States Department of Labor
Employees' Compensation Appeals Board

D.C., Appellant	)	
and	)	**Docket No. 17-1569**
	)	**Issued: November 14, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Hancock, MN, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 11, 2017 appellant filed a timely appeal from a January 30, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 occupational disease condition in the performance of duty.

FACTUAL HISTORY

On July 28, 2016 appellant, then a 60-year-old postmaster, filed an occupational disease claim (Form CA-2) alleging that he sustained several medical conditions, including generalized anxiety and fibromyalgia, due to his work over a period of time. He indicated that he first

[1] 5 U.S.C. § 8101 *et seq.*

became aware of his claimed condition on February 12, 2016 and first realized on the same date that it was caused or aggravated by his employment. Appellant stopped work on July 28, 2016.

On the same form, appellant's immediate supervisor indicated that appellant's regular hours were 7:00 a.m. to 1:00 p.m., six days per week. He advised that the employing establishment was continuing appellant's claim because he had not alleged specific events as causing his claimed conditions and had not provided specific information in support of his claim. The supervisor indicated that appellant worked in a very small employing establishment that attracted a minimal number of customers and had only one rural mail delivery route. He indicated that appellant did not request use of any annual leave, but had used more than 400 hours of sick leave. The supervisor asserted that appellant had significant stressors outside his federal employment, including the fact that his mother had been ill and recently passed away, and that he performed concurrent nonfederal work (driving a school bus and doing lawn care work).

In an August 16, 2016 letter, OWCP requested that appellant provide additional evidence and information in support of his claim. It requested that he complete and return a questionnaire which posed various questions about his claimed employment factors. OWCP requested that appellant submit a physician's opinion supported by a medical explanation regarding the cause or causes of his claimed medical condition.

Appellant submitted a September 6, 2016 statement in which he listed medical conditions that he related to the stressful conditions of his federal employment. These included anxiety, headaches, fatigue, low body temperature, plantar fasciitis, white and leathery skin, leg muscle weakness, body itching, nausea, poor appetite, low metabolism, neck and spine misalignment, abnormal walking gait, dry mouth, numbness/tingling in the hands and feet, irritable bowel syndrome, and loss of hearing, smell, and taste. Appellant indicated that, in August 2012, after working seven years with the employing establishment, he became the temporary postmaster of the Hancock Post Office. He advised that the Hancock Post Office was open 44 hours per week (40 hours on Monday through Friday and 4 hours on Saturday). Appellant noted that he had a clerk working for him for approximately the first month he worked as a postmaster. He asserted that the employing establishment should have hired another clerk after he left, but that it failed to do so. Appellant worked without a clerk from September 2012 to June 2013, at which time he left his position. He asserted that the Hancock Post Office was very busy and that his job required him to work more than 50 hours per week on many occasions. As postmaster, appellant was required to work the hours necessary to complete all tasks.

Appellant noted that, by February 2013, the employing establishment had implemented a program called Post Plan, which for the Hancock Post Office meant that operating hours were reduced to 32.5 hours on Monday through Friday and 3.5 hours on Saturday. He asserted that, although some duties were transferred to the Administrative Post Office (APO) in Benson, Minnesota, during most weeks 40 or more hours were needed to complete all the tasks at the Hancock Post Office. Appellant indicated that the APO in Benson was supposed to find a substitute for him when he took annual leave, but noted that this did not happen as the APO in Benson claimed that it did not have anyone to send over as a replacement. If he wanted any time off, he had to find a postmaster from Clontarf, Minnesota or another neighboring town to relieve him, but this only happened when someone was available. Appellant indicated that in June 2013

a permanent postmaster job at the Hancock Post Office was advertised and he transferred to the Clontarf Post Office which was open for 40 hours on Monday through Friday and 2 hours on Saturday. He noted that the Clontarf Post Office had a postmaster so he worked Monday through Friday and the postmaster worked on Saturday. By the end of August 2013, the Clontarf Post Office became a level two office as part of the Post Plan program which meant that is was open Monday through Saturday for two hours each day. Appellant indicated that he then transferred to the nearby Danvers Post Office which was open for 40 hours from Monday through Saturday. He worked Monday through Friday and a postmaster worked on Saturday.

Appellant advised that on July 14, 2014 he became the permanent postmaster at the Hancock Post Office where he worked 32.5 hours on Monday through Friday and a postmaster relief employee worked most Saturdays. The postmaster relief employee left after a month and he was the only employee at the Hancock Post Office. Appellant noted that the Hancock Post Office was 10 to 20 times busier than the Clontarf Post Office, which had two employees. He indicated that the APO at Benson was supposed to provide a replacement for his use of annual leave or sick leave, but that he was provided a replacement for only one day (November 7, 2015) between July 14, 2014 and the date he collapsed, February 18, 2016. Appellant asked for a few other days off, but they were never granted. He indicated that he accumulated 600 hours of annual leave and 400 hours of sick leave. Appellant noted that the Christmas season (October through December) at the Hancock Post Office was unbelievably busy with three to five times more mail being received compared to a typical summer day. He indicated that he would arrive at work at 7:30 a.m. and would sort mail, scan packages, work the window serving customers, and answer the telephone all at the same time. Appellant noted that he had to spend time with two carriers when they arrived at 8:00 a.m. and 8:30 a.m., respectively. After sorting mail for 1.5 to 2 hours, he would scan packages, place mail in the box section, engage in computer transactions, produce reports, and order stamps and supplies. Appellant asserted that he was unable to take breaks. He also had to scan and sort more than 100 United Parcel Service and FedEx packages. Appellant claimed that in 2014 he worked extra hours to complete all his tasks, sometimes four to six extra hours per week. In 2015 the manager of post office operations did not allow extra hours to be worked, including during the Christmas season, and he was not provided with any extra help.

Appellant submitted numerous medical reports dated beginning in February 2016, including several reports of Dr. Richard R. Horecka and Dr. Stephen C. Olsen, attending Board-certified family practitioners. In an April 27, 2016 report, Dr. Horecka noted that appellant reported experiencing stress from attempting to complete his work tasks. He diagnosed anxiety with somatic features and fatigue. In a September 15, 2016 report, Dr. Olsen indicated that he agreed with appellant that anxiety and stress could lead to a number of symptoms and that his current work setting was not conducive to his general health. A number of the reports addressed appellant's complaints about foot pain and tingling/numbness in his lower extremities.

In a January 30, 2017 decision, OWCP found that appellant had not met his burden of proof to establish an occupational disease condition due to factors of his federal employment. It determined that he had not established any compensable employment factors. OWCP noted appellant's claims that he had an excessive workload, worked without help, and did not receive time off work. However, it found that appellant failed to provide evidence to establish that his claims about employment factors were factual.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that the injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[2] To establish fact of injury, an employee must submit evidence sufficient to establish that he or she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged.[3] An employee must also establish that such event, incident, or exposure caused an injury.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

OWCP regulations define the term "[o]ccupational disease or illness" as a condition produced by the work environment over a period longer than a single workday or shift.[6] To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[7] The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence.[8] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 established employment factors.[9]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's

[2] 5 U.S.C. § 8101(1); *B.B.*, 59 ECAB 234 (2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *J.C.*, Docket No. 16-0057 (issued February 10, 2016); *E.A.*, 58 ECAB 677 (2007).

[4] *Id.*

[5] *R.H.*, 59 ECAB 382 (2008); *Ellen L. Noble*, 55 ECAB 530 (2004).

[6] 20 C.F.R. § 10.5(q); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.2b (June 2011).

[7] *D.H.*, Docket No. 15-1876 (issued January 29, 2016); *D.I.*, 59 ECAB 158 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[8] *F.S.*, Docket No. 15-1052 (issued July 17, 2015); *Tomas Martinez*, 54 ECAB 623 (2003).

[9] *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *John W. Montoya*, 54 ECAB 306 (2003).

emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.[10] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction in force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.[11]

As a rule, allegations alone by a claimant are insufficient to establish a factual basis for a condition related to work stress.[12] The claimant must specifically delineate those factors or incidents to which the stress-related condition is attributed and submit supporting factual evidence verifying that the implicated work situations or incidents occurred as alleged.[13] Based on the evidence submitted by the claimant, OWCP is then required to make factual findings which are reviewable by the Board.[14] The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by OWCP and the Board.[15]

ANALYSIS

Appellant alleged that he sustained multiple occupational conditions as a result of his work. The Board must initially review whether these claimed conditions of employment are covered employment factors under FECA. The Board notes that appellant's claims ostensibly pertain to his regular or specially assigned duties under *Lillian Cutler*.[16]

Appellant alleged that his work for the employing establishment, including his work as a postmaster, was stressful in nature and that the resultant stress caused him to develop a number of medical conditions. He claimed that he was required to work long hours and did not have adequate employee support given his heavy workload, especially during the Christmas season when mail volume was higher than usual. Appellant asserted that he had to perform multiple tasks, without being allowed a break, including sorting mail, scanning packages, working the window serving customers, and answering the telephone. He indicated that he worked alone for part of his employment and claimed that he was only able to take leave to a limited extent because management would not provide him with a replacement employee in his absence.

Appellant's argument that he sustained various medical conditions due to stress in carrying out his employment duties may constitute a compensable employment factor. As the

[10] *See Lillian Cutler*, 28 ECAB 125 (1976).

[11] *Gregorio E. Conde*, 52 ECAB 410 (2001).

[12] *See T.V.*, Docket No. 16-1519 (issued September 12, 2017).

[13] *M.G.*, Docket No. 16-1453 (issued May 12, 2017).

[14] *Paul Trotman-Hall*, 45 ECAB 229 (1993) (Michael E. Groom, Alternate Member, concurring).

[15] *Id.*

[16] *See supra* note 10.

Board noted above, allegations alone are insufficient, as a rule, to establish a factual basis for a claim of a stress-related condition.[17] Appellant must specifically delineate those factors or incidents to which the stress-related condition is attributed and submit supporting factual evidence verifying that the implicated work situations or incidents occurred as alleged.[18] The Board finds that he has not established a factual basis for his claim. The allegations lack a contextual foundation and are unsupported by any evidence. Appellant failed to submit any factual evidence to support his claim such as job descriptions, time records, or statements from coworkers and superiors to substantiate his assertions about long work hours, heavy workload, and lack of adequate support to carry out his work duties. The Board notes that the employing establishment disputed his characterization of his work and challenged his occupational disease claim. Appellant's immediate supervisor indicated that appellant worked in a very small employing establishment that attracted a minimal number of customers and had only one rural mail delivery route. He indicated that appellant did not request use of any annual leave, but had used more than 400 hours of sick leave.

For these reasons, appellant has not established any compensable employment factors under FECA and, therefore, has not met his burden of proof to establish that he sustained an occupational condition due to his federal employment.[19]

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish an occupational disease condition in the performance of duty.

[17] *See supra* note 12.

[18] *See supra* note 13.

[19] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *See Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the January 30, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 14, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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