that he used such leave. It found that appellant's decision to "sell" his leave was completely voluntary on his part. The employing establishment noted that there was no evidence that appellant was ever denied the usage of leave and he did not provide evidence to support his contention. It advised that appellant was placed on administrative leave during its investigation into his misconduct and was exposed to the same stresses that thousands of other postal inspectors experienced on a daily basis.

By decision dated February 27, 2014, OWCP denied modification of its prior decision. It noted that appellant did not substantiate his allegation of "overwork" and staff shortages. Since no compensable factors were established, it did not review the medical evidence.

On July 16, 2014 appellant, through counsel, requested reconsideration and submitted a June 26, 2014 report from Dr. Price-Sharps, who opined that her diagnoses would not change if hypothetically there were no extraordinary work hours or staffing shortages.

By decision dated October 15, 2014, OWCP denied modification of its prior decision. It found that as appellant's allegations regarding his work duties were vague, it did not review the medical evidence.

On November 10, 2014 appellant, through counsel, requested reconsideration and submitted time and leave analysis statements dated 2011 and 2012.

By decision dated April 13, 2015, OWCP denied modification of its prior decision. It again found that, as appellant's allegations regarding his work duties were vague and pertained to leave, workload, and work hours which were not substantiated. As his allegations were too general, OWCP stated that it did not review the medical evidence.

LEGAL PRECEDENT

In providing for a compensation program for federal employees, Congress did not contemplate an insurance program against any and every injury, illness, or mishap that might befall an employee contemporaneous or coincidental with his or her employment. Liability does not attach merely upon the existence of an employee-employer relation. Instead, Congress provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[3] The phrase while in the performance of duty has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers' compensation law of arising out of and in the course of employment.

In *Lillian Cutler*,[4] the Board noted that workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are situations when an injury or illness has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation as they are found not to have arisen out of the employment. When an employee experiences emotional stress in carrying out his employment duties, or has fear and anxiety regarding his ability to carry out his duties, and the medical evidence establishes that the disability resulted from his 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 resulted from his emotional reaction to his day-to-day duties. The same result is reached when the emotional disability resulted from the employee's emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of the work.[5]

In contrast, a disabling condition resulting from an employee's feelings of job insecurity is insufficient to constitute a personal injury sustained in the performance of duty within the meaning of FECA. Thus, disability is not covered when it results from an employee's fear of a reduction-in-force, unhappiness with doing inside work, desire for a different job, brooding over the failure to be given work he desires, or the employee's frustration in not being permitted to work in a particular environment or to hold a particular position.[6] Board case precedent demonstrates that the only requirements of employment which will bring a claim within the

[3] *See* 5 U.S.C. § 8102(a).

[4] 28 ECAB 125 (1976).

[5] *Id.* at 130.

[6] *See supra* note 4.

scope of coverage under FECA are those that relate to the duties the employee is hired to perform.[7]

To the extent that disputes and incidents alleged as constituting harassment by coworkers are established as occurring and arising from a claimant's performance of his regular duties, these could constitute employment factors.[8] However, for harassment to give rise to a compensable disability under FECA there must be evidence that harassment did, in fact, occur. Mere perceptions of harassment are not compensable under FECA.[9]

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.[10] 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.[11] 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.[12]

A claimant has the burden of establishing by the weight of the reliable, probative, and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.[13] This burden includes the submission of a detailed description of the employment factors or conditions, which he believes caused or adversely affected a condition for which compensation is claimed, and a rationalized medical opinion relating the claimed condition to compensable employment factors.[14]

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 work 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 compensable factors of employment and may not be considered.[15] If a claimant does implicate a

[7] *See Anthony A. Zarcone*, 44 ECAB 751 (1993).

[8] *See David W. Shirey*, 42 ECAB 783, 795-96 (1991).

[9] *See Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

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

[11] *See William H. Fortner*, 49 ECAB 324 (1998).

[12] *See Ruth S. Johnson*, 46 ECAB 237 (1994).

[13] *See Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[14] *See Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[15] *See Dennis J. Balogh*, 52 ECAB 232 (2001).

factor of employment, OWCP should then consider whether the evidence of record substantiates that factor. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim as the claim must be supported by probative evidence.[16] Where the matter asserted is a compensable factor of employment and the evidence of record established the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.[17]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

Appellant alleged an emotional condition due to being overworked with long hours and little assistance due to staffing shortages and inability to take leave. He further alleged that he worked in a hostile work environment. On appeal, counsel contends that appellant submitted sufficient factual and medical evidence to establish that he developed PTSD and severe panic disorder as a result of his regular duties as a postal inspector. As noted, when disability is proven to result from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.[18]

Appellant attributed his emotional condition to workload. The Board has held that overwork, when substantiated by sufficient factual information to corroborate appellant's account of events, may be a compensable factor of employment.[19] The Board finds, however, that appellant did not submit sufficient evidence to establish a compensable employment factor. The record does not substantiate appellant's contentions that he was overworked. Rather, the record shows that he was meeting his productivity and quality standards. As noted the employing establishment indicated that appellant's workload and work environment was similar to that of other postal inspectors. Thus, the Board finds that the evidence is insufficient to establish overwork allegations.[20] As appellant did not otherwise attribute his claimed condition to particular duties performed on particular dates, he has not established an employment factor under *Lillian Cutler*.[21]

Appellant further attributed his emotional condition to stress caused by staffing shortages. He stated that his supervisor never hired additional postal inspectors as promised and assigned him the duties equivalent to that of three postal inspectors. Appellant asserted that he was "the only postal inspector within hundreds of miles with hundreds of thousands of persons to service." This allegation pertains to an administrative matter. The standard under *McEuen* is

[16] *See Charles E. McAndrews*, 55 ECAB 711 (2004).

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

[18] 5 U.S.C. §§ 8101-8193; *Penelope C. Owens*, 54 ECAB 684 (2003); *supra* note 4.

[19] *See Bobbie D. Daly*, 53 ECAB 691 (2002).

[20] *See E.H.*, Docket No. 13-559 (issued August 21, 2013).

[21] *Supra* note 4.

whether the evidence of record establishes error or abuse by the employing establishment.[22] In a January 24, 2014 letter, the employing establishment indicated that appellant's work conditions were "neither unique nor unusual" as it maintained in excess of two dozen "one inspector domiciles" that were often isolated and without ready access to supervisors or support staff. The Board finds that appellant's stress and anxiety at work must be construed to be self-generated. There is no evidence that the employing establishment assigned appellant work that was not within the scope of his job responsibilities. The Board has held that a manager or supervisor must be allowed to perform his or her duties and that employees will disagree with actions taken. Mere disagreement or dislike of actions taken by a supervisor will not be compensable absent evidence establishing error or abuse.[23] An employee's reaction to an administrative or personnel matter is not covered under FECA, unless there is evidence that the employing establishment acted unreasonably.[24] As noted, disability is not covered when an employee is frustrated in not being permitted to work in a particular environment.[25] Because appellant has not presented sufficient evidence to establish that his supervisors acted unreasonably or that the employing establishment engaged in error, he has failed to identify a compensable work factor.

Appellant also attributed his emotional condition to his inability to take time off work by using annual or sick leave, which caused him to sell his annual leave back to the employing establishment or obtain a carryover of leave beyond 240 hours for the year. Generally, actions of the employing establishment in matters involving the use of leave are not considered compensable factors of employment as they are administrative functions of the employer and not duties of the employee.[26] In the January 24, 2014 letter, the employing establishment asserted that appellant was able to avail himself of both annual and sick leave and submitted leave records indicating that he had used leave. It asserted that appellant's decision to sell back his leave was completely voluntary and that it had determined that appellant was never denied the usage of leave. The Board finds that appellant has not submitted sufficient evidence to support that the employing establishment acted erroneously or abusively regarding his leave requests. Thus, appellant has not established a compensable work factor.

Appellant also attributed his emotional condition to a hostile work environment. He claimed that while he was on sick leave he continued to receive work-related telephone calls, after-hours duty calls, weekly assignments, and e-mail correspondence from his supervisor. In a June 11, 2013 report, Dr. Price-Sharps noted that appellant was on vacation when his supervisor drove three hours to his home on Labor Day weekend in 2011. The supervisor allegedly came through the privacy gate and broke appellant's window by pounding on it. The next week appellant had a meeting with his supervisor which he reported was "very hostile" and "the supervisor had literally blocked [appellant] from leaving the office." Appellant "said he feared for his life." He also attended mediation with the employing establishment in February 2013.

[22] *See McEuen, supra* note 10.

[23] *See Linda Edwards-Delgado,* 55 ECAB 401 (2004).

[24] *See Alfred Arts*, 45 ECAB 530 (1994).

[25] *See supra* note 4.

[26] *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

Appellant stated that "one of his biggest fears [was] that he didn't know who would be in the meeting but knew that they would be armed and that he would not be" and that he was "very afraid to walk into a meeting where he could once again be barred from leaving, knowing that he could not defend himself."

Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his allegations with probative and reliable evidence.[27] Grievances and EEO complaints do not establish that workplace harassment or unfair treatment occurred.[28] The Board has recognized the compensability of verbal altercations or abuse when sufficiently detailed by the claimant and supported by the record. This does not imply, however, that every statement uttered in the workplace will give rise to compensability.[29] The Board finds that there is no evidence of record from any witness substantiating appellant's contention that he was harassed by his supervisor or any other coworker during any of the claimed instances or situations.

In a March 14, 2013 letter, the employing establishment asserted that the supervisor's actions on September 4, 2011 in trying to contact appellant were "well within the scope of his employment" and appellant's assertion that by knocking on the doors of his residence he was somehow acting in a manner contrary to agency policy was "simply baseless, without any foundation, and [did] not violate any Inspection Service policy or practice." The employing establishment noted that appellant's refusal to disclose his whereabouts and the identity of his neighbor who he claimed reported a "strange black male" banging on his door on September 4, 2011 would have allowed for the verification of his otherwise unsubstantiated allegations of his supervisor's behavior. Instead, appellant failed to cooperate in an official agency investigation of the matter. The employing establishment advised that the only identified witness was postal inspector, J.V., who described the events in a manner quite different from appellant indicating, that the supervisor was not knocking loudly on the front door and did not hear anything when he walked around the side of appellant's house. During the investigation into appellant's conduct, he repeatedly claimed that he was not at home, but refused to provide any verifiable details of his whereabouts. Appellant submitted no evidence corroborating his accusations. The Board has held that mere allegations, in the absence of factual corroboration, are insufficient to meet a claimant's burden of proof.[30] While appellant's psychologist referred to harassment at work, she was not present during these encounters and her depictions rely on appellant's representations, which are not corroborated by evidence of record. As appellant failed to provide evidence to establish a compensable factor of employment, the Board finds that he has not met his burden of proof to establish a claim.

[27] *Supra* note 13.

[28] *See Parley A. Clement*, 48 ECAB 302 (1997).

[29] *See supra* note 26.

[30] *See Bonnie Goodman*, 50 ECAB 139 (1998).

Since appellant has not substantiated a compensable factor of employment as the cause of his emotional condition the Board will not address the medical evidence.[31]

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the April 13, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 20, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

[31] *See Karen K. Levene*, 54 ECAB 671 (2003).