

ISSUE

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

On appeal counsel contends that appellant sustained an emotional condition due to being overworked and his efforts to meet the requirements of his job. He asserts that OWCP erred by failing to fully develop the evidence in this case. Counsel further asserts that, pursuant to *J.E.*,⁴ it is a direct contradiction for OWCP to reject appellant's claim which has not been controverted by the employing establishment. He noted that it did not contact the employing establishment or appellant's physician.

FACTUAL HISTORY

On December 6, 2016 appellant, then a 50-year-old postmaster, filed an occupational disease claim (Form CA-2) for stress, sleep deprivation, insomnia, anxiety, depression, back spasms, degenerative discs, neck pain, and tension headaches. He alleged that he first became aware of these conditions on April 1, 2012 and first realized their relationship to his federal employment on November 30, 2016. Appellant stopped work on December 1, 2016 and has not returned to work.

In a November 30, 2016 narrative statement, appellant related that he was transferred to his current facility in July 2011 where he did not have a supervisor. He stated that it was a one-man show. In early 2012, appellant became responsible for two more facilities. He claimed that his workload and stresses increased three-fold with managing three employing establishments. Appellant also claimed that he had tried for four and one-half years to run this operation to the best of his ability. He noted that as of November 30, 2016 he could no longer perform his job due to harassment and extra stresses placed on him. Appellant indicated that he planned to file an Equal Employment Opportunity (EEO) complaint against L.B., a manager of employing establishment operations, alleging that she continually harassed and placed stress on him. He asserted that, during the last four years, he had to work parcel distribution regularly due to poor staffing, including the last three months which further aggravated his back/neck pain and spasms. Appellant claimed that this was a violation of a union contract. He noted that he was unable to submit his claim form until the date of his statement due to illness from undue stresses by L.B. and the employing establishment. Appellant indicated that, after being told to perform duties which he was not trained to perform, he had a nervous breakdown on the same day. His medical condition had deteriorated to the point where he barely got two to three hours of rest a night. Appellant had daily tension headaches due to back spasms from excessive stress. His blood pressure medication was increased approximately four years ago. Appellant took sleeping pills nightly to try to rest. He also took muscle relaxers and pain pills to relieve his pain and headaches. Appellant planned to request anti-depressants and anxiety pills during a pending appointment with Dr. Dennis L. Crunk, an attending Board-certified family practitioner as he

⁴ Docket No. 11-1657 (issued March 20, 2012) (the Board found that appellant's allegation regarding an August 10, 2010 incident were sufficiently supported in the record to establish that the incident occurred as alleged. The Board, *inter alia*, noted that he provided a statement from a coworker who witnessed the incident and its immediate aftermath).

concluded that he could no longer work due to the physical, mental, and psychological toll on his health. Appellant planned to request full disability retirement.

By letter dated December 7, 2016, OWCP informed appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to a factual development questionnaire.

On December 20, 2016 appellant responded to OWCP's development questionnaire. He reiterated his allegation of overwork. Appellant claimed that he had to work over 40 hours, usually 50 hours, each week to attempt to accomplish his work tasks for all three facilities with short staffing a constant battle. He alleged that he was forced to work in the parcel distribution unit with regularity for four years and on a daily basis from September through November 2016. Appellant further alleged that when he advised L.B. of staffing issues she responded that training of new employees needed to be sped up. He related that her harassing e-mails with unrealistic goals finally came to a head on November 30, 2016. Appellant indicated that L.B. harassed his top performing unit about working less overtime even though he had a shortage of three clerks. L.B. also harassed the unit about performing "mystery shop wait time in line." On November 30, 2016 she demanded that appellant change his report to her satisfaction and that he use pareto charts a type of tool he alleged he was not trained to use. Appellant refused to change his report and L.B. advised him to follow instructions. He claimed that she did not harass poor performing units. Appellant noted that he filed an EEO complaint. He indicated that he had no stresses outside of his federal employment. Appellant further indicated that he went through a divorce over 11 years ago.

OWCP received medical reports dated November 17, and December 6 and 20, 2016 from Dr. Crunk noting that appellant had been placed off work due to severe stress and anxiety. Dr. Crunk discussed examination findings and assessed severe anxiety and depression, history of situational anxiety, situational anxiety, spasm of the lumbar paraspinous muscle, acute maxillary sinusitis, lower back pain, and tension headache. He placed appellant on disability for six weeks as of December 6, 2016.

OWCP also received correspondence dated January 10 through May 12, 2017 from the State of California Health and Human Services Agency and the State of Nevada which addressed medical information needed to evaluate appellant's application for disability benefits under the Social Security Act. The correspondence noted that his alleged impairments included post-traumatic stress disorder, insomnia, severe anxiety, depression, stress-related migraines from back spasms, degenerative, bulging disc in the back and neck, rosacea from stress, and increased blood pressure.

By decision dated May 25, 2017, OWCP denied the claim finding no compensable factors of employment. Thus, it concluded that appellant had not sustained an injury as defined under FECA.

LEGAL PRECEDENT

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

or adversely affected by factors of his or her federal employment.⁵ To establish that he or she sustained an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.⁶

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.⁷ 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.⁸

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA.⁹ Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹⁰ A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹¹

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of several employment incidents and factors. OWCP denied the emotional condition claim as he had not established any compensable employment factors. The Board must initially review whether these alleged incidents and conditions of employment are compensable employment factors under the terms of FECA. The Board notes that some of appellant's allegations pertain to his

⁵ *Pamela R. Rice*, 38 ECAB 838 (1987).

⁶ *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁷ *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁸ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁹ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁰ *Kim Nguyen*, 53 ECAB 127 (2001). *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹¹ *Roger Williams*, 52 ECAB 468 (2001).

regular or specially assigned duties, as under *Cutler*.¹² Appellant has also alleged harassment on the part of his supervisor.

Appellant alleged that he was overworked as he had to work upwards of 50 hours a week due to managing three facilities with a staff shortage. He further alleged that he had to work in the parcel distribution unit for four and one-half years and on a daily basis from September to November 2016. The Board has held that overwork is a compensable factor of employment if appellant submits sufficient evidence to substantiate this allegation.¹³ However, appellant did not submit evidence, such as a witness statement or personnel documents, to corroborate his allegation that he was overworked. Thus, the Board finds that appellant failed to establish overwork as a compensable factor of employment.

Appellant's allegations regarding disagreement or dislike of a supervisory or managerial action,¹⁴ the filing of a grievance,¹⁵ and lack of adequate training¹⁶ are administrative matters and not compensable absent a showing of error or abuse on the part of the employing establishment. While he filed an EEO claim against the employing establishment regarding his supervisor's actions, there was no final EEO decision finding that the employing establishment committed error or abuse. Moreover, appellant provided no evidence corroborating his allegations that L.B., his supervisor, committed error or abuse in asking him to revise his report and to reduce overtime work and that the employing establishment did not provide him with adequate training on the use of tools required to perform his job duties. For the stated reasons, the Board finds that appellant has failed to establish a compensable employment factor with regard to these administrative matters.

Appellant alleged that he was harassed by L.B. He claimed that she constantly complained and demanded that his unit perform less overtime work even though he had a staff shortage. Appellant asserted that L.B. sent him harassing e-mails with unrealistic goals. Harassment and discrimination by supervisors and coworkers, if established as occurring and arising from the performance of work duties, can constitute a compensable work factor.¹⁷ A claimant however must substantiate allegations of harassment and discrimination with probative and reliable evidence.¹⁸ Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.¹⁹ Appellant did not submit a witness statement to corroborate his allegation that L.B. acted inappropriately. Since he did not submit any evidence

¹² See *supra* note 7.

¹³ *Bobbie D. Daly*, 53 ECAB 691 (2002).

¹⁴ See *Marguerite J. Toland*, 52 ECAB 294 (2001).

¹⁵ *Michael A. Salvato*, 53 ECAB 666, 668 (2002).

¹⁶ *L.R.*, Docket No. 14-1990 (issued January 27, 2015).

¹⁷ *T.G.*, 58 ECAB 189 (2006); *Doretha M. Belnavis*, 57 ECAB 311 (2006).

¹⁸ *C.W.*, 58 ECAB 137 (2006); *Robert Breeden*, 57 ECAB 622 (2006).

¹⁹ *Kim Nguyen*, 53 ECAB 127 (2001).

to substantiate his allegations of harassment, the Board finds that he failed to establish harassment as a compensable factor of employment.

As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record.²⁰

On appeal counsel contends that appellant sustained an emotional condition due to being overworked and his efforts to meet the requirements of his job. He asserts that OWCP erred by failing to fully develop the evidence in this case. Counsel further asserts that, pursuant to *J.E.*,²¹ it is a direct contradiction for OWCP to reject appellant's claim which has not been controverted by the employing establishment. He noted that it did not contact the employing establishment or appellant's physician. The Board notes that *J.E.* may be distinguished as that case involved a traumatic injury claim for which he provided a statement from a witness present at the time of the claimed injury who corroborated appellant's account of the incident at issue. In the present case, an occupational disease claim, appellant has provided no such corroborating evidence regarding any particular incidents alleged to have occurred. The Board finds that OWCP properly evaluated the evidence of record in meeting its obligation to adjudicate his claim. Further, for the reasons stated above, the Board finds that appellant failed to establish a compensable work factor. Consequently, he has failed to meet his burden of proof to establish an emotional condition in the performance of duty.

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 failed to meet his burden of proof to establish an emotional condition in the performance of duty.

²⁰ A.K., 58 ECAB 119 (2006).

²¹ *Supra* note 4.

ORDER

IT IS HEREBY ORDERED THAT the May 25, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 7, 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