

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

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C.T., Appellant )

and )

U.S. POSTAL SERVICE, GOVERNMENT )  
MAILS, Washington, DC, Employer )

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**Docket No. 16-1862  
Issued: March 1, 2018**

*Appearances:*

Lamar L. Grigsby, for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On August 24, 2016 appellant, through his representative, filed a timely appeal from a June 9, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>2</sup> Pursuant to the Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

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<sup>1</sup> 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.

<sup>2</sup> Together with his appeal request, appellant submitted a timely request for oral argument pursuant to 20 C.F.R. § 501.5(b). By order dated February 7, 2017, the Board exercised its discretion and denied the request as appellant's arguments on appeal could be adequately addressed in a decision based on a review of the case as submitted on the record. *Order Denying Request for Oral Argument*, Docket No. 16-1862 (issued February 7, 2017).

<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant met his burden of proof to establish an emotional condition in the performance of duty on April 14, 2016, as alleged.

## FACTUAL HISTORY

On April 20, 2016 appellant, then a 51-year-old mail handler, filed a traumatic injury claim (Form CA-1) for an unspecified stress-related medical condition. He alleged that he sustained injury on April 14, 2016 due to a stressful and hostile work environment. Appellant described the nature of his injury as “mentally stressful daily situations with co-workers.” The employing establishment represented that the claimed injury did not occur in the performance of duty. It noted that on April 14, 2016 appellant was involved in a verbal altercation with another mail handler, and that the incident was pending investigation.

In an April 14, 2016 statement, appellant indicated that a coworker, S.P., approached him yelling and cursing, and asked “What the f... [was] I doing?” and “How come I was not helping [another] employee [S.A.]” He told S.P. to get away from him and to stop talking to him. Appellant also indicated that he and S.P. came face-to-face, at which point he smelled alcohol on S.P.’s breath. He stated that he then realized S.P. was intoxicated and trying to provoke a fight with him. Appellant walked away and called the supervisor, L.R., who was not in the building at the time. He then walked outside to wait for L.R. Appellant later explained the situation to L.R., and he reportedly told him that he would speak to S.P. Another supervisor, A.N., arrived and appellant again explained the situation. A.N. advised appellant that he would look into the matter.

S.P. also provided an April 14, 2016 written statement. He indicated there was a disagreement about who would work the mail that had been put in his work area. Appellant and S.A. were back there, but nothing was getting done. S.P. stated that he felt upset that they might leave the work for him and go on to some other project. He noted that he previously had to mail for ZIP Codes 20510 and 20515 because someone had not done. S.P. stated that, when he returned from the restroom, it looked like S.A. was about to begin the work, so he asked appellant if he was going to let her do it all by herself. At that point, appellant “went off.” S.P. stated that appellant tried to intimidate him by the way he approached him, but S.P. was not intimidated and the two exchanged words. Afterwards, he was alone doing the mail by himself, as suspected would happen.

In an April 16, 2016 e-mail/statement, A.N., noted that an altercation occurred on April 14, 2016 at approximately 2:30 p.m. between S.P. and appellant. He was not present at the time of the incident, but learned about it from Acting Supervisor L.R. When he returned to the employing establishment around 3:00 p.m., everything was quiet. A.N. approached appellant and asked for a written statement. He indicated that appellant stated that S.P. smelled of alcohol and he had started cursing at him. Appellant also indicated that S.P. was trying to provoke him. A.N. then spoke with S.P., who “basically said that they had words and [appellant] was in his face.” Neither appellant nor S.P. told A.N. what really happened or why they were arguing. He asked S.P. whether he had been drinking, and he replied that he had some drinks the previous

(Wednesday) evening. A.N. stated that S.P. appeared to have just come to work after awakening from a hangover. He instructed both appellant and S.P. to go home.

In an April 22, 2016 statement, S.A. indicated that on April 14, 2016 S.P. noticed a situation where mail had been mishandled and asked appellant "Who did this?" Appellant then walked over to the wire cage and said, "I did this," and then walked back to his stool. S.P. walked over and stopped by the OTR (over the road) container, cussed (to himself), and then asked appellant, "Are you going to let [S.A.] do this mail all by herself?" S.A. observed appellant jump up from his stool, walk over, and "chest bump" S.P. Appellant reportedly stated to S.P. "Man I gave you one pass [and] I'm not going to give you another." At that point, S.A. walked away and yelled for the group leader's assistance.

Acting Supervisor L.R. also provided an April 22, 2016 written statement. He indicated that he was out of the building on April 14, 2016 when a problem arose between two coworkers. When he returned, he spoke first with appellant and then S.P. L.R. indicated that S.P. stated "pretty much" what appellant had previously told him. He then went on to describe work assignments he made prior to the reported confrontation between appellant and S.P.

In a development letter dated May 4, 2016, OWCP informed appellant of the type of evidence needed to support his claim and requested that he submit such evidence within 30 days.

In an August 27, 2015 letter, S.A. explained that she was uncomfortable with regard to workplace behavior. She referred to an incident on August 26, 2015. S.A. indicated that appellant screamed at her and asked her why she was in his work area. She noted that another coworker, S.F. joined in with him. S.A. noted that management needed to take action.

In a workplace harassment interview dated April 23, 2016, appellant repeated the circumstances regarding the incident that occurred between him and S.P. on April 14, 2016. Appellant indicated that he was subjected to a hostile work environment.

In a letter dated April 23, 2016, A.C., a former supervisor, reported two instances that occurred between him and appellant. He noted that appellant, on an occasion, called him an "old ass bitch." On the other occasion, appellant slammed all-purpose containers (APC) with a great amount of force and could have hurt someone. A.C. noted that when appellant was approached by the acting supervisor, L.R., appellant told him to "get the f\*\*\* out of the way." He indicated that appellant "constantly and continuously disrespects and disrupts our working environment."

In an April 24, 2016 statement, K.M., a coworker, noted that she was disrespected by appellant. She referenced an incident where appellant shouted and stated that he hated her and that she made him sick and he was tired of her. K.M. completed an interview on April 28, 2016 and noted that she does not speak to appellant.

S.P. also completed a workplace harassment interview dated April 28, 2016. He explained that appellant was supposed to assist him with a work load, along with S.A. However, they left and appellant indicated that he was not going to help anyone.

In a May 19, 2016 treatment note, Dr. Jessica Morris, a Board-certified psychiatrist, requested that appellant be excused from work for the period April 15 to May 28, 2016 due to a

medical condition. She advised that appellant was incapacitated from work due to effect mood symptoms were having on his activities of daily living, which was prompted by stress at work and a hostile environment. Dr. Morris diagnosed adjustment disorder and indicated that he was currently under treatment.

By decision dated June 9, 2016, OWCP denied appellant's emotional condition claim. It found that on April 14, 2016 appellant had a disagreement with a coworker, S.P., about a work assignment. However, OWCP determined that the accepted incident/event was not a compensable factor of employment.

### **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.<sup>4</sup>

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.<sup>5</sup> However, disability is not compensable when it results from factors such as an employee's fear of a reduction-in-force, or frustration from not being permitted to work in a particular environment, or to hold a particular position.<sup>6</sup>

To the extent that incidents alleged as constituting harassment or a hostile work environment are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.<sup>7</sup> For harassment to give rise to a compensable disability under FECA, there must be evidence that harassment did in fact occur.<sup>8</sup> Allegations of harassment must be substantiated by reliable and probative evidence.<sup>9</sup> Mere perceptions of harassment are not compensable.<sup>10</sup>

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<sup>4</sup> See *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>5</sup> *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>6</sup> *Lillian Cutler, id.*

<sup>7</sup> *P.T.*, Docket No. 14-2011 (issued February 5, 2015); see also *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker, supra* note 4 at 608.

<sup>8</sup> *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

<sup>9</sup> *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991).

<sup>10</sup> *Donna J. DiBernardo, supra* note 8.

Verbal altercations and difficult relationships with co-workers/supervisors/managers, when sufficiently detailed and supported by the record, may constitute compensable factors of employment.<sup>11</sup> However, this does not imply that every ostensibly abusive or threatening statement uttered in the workplace will give rise to coverage under FECA.<sup>12</sup> For appellant to prevail on his claim, he must support his allegations with probative and reliable evidence.<sup>13</sup>

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.<sup>14</sup>

### ANALYSIS

Appellant alleged that on April 14, 2016, he sustained an emotional condition as a result of a stressful and hostile workplace. He indicated that on that date, an altercation occurred between him and a coworker, S.P. OWCP denied his emotional condition claim finding that he had not established any compensable employment factors. The Board must review whether the alleged incident and conditions of employment are covered employment factors under the terms of FECA.

Appellant has not attributed his emotional condition to the regular or specially assigned duties of his position as a mail handler. Therefore, he has not alleged a compensable factor under *Cutler*.<sup>15</sup>

Appellant alleged that he sustained an emotional condition as a result of stress related to an incident on April 14, 2016. The Board notes that the incident was essentially a verbal disagreement between appellant and his coworker, S.P., about who was going to complete a work assignment. The record contains a statement from A.N., the supervisor, who indicated that at the time of the incident, another supervisor, L.R., informed him that appellant and another employee, S.P., had a verbal altercation. He investigated the matter and related that appellant believed S.P. smelled of alcohol and had cursed at him. A.N. noted that S.P. indicated that he and appellant had “words” and appellant was “in his face.” Regarding drinking, S.P. responded that he “had some drinks Wednesday night.” A.N. related that he asked both individuals to go home. Additionally, Mr. Perry explained that he and appellant had “words” because he did not want to be left working the mail alone.

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<sup>11</sup> *Marguerite J. Toland*, 52 ECAB 294, 298 (2001).

<sup>12</sup> *Fred Faber*, 52 ECAB 107, 109 (2000).

<sup>13</sup> See *Kathleen D. Walker*, *supra* note 4.

<sup>14</sup> 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).

<sup>15</sup> See *Cutler*, *supra* note 5.

Several coworkers provided statements, which revealed that appellant was, at a minimum, “disagreeable.” For example, S.A., explained that S.P. asked him if he was going to let her do the work by herself, when appellant “jumped up from the stool” and chest bumped S.P. She indicated that he said, “Man I gave you one pass and I’m not going to give you another.” S.A. indicated that she walked away and yelled for a group leader and assistance. OWCP received statements from appellant’s colleagues pertaining to other incidents on other dates, wherein appellant engaged in disagreeable activities such as screaming at his coworkers, and calling them names such as “old ass bitch” and told them to “get the f\*\*\* out of the way.”

The Board finds that the occurrence of April 14, 2016 was not a compensable factor of employment. Rather, appellant has a quick temper and difficulty getting along with others, and this would not be considered to be an event which would be accepted as a compensable factor of employment. In as much as the dispute arose out of an assignment of work, the Board has long held that the assignment of work is an administrative function, and the manner in which a supervisor exercises his or her discretion falls outside the coverage of FECA.<sup>16</sup> Moreover, not every statement uttered in the workplace will give rise to coverage under FECA.<sup>17</sup>

Where a claimant has not established any compensable employment factors, the Board need not consider the medical evidence of record.<sup>18</sup>

On appeal appellant’s representative argues that the medical evidence supports that appellant’s stress was prompted by a stressful hostile work environment. However, as found above, appellant has not established a compensable factor of employment. As such, the Board need not consider the medical evidence of record.<sup>19</sup>

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 has not established that he sustained an emotional condition in the performance of duty on April 14, 2016, as alleged.

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<sup>16</sup> See *D.C.*, Docket No. 16-0312 (issued June 22, 2016).

<sup>17</sup> *V.W.*, 58 ECAB 428 (2007).

<sup>18</sup> *A.K.*, 58 ECAB 119 (2006).

<sup>19</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 9, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 1, 2018  
Washington, DC

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

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

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