

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

J.Q., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Hartford, CT, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 17-1276
Issued: December 27, 2017**

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 May 22, 2017 appellant filed a timely appeal from a December 20, 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 is whether appellant met his burden of proof to establish an emotional condition in the performance of duty on August 16, 2016, as alleged.

FACTUAL HISTORY

On August 16, 2016 appellant, then a 30-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on that same date he sustained situational anxiety, stress, and

¹ 5 U.S.C. § 8101 *et seq.*

lack of sleep due to constant daily harassment, discrimination, and bullying at work. He stopped work and first received medical care on the date of injury.

In an August 16, 2016 Bristol Hospital report, Dr. Craig Mittleman, Board-certified in emergency medicine, reported that appellant presented to the emergency department for anxiety due to issues with his boss at work. Appellant explained that he left work and was unable to sleep due to anxiousness. Dr. Mittleman diagnosed situational anxiety and discharged him from treatment. Bristol Hospital emergency care center notes documented treatment on August 16, 2016 which excused appellant from returning to work until August 22, 2016. In an accompanying August 16, 2016 attending physician's report (Form CA-20), Matthew Razon, a physician assistant, reported that appellant felt harassed at work with anxiety and stress. He diagnosed situational anxiety and checked the box marked "no" when asked if he believed the condition was caused or aggravated by the employment activity.

By letter dated August 23, 2016, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence necessary. OWCP requested that he describe in detail the employment-related activities which he believed contributed to his condition, relevant dates, locations, how often and how long the events occurred, signed witness statements from anyone who could verify the allegations made, whether he had filed previous grievances or Equal Employment Opportunity (EEO) complaints, relevant documents, sources of stress outside of his federal employment, details pertaining to any prior emotional conditions, medical care, the development of the claimed condition, when he first experienced his symptoms, any activities he was performing prior to the onset of his symptoms, and any treatment pertaining to his claimed condition. Appellant was afforded 30 days to submit the necessary evidence.

On August 29, 2016 appellant responded to OWCP's questionnaire stating that he had not filed any EEO complaints as he did not want the situation to escalate. He reported no stressful situations in his life, noting his only source of stress was the hostile work environment where he was bullied. Appellant stated that he had no prior emotional conditions and had never sought treatment for psychiatric conditions. He further reported no prior issues in any other employment.

By decision dated October 18, 2016, OWCP denied appellant's claim finding that he failed to establish fact of injury because the evidence of record did not support that the August 16, 2016 exposure occurred as alleged. It noted that he failed to provide a detailed answer outlining the factual portion of his claim as requested in its August 23, 2016 development letter.

On November 17, 2016 appellant requested reconsideration of OWCP's decision. In an accompanying narrative statement, he reported that he was employed as a letter carrier and experienced an emotional condition due to bullying and harassment at work. Appellant alleged that he experienced harsh predisciplinary interviews (PDIs) and questionings almost every day. He noted that these PDIs would get dismissed because he was properly performing his work

duties. Appellant reported that there were witnesses to these events and on October 18, 2016² he was harassed when he received three PDIs in less than one hour for filing a leave slip the week before. This caused him a great deal of anxiety following which the postmaster provided him a form to seek treatment at the emergency room because of how emotional he got after receiving the PDIs. In support of his claim, appellant submitted a November 1, 2016 community counseling note documenting treatment from September 6 through October 19, 2016.

In a November 6, 2016 narrative statement, B.C. reported that he was appellant's chief steward at the Manchester, CT branch and sat in on three separate PDIs with appellant in one single day. He explained that a PDI was a "predisciplinary interview" involving something potentially serious in nature. The PDI either confirmed a supervisor's suspicions or allowed an employee, with the help of a union representative, to offer information that the supervisor was not aware of to clear their name. B.C. reported that R.H., appellant's supervisor who was involved with his PDIs, was no longer employed at the Manchester branch. According to B.C., R.H. used the PDIs daily as a form of intimidation which involved addressing appellant, and instructing him to follow across the workroom floor to the front office in view of every employee, causing stress and anxiety. B.C. related that a PDI caused anxiety because further disciplinary action included removal from the employing establishment. He noted that management purposely kept the suspense ongoing for days without the courtesy of telling the employee or union that they would not be pursuing actual discipline. B.C. reported that the psychological effect was often the goal of the PDI process and historically 80 percent of PDIs never amounted to discipline. On the date in question appellant was given three PDIs and more specifically, three separate walks escorted by his supervisor across the workroom floor to the office. He was able to articulate his defense to the first PDI easily. B.C. argued that the second and third PDIs were nothing more than harassment and easily explained away as his supervisor was woefully unprepared to interview him. He reported that this was nothing more than an attempt to personally intimidate appellant as no discipline resulted. B.C. noted that in the 20 years he served as a union steward, it was unprecedented to receive three PDIs in one morning.

In a December 7, 2016 narrative statement, R.H. reported that on the date in question he assigned a supervisor to investigate why appellant had failed to complete his assignment in the time expected in a PDI. He explained that this was an administrative decision and all the rules and regulations governing the PDI were followed. On the day in question appellant had two separate PDIs for two separate issues. Three PDIs were conducted because, following review of information from the first PDI, there were follow-up questions. R.H. reported that, in this forum, management must announce another PDI so the employee was aware there could be corrective action taken, up to and including removal, so that the employee would be fairly notified. He argued that appellant only claimed injury after meeting with the union steward who told managers if they continued the PDIs then appellant would go home because of stress. R.H. explained that management must thoroughly investigate each matter which can take up to a day or even a week. If an employee provides new information or gives reason to look into something further, management would do so. R.H. also noted that management did not like to prolong these matters. He noted that appellant, for that day and for different days of that same week,

² The Board notes that, while appellant referenced the date as October 18, 2016, the remainder of the evidence supports that the event occurred on August 16, 2016.

requested leave. R.H. had already used all of his vacation leave and therefore his request was denied and appellant was expected to report to work as scheduled. As such, he argued that appellant's stress claim was his attempt to get the time off he wanted.

By decision dated December 20, 2016, OWCP affirmed the October 18, 2016 decision, as modified, finding that the evidence of record did not establish a compensable factor of employment as to the cause of his emotional condition. It noted that it accepted that on August 16, 2016 he was asked to sit in three different PDIs, but these interviews did not constitute compensable factors of employment. OWCP further noted that appellant failed to establish that he was subjected to PDIs almost daily.

LEGAL PRECEDENT

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition, and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.³ There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable, and probative evidence.⁴

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.⁵ 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.⁶ 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.⁷

The Board has held that the manner in which a supervisor exercises his or her discretion falls outside the coverage of FECA. This principal recognizes that a supervisor or manager must be allowed to perform their duties and that employee's will, at times, disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.⁸ Although the handling of leave

³ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

⁴ See *Ruth C. Borden*, 43 ECAB 146 (1991).

⁵ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

⁶ See *William H. Fortner*, 49 ECAB 324 (1998).

⁷ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁸ *S.M.*, Docket No. 09-2290 (issued July 12, 2010); *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

requests and attendance matters are generally related to employment, they are administrative matters and not a duty of the employee.⁹

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.¹⁰ Mere perceptions of harassment or discrimination are not compensable under FECA.¹¹ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.¹² Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹³ A claimant must establish a factual basis for his or her allegations of harassment or discrimination with probative and reliable evidence.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 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.¹⁵ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.¹⁶ 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.¹⁷

ANALYSIS

Appellant did not attribute his emotional condition to his regular or specially assigned duties under *Cutler*.¹⁸ In this case, he filed a Form CA-1 and attributed his condition to events which occurred on August 16, 2016 when he had three different PDIs in one day. Appellant's

⁹ *C.T.*, Docket No. 08-2160 (issued May 7, 2009); *Jeral R. Gray*, 57 ECAB 611 (2006).

¹⁰ *K.W.*, 59 ECAB 271 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

¹¹ *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

¹² *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, *supra* note 10.

¹³ *G.S.*, Docket No. 09-764 (issued December 18, 2009); *Ronald K. Jablanski*, 56 ECAB 616 (2005); *Penelope C. Owens*, 54 ECAB 684 (2003).

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

¹⁵ *D.L.*, 58 ECAB 217 (2006); *Jeral R. Gray*, *supra* note 9.

¹⁶ *K.W.*, 59 ECAB 271 (2007); *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

¹⁷ *Robert Breeden*, *supra* note 10.

¹⁸ *Lillian Cutler*, 28 ECAB 125 (1976).

primary allegation was that he suffered anxiety and stress due to these PDIs and a hostile work environment.

The Board finds that appellant has not established an emotional condition arose in the performance of duty on August 16, 2016.

The Board has characterized disciplinary actions as administrative matters of the employing establishment, which are only covered under FECA when a showing of error or abuse is made.¹⁹ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.²⁰ Therefore, to support such a claim, appellant must establish a factual basis by providing probative and reliable evidence that the employer's conduct towards him on August 16, 2016 was unreasonable.²¹ He has submitted no such evidence and the Board finds that he did not establish a compensable factor of employment in this regard.²²

As noted in OWCP's December 20, 2016 decision, the record establishes that appellant was asked to sit in for three different PDIs in one day. Appellant argued that these PDIs were unwarranted and caused him anxiety. His supervisor, R.H., reported that on that date, appellant had two PDIs on two separate issues: his failure to complete his assignments on time and his leave request despite having used all of his vacation time. R.H. explained that the third PDI was for follow-up questions after having reviewed his first response. He noted that policy required that management announce a PDI as soon as possible to fairly notify the employee regarding the nature of the infraction and corrective action. R.H. also explained that during a PDI the employee is allowed to explain and defend his actions, so that the investigative process is not prolonged, if unnecessary. The Board notes that 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.²³ Appellant's supervisor explained the rationale behind conducting three PDIs on August 16, 2016 which was reasonable under the circumstances. Because appellant has not presented sufficient evidence that his supervisor acted unreasonably, he has failed to identify a compensable work factor.²⁴

B.C, appellant's union steward, corroborated appellant's allegation that his supervisor held three PDIs with appellant on August 16, 2016 and that they caused him stress. Monitoring performance is an administrative function of a supervisor.²⁵ The manner in which a supervisor exercises his/her discretion falls outside FECA's coverage. This principle recognizes that

¹⁹ *Roger W. Robinson*, 54 ECAB 846 (2003).

²⁰ *Supra* note 18.

²¹ *See Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

²² *C.M.*, Docket No. 11-0893 (issued December 9, 2011).

²³ *See Alfred Arts*, 45 ECAB 530 (1994).

²⁴ *Supra* note 22.

²⁵ *See N.D.*, Docket No. 16-0823 (issued August 18, 2017).

supervisors must be allowed to perform their duties, and at times employees will disagree with their supervisor's actions. Mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor.²⁶ While B.C. expressed displeasure with the supervisor's actions, he did not provide evidentiary support that R.H. erred by scheduling three PDIs on August 16, 2016. The evidence of record therefore does not establish that R.H. acted improperly in conducting appellant's PDIs on August 16, 2016.

Appellant further alleged that he was subjected to a hostile work environment where he was bullied and harassed. With regard to these allegations, insofar as appellant is alleging an injury produced by his work environment over a period longer than a single workday or shift, the Board notes that he filed a traumatic injury claim and not an occupational disease claim (Form CA-2).²⁷ Regardless, appellant did not submit sufficient evidence to establish his allegations as to time, place, what was said, or any witnesses to any specific incident.²⁸ He provided no evidence corroborating of other PDIs or witness statements to establish that he was harassed by his supervisor.²⁹ Mere perceptions of harassment or discrimination are not compensable. Appellant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.³⁰ Thus, he has failed to establish these allegations as factual.

As appellant has not established any compensable work factors, the Board need not consider the medical evidence of record submitted.³¹ As such, appellant has failed to meet his burden of proof.

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. §§ 10.605 and 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty on August 16, 2016, as alleged.

²⁶ *Linda J. Edwards-Delgado*, *supra* note 8.

²⁷ A traumatic injury is defined as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

²⁸ *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

²⁹ *Id.*

³⁰ *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

³¹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated December 20, 2016 is affirmed.

Issued: December 27, 2017
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