United States Department of Labor
Employees' Compensation Appeals Board

M.R., Appellant	)	
and	)	**Docket No. 16-0125**
	)	**Issued: October 2, 2017**
U.S. POSTAL SERVICE, POST OFFICE, North Hollywood, CA, Employer	)	

Appearances:
Brett E. Blumstein, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 28, 2015 appellant, through counsel, filed a timely appeal from an October 8, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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The issue is whether OWCP properly rescinded its acceptance of appellant's claim for aggravation of post-traumatic stress disorder (PTSD).

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 8, 2012 appellant, then a 29-year-old customer service supervisor, filed an occupational disease claim (Form CA-2) alleging that he sustained Bell's palsy, trigeminal neuralgia, and anxiety due to exposure to stress at work. He indicated that he first became aware of his claimed condition on November 17, 2011 and that he first realized on October 8, 2012 that it was caused or aggravated by his employment. Appellant noted, "I had been supervising and Managing Studio City Post Office working 12-14 hour shifts. I had previously informed my Postmaster it was too much workload and she said, 'deal with it.' I was also working 12-16 hours [sic] shifts concurrently." On the same form, appellant's immediate supervisor indicated that his usual work schedule was 6:00 a.m. to 3:00 p.m. on a rotating basis for five days per week. Appellant stopped work on October 13, 2012.[3]

Appellant submitted a November 5, 2012 report in which Dr. Michael Su, an attending Board-certified neurologist, indicated that appellant was disabled from work through November 26, 2012 because his headaches, tinnitus, insomnia, PTSD, and hearing loss were exacerbated by prolonged work hours and exposure to loud noises.[4]

In a November 9, 2012 letter, appellant's immediate supervisor indicated that appellant's claim for a stress-related condition was being challenged by the employing establishment. The supervisor noted that, prior to September 10, 2011, appellant worked with her in the Laurel Canyon Carrier Annex and that he did not work any overtime prior to September 10, 2011. Beginning September 10, 2011, appellant worked on a detail assignment as a customer service supervisor in the Studio City Post Office. The supervisor noted that timekeeping record entries showed that from September 10, 2011 to March 16, 2012 appellant worked 49 days of overtime. She indicated that appellant never worked over 13 hours per day and only worked over 12 hours per day on one occasion. The rest of the time his overtime work averaged approximately 30 minutes to 2 hours.[5] The supervisor indicated that this overtime work was not authorized by her. She asserted that she was unaware of appellant's use of overtime at first and that, after she became aware of this usage (on an unspecified date), she told appellant and another management official that it needed to stop. The supervisor indicated that management conducted an investigative interview with appellant regarding his poor performance at the Studio City Post Office. She denied appellant's allegation that she told him to "deal with it" in response to his concerns about his workload.

Appellant's immediate supervisor submitted timekeeping record entries on which she added handwritten notes for 49 days that overtime had been worked, *i.e.*, days that more than

[3] OWCP has acknowledged that appellant had a preexisting diagnosis of PTSD which he sustained in the military.

[4] Appellant's allegation of developing an occupational disease due to exposure to workplace noise has been developed and considered under a separate claim (File No. xxxxxx768). On April 3, 2013 appellant filed a Form CA-2 alleging physical and emotional conditions due to exposure to workplace noise. In a September 13, 2013 decision, OWCP denied his claim. This matter is not currently before the Board.

[5] The supervisor indicated that appellant started working at the Chandler Post Office on March 18, 2012 and then worked on a detail assignment at the Palmdale Post Office from August 25 to November 2, 2012.

eight hours had been worked. The time worked records are not clearly legible but the handwritten notes provided by the supervisor are legible.

In a letter dated December 11, 2012, OWCP requested that appellant submit additional factual and medical evidence in support of his claim.

Appellant submitted a November 2, 2012 statement in which he further discussed his belief that he did not have adequate staffing while working in a detail assignment as a customer service supervisor at the Studio City Post Office beginning in September 2011. He indicated that he worked 10 to 16 hour days for 6 days per week in order to complete work tasks and meet deadlines. Appellant indicated that he advised his immediate supervisor that supervising the unit "was too much" and that she told him to "deal with it." He asserted that, after his request for another supervisor to help out was turned down, he was wrongly demoted in November 2011 by his immediate supervisor to being a line supervisor at the Studio City Post Office. Appellant claimed that his immediate supervisor unfairly criticized him for how he utilized a subordinate and that he was unfairly passed up for promotions on two occasions.

In a December 14, 2012 statement, a fellow customer service supervisor indicated that she observed appellant working 10 to 12 hour days due to staffing shortages at the Studio City Post Office. On December 14, 2012 a subordinate of appellant noted that she witnessed appellant working more than 10 hours per day between August and October 2012.

Appellant submitted additional medical reports dated between 2010 and 2013.

In May 2013 OWCP referred appellant to Dr. Larisa Levin, a Board-certified psychiatrist, for a second opinion examination and evaluation of his medical condition, particularly with regard to stress-related conditions. In the May 9, 2013 statement of accepted facts (SOAF) provided to Dr. Levin, OWCP indicated one accepted employment factor, "[Appellant] worked overtime on approximately 49 days from [September 10, 2011 to March 16, 2012]. The employing agency verified he never worked over 13 hours a day and only once worked over 12 hours."[6]

The employing establishment submitted additional timekeeping record entries, including records of time clock punches, on which handwritten notes indicated that appellant worked 49 days of overtime between September 2011 and March 2012.[7] These additional records are legible.

In a June 15, 2013 report, Dr. Levin discussed appellant's factual and medical history and reported the findings of her evaluation. She diagnosed chronic PTSD, migraine headaches, history of traumatic brain injury, tinnitus, bilateral decreased hearing, and history of Bell's palsy. Dr. Levin determined that appellant's preexisting PTSD and traumatic brain injury were aggravated while he was working for the employing establishment due to the factors mentioned

[6] OWCP repeated these facts in a SOAF dated July 2, 2013.

[7] The records reflect that appellant never worked more than 13 hours per day and that other overtime work averaged approximately 30 minutes to 2 hours on the days overtime work was performed.

in the SOAF, including "a stressful shift and long hours of work." She indicated that appellant could work eight hours per day, but no more, if he was given "limited assignment, duties."

In a decision dated July 2, 2013, OWCP accepted aggravation of PTSD.

On July 30, 2013 the employing establishment offered appellant a position as a customer care agent. On October 8, 2013 OWCP advised appellant that the position of customer care agent constituted suitable work.[8] Appellant reported to work on November 4, 2013 and stopped work on November 5, 2013.

On November 18, 2013 appellant filed a claim for recurrence (Form CA-2a) alleging a recurrence of disability on November 5, 2013 due to his accepted work injury.

In a May 8, 2014 letter entitled "Notice of Proposed Decision," OWCP advised appellant that it had reviewed his claim to determine his entitlement to benefits and it had been determined that the claim had been accepted prematurely, and that further development was necessary to establish his entitlement to benefits under FECA. It noted that it had requested further information from appellant to support his occupational disease claim. OWCP indicated that, once appellant provided a response and supporting evidence, it accepted the compensable factor of employment of overtime and accepted his claim for aggravation of PTSD. It noted, however, that the employing establishment had not been afforded an opportunity to provide a statement responding to appellant's statement regarding the claimed events and work factors. OWCP discussed appellant's other claimed employment factors which had not been accepted, indicated that additional development of the factual elements of appellant's claim was required, and noted:

> "You are asked to respond to the questions on the attached questionnaire, sign and date the questionnaire, and return it to this office within 30 days from the date on this letter.[9] The employing [establishment] will be asked to provide a response to the allegations you previously submitted, as well as to your response to the attached questions. This information from you and the [employing establishment] is necessary in order for this office to determine whether you sustained an injury due to compensable work factors arising in and out of the performance of duty.
>
> "Once this information is received, or after the allotted timeframe has elapsed, [OWCP] will undertake further review of the merits of the claim. This review may entail additional factual or medical development, and will result in a *de novo* decision regarding the merits of your claim for a work-related injury."

In a June 5, 2013 statement, appellant challenged the proposed rescission action by OWCP. He argued that he was, in fact, overworked due to staffing shortages and had to work

[8] OWCP indicated that it proposed to terminate appellant's wage-loss and schedule award compensation if he failed to return to the offered position without good cause. It does not appear from the record that OWCP took any further action regarding the offered position after making this suitability determination.

[9] The attached questionnaire requested answers to various questions about appellant's claimed employment factors, including questions about his claims of overwork and overtime usage.

overtime as alleged. Appellant argued that the medical opinion of Dr. Levin showed that he sustained an aggravation of PTSD due to this overwork.[10]

Appellant submitted several statements from employees at the Studio City Post Office. In a statement dated May 14, 2014, a subordinate indicated that appellant was forced to work more than eight hours per day at the Studio City Post Office in 2011 in order to finish his work duties given the lack of adequate staff support. On May 14, 2014 another subordinate reported that appellant's immediate supervisor at the Studio City Post Office knew that he worked additional hours and asserted that appellant was not paid for all the additional hours he worked. In a statement dated June 1, 2014, another subordinate advised that she worked under appellant's supervision at the Studio City Post Office and that, due to unreasonable adjustment to mail delivery routes without adequate staffing, appellant had to stay at work for more than eight hours per day.

In a statement dated June 11, 2014, appellant's immediate supervisor at the Studio City Post Office asserted that appellant was not required to work extra hours but that he worked these extra hours on a voluntary basis. She indicated that in September 2011, in response to his desire to prepare for upward mobility, appellant was given the opportunity for a higher level detail at the Studio City Post Office. The immediate supervisor indicated that appellant oversaw subordinate supervisors and managed delivery, collection, window, box section, mail distribution, and dispatch operations in the unit. She indicated that appellant's work tasks and deadlines were reasonable and noted:

> "As a promoted Supervisor of Customer Service, [appellant] may be required to stay overtime occasionally or to cover fellow supervisors in another station within North Hollywood.[11] However, [appellant's] claim that he was required to work more than 12 [to] 16 hours is untrue. I did not require or authorize [appellant] to work long hours. This action on his part to work over 10 to 16 hours, as he claimed, was clearly an independent decision without a mandate, authorization, or instruction from me."

In a decision dated July 14, 2014, OWCP rescinded its acceptance of appellant's claim for aggravation of PTSD noting that it now had determined that appellant failed to establish any compensable employment factors in connection with his emotional condition claim. It found that it had properly denied the various other claimed employment factors prior to the July 2, 2013 acceptance of his claim. It discussed the one employment factor it had accepted, relating to overtime usage, and noted that it had been accepted that appellant worked long hours. OWCP advised that the issue was whether appellant was authorized to work the extra overtime hours beyond his normal eight-hour shift, and whether this was a part of his regular or specially

[10] Appellant also submitted additional medical evidence in support of his claim.

[11] The record reflects that the Studio City Post Office is part of the North Hollywood area for the employing establishment's organizational purposes.

assigned job duties which would confer coverage in the performance of duty. It indicated:

> "Based on the evidence received from the employing [establishment], it is clear that your expected work shift is [eight] hours and that any additional time worked past this timeframe requires prior approval from your supervisor. The statements from supervisors make it clear that the additional hours you worked were not authorized or condoned by your employing [establishment]. Therefore they were not part of your regular or specially assigned work duties. It was made clear to you once it was realized you were working beyond your scheduled hours that it needed to stop. You state yourself that managers and supervisors would not be paid for overtime. Any extra hours you may have worked beyond your regular shift without approval represent work that is found to have been voluntary and not a part of your regular[-]duty requirements.
>
> "With regard to your claim that you had to work 10 to 16 hour shifts, the evidence from the employing [establishment] explicitly states that you were not assigned or expected to work such hours, that doing so required prior approval from your supervisor, and that when [your supervisor] found out about your unauthorized work hours, she specifically instructed you to cease working more than your allowed hours. Your reaction to these work factors is therefore not found to arise in the performance of duty, as the long hours you worked were not part of your regular or specially assigned duties. As such, the allegations that working overtime up to 16 hours per shift caused your Bell's palsy, trigeminal neuralgia, and anxiety are not covered under FECA as the overtime you worked was not authorized by your [employing establishment] and therefore not a part of your regular job duties."[12]

In a letter dated July 13, 2015 and received by OWCP on July 14, 2015, appellant, through counsel, requested reconsideration of his claim. Appellant submitted a July 13, 2015 report in which Dr. Carolyn Feigel, an attending clinical psychologist, discussed her treatment of appellant's PTSD. Dr. Feigel noted that appellant reported that this condition had been aggravated by several factors, including long hours and pressure to meet deadlines while working for the employing establishment. Appellant also submitted a job description of the position of customer service supervisor.

By decision dated October 8, 2015, OWCP denied modification of its July 14, 2014 decision rescinding its acceptance of appellant's claim for aggravation of PTSD.

LEGAL PRECEDENT

Section 8128 of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.[13] The Board

[12] OWCP cited the case of *Sandra F. Powell*, 45 ECAB 877 (1994) for the proposition that overwork may be a compensable factor of employment if the evidence establishes that the claimant was in fact overworked.

[13] 5 U.S.C. § 8128.

has upheld OWCP's authority to reopen a claim at any time on its own motion under section 8128 of FECA and, where supported by the evidence, set aside, or modify a prior decision and issue a new decision.[14] The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be set aside in the manner provided by the compensation statute.[15]

Workers' compensation authorities generally recognize that compensation awards may be corrected, in the discretion of the compensation agency and in conformity with statutory provision, where there is good cause for so doing, such as mistake or fraud. It is well established that, once OWCP accepts a claim, it has the burden of justifying the termination or modification of compensation benefits. This holds true where, as here, OWCP later decides that it erroneously accepted a claim. In establishing that its prior acceptance was erroneous, OWCP is required to provide a clear explanation of the rationale for rescission.[16]

OWCP procedures require a proposed and final decision rescinding the original finding.[17] These procedures further provide that a rescission decision should contain a brief background of the claim, discuss the evidence on which the original decision was based, and explain why OWCP finds that the decision should be rescinded. The evidence used to rescind the claim should be thoroughly discussed so that it is clear to the reader how the case was incorrectly adjudicated and why the original decision is now being invalidated.[18]

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 emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.[19] 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.[20]

A claimant has the burden of proof to establish by the weight of the reliable, probative and substantial evidence that the condition for which he or she claims compensation was caused

[14] *John W. Graves*, 52 ECAB 160, 161 (2000).

[15] *See* 20 C.F.R. § 10.610.

[16] *See supra* note 14.

[17] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances,* Chapter 2.1400.19(b) (February 2013); *see also R.C.*, Docket No. 16-0594 (issued December 1, 2016).

[18] *Id.* at Chapter 2.1400.19(d); *R.C., id.*

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

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

or adversely affected by employment factors.[21] This burden includes the submission of a detailed description of the employment factors or conditions which the claimant believes caused or adversely affected a condition for which compensation is claimed, and a rationalized medical opinion relating the claimed condition to compensable employment factors.[22] When a claimant has not established any compensable employment factors, it is not necessary to consider the medical evidence of record.[23]

ANALYSIS

On November 8, 2012 appellant filed a Form CA-2 alleging that he sustained stress-related conditions due to working overtime and exposure to stressful incidents and conditions at work. He asserted that he did not have adequate staffing while working in a detail assignment as a customer service supervisor at the Studio City Post Office between September 2011 and March 2012. Appellant indicated that he worked overtime in order to complete work tasks and meet deadlines. He asserted that he advised his immediate supervisor that supervising the unit "was too much" and that she told him to "deal with it." Appellant claimed that, after his request for another supervisor to help out was turned down, he was wrongly demoted in November 2011 by his immediate supervisor to being a line supervisor at the Studio City Post Office. He asserted that his immediate supervisor unfairly criticized him for how he utilized a subordinate and that he was unfairly passed up for promotions on two occasions.

In May 9 and July 2, 2013 SOAFs, OWCP indicated that it had only accepted one employment factor, "[Appellant] worked overtime on approximately 49 days from [September 10, 2011 to March 16, 2012]. The employing establishment verified he never worked over 13 hours a day and only once worked over 12 hours." In a June 15, 2013 report, Dr. Levin, an OWCP referral physician, determined that appellant's preexisting PTSD and traumatic brain injury were aggravated while he was working for the employing establishment due to the accepted factors mentioned in the SOAF, including "a stressful shift and long hours of work." In a decision dated July 2, 2013, OWCP accepted aggravation of PTSD.

In a decision dated July 14, 2014, OWCP rescinded its acceptance of appellant's claim for aggravation of PTSD noting that it now had determined that appellant failed to establish any compensable employment factors in connection with his emotional condition claim. On October 8, 2015 it denied modification of its July 14, 2014 rescission determination.

The Board finds that OWCP improperly rescinded its acceptance of appellant's claim for aggravation of PTSD.

As noted above, once OWCP accepts a claim, it has the burden of proof to justify the termination or modification of compensation benefits and, in establishing that its prior

[21] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[22] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[23] *See Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

acceptance was erroneous, it is required to provide a clear explanation of the rationale for rescission.[24]

The Board finds that OWCP has not adequately explained the basis for rescinding its acceptance of appellant's claim for aggravation of PTSD. OWCP's rescission action is primarily premised on its new determination that the employment factor it had previously accepted, related to overtime, did not constitute a compensable employment factor.[25] However, it has not justified its finding that this previously accepted employment factor does not constitute a compensable employment factor.

It is important to note that, in its rescission determination, OWCP has not denied the factual aspect of appellant's overtime work, namely that he worked overtime on approximately 49 days from September 10, 2011 to March 16, 2012.[26] OWCP's rationale for no longer accepting this factual circumstance as an employment factor remains unclear. The Board has held that a claimant's demonstrated overwork in attempting to carry out work duties and meet deadlines, including through the use of overtime, may constitute a compensable employment factor.[27] In its rescission determinations, OWCP suggested that appellant's complaints of engaging in overwork to carry out work tasks and meet deadlines lacked validity. However, OWCP did not provide any detailed discussion of this aspect of appellant's claim. While appellant's immediate supervisor indicated that his work tasks and deadlines were reasonable, she did, in fact, acknowledge that his job as a customer service supervisor would require him at times to perform overtime work. The record contains several statements in which appellant's subordinates and a fellow customer service supervisor testified that the Studio City Post Office lacked adequate staffing and that appellant had to work overtime to finish work tasks and meet deadlines. In its rescission determinations, OWCP did not discuss these statements and explain how they impacted its apparent determination that appellant did not engage in overwork.

In rescinding its acceptance of appellant's claim for aggravation of PTSD, OWCP placed great emphasis on the fact that appellant's immediate supervisor asserted that his overtime work was not mandated or preapproved.[28] OWCP suggested that appellant's overtime work could not be considered a compensable employment factor because it was deemed to be voluntary or

[24] *See supra* note 16.

[25] In its rescission determinations, OWCP continued to find that appellant had not established his other claimed employment factors. It indicated that it was not necessary to consider the medical evidence of record, given the finding that appellant had not established any compensable employment factors. *See supra* note 21.

[26] The evidence of record, including timekeeping records, supports that this overtime work occurred.

[27] *See M.D.*, Docket No. 15-1796 (issued September 7, 2016) (appellant established a compensable factor of routinely working overtime during a specified period as the evidence of record supported her allegation and the employing establishment did not dispute the allegation); *see also Bobbie D. Daly*, 53 ECAB 691 (2002); *Sherman Howard*, 51 ECAB 387 (2000).

[28] Appellant's immediate supervisor indicated that, after she became aware of appellant's overtime usage, she told him that it needed to stop. However, the supervisor did not identify when she became aware of appellant's overtime usage and the record does not contain any document memorializing her statement to appellant that the overtime usage needed to stop.

nonmandatory in nature. However, it did not provide sufficient justification for its implication that overwork or overtime work that is voluntary could not be considered an employment factor. In *Richard S. Donohue*,[29] the Board made no such distinction between voluntary and nonvoluntary overwork in determining that OWCP had properly found an employment factor due to the claimant's voluntary overtime usage. In that case, the claimant worked overtime to meet work requirements, and the Board, in noting that OWCP properly found an employment factor in this regard, indicated, "Regardless of whether appellant volunteered to do the overtime work, the record supports that appellant worked overtime when necessary to perform his job." In the present case, there is no factual dispute that appellant worked approximately 49 days of overtime in late-2011 and early-2012 and OWCP did not adequately explain, in connection with its rescission determination, why this factual circumstance no longer constituted an employment factor.

For these reasons, OWCP has not justified the rescission of its acceptance of appellant's claim for aggravation of PTSD.

CONCLUSION

The Board finds that OWCP improperly rescinded its acceptance of appellant's claim for aggravation of PTSD.

[29] Docket No. 03-2145 (issued February 27, 2004).

ORDER

IT IS HEREBY ORDERED THAT the October 8, 2015 decision of the Office of Workers' Compensation Programs is reversed.

Issued: October 2, 2017
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board