

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

Z.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Baltimore, MD, Employer**

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**Docket No. 16-1783
Issued: August 16, 2018**

Appearances:

*Stephen J. Dunn, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 7, 2016 appellant, through counsel, filed a timely appeal from a June 13, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.³

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.*

³ Appellant, through counsel, timely requested oral argument before the Board pursuant to 20 C.F.R. § 501.5(b). By order dated March 1, 2017, the Board exercised its discretion and denied the request for oral argument. *Order Denying Request for Oral Argument*, Docket No. 16-1783 (issued March 1, 2017).

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On July 10, 2015 appellant, then a 40-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained stress, fear, and anxiety on June 3, 2015 while in the performance of duty. He attributed his claimed condition to a “mental overload of miscommunication and fear for [his] safety,” which caused him to have an “enraged stressful meltdown.” Appellant stopped work on June 3, 2015.⁴

In an undated, hand-written statement, submitted with the claim form, appellant asserted that he was delivering mail on May 29, 2015 when a signature-waived Express Mail package that was emitting a strong odor burst open, exposing its contents.⁵ He informed the building receptionist that he was taking the package back to the employing establishment because the apartment number and recipient’s name were incorrect. When the apartment building manager inquired what would happen next, appellant suggested that they act as if nothing happened and that the postal service would contact them.

Appellant returned directly to his duty station, placed the box under a desk in the manager’s office, and told the “pm supervisor” about it. He returned to work the following day, told the “am supervisor” about it and went on his route. While working his route, he noticed three suspicious men watching him from their car. At one of appellant’s stops, two of the men got out of the car and stood around the building, the stores, and the postal van. One of the men asked appellant to describe the procedures for when a package is scanned “arrived” but not delivered. Appellant told him to contact the postal service. The man then met back up with the other two men. Two hours later, appellant noticed those same men driving near him. He saw the same car again several times, at different parts of his route. Appellant related that he was worried and fearful that these individuals thought he had taken their package. He was also afraid, however, that, if management were to take him off of that route, the men who were following him might think he took their package. Appellant discussed this with his manager on June 3, 2015, at which time he learned that management had assigned a route inspector to walk his route with him. This caused him much consternation. Appellant told his supervisor that he did not feel comfortable with the management official accompanying him as it would endanger their safety. He expressed his fears and told her he would walk the route, but only without the accompanying manager. Appellant felt as though walking with a “white woman with a clip board and badge” would put a target on his back, as people would more readily think that he snitched or stole the package. He asserted that his duty station was located in a dangerous, crime-ridden neighborhood where many young people had been shot. Appellant’s route, however, was in a “good” area, which is why it was particularly

⁴ OWCP received a June 4, 2015 verification of treatment report from Noel A. Cuff, a certified licensed clinical social worker, indicating that appellant had received treatment that day and was unable to work for the period June 3 through July 22, 2015.

⁵ The record indicates that the package was believed to have contained illegal drugs.

strange seeing that car following him. Because other packages had recently been seized, he was afraid that he and his family could be in danger and feared for their safety. Appellant asserted that his supervisor did not understand and seemed to be more concerned with how it would look if they did not assign a manager to walk with him. He became enraged, called his wife, and spoke to a physician on the telephone, who was able to somewhat calm him down.

In a June 10, 2015 memorandum, customer service manager, J.H., controverted appellant's claim. She asserted that appellant never stated that he felt unsafe or fearful of his work assignment prior to June 3, 2015. J.H. noted that he became enraged when he was informed on June 3, 2015 that he would be accompanied on his route by a management official for the day. She acknowledged that an incident occurred on May 29, 2015 involving a parcel that allegedly contained marijuana, but she contended that appellant continued to work the same route without delay, including on May 30, and June 1 and 2, 2015. When asked if he was okay with carrying the route, he replied that he was fine. J.H. asserted that appellant's claimed June 3, 2015 "mental breakdown" only after he was informed that he would be "walked with" was incredulous, and she argued that he did not have a traumatic injury that would have resulted in total disability from work. She further noted that had appellant alerted management of his concerns, he could have been placed on his other route assignments or had that portion of the route pulled off. By development letter dated July 28, 2015, OWCP advised appellant that additional information was needed to support his claim and provided a questionnaire for his completion in order to substantiate the factual elements of his claim. The questionnaire asked him to clarify whether he was claiming an occupational disease or traumatic injury because it was unclear from the evidence received. It noted that it appeared that appellant had filed a claim for an occupational disease because his statement seemed to indicate that he developed a condition over a period of more than a single workday. OWCP afforded appellant 30 days to submit the requested information.

OWCP subsequently received additional medical evidence, including July 22, 2015 treatment notes signed by a psychiatrist.

By decision dated August 28, 2015, OWCP denied appellant's emotional condition claim, finding that he failed to satisfy the factual component of fact of injury. It noted that he had not responded to its July 28, 2015 development letter. OWCP also noted that it remained unclear whether appellant was claiming a traumatic injury or an occupational disease.

Appellant timely requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on April 13, 2016.

OWCP subsequently received additional medical evidence, which included a July 27, 2015 report from Dr. Stacey T. Neal, a Board-certified psychiatrist. Dr. Neal advised that she had clinical concerns regarding appellant. She reported that in June 2015, he encountered and dealt with a significant work incident that occurred on his route. Dr. Neal noted that, as a result of the incident, appellant became increasingly anxious and felt nervous and edgy. He began worrying, had difficulty sleeping, became irritable, and felt as if something awful might happen. Appellant also experienced physical symptoms related to the anxiety such as shortness of breath, increased blood pressure, and hyperventilation.

Dr. Neal advised that appellant also became frustrated and further afraid for his safety due to the subsequent events initiated by management. She noted that he believed he took the appropriate professional actions and that his supervisors subsequently put him at risk of harm. Dr. Neal opined that appellant reasonably feared for his safety on the streets in the form of retaliation from the parties involved with the suspected illegal substances. She asserted that management's investigation of the incident appeared to have eroded the trust and confidence that he had with the management team. Dr. Neal related that appellant believed that he received little positive communication to resolve his concerns regarding his personal safety and, as such, he had the following concerns about management: perceived intimidation; use of fraudulent paperwork; and retaliation by not submitting workers' compensation paperwork for over a month. Appellant also believed that management was colluding with appellant's union to work against him. Dr. Neal diagnosed post-traumatic stress disorder (PTSD) and opined that, based on his legitimate concerns and conflict with management, appellant was incapable of performing his duties due to the situation that occurred on June 3, 2015.

In a letter received by OWCP on November 13, 2015, appellant advised that he experienced additional stress after receiving management's July 1, 2015 investigative interview questions regarding the May 29 and 30 and June 3, 2015 incidents.⁶ He felt that the way the questions were worded made it appear as though management was trying to scare him, intimidate him, retaliate against him, and blame him for something. Appellant believed that he was being punished by management for doing the right thing; *i.e.*, by bringing the suspicious package back to the employing establishment, and that management had aroused the suspicions of drug dealers who "knew he brought it back." He asserted that he was being bullied and harassed by management and reiterated that he was worried about doing his job in his neighborhood route.

During the April 13, 2016 hearing, counsel related that, on May 29, 2015, appellant delivering his packages at the reception desk of a luxury apartment building, when he and the receptionist noticed an odor of marijuana coming from one of the packages. The box was partially opened and he could see plastic wrap inside, which he pulled from the gurney. As he saw more of the contents, appellant's suspicions were confirmed that it likely was marijuana. He closed the box up, took it back to the employing establishment, and reported it to his supervisor. Counsel noted that appellant rescanned the package as an "attempted delivery." While appellant was making his deliveries the next day he noticed three suspicious men watching him periodically throughout his workday. Counsel reiterated appellant's previous assertion that two of the men approached him and asked him what happens when you do not receive a package that was scanned as "arrived," but not delivered. This scared appellant, especially since the receptionist at the same apartment building told him on June 1, 2015 that several people had previously attempted to pick up the same package that he did not deliver. The receptionist also told him that a postal inspector

⁶ These questions included: was the box sealed when he signed for it; at what time did he notice the box was missing contents from the time he signed for it until the time he returned to the employing establishment; did anything fall out of the package; what is the standard policy for bringing back an Express Mail package unsealed at his employing establishment; when the package was brought back did he take it to the attention of the manager; why did he believe persons on his delivery route would have a problem with a postal employee accompanying him on his delivery route; why did he become stressed on June 3, 2015; why did he feel his safety and his family's safety would be in jeopardy; did he have past history of PTSD, and if so from what; when did PTSD first occur; when did he report the occurrence of PTSD to management; prior to this incident, did he report any safety issues on his route to management; and did he remove anything from the suspicious package.

recently came and seized other packages there that also smelled like marijuana. When management informed appellant on June 3, 2015 that they were assigning a route inspector to walk his route with him he became fearful, stressed, and enraged. Counsel related that when route inspectors walked with appellant in the past, people in the neighborhood suspected that the route inspector was a police officer, which increased his fear that the people involved with the undelivered package would suspect him of either snitching to the police or stealing the package, and would possibly confront him. He reiterated that this was a very dangerous area of Baltimore and that appellant did not want any retaliation against himself or his family from the individuals involved with this package. When appellant expressed these fears to his supervisor, she refused to change the assignment and insisted that he had to walk with the route inspector. He left work because he was so upset and because he felt as if his managers did not care about his safety.

Counsel contended that this incident aggravated appellant's PTSD and resulted in him having an emotional breakdown. Appellant consulted a psychiatrist and began receiving treatment for PTSD. Counsel further argued that the compensability of the alleged June 3, 2015 incident should be determined by whether disability results from appellant's emotional reaction to his regular duties, specially assigned duties, or an imposed employment requirement, and his fear of potential danger; not by whether there was actual danger entailed by his being accompanied on his route by a postal inspector.

In an April 5, 2016 report, Dr. John Lion, Board-certified in psychiatry, diagnosed PTSD. He opined that appellant was involved in prior incidents which caused him trauma. A nonwork-related incident occurred in January 2014 involving the police. Dr. Lion noted that appellant demonstrated PTSD symptoms. A work-related incident took place on May 29, 2015 when a package partially opened at an apartment building and emitted a marijuana odor, and the receptionist informed appellant that the sender was a resident of the building. Appellant returned the package to his employing establishment and notified authorities. One day after this event he noted that three men watching him from a parked automobile who he suspected were somehow involved with the marijuana package. Dr. Lion noted that appellant was suspicious that these men might think he turned the package into the authorities or took the package for himself. Appellant advised that his postal route had an excessively high degree of violent crime and drug trafficking and had posted signs containing the "stop snitching" slogan indicating that area crimes should not be reported to the police.

Dr. Lion reported that another work-related incident occurred on June 3, 2015 when appellant was told that a route inspector would be traveling with him that day. The route inspector had a clipboard and a badge and appellant immediately protested this action, fearing that the residents of the neighborhood where he worked might conclude that the inspector was an undercover police officer and that he could be identified an informant. Appellant refused to go on his route with the route inspector and stopped work on June 3, 2015. Dr. Lion opined that, by that time, appellant's symptoms had escalated to extreme clinical proportions. Appellant experienced panic attacks and feared that he and his family would be targeted for retaliation. He began to experience sleeplessness, hopelessness, loss of interest in daily living activities, a fear of going out in public, and distressing flashbacks of prior traumatic incidents. Dr. Lion diagnosed PTSD of moderate intensity caused by the work event of June 3, 2015. He opined that appellant had some PTSD symptoms after the January 2014 incident, which reemerged on May 29, 2015 and culminated on June 3, 2015. Dr. Lion advised that the cascading set of events evoked anxiety and

terror in appellant about being placed in acute danger, with marked suspiciousness, agitation, sleeplessness, and deepened, intrusive thoughts and perceptions about being harmed or having his family harmed. He opined that appellant was totally disabled from work commencing June 3, 2015 because he was unable to perform the work functions of reporting to the employing establishment, interacting with management, and delivering mail to his route.

By decision dated June 13, 2016, an OWCP hearing representative affirmed the August 28, 2015 decision as modified. He found that, while the claim was initially denied for lack of factual evidence, the evidence subsequently received was sufficient to establish that management assigned a postal investigator to accompany appellant on June 3, 2015 after his nondelivery of a package that smelled like marijuana on May 29, 2015 and that appellant has been diagnosed with PTSD. The hearing representative further found, however, that the fact that the June 3, 2015 incident did not rise to the level of a compensable factor of employment, as the employing establishment's decision to have an inspector accompany appellant on his route on June 3, 2015 was an administrative function within management's discretion. He determined that appellant's emotional reaction to such a decision was self-generated, noncompensable, and did not give rise to coverage under FECA. Any belief on appellant's part that he would be perceived as a snitch when accompanied by a postal investigator was without sufficient basis and that any fear or emotional reaction to such accompaniment was self-generated.

The hearing representative further found that had not submitted evidence to corroborate that he was watched, followed, or questioned on his route. He noted that such corroboration could have been provided by an accompanying inspector. Also, there was no evidence received which indicates that appellant would have stopped work but for the assignment of a route inspector to accompany him on June 3, 2015. Thus, the claim remained denied.

LEGAL PRECEDENT

To establish that he sustained an emotional condition causally related to factors of his federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.⁷

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.⁸ However, disability is not compensable when it results from factors such as an employee's fear of

⁷ See *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁸ *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

a reduction-in-force, or frustration from not being permitted to work in a particular environment, or to hold a particular position.⁹

An employee's emotional reaction to administrative or personnel matters generally falls outside FECA's scope.¹⁰ Although related to the employment, administrative, and personnel matters are functions of the employing establishment rather than the regular or specially assigned duties of the employee.¹¹ However, to the extent 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.¹² Assigning work and monitoring performance are administrative functions of a supervisor.¹³ The manner in which a supervisor exercises his/her discretion falls outside FECA's coverage. This principle recognizes that 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.¹⁴

To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.¹⁵ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter, OWCP must base its decision on an analysis of the medical evidence.¹⁶

ANALYSIS

Appellant alleged that he sustained an emotional condition because he was subjected to stress due to his working conditions between May 29 and June 3, 2015. He asserted that the following resulted in his sustaining an emotional condition: (1) attempted delivery of a partially opened package on May 29, 2015, which contained illegal drugs; (2) his being followed and questioned by individuals regarding the delivery status of that same package while working his route on May 30, 2015; (3) management's proposed assignment on June 3, 2015 of a uniformed employing establishment inspector to accompany him on his mail route; and (4) July 1, 2015 investigative interview questions posed to him regarding the May 29 and 30, and June 3, 2015 incidents.

⁹ *Lillian Cutler, id.*

¹⁰ *Andrew J. Sheppard, 53 ECAB 170, 171 (2001); Matilda R. Wyatt, 52 ECAB 421, 423 (2001).*

¹¹ *David C. Lindsey, Jr., 56 ECAB 263, 268 (2005).*

¹² *Id.*

¹³ *Donney T. Drennon-Gala, 56 ECAB 469, 475 (2005); Beverly R. Jones, 55 ECAB 411, 416 (2004); Charles D. Edwards, 55 ECAB 258, 270 (2004).*

¹⁴ *Linda J. Edwards-Delgado, 55 ECAB 401, 405 (2004).*

¹⁵ *Supra* note 6.

¹⁶ *See Norma L. Blank, 43 ECAB 384, 389-90 (1992).* Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo, 47 ECAB 299, 305 (1996).*

The Board finds that appellant has established compensable factors of employment under *Cutler*¹⁷ with regard to his attempted delivery of a partially opened package on May 29, 2015 and his being followed and questioned by individuals regarding the delivery status of that same package while working his route on May 30, 2015. Where the claimed disability or condition 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. While appellant was attempting delivery on May 29, 2015, he observed that a malodorous package was partially opened and contained illegal drugs. The following day, while working his mail route, appellant was followed and questioned by individuals regarding the delivery status of that same package. Appellant contended that these stressful working conditions caused his diagnosed emotional condition. The Board finds that as the events of May 29 and 30, 2015 occurred while appellant was performing his regularly assigned duties, they constitute compensable factors of employment under *Cutler*.

Appellant also alleged that management's June 3, 2015 assignment of an inspector to accompany him on his route and the July 1, 2015 posing of investigative interview questions regarding the May 29 and 30, and June 3, 2015 incidents caused or aggravated his emotional condition. In *Thomas D. McEuen*¹⁸ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under FECA would attach if the facts surrounding the administrative or personnel action established error or abuse by employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.

Appellant asserted that management erred by directing him to be accompanied by a uniformed route inspector and posing investigatory interview questions regarding the May 29 and 30, and June 3, 2015 incidents. Although assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employing establishment.¹⁹ Management was properly exercising its administrative responsibilities by assigning an employing establishment inspector to accompany appellant on June 3, 2015. After learning that appellant had attempted to deliver a package containing illegal substances, management reasonably followed up on this information to learn as much as possible about what had transpired. Similarly the internal investigations are also administrative functions of the employing establishment. The questions posed were reasonable in light of the circumstances surrounding the foregoing events. The Board thus finds that the evidence of record is insufficient

¹⁷ *Supra* note 8.

¹⁸ *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Cutler*, *supra* note 8.

¹⁹ *F.M.*, Docket No. 16-1504 (issued June 26, 2017); *G.S.*, Docket No. 09-0764 (issued December 18, 2009).

to establish that the employing establishment committed error or abuse in discharging its administrative duties with regard to these allegations.

As appellant has established compensable factors of employment, OWCP must review the medical evidence of record in order to determine if he has submitted sufficient evidence to substantiate his claim.²⁰ Following this and any necessary further development, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the June 13, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: August 16, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy 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

²⁰ *Margaret S. Krzycki*, 43 ECAB 496 (1992).