United States Department of Labor
Employees' Compensation Appeals Board

I.H., Appellant	)	
and	)	**Docket No. 17-0505**
	)	**Issued: May 1, 2018**
U.S. POSTAL SERVICE, POST OFFICE, St. Charles, MO, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 5, 2017 appellant filed a timely appeal from a November 1, 2016 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.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish an injury in the performance of duty, as alleged.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant timely requested oral argument before the Board. By decision dated May 9, 2017, the Board, after exercising its discretion, denied oral argument, finding that his arguments on appeal could adequately be addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 17-0505 (issued May 9, 2017).

FACTUAL HISTORY

On April 13, 2016 appellant, then a 59-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed "heart disease," which allegedly arose on or about October 18, 2015 while in the performance of duty. He indicated that he suffered a heart attack due to stress. Appellant further stated that the employing establishment was trying to fire him for no apparent reason.

In an attached narrative statement, appellant reported having experienced shortness of breath and problems delivering his route ever since August 2015 when, for "no apparent reason," the employing establishment informed him that he was being removed from service. He further indicated that he could not function or concentrate as a direct result of the stress and pressure of losing his livelihood. Appellant related that the stressful conditions persisted from the day he was informed of his removal from employment for actions perceived to have occurred more than 30 years prior. He asserted that, with each new development regarding his removal, his condition worsened and his breathing and chest pain increased at an abnormal rate. Appellant explained that the Saturday before his heart attack, he could barely finish his route because his shop steward had told him that the situation had worsened. He noted that he had no prior issues with his heart.

In a May 6, 2016 letter, P.J., an employing establishment representative, controverted appellant's claim. She noted that, in August 2015, he received a letter of proposed removal for falsification of employment application documents. Following arbitration, the proposed removal was reduced to a 14-day suspension, which appellant accepted. However, he never returned to work. P.J. further noted that he was diagnosed with coronary artery disease, a condition which was more attributable to diet than stress.

In a February 10, 2016 letter, Dr. Phillip Apprill, a Board-certified internist specializing in cardiovascular disease, related that appellant was under his cardiac care and had undergone multiple cardiac procedures, including coronary artery bypass surgery on October 22, 2015. He advised that appellant could return to work with restrictions, effective April 7, 2016.

Dr. Apprill continued to treat appellant. In an April 1, 2016 after-visit summary report, he noted diagnoses of coronary artery disease, essential hypertension - benign, mixed hyperlipidemia, status post coronary artery bypass graft, and non-ST elevated myocardial infarction.

By development letter dated August 29, 2016, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he respond to an attached factual questionnaire and submit additional medical evidence to establish a diagnosed condition causally related to factors of his federal employment. OWCP afforded appellant 30 days to submit the requested information. It issued a similar letter dated August 29, 2016 to the employing establishment inquiring about any stress-related accommodations providing him. OWCP also requested additional information regarding the proposed removal action and the results of any investigations conducted by the employing establishment.

The employing establishment submitted a print-out of an e-mail dated September 2, 2016 by L.H., of the employing establishment. L.H. explained that appellant falsified his employment application by answering "NO" to the questions of whether he had ever been fired and/or whether

he quit knowing that he would be fired. She also noted that he submitted a 1767 (PS Form 1767 – Report of Hazard, Unsafe Condition or Practice) and in the narrative stated that he was fired, and consequently the Office of Inspector General (OIG) was notified. L.H. also alluded to the existence of an OIG report, inquiring whether the OIG's investigation was needed.

OWCP also received an e-mail dated September 10, 2016 from J.J., a customer service supervisor. J.J. indicated that she was attaching physician notes listing appellant's work limitations. She related that he had not requested limited duty or attempted to return to work. J.J. reported that appellant was absent without leave as of September 8, 2016.

OWCP received several disability and work status notes from Dr. Ziad A. Dalu, a Board-certified family practitioner, dated April 29 to August 4, 2016. Dr. Dalu indicated that appellant was examined in his office and could return to modified duty with restrictions.[3] In an August 4, 2016 note, he reported that appellant could return to full duty on September 7, 2016.

In a September 26, 2016 letter, Dr. Dalu indicated that he had reviewed OWCP's August 29, 2016 development letter and hoped that this letter would answer all questions regarding appellant's current disabilities and overall health. He reviewed appellant's medical history, which included a service-connected disability incurred during appellant's military service, hospitalization for acute respiratory disease, a chronic back disorder sustained in 1984, incessant knee pain, arthritis, and high cholesterol for which he was taking medication. Dr. Dalu reported that it was his determination, along with Dr. Apprill, appellant's cardiologist, that appellant was physically unable to continue his current occupation as a letter carrier with the employing establishment. He related that appellant could return to work, but in a different capacity that was in consideration of the capabilities and restrictions allowed by appellant's health issues. Dr. Dalu opined: "the stress and pressures associated with the fast-paced, high-energy, physically, and mentally challenging profession of a mail carrier would seriously impact the heart condition and total well-being of [appellant], and could result in debilitating, life-altering, or fatal cardio episode." He recommended that appellant be placed in a position for which he was capable, with consideration that prolonged exposure to extreme heat or cold, while combined with physical exertion, will cause appellant's heart rate and blood pressure to increase to dangerous levels and may induce a heart problem. Dr. Dalu further noted that appellant could neither stand nor walk for more than an hour without a 15-minute break, could not lift more than 40 pounds, carry any weight over 10 pounds for a distance of more than 10 feet, carry more than 10 pounds up any elevation of stairs, and could not sit for more than two hours without a 15-minute break.

On October 3, 2016 OWCP received appellant's response to its development questionnaire. In a September 26, 2016 statement, appellant noted that he had submitted all the information that he had regarding his claim. He alleged that it was impossible for anyone to determine the effect that the toll of the past two years has had on his overall mental, physical, and spiritual health. Appellant asserted that no certified professional of any caliber could truly understand the thoughts of homicide and suicide that he felt as a result of the probe and investigation of incidents of his life that occurred over 30 years ago. He indicated that, although his cardiac condition was the result of a medical condition, there was no way to tell how it was

[3] Dr. Dalu examined appellant in his office on April 29, June 20, July8 and 18, and August 4, 2016. He continued to postpone the date at which appellant could return to full duty.

aggravated and intensified by stress factors, threats, and harassment generated by his employment. Appellant related that the threat and possible loss of his employment, which meant the inability to provide for his family, was more than he could bear. He explained that, since January 2016, the threat of removal from employment was gone, but he had been in leave without pay status since his surgery.

Appellant also provided a September 14, 2015 letter that he sent to the employing establishment in response to the August 24, 2015 proposed removal letter. He alleged that he did not falsify his employment documents because a simple record check would disclose his conviction and subsequent incarceration. Appellant expressed his confusion that the employing establishment was investigating matters that occurred 30 years ago, and his disappointment that the employing establishment was actively pursuing a way to terminate him from employment. He also gave examples of how he was a model citizen and requested that the employing establishment consider his employment record for the past 10 years.

By decision dated November 1, 2016, OWCP denied appellant's occupational disease claim. It found that the evidence of record did not support that the injury and/or events occurred in the performance of duty. OWCP explained that an administrative action, such as a proposal to terminate, was not considered in the performance of duty, absent evidence of error or abuse on the part of the employing establishment. It found that appellant had not submitted any evidence of error or abuse. OWCP further found that he had not submitted medical evidence establishing a diagnosed condition causally related to a compensable employment factor.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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 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 specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[5] In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[6]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.[7] There are situations where an injury or illness

[4] *Supra* note 1.

[5] *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

[7] *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation.[8] Where the injury or illness results from an employee's reaction to his or her regular or specially assigned duties or to a requirement imposed by the employing establishment or by the nature of the work, the injury or illness comes within the coverage of FECA.[9] On the other hand, when an injury or illness results from an employee's feelings of job insecurity *per se*, fear of a reduction-in-force, or his or her frustration from not being permitted to work in a particular environment or hold a particular position, unhappiness with doing work, or frustration in not being given the work desired, such injury or illness falls outside FECA's coverage because they are found not to have arisen out of employment.[10]

An employee's emotional reaction to administrative or personnel matters generally falls outside FECA's scope.[11] Although related to the employment, administrative and personnel matters are functions of the employing establishment rather than the regularly or specially assigned work duties of the employee.[12] However, the Board has held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.[13]

Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his or her allegations with probative and reliable evidence.[14] 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.[15]

ANALYSIS

Appellant alleged that work-related stress either caused or contributed to his diagnosed heart disease. He specifically implicated the employing establishment's efforts to remove him from service, which began in August 2015. The employing establishment acknowledged that it proposed to remove appellant based on alleged falsification of employment application documents. It also noted that the proposed disciplinary action was later reduced to a 14-day suspension, which he reportedly accepted. The Board must initially review whether the reported disciplinary action

[8] *A.K.*, 58 ECAB 119 (2006); *David Apgar*, 57 ECAB 137 (2005).

[9] *Lillian Cutler*, 28 ECAB 125 (1976); *see also Trudy A. Scott*, 52 ECAB 309 (2001).

[10] *William E. Seare*, 47 ECAB 663 (1996).

[11] *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

[12] *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005).

[13] *William H. Fortner*, 49 ECAB 324 (1998).

[14] *See Kathleen D. Walker*, 42 ECAB 603 (1991).

[15] *See Norma L. Blank*, 43 ECAB 384 (1992).

is a covered employment factor under FECA.[16] The Board notes that appellant's allegations do not pertain to his regular or specifically assigned duties under *Cutler*.[17] Rather, appellant has alleged stress from administrative/personnel matters on the part of the employing establishment.

As noted, appellant alleged that the employing establishment tried to fire him for "no apparent reason." Administrative and personnel matters, although related to the employee's employment, are functions of the employing establishment rather than the regularly or specially assigned duties of the employee and, as such, are generally not covered under FECA.[18] However, the Board has held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative/personnel matter, coverage will be afforded.[19] In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.[20]

The Board finds that appellant has not provided any evidence that the employing establishment committed any error or abuse in the administrative function of proposing to remove him from employment. Appellant alleged that the employing establishment tried to fire him for "no apparent reason." In a May 6, 2016 letter, however, a human resource specialist for the employing establishment, explained that his removal from employment was due to the fact that he falsified answers on his application for employment. She submitted a print-out of a September 2, 2016 e-mail which indicated that appellant provided false answers to his employment application by answering "No" that he was never fired and "No" that he had never quit knowing he would be fired. The human resource specialist noted that an OIG report was available. These documents demonstrate that the employing establishment's actions were in response to a legitimate concern over appellant's employment application and do not show any wrongdoing by the employing establishment. Although appellant contended that he did not falsify his employment documents, he did not submit any corroborating evidence to show that the employing establishment acted wrongly. The Board finds, therefore, that he has not shown error or abuse with respect to the administrative action to propose to terminate him from employment.[21]

For this reason, appellant has not established a compensable employment factor under FECA and, therefore, has not met his burden of proof to establish that he sustained an injury in the performance of duty.[22]

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

[17] *See Lillian Cutler*, *supra* note 9.

[18] *See supra* notes 14 and 15.

[19] *Supra* note 13.

[20] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[21] *See N.D.*, Docket No. 16-0823 (issued August 18, 2017).

[22] 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).

On appeal appellant alleges that every aspect of his life, including his children, friends, neighbors, credit history, and leisure activities, from 1984 to the present was "placed under a microscope" because of a complaint that he filed against a disgruntled customer (PS Form 1767). He further asserts that it was "almost impossible" to prove that his medical condition was causally related to a compensable employment factor. As noted above, a claimant seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including that the injury was sustained while in the performance of duty.[23] Appellant did not submit sufficient evidence to establish that his alleged injury occurred 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 did not meet his burden of proof to establish an injury in the performance of duty, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the November 1, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 1, 2018
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

[23] *Supra* note 5.