

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

P.S., Appellant)	
)	
and)	Docket No. 16-0711
)	Issued: June 27, 2016
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Los Angeles, CA, Employer)	
)	

Appearances:
Appellant, pro se
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 February 26, 2016 appellant filed a timely appeal from a September 11, 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 established an emotional condition causally related to compensable work factors alleged on March 27, 2012.

FACTUAL HISTORY

On January 12, 2015 appellant, then a 42-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on March 27, 2012 he sustained an emotional condition as a

¹ 5 U.S.C. § 8101 *et seq.*

result of being improperly placed on absent without leave (AWOL) status for March 27, 2012. On the claim form appellant indicated that his father had died on March 27, 2012. He also reported that he was subject to workplace harassment and bullying.

The Board notes that the record contains additional claim forms completed by appellant. A Form CA-2 dated March 29, 2015 alleges an emotional condition from a July 12, 2010 notice of removal, as well as letters of warning issued in 2007 and 2008, and disciplinary actions in 2008 and 2009. A Form CA-1 dated March 29, 2015 alleges an emotional condition from a June 4, 2012 notice of removal based on a violation of a settlement agreement. An April 21, 2015 Form CA-1 alleges an emotional condition from July 18 and 23, 2011 notices of removal. The record also contains an April 21, 2015 CA-2 claim with similar allegations.

The September 11, 2015 hearing representative's decision on appeal notes that the March 29, 2015 claims have not been adjudicated. The allegations addressed in the decision on appeal were limited to the allegation of error in placing appellant on AWOL status of March 27, 2012, and an allegation of harassment and bullying. Although the case record provides statements from appellant regarding such disciplinary actions such as notices of removal, the Board will focus on the allegations regarding administrative actions on March 27, 2012 and allegations of harassment and bullying.²

Appellant submitted a calendar for January to May 2012, showing various dates as "AWOL," including March 27, 2012. In an undated statement received on February 18, 2015, he asserted that he should have been placed on Family and Medical Leave Act (FMLA) leave for March 27, 2012, as he has a chronic low back condition and was seen by a physician on March 25 and 27, 2012.³ Appellant also reported that March 27, 2012 was a scheduled vacation day, and that his father's death should be considered an emergency.

The employing establishment submitted a letter dated March 24, 2012 to appellant from his supervisor. The supervisor indicated that appellant had requested leave, but did not have enough work hours to qualify for FMLA. According to the supervisor, appellant would be placed in AWOL status until appropriate documentation was submitted to justify an absence. The letter reported that appellant had not complied with employing establishment regulations regarding absences, and therefore was charged with AWOL. To change the leave status to sick leave or other approved leave, there must be medical documentation.

The record contains an "investigative interview" form from appellant's supervisor, requesting an explanation regarding specific dates of absence from January 6 to May 12, 2012, including March 27, 2012. In a "notice of removal" dated June 4, 2012, the employing establishment alleged that appellant had violated a last chance agreement dated October 18, 2010 to maintain a satisfactory attendance record.⁴ Appellant submitted a decision dated August 26,

² The remaining claims filed on March 29 and April 21, 2015 have not been formally adjudicated and were not considered by the Branch of Hearings and Review and therefore will not be considered by the Board on this appeal.

³ The record contains a report dated March 25, 2012 from Dr. Anjum Sameena, a Board-certified family practitioner, indicating that appellant was seen for back pain.

⁴ A grievance form filed with respect to the notice of removal reports that appellant was removed from the employing establishment on July 15, 2012.

2012 from a State Unemployment Insurance Appeals Board. In an undated note, appellant argued that the decision showed that he did call the employing establishment on March 27, 2012 to explain his absence. The decision itself found that he had no documentary record or corroboration for calling his employer from March 20 to April 14, 2012. Appellant also submitted a portion of a Merit Systems Protection Board decision, which finds that the employing establishment's removal was sustained.

An arbitrator's decision dated June 17, 2013 denied a grievance filed regarding appellant's removal, finding appellant had violated the last chance agreement. As to March 27, 2012, the arbitrator found that appellant had subsequently been approved for funeral leave due to the death of his father.

By undated e-mail correspondence received on January 13, 2015, a supervisor reported that appellant had a history of attendance issues. The supervisor indicated that he was not informed that appellant's father had passed away, and any unapproved leave during that period was due to attendance irregularities.

By decision dated April 27, 2015, OWCP denied the claim for compensation. It found appellant had not established a compensable work factor.

Appellant requested a review of the written record by an OWCP hearing representative on May 6, 2015. He argued that he believed the evidence showed error by the employing establishment in placing him on AWOL. Appellant submitted with his request Board decisions that did not involve claims for emotional conditions.

By decision dated September 11, 2015, the hearing representative affirmed the April 27, 2015 decision. The hearing representative found appellant had not established a compensable work factor with respect to administrative error on March 27, 2012, or regarding an allegation of harassment and bullying.

LEGAL PRECEDENT

Appellant 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 factors of his federal employment.⁵ This burden includes the submission of detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁶ A claimant must also submit rationalized medical opinion evidence establishing a causal relationship between the claimed condition and the established, compensable work factors.⁷

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 illness has

⁵ *Pamela R. Rice*, 38 ECAB 838 (1987).

⁶ *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

⁷ *See Bonnie Goodman*, 50 ECAB 139, 141 (1998).

some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁸

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.⁹ Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.¹⁰

ANALYSIS

Although appellant filed a traumatic injury claim,¹¹ OWCP considered his claim as an occupational disease claim with respect to allegations of bullying and harassment.¹² The initial question is whether appellant has alleged and substantiated a compensable work factor with respect to the claim for an emotional condition.

The Board notes that appellant has not asserted that his regular or specially assigned work duties caused his alleged emotional condition. In the present case, appellant's primary allegation is that it was administrative error for the employing establishment to initially place him on AWOL for March 27, 2012. The record indicates that the employing establishment did subsequently approve leave based on his father's death.

The Board finds that the evidence of record does not establish error or abuse by the employing establishment. The employing establishment indicated that appellant had numerous absences prior to March 27, 2012, and by letter dated March 24, 2012 indicated that he would be placed on AWOL status until there was adequate documentation of any further absences. He was found not to be eligible for FMLA leave, and there was no indication that as of March 27, 2012 he had submitted any medical documentation as to disability on that date. With respect to his father's death, the supervisor indicated that appellant did not initially report the death. The August 26, 2012 Unemployment Insurance Appeals Board decision also indicated that appellant

⁸ *Lillian Cutler*, 28 ECAB 125 (1976).

⁹ *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

¹⁰ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

¹¹ A traumatic injury is a condition caused by events or incidents occurring within a single workday or shift. 20 C.F.R. § 10.5(ee).

¹² An occupational disease or illness is a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

did not call the employing establishment with information regarding absences from March 20 to April 14, 2012.

There is no probative evidence of record establishing that the employing establishment erred or acted abusively in initially determining that appellant was in AWOL status on March 27, 2012. The record indicated that appellant had been advised that he would be placed in AWOL status for leave requests until proper documentation was provided for his absence.

With respect to the allegation of harassment or bullying, appellant has provided no additional detail or accompanying evidence. Appellant did not discuss specific incidents of alleged harassment or bullying. He did not provide probative evidence, such as witness statements or other relevant evidence. It is well established that a claimant must establish a factual basis for claims of harassment by supporting the allegations with probative and reliable evidence.¹³ An employee's allegation that he or she was harassed is not determinative of whether or not harassment occurred.¹⁴

The Board accordingly finds that appellant has not established a compensable work factor in this case. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.¹⁵

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 established an emotional condition causally related to compensable work factors alleged on March 27, 2012.

¹³ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

¹⁴ *Helen P. Allen*, 47 ECAB 141 (1995).

¹⁵ *See Margaret S. Krzycki*, 43 ECAB 496 (1992) (a medical issue is not presented until a compensable work factor is established).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 11, 2015 is affirmed.

Issued: June 27, 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