

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

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S.B., Appellant)	
)	
and)	Docket No. 16-1124
)	Issued: November 10, 2016
GENERAL SERVICES ADMINISTRATION, ACQUISITION CENTER, Kansas City, Mo, Employer)	
)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case submitted on the record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On May 5, 2016 appellant filed a timely appeal of an April 13, 2016 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 on appeal is whether appellant has met his burden of proof to establish an emotional condition in the performance of duty.

FACTUAL HISTORY

On July 13, 2015 appellant, then a 37-year-old contracting officer, filed a traumatic injury claim (Form CA-1) alleging that on April 13, 2015, he was subjected to "Harassment at work, coughing, noise pollution and noise from the environment in my workplace to induce more hurt

¹ 5 U.S.C. § 8101 *et seq.*

and pain at time. [sic] Sometimes to correct and micromanage things.” He stopped work on April 30, 2015. Accompanying the claim was an undated resignation letter from appellant. Appellant claimed that he had been released from the hospital on May 18, 2015 and would no longer work with the employing establishment. He noted that his last day would be June 2, 2015 and that this was his two weeks’ notice, but he “would not be able to work in the meantime.” OWCP also received a notification of personnel action (Form CA-50) regarding his resignation effective June 2, 2015. The employing establishment controverted the claim and indicated that appellant submitted a resignation letter on May 19, 2015 with two weeks’ notice. The employing establishment indicated that he dropped off his equipment on May 27, 2015 and he had completed no work since April 29, 2015.

In a May 18, 2015 disability certificate, Dr. Lourdes Gonzales, a psychiatrist, advised that appellant was under her care for treatment and that he was on leave from May 19 to June 14, 2015.

By letter dated July 20, 2015, OWCP advised appellant that the evidence of record was insufficient to establish his claim and requested that he submit additional supportive factual and medical evidence. In a separate letter also dated July 20, 2015, it requested that the employing establishment submit additional factual and medical evidence.

On July 22, 2015 OWCP received a July 13, 2015 occupational disease claim, (Form CA-2), from appellant. Appellant alleged that he was working on his computer “as usual with office and service contract related award administrations.” He noted that, “Since the Obama administration’s new management, there has been harassment and micromanagement that amounted to much more stress and increase of paranoia in my mental health. Over the years, I have become more suspicious and had a hard time coping.” Appellant alleged that his illness was an aggravation of his “schizoaffective/schizophrenia that was under control with better cubicles until we moved to open space work environment. Psychological pain and hurts are in question and lost all of my sick leave.” He noted his hospitalization and advised that he did not file his claim sooner because he always wanted “to side on mercy and grace even though my environment might be toxic.” Appellant indicated that he “was not providing anything at this time because I want an investigation to open. My management is aware of what was going on. Unfortunately, they are the puppets of Washington as well. No one is taking a chance to boldly stand against injustice.” He claimed that he first realized that his condition was caused or aggravated by his federal employment on April 23, 2013. Appellant stopped work on April 30, 2015.

The employing establishment controverted this claim as well and noted that appellant had resigned on May 19, 2015 effective June 2, 2015. Appellant’s supervisor noted that appellant’s medical condition had not been revealed or discussed until appellant filed his claim. He indicated that a team leader had been assigned in March 2015 due to an office reorganization. The supervisor indicated that appellant lost approximately four weeks of leave during May 2015, but otherwise was a dependable, hardworking associate.

In a July 22, 2015 letter, Jacqueline L. Yost, an employing establishment workers’ compensation specialist, controverted appellant’s claim. She explained that he had not documented his claims and that his allegations were unclear. Ms. Yost further noted that it did

not appear to be in the course of employment or performance of his duties. She also asserted that appellant had a preexisting condition. OWCP received a July 21, 2015 hospital visit record from New York Presbyterian Hospital covering the period June 5 to 12, 2013. The record did not contain a physician's report.

In a letter dated July 24, 2015, OWCP advised appellant that he had filed two claims for the same condition. It indicated that the matter would be adjudicated under the occupational disease claim.

Appellant submitted September 12 and 14, 2015 statements. He noted that he started his position under the administration of President Bush. Appellant noted that "as soon as the Obama administration took place, or a couple months later, he was put under pressure." He alleged:

"[M]anagement started using people around me to communicate with me and mess with my mind in a way that I could not be understood by other people. They created some sort of encryption and decryption of messages through coughing and monitoring whatever I was doing on my computer. Whenever I would make a mistake or something that displeased them, someone around me would cough and blame allergies or cold. They used pretty much all my surrounding neighbors. I felt that it would not be appropriate to put more pressure on my coworkers and myself and it is one of the reasons why I left my job/position. The coughing from neighbors would happen every single day whenever we had to meet at 26 Federal Plaza -- not when working from home. No one would back me up since they were all under pressure from management. As such, my condition of suspiciousness and schizophrenia has worsened over the past couple years. Instead of being of help, I was seen as an outcast or someone so dangerous that they had to check my bag for safety measure I guess. I feel like I was treated differently in a condescending way by management besides the harassment going on through the environment such as slamming doors or being brutal in closing closets in the environment and so forth."

Appellant asserted that his employing establishment thought of him "as a spy or some intruder that came to sabotage the mission of my previous [employing establishment]." He related that he was paranoid, "but they took a step further into my paranoia" by making "use of all people in my surroundings to communicate with me nonverbally and through the environment like in a second layer of communication." Appellant continued: "The summit of this happened that I was hospitalized in May of 2013 because of poor management and other ailment within my body and mind happening due to the stress received from my workplace. I had to be hospitalized for three weeks and finally in May of 2015 before I made the decision that it was my best interest for my health to leave my job." He explained that he was hospitalized on April 30, 2015 and for much of May 2015. After this, appellant was affected by medication side effects that prevented him from filing his claim sooner. Regarding his stress, he advised that he felt like a red fish in a small bowl where people could see him; that he felt that he was under observation 24/7. Appellant allowed that "familial stress could also be coming from my sister who is also suffering from depression." He explained that his condition developed "during Obama's administration the first term as soon as the Democratic administration took place" and, since that time, "they had misappropriate[d] or took usage of the sound and everything that is in the environment to

wage a psychological warfare against me as I came under Bush's administration." Appellant related symptoms of "extra stimulation of my sensory organs from smelling to hearing to seeing *etc.*" and noted that whenever he "rant[ed] about the current administration on Facebook politely, things seem to get worse. To treat these, I take meds and see a psychiatrist." He indicated that he had been under a psychiatrist's care since 2003 for paranoid schizophrenia. Appellant advised that his mental condition had stabilized for a couple of years, which allowed him to work, until stress came upon him at the employing establishment. He noted that he used medication to relieve anxiety and stress.

Appellant also submitted a July 3, 2015 report from Dr. Gonzales who had treated appellant since July 23, 2014. Dr. Gonzales diagnosed schizoaffective disorder and reported that appellant had previous psychiatric hospitalizations for paranoid delusions, ideas of reference, and auditory hallucinations in 2002, 2004, and 2013. Appellant was recently hospitalized from May 1 to 18, 2015 for worsening mania on top of baseline psychosis. He reported "having more and more signals sent to him in the form of messages in the form of license plates or posters" and related receiving "signals from God." Dr. Gonzales related that appellant lived with his mother and was "paranoid that she places something in his food." She advised that he denied suicidal or homicidal ideations. Dr. Gonzales advised that because of appellant's "current acuity of mental illness symptoms, such as paranoid delusions, referential delusions, affective liability symptoms, inability to focus, ineffective at workplace" he was unable to perform his job. She noted that he resigned, effective June 1, 2015, which she highly recommended and supported. Also provided was a July 23, 2014 from Dr. Gonzales, noting appellant's history and treatment and a March 16, 2006 report from Dr. Jessica Daniels, a Board-certified psychiatrist, who noted treating appellant for paranoid-type schizophrenia.

By decision dated April 13, 2016, OWCP denied appellant's claim. It found that the evidence of record failed to establish an emotional condition in the performance of duty. OWCP found that appellant had not established any compensable factors of employment.

LEGAL PRECEDENT

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.² If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.³ 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.⁴

² *Leslie C. Moore*, 52 ECAB 132 (2000).

³ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁴ *Id.*

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*,⁵ 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.⁶ 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.⁷ Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.⁸ Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.⁹ Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹⁰

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.¹¹ 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.¹²

For harassment or discrimination to give rise to a compensable disability, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. 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 or her allegations that the harassment occurred with probative and reliable evidence.¹³ With regard to emotional claims arising under FECA, the term harassment as applied by the Board is not the equivalent of harassment as defined or implemented by other agencies, such as the Equal Employment Opportunity Commission, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers'

⁵ 28 ECAB 125 (1976).

⁶ See *Robert W. Johns*, 51 ECAB 137 (1999).

⁷ *Supra* note 5.

⁸ *J.F.*, 59 ECAB 331 (2008).

⁹ *M.D.*, 59 ECAB 211 (2007).

¹⁰ *Roger Williams*, 52 ECAB 468 (2001).

¹¹ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹² *Kim Nguyen*, 53 ECAB 127 (2001).

¹³ *James E. Norris*, 52 ECAB 93 (2000).

compensation under FECA, the term harassment is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by coemployees or coworkers. Mere perceptions and feelings of harassment will not support an award of compensation.¹⁴

ANALYSIS

OWCP denied appellant's emotional condition claim, finding that he had failed to establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA. The Board notes that none of appellant's claimed employment factors are alleged to be related to his regular or specially assigned duties under *Cutler*.¹⁵

Appellant alleged that he was closely monitored and scrutinized regarding his work. He noted frustration with management and is dissatisfied with his work environment.¹⁶ Such 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. 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.¹⁷ The employing establishment denied that it committed error or abuse with respect to such matters and appellant has submitted insufficient evidence to establish specific incidents, as to time and place of error or abuse with respect to these allegations. Appellant has failed to support these allegations with any witness statements or evidence to support these allegations that the employing establishment acted unreasonably.

Appellant also claimed that management was "using people around me to communicate with me and mess with my mind in a way that I could not be understood by other people." He alleged that the employing establishment "created some sort of encryption and decryption of messages through coughing and monitoring whatever I was doing on my computer" and that, whenever he made "a mistake or something that displeased them, someone around me would cough and blame allergies or cold." Appellant indicated that this coughing, noise pollution, and noise from the environment in his workplace was designed to induce "more hurt and pain at time" and "sometimes to correct and micromanage." He argued that no one would corroborate his assertions due to pressure from management. The Board notes that the employing establishment denied that appellant was subjected to harassment or discrimination and explained that he had resigned on May 19, 2015 effective June 2, 2015. The employing establishment also

¹⁴ *Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁵ *Supra* note 5.

¹⁶ The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under FECA. See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993). See *supra* note 14 (assigning work and monitoring work are administrative functions of the employing establishment).

¹⁷ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Ruth S. Johnson*, 46 ECAB 237 (1994); *reaff'd on recon.*, 42 ECAB 556 (1991); and *Thomas D. McEuen*, 41 ECAB 387 (1990).

noted that it had not been aware of his medical condition until he filed his claim. It further explained that political affiliation had no direct impact on appellant's job. The Board finds that he has not submitted sufficient evidence to establish that the incidents or actions which he characterized as harassment or discrimination actually occurred.¹⁸

Appellant also asserted that he was harassed by being singled out, closely monitored such as having his bag checked, and treated in a condescending manner. He further asserted that his employing establishment thought he was a "spy" or "intruder that came to sabotage the mission of my previous [employing establishment]." However, appellant has not provided any evidence to support these claims or to establish disparate treatment. The Board notes that there are no witnesses and the employing establishment denied such claims of harassment.

The Board finds that appellant has not established a compensable employment factor. Thus, it is unnecessary to address the medical evidence of record.¹⁹

Appellant may submit evidence or argument with a written request for reconsideration 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

For the foregoing reasons, appellant has not met his burden of proof to establish an emotional condition in the performance of duty.

¹⁸ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁹ *Garry M. Carlo*, 47 ECAB 299 (1996). See *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the April 13, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 10, 2016
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board