

FACTUAL HISTORY

On May 30, 2013 appellant, then a 56-year-old supervisor of maintenance operations (SMO), filed an occupational disease claim (Form CA-2) alleging that working alone on weekends and at night with an understaffed, unqualified, and untrained workforce caused work-related stress and anxiety disorders. He first became aware of his condition on May 14, 2013 and realized its relationship to his employment on May 28, 2013. Appellant's regular work hours on Tour 1 were from 9:45 p.m. to 6:45 a.m. Sunday through Thursday. In an attached statement he related that over the period January 14 to February 24, 2013 he was the only supervisor on Tour 1 over the weekend when he averaged 10.5 hours daily, without a lunch break, and that he also worked long hours during the regular workweek. Appellant indicated that he had similar work-related stress in 2005.

In June 28, 2013 correspondence, OWCP informed appellant of the evidence needed to support his claim. In a July 24, 2013 statement, appellant maintained that his facility was understaffed, especially on weekends. This caused an anxiety disorder, panic attacks, bipolar, and post-traumatic stress disorder (PTSD) when he was the only maintenance manager on Tour 1. Appellant asserted that the type of radio he had to use for communication caused further stress. He noted that while other supervisors were assigned to Tour 1, they took leave on weekends, and he had to work alone when only untrained mechanics and technicians were scheduled. Appellant indicated that he first noticed his anxiety condition in February 2013 when he unintentionally skinned his knuckles on a toolbox by shadow boxing to demonstrate to an unqualified electronic technician that he was fighting to have him trained to troubleshoot/repair equipment. He described symptoms of nervousness, racing thoughts, rapid heart rate, insomnia, increased blood pressure, increased sweating, and depression, in addition to knee pain and headaches. These ailments began in March 2011 when appellant passed out at home and had to go to the emergency room. He advised that in 2005 he sought psychiatric help for work-related anxiety and PTSD, and was hospitalized from July 14 to 20, 2013 for a mental breakdown.

Appellant attached correspondence from the employing establishment. This included a March 1, 2013 memorandum in which L.H., lead manager of distribution operations, notified appellant that the plant manager had been contacted regarding an investigation about an incident in which appellant threatened violence and punched a toolbox, causing his knuckles to bleed. Appellant was instructed not to come onto postal property until further notice, and was scheduled for psychological testing and a psychiatric fitness-for-duty evaluation.

In a March 27, 2013 report, Edward A. Peck, III, Ph.D., noted performing psychological testing. Appellant had a history of service-related knee and head injuries. Following testing, Dr. Peck noted that there was a consistent pattern of reporting from others which indicated that there was an elevated probability that appellant displayed mental health and/or behavioral issues which could lead to an increased potential for disruption in the workplace. He advised that appellant should not return to work due to this threat potential.

In May 2013, the employing establishment referred appellant to the District Reasonable Accommodation Committee (DRAC) to consider if accommodation of his medical condition was appropriate. The record also includes evidence about an investigation and his subsequent removal for the toolbox incident and other incidents when he allegedly threatened acts of

violence and made comments about shooting or killing. This included a May 24, 2013 notice of enforced leave that described a postal inspector interview with appellant. The enforced leave was finalized on July 25, 2013.

In a May 30, 2013 report, Dr. Shireesha Narla, a Board-certified internist, diagnosed hypertension, diabetes, hyperlipidemia, generalized anxiety disorder, and possible PTSD. She indicated that a mental health clinic should assess appellant's needs for his psychiatric disorders, and that his medical diagnoses required monitoring and medication.

In a report dated July 24, 2013, Dr. Lajuana M. Collins-Morgan, a Board-certified psychiatrist, noted that appellant was hospitalized from July 15 to 20, 2013. She diagnosed bipolar disorder, generalized anxiety disorder, PTSD (provisional), prescribed medication, and advised that he had been incapacitated since February 23, 2013.²

By letter dated August 8, 2013, OWCP asked the employing establishment to comment on appellant's claim. In a response dated August 26, 2013, R.C., manager of maintenance operations, indicated that appellant claimed an anxiety disorder after being removed from service for egregious misconduct. He reported that a fitness-for-duty examination revealed that appellant was unable to supervise employees and could no longer work at the employing establishment. R.C. further indicated that appellant had been investigated by the postal inspection service due to threats of violence. He continued that appellant had been offered reasonable accommodation and explained that his job duties did not vary from the official SMO job description, noting that the SMO was responsible for scheduling employees to work, including overtime, and was to follow-up when employees did not report for duty. A description of appellant's job duties was attached. On August 15, 2013 R.C. noted that he had supervised appellant for less than one year.

By decision dated December 4, 2013, OWCP denied the claim, finding that appellant had failed to establish a compensable factor of employment. Appellant timely requested a hearing before OWCP's Branch of Hearings and Review.

Appellant submitted evidence previously of record and an SMO position description.³

A report from the postal inspection service dated February 28, 2013 described the events that led to appellant's removal. This included a February 24, 2013 interview with appellant and a number of reports of interviews with employing establishment staff regarding the toolbox incident and alleged threats made by him.

In an undated report, Dr. Suresh Gharse, a psychiatrist, who provided a fitness-for-duty examination, noted appellant's 2005 psychiatric history. He advised that appellant was stressed

² Appellant also submitted information regarding his 2005 psychiatric diagnosis. A claim filed on September 16, 2005, adjudicated by OWCP under File No. xxxxxx809, was denied by decision dated July 20, 2006. The instant case was adjudicated under File No. xxxxxx865.

³ Appellant also submitted reports regarding his 2005 psychiatric condition, a Department of Veterans Affairs rating decision dated September 23, 1997 awarding appellant 10 percent disability for facial scars and 10 percent for hypertension, and his preemployment medical examination dated December 8, 1997.

because he felt that he was always short-staffed and had to run around to get work done, which was beyond his capacity. Dr. Gharse maintained that appellant was losing control, which was compromising his ability to deal with work in a rational manner and needed to be transferred to another area with less stress. He diagnosed adjustment disorder with anxiety and possible mood or bipolar disorder. Dr. Gharse advised that appellant was not fit to work at the current location and that he did not pose a clear and direct threat to an identifiable target. The record also contained additional reports from Dr. Collins-Morgan.

Appellant also submitted documentation of his clock rings from January 26 through September 4, 2013.

At the hearing, held on August 12, 2014, appellant testified about work conditions. He stated that for most of the two years he worked as Tour 1 SMO. Appellant worked alone and had to handle mail processing equipment, supervise technicians, and perform administrative and disciplinary duties. He indicated that the facility was understaffed, noting that, in addition to Richmond area mail, Norfolk mail was added. Appellant maintained that his staff of approximately 20 was undertrained and not qualified to do the required work, which caused frustration and anger. He advised that he received treatment from the Veterans Health Administration for his psychiatric conditions.

After the hearing, appellant submitted a publication regarding the closure of postal facilities, additional documentation of clock rings with personal comments, and corrections and additions to the hearing transcript. He also provided a statement reiterating that the employing establishment was short-staffed with untrained personnel, and that he had to work at times by himself.

The employing establishment submitted a response prepared for a claim filed by appellant before the Merit Systems Protection Board.⁴

In a November 3, 2014 decision, an OWCP hearing representative found that the December 4, 2013 decision was correct when it was issued. She, however, set aside the decision based on appellant's more thorough description of duties he believed led to his condition. The case was remanded for OWCP to obtain a response from the employing establishment about his description of his supervisory duties and staffing issues.

On January 27, 2015 OWCP requested that the employing establishment comment regarding whether other supervisors were scheduled to assist appellant yet routinely left him to perform the job alone, whether there were there aspects of appellant's job that could be perceived as stressful, whether the employing establishment made accommodations to reduce appellant's stress, whether staffing shortages affected appellant's workload, whether appellant was generally able to perform required duties in accordance with expectations, and whether there were any performance or conduct problems.

⁴ This noted that appellant was paid administrative leave from the date of enforced leave on February 27, 2013 until August 15, 2013, and that on May 14, 2013 he refused to return to work after he was offered a nonsupervisory position at another facility, based on the psychiatric fitness-for-duty evaluation.

In a February 11, 2015 letter, J.Y., maintenance manager, advised that appellant transferred from a Norfolk, VA, to a Richmond, VA, facility on January 1, 2011. He indicated that the employing establishment had 55 primary pieces of equipment, and there was no regulation stating how many employees were needed on each tour, noting that there were 47 maintenance positions: three for the building maintenance and 12 custodians to clean and maintain the facility. J.Y. surmised that on a normal night, 14 or 15 of the 47 positions would be off. He related that appellant was adamant about taking his lunch period because he needed to eat when he took medications. J.Y. related that he, not appellant, was responsible to answer for dispatch issues, and that he, not appellant, attended the meetings and responded to maintenance allegations. He maintained that appellant was not targeted by employing establishment management. J.Y. related that when appellant had a mental breakdown and was hospitalized in July 2013, he had not been at the employing establishment for six months. He advised that appellant was only required to do what the other supervisors did on a regular basis, and that the other SMOs on the other tours also faced the same situations as he experienced, noting that mail processing at the employing establishment was a seven-day-a-week operation. J.Y. related that, unless he utilized leave, a manager of maintenance operations worked Sunday nights with appellant. He indicated that Tour 1 maintenance staffing included three supervisors and one manager. J.Y. noted that there would be times when there were vacant supervisor positions on each tour, but that these would be filled with acting supervisors who were detailed there whenever possible. He admitted that, due to either scheduled or unscheduled leave, there were days when only one supervisor would be on duty, noting that the other SMOs worked under the same conditions.

J.Y. acknowledged that being a supervisor or manager in a large facility carried a certain amount of stress by having to address multiple tasks simultaneously, needing a wealth of knowledge, having a good working relationship with peers and subordinates to be successful, and having to be ready to respond to all inquiries and to explanations for the performance issues immediately. He indicated that those who could not do this consistently could feel pressured or stressed. J.Y. advised that appellant never requested help, and noted that when DRAC offered him a different position, he turned it down. He related that appellant had multiple opportunities to take an SMO position on another tour with different nonscheduled days, but that he chose to stay on Tour 1. J.Y. admitted that the maintenance craft was understaffed on every tour and that each tour had the same conditions, including operational failures. He advised that SMOs were expected to perform their assigned duties, including monitoring employees and equipment maintenance and repairs, while accurately recording and reporting issues.

J.Y. reported that appellant was able to perform his duties, but that he was issued a letter of warning in 2011 for not addressing attendance issues, and was provided a service talk after he found a large number of pornographic photographs on the maintenance copy machine. Appellant admitted that he had printed the pictures after surfing the internet on his lunch break. J.Y. continued that several complaints had been made against appellant regarding how he interacted with other employees and supervisors but that, to the best of his recollection, no one had provided a written statement about appellant's behavior or actions. He acknowledged that at times appellant was the sole Tour 1 supervisor. J.Y. maintained that appellant was not required to work 10-hour days, noting that he was scheduled for a 9-hour period with a 1-hour lunch break. He advised that appellant only supervised maintenance personnel. These personnel were sent to training classes in Oklahoma. National service technicians were available to provide

telephone support when a problem or issue was beyond local capability and, if necessary, the support center would dispatch a technician to provide on-site support. J.Y. reported that appellant had attended three formal training classes at the Oklahoma training center during the two years he had been at the employing establishment, in May, June, and November 2011.

Appellant submitted additional clock ring reports with appended handwritten notes.

In a May 4, 2015 decision, OWCP denied the claim finding that appellant had failed to establish a compensable factor of employment.

On May 18, 2015 appellant requested a hearing. On June 5, 2015 he requested subpoenas for numerous employing establishment records and for personal testimony of named employing establishment personnel. Appellant maintained that the employing establishment was short-staffed and that the electronics technicians that worked on the weekend were not sufficiently trained.

At the hearing, held on January 4, 2016, appellant alleged that the employing establishment committed perjury, arguing that he was the sole supervisor most of the time, constantly missed lunch breaks, and that he was not violent. He maintained that J.Y.'s statement confirmed that he was working alone because other SMOs would go on three-week vacations or leave work to go to football games, stating that being the sole supervisor caused anxiety, mood swings, and paranoia. Appellant further indicated that, when machines broke down, there were not enough technicians who were well-trained, and he would be blamed. He admitted that he was having anxiety attacks and that his physicians advised that he not return to work. Appellant asserted that he did not threaten management and maintained that he needed the subpoenas because the employing establishment had fabricated the evidence related to his dismissal.

By letter dated January 5, 2016, an OWCP hearing representative denied appellant's subpoena requests. She noted that he had not explained the relevance of the documents requested or identified the steps taken to obtain them by other means, noting that he had not made a Freedom of Information (FOIA) request, and that some of the information requested was protected by the Privacy Act. The hearing representative also denied appellant's request for issuance of a subpoena to compel attendance and testimony of employing establishment personnel, advising that he had not explained why a subpoena was the best method or opportunity to obtain such evidence.

In an undated statement, appellant reiterated that he was the sole supervisor for much of the time during the past two years. He maintained that employees were incapable of keeping the machines running without calling for help, and that he moved employees to where they were better trained. Appellant reiterated that he had not made threats. He stressed that he was the sole supervisor on Tour 1 and included documentation of clock rings.⁵

By decision dated February 22, 2016, an OWCP hearing representative modified the May 4, 2014 decision, finding that appellant established as a compensable work factor that he

⁵ Appellant also submitted evidence regarding applications for other positions, staffing at the Richmond facility, and corrections and additions to the January 4, 2016 hearing transcript.

worked as the lone supervisor on some occasions. She reviewed the medical evidence of record and denied the claim because the medical evidence failed to establish that his diagnosed condition was caused by this one factor. The hearing representative also noted that appellant testified that subpoenas were needed to show that he was the only supervisor on duty, which had been accepted as factual. She advised that her decision also provided appeal rights for the denial of the requested subpoenas.

LEGAL PRECEDENT -- ISSUE 1

Section 8126 of FECA provides that the Secretary of Labor, on any matter within his jurisdiction under this subchapter, may issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles.⁶ The implementing regulations provide that a claimant may request a subpoena, but the decision to grant or deny such a request is within the discretion of the hearing representative, who may issue subpoenas for the attendance and testimony of witnesses and for the production of books, records, correspondence, papers, or other relevant documents. Subpoenas are issued for documents only if they are relevant and cannot be obtained by other means and for witnesses only where oral testimony is the best way to ascertain the facts.⁷ In requesting a subpoena, a claimant must explain why the testimony is relevant to the issues in the case and why a subpoena is the best method or opportunity to obtain such evidence because there is no other means by which the testimony could have been obtained.⁸ Section 10.619(a) of the implementing regulations provides that a claimant may request a subpoena only as a part of the hearings process and no subpoena will be issued under any other part of the claims process.

To request a subpoena, the requestor must submit the request in writing and send it to the hearing representative as early as possible, but no later than 60 days (as evidenced by postmark, electronic marker or other objective date mark) after the date of the original hearing request.⁹ The hearing representative retains discretion on whether to issue a subpoena. The function of the Board on appeal is to determine whether there has been an abuse of discretion.¹⁰ Abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment or actions taken which are clearly contrary to logic and probable deduction from established facts.¹¹

⁶ 5 U.S.C. § 8126(a).

⁷ 20 C.F.R. § 10.619; *see Gregorio E. Condi*, 52 ECAB 410 (2001).

⁸ *Id.*

⁹ *Id.* at § 10.619(a)(1).

¹⁰ *See Gregorio E. Condi*, *supra* note 7.

¹¹ *Claudio Vazquez*, 52 ECAB 496 (2001).

ANALYSIS -- ISSUE 1

In the present case, appellant requested that the hearing representative subpoena a number of employing establishment personnel and documentation. She denied the request, finding that the subpoenas were not necessary to the adjudication of the case.

A hearing representative has discretion with respect to the issuance of subpoenas for documents and testimony. Appellant argued that the subpoenas were crucial to establishing his emotional condition claim. He, however, did not provide a valid explanation as to why they were necessary. The hearing representative noted that appellant had not explained the relevance of the documents requested or identified the steps taken to obtain them by other means, noting that he had not made a FOIA request. She further noted that some of the information requested was protected by the Privacy Act. The hearing representative found that appellant had not explained why a subpoena was the best method or opportunity to obtain such evidence. As appellant presented no evidence to show that subpoenas were necessary with respect to the development of the relevant evidence in this case, the Board finds no abuse of discretion related to the denial of a subpoena request.¹²

LEGAL PRECEDENT -- ISSUE 2

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.¹³ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.¹⁴ 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.¹⁵

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*,¹⁶ 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.¹⁷ When an employee experiences emotional stress in carrying out his or

¹² *D.O.*, Docket No. 15-1368 (issued October 22, 2015).

¹³ *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁴ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁵ *Id.*

¹⁶ 28 ECAB 125 (1976).

¹⁷ See *Robert W. Johns*, 51 ECAB 137 (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.¹⁸ Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.¹⁹ Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.²⁰ Personal perceptions alone are insufficient to establish an employment-related emotional condition.²¹

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.²² 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.²³

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.²⁴ 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 employing establishments, 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' 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.²⁵

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.²⁶ The opinion of the physician must be

¹⁸ *Supra* note 16.

¹⁹ *J.F.*, 59 ECAB 331 (2008).

²⁰ *M.D.*, 59 ECAB 211 (2007).

²¹ *Roger Williams*, 52 ECAB 468 (2001).

²² *Charles D. Edwards*, 55 ECAB 258 (2004).

²³ *Kim Nguyen*, 53 ECAB 127 (2001).

²⁴ *James E. Norris*, 52 ECAB 93 (2000).

²⁵ *Beverly R. Jones*, 55 ECAB 411 (2004).

²⁶ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.²⁷ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.²⁸

ANALYSIS -- ISSUE 2

The Board finds that this case is not in posture for decision. Appellant attributes his emotional condition to several factors. First and foremost, he alleged that he frequently had to work as the sole SMO on busy Tour 1, from 9:45 p.m. to 6:45 a.m. OWCP accepted this as a compensable factor of employment, and the Board agrees. J.Y., maintenance manager, concurred that, due to other supervisors taking leave or other matters, at times appellant worked as the sole supervisor.²⁹

Appellant also asserted that he would become stressed because Tour 1 was understaffed. The Board finds this, too, a compensable factor of employment. Again, J.Y. admitted that the maintenance craft was understaffed on every tour, noting that SMOs were expected to monitor employees and equipment maintenance and repairs while accurately recording and reporting issues. As supervising maintenance personnel was one of appellant's regular assigned duties, this is a compensable factor of employment.³⁰

As to appellant's allegation regarding the radio he had to use, the Board has long held that the provision of equipment relates to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and does not fall within the coverage of FECA, absent error and abuse.³¹ Appellant presented no evidence that the radios he used were inoperable or other evidence to substantiate error and abuse in this administrative matter.³²

The record also contains no evidence that other supervisors took leave inappropriately. This would not be a compensable factor of employment. As to his allegation that the employees he supervised were not properly trained, J.Y. explained that all employees were sent for training as appropriate. This too would not be compensable. Where the claimant alleges compensable factor of employment, he or she must substantiate each allegation with probative and reliable evidence.³³ Appellant did not do so regarding these claimed factors.

²⁷ *Supra* note 13; *Gary L. Fowler*, 45 ECAB 365 (1994).

²⁸ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

²⁹ *Kimber A. Stokke*, 48 ECAB 510 (1997).

³⁰ *Supra* note 16; *see Edward J. Hilinski*, Docket No. 00-0378 (issued February 13, 2001).

³¹ *See Brian H. Derrick*, 51 ECAB 417 (2000).

³² *Id.*

³³ *Supra* note 20.

If an employee establishes a compensable factor of employment, OWCP must base its decision on an analysis of the medical evidence.³⁴ In her February 22, 2016 decision, OWCP's hearing representative found one compensable factor established, that at times appellant was the sole SMO on Tour 1 and analyzed the medical evidence on that basis. The Board has found a second compensable factor, that the maintenance craft that he supervised was understaffed on every tour.

As appellant has established two compensable factors of employment, and the February 22, 2016 decision addressed only one, the Board will set aside OWCP's February 22, 2016 decision denying the claim. OWCP must base its decision on an analysis of the medical evidence as it relates to these two factors. The case will therefore be remanded to OWCP to analyze and develop the medical evidence.³⁵ After this and such further development deemed necessary, OWCP shall issue a *de novo* decision on the merits of this claim.

CONCLUSION

The Board finds that OWCP properly denied appellant's subpoena request. With respect to the emotional condition issue, the case is not in posture for decision as the evidence establishes two compensable factors of employment.

³⁴ See *supra* note 22.

³⁵ *Tina D. Francis*, 56 ECAB 180 (2004).

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2016 decision of the Office of Workers' Compensation Programs is affirmed with regard to the denial of appellant's subpoena request. The decision is otherwise set aside and the case is remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: February 23, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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