

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

E.C., Appellant)

and)

U.S. POSTAL SERVICE, DALLAS)
PROCESSING & DISTRIBUTION CENTER,)
Dallas, TX, Employer)

Docket No. 15-1743
Issued: September 8, 2016

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 August 18, 2015 appellant filed a timely appeal of a July 27, 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)(1) and 501.3, the Board has jurisdiction to consider the merits of the case.²

ISSUE

The issue is whether appellant has met his burden of proof to establish an emotional condition causally related to factors of his federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

² Following OWCP's July 27, 2015 decision appellant submitted new evidence. As OWCP did not consider this evidence in reaching a final decision, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On November 26, 2014 appellant, then a 44-year-old manager, filed a traumatic injury claim (Form CA-1) alleging that he developed post-traumatic stress disorder (PTSD) due to factors of his federal employment. He attributed his condition to a hostile work environment and disparity of treatment. Appellant stopped work on November 22, 2014.

In support of his claim, appellant submitted a report dated January 6, 2015 from Dr. Adami Gabriel, a licensed clinical psychologist, diagnosing PTSD, major depressive disorder and severe alcohol use disorder. Dr. Gabriel noted that appellant attributed his condition to witnessing a severe accident at work in November 2014 when a dock worker was caught between a truck and the dock severing his spine. He also reported that appellant attributed his condition to being asked to leave a November 22, 2014 meeting after yelling an expletive at a female coworker, disagreement with management policies, and management's lack of receptivity to his feedback.

The employing establishment investigative service completed a report and interviewed witnesses regarding the allegation that appellant filed his Form CA-1 to avoid disciplinary action for unprofessional behavior. It asked that his claim be denied.

P.W., the lead manager of distributions operations, and appellant's direct supervisor, completed an investigatory interview on December 15, 2014. She noted that appellant used sick leave for most of October 2014, but did not contact management during this period. P.W. indicated that he used the automated system to request leave. F.E., the senior manager of distribution operations, sent an absence inquiry letter to appellant on November 6, 2014 as is standard procedure when an employee does not show up for work for an extended period of time. Appellant requested a meeting with both P.W. and F.E. on November 22, 2014. During this meeting, he tossed the inquiry letter on F.E.'s desk and started yelling. Appellant allegedly was angry and standing over P.W.'s desk. Appellant wanted to know if he worked for F.E. or P.W. P.W. alleged that appellant stated that, if he worked for F.E., he was not going to report to P.W. anymore. Appellant allegedly stated, "I'm not going to do a damn thing for you. I don't work for you." F.E. informed appellant that he worked for both P.W. and for her. She then stated that the meeting was over. While he was leaving the office, appellant allegedly stated, "I'm through with you whores." F.E. asked if he had just called her a whore, and appellant confirmed that he had. She then directed appellant to leave the building. Appellant asked if he was on administrative leave, and F.E. told him he was off the clock. As he left he referred to F.E. and P.W. as, "f----- bitches." P.W. stated that she had replaced appellant as lead Manager of Distribution Operations (MDO), that he was upset about this change, and that she was unaware of any traumatic event involving appellant at the employing establishment.

On January 15, 2015 appellant was interviewed by the employing establishment investigative service and stated that problems began when F.E. returned to work after breaking her foot, as he had been transferred to replace her during her absence. Appellant confirmed that he had requested a meeting with F.E. and P.W. on November 22, 2014 after receiving an absence inquiry letter. He was upset at receiving the absence inquiry letter from a supervisor as he was a manager. Appellant stated that he did not want other supervisors knowing his business. He confronted F.E. about the letter and was angry. Appellant alleged that F.E. could have called him on his employing establishment cell phone and that he had received disparate treatment as

many other employees were not contacted through official letters. He admitted that as he left the meeting he stated “you whores are crazy.” He explained that F.E. asked if he had called her a whore and he confirmed that he had. She then instructed him that he was “off the clock.” Appellant denied calling F.E. and P.W. “f----- bitches.” He alleged that he became depressed in May 2014 and that he did not get along with F.E. and P.W. as he did not like their management style.

Appellant reported that on June 9, 2014 he left a management meeting after a heated conversation he initiated regarding problems at the employing establishment. He admitted that he abruptly stood and stated, “I’m not listening to this [s—t] anymore” and left the meeting. Appellant also reported that a truck driver was crushed in an on-the-job accident in November 2014. He contacted the Employee Assistance Program (EAP) to obtain help for the other employees who had witnessed this event. Appellant stated that he did not see the accident, but reached out to the driver’s wife and visited in the hospital.

E.J., a manager, completed an investigatory interview on December 15, 2014 and detailed the events of the November 22, 2014 meeting he witnessed with appellant, F.E. and P.W. He alleged that the meeting became confrontational and loud very quickly. Appellant asserted that F.E. should have called him, and she informed him that a letter was standard procedure. E.J. heard appellant refer to F.E. and P.W. as whores and heard F.E. direct appellant to leave the building as he was off the clock. As he left the office, appellant stated, “F--- you bitches.”

Appellant had received a proposed letter of warning from the employing establishment due to his behavior in a June 9, 2014 meeting. The employing establishment based this proposed discipline on appellant’s unacceptable conduct in a June 9, 2014 meeting in which appellant allegedly became agitated during a meeting, raised his voice, and stormed out. Due to that, an investigation was conducted. During the investigative interview, appellant alleged that he had been provoked and singled out by executive managers.

On November 22, 2014 the employing establishment placed appellant into an off-duty status without pay effective that date pending an investigation. The employing establishment stated that during a meeting on November 22, 2014 appellant’s behavior was threatening and his conduct was unprofessional.

In a letter dated February 11, 2015, OWCP requested additional factual and medical evidence from appellant in support of his traumatic injury claim. It asked that he complete a questionnaire and afforded him 30 days to respond.

Appellant submitted a report dated March 12, 2015 from Dr. Gabriel, which noted that appellant reported having witnessed a severe accident during which a dock worker was caught between a truck and the dock, severing his spine. He further described the meetings appellant had with his supervisors. Dr. Gabriel diagnosed PTSD, major depressive disorder, and severe alcohol use disorder. He concluded that appellant’s work caused the diagnosed conditions based on the temporal relationship.

By decision dated April 7, 2015, OWCP denied appellant’s claim as he had not substantiated a compensable factor of employment as causing or contributing to his diagnosed emotional condition.

Appellant requested reconsideration on April 28, 2015. He included a statement alleging severe stress and harassment from upper management at the employing establishment. Appellant noted that he had requested a downgrade to a lower level management position, but was denied. He described a mandatory meeting which management asserted would have no subject off limits and no adverse actions. Appellant alleged that during this meeting higher management became very agitated with his concerns as well as very loud and hostile toward him. He asserted that these events caused him to become defensive and agitated. Appellant alleged that he was placed in a very hostile environment and was the only person singled out in this meeting.

Appellant also attributed his emotional condition to witnessing a severe accident of a coworker in November 2014. He stated that this worker was “smashed” between a truck and the dock, severing his spine. Appellant noted that he experienced stress consoling the employees who also witnessed this traumatic injury, that he did not receive assistance from upper management, and that his immediate manager showed an extreme lack of concern for him and the other employees. He stated, “Their mannerism towards me combined with the traumatization of this accident resulted in me responding to my manager in a manner which was unprofessional. I knew that behavior was due to the ever mounting stress, so I removed myself from the situation.”

Appellant provided an e-mail dated June 5, 2014 from S.W., the plant manager, directing appellant to attend a mandatory meeting on June 9, 2014. The e-mail stated that invitees were expected to present themselves appropriately, but that there was no subject that was off limits. The e-mail further included, “No adverse action will come from this meeting.”

Appellant also submitted a letter from appellant dated June 3, 2014 addressed to E.C., describing the employing establishment’s decision to deny his request for a downgrade to transportation supervisor, his perception of a hostile environment during a June 9, 2014 meeting during which he spoke, and his feelings of being chastised for being honest. Appellant supplied an e-mail from E.C. denying a requested meeting on July 25, 2014. He also resubmitted his July 25, 2014 letter of warning and the January 6, 2015 report from Dr. Gabriel.

By decision dated July 27, 2015, OWCP denied modification of its prior decision, finding that appellant had failed to establish a compensable factor of employment as causing or contributing to his diagnosed emotional condition.

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*,³ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.⁴ There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under FECA.⁵ When an employee experiences emotional stress in carrying out his or

³ 28 ECAB 125 (1976).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ See *Robert W. Johns*, 51 ECAB 136 (1999).

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.⁶ In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* 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, nor is disability covered when it results from such factors as an employee's frustration in not being permitted to work in a particular environment or to hold a particular position.⁷

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.⁸ 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.⁹ A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹⁰

For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under FECA. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹¹

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.¹² 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

⁶ *Supra* note 3.

⁷ *Id.*

⁸ *Charles D. Edwards*, 55 ECAB 258 (2004).

⁹ *Kim Nguyen*, 53 ECAB 127 (2001). *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

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

¹¹ *Alice M. Washington*, 46 ECAB 382 (1994).

¹² *J.A.*, Docket No.12-1964 (issued April 25, 2013); *Dennis J. Balogh*, 52 ECAB 232 (2001).

record establishes the truth of the matter asserted, it must base its decision on an analysis of the medical evidence.

ANALYSIS

Appellant has attributed his emotional condition to a variety of factors not all of which were properly developed by OWCP. Initially, the Board finds that appellant has not attributed his emotional condition to a *Cutler* factor.¹³

In *Thomas D. McEuen*,¹⁴ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA as such matters pertain to procedures and requirements of the employing establishment and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under FECA would attach if the facts surrounding the administrative or personnel action established error or abuse by employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated, and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁵

Appellant acknowledged that during a June 9, 2014 meeting he became defensive and agitated. He admitted that he abruptly stood and stated, "I'm not listening to this [s--t] anymore" and left the meeting. The employing establishment issued a letter of warning on July 25, 2014 due to unacceptable conduct on June 9, 2014 when appellant became agitated during a meeting, raised his voice, and stormed out. The Board finds that there is no evidence that the employing establishment acted with error or abuse in issuing this disciplinary action.¹⁶ While appellant and the other employees were offered the opportunity to raise any and all concerns without adverse action, he and others were further directed to present themselves appropriately. He has agreed that he failed to present himself appropriately.

Appellant requested a downgrade from his current managerial position to a supervisory position. The employing establishment denied this request. The Board has held that denials by an employing establishment of a request for a different job, promotion, or transfer are not compensable factors of employment as they do not involve the employee's ability to perform his or her regular or specially assigned work duties, but rather constitute a desire to work in a different position.¹⁷

¹³ *Supra* note 3.

¹⁴ *See Thomas D. McEuen, supra* note 9.

¹⁵ *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁶ *L.R.*, Docket No. 14-1990 (issued January 27, 2015) (disciplinary actions such as letters of warning are considered administrative actions).

¹⁷ *Donald W. Bottles*, 40 ECAB 349, 353 (1988). *See Robert Breeden*, 57 ECAB 622 (2006) (an employee's dissatisfaction with being transferred constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable).

Appellant also attributed his emotional condition to disparate treatment through the receipt of an absence inquiry letter and stated that he did not get along with F.E. and P.W. as he did not like their management style which he felt was a hostile work environment. He confronted F.E., in a November 22, 2014 meeting about the letter and was angry. Appellant alleged that F.E. could have called him on his employing establishment cell phone as many other employees were not contacted through official letters. He claimed disparate treatment. Appellant has not submitted any evidence substantiating his allegations that he was subjected to a hostile work environment or disparate treatment. Mere perceptions of harassment or discrimination are not compensable. To establish the claim for benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹⁸ Appellant has not submitted the necessary factual evidence to substantiate this aspect of his emotional condition claim.

Appellant attributed his emotional condition to the requirement that he attend a mandatory meeting with the alleged opportunity to discuss all topics and an offer of no adverse action. The e-mail directing him to attend the meeting including a statement that invitees were expected to present themselves appropriately. Appellant alleged that when he spoke up at the meeting higher management became very agitated and hostile toward him. He has submitted no witness statements or other corroborating evidence supporting this allegation. Verbal altercations and difficult relationships with supervisors, when sufficiently detailed and supported by the record, may constitute compensable factors of employment.¹⁹ However, this does not imply that every ostensibly abusive or threatening statement uttered in the workplace will give rise to coverage under FECA. For appellant to prevail on his claim, he must support his allegations with probative and reliable evidence. He did not submit sufficient evidence to show that management acted in an abusive, erroneous, or improper manner in dealing with him. Thus, any stress or anxiety appellant may have experienced is considered self-generated and not compensable.²⁰

Appellant has alleged that he developed an emotional condition as the result of witnessing a coworker's spine being severed when he was crushed between a truck and the dock at the employing establishment in November 2014. He submitted conflicting statements with regard to whether he was physically present at the site of this incident. During his interview with the employing establishment investigative service, appellant denied that he actually witnessed the event in November 2014, noting instead that he contacted the EAP to obtain help for the other employees who witnessed this event and visited the employee in the hospital. In his narrative statement and to his doctor, he attributed his emotional condition to actually witnessing this severe accident of a coworker. Appellant also asserted that he, as a supervisor, experienced stress in consoling the employees who witnessed this traumatic injury, in contacting EAP to aid these employees, and that he did not receive assistance from upper management and that his immediate manager showed an extreme lack of concern for him and the other employees.

¹⁸ *Alice M. Washington*, 46 ECAB 382 (1994).

¹⁹ *Marguerite J. Toland*, 52 ECAB 294, 298 (2001).

²⁰ *C.T.*, Docket No. 15-0647 (issued August 20, 2015).

Appellant has failed to provide sufficient details as to the circumstances surrounding this incident to establish a factor of employment as to either his personally witnessing the event or as to helping his subordinates. Thus, the Board finds that these allegations are not factually established.²¹

The Board finds that appellant has failed to establish a compensable factor under FECA. Since no compensable factors of employment have been established, the Board will not address the medical evidence.²²

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish an emotional condition causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the July 27, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 8, 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

²¹ *Supra* note 11.

²² *Gerald J. Walck*, Docket No. 01-2041 (issued April 28, 2003).