United States Department of Labor
Employees' Compensation Appeals Board

G.R., Appellant	)	
and	)	**Docket No. 18-0893**
	)	**Issued: November 21, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Amherst, NY, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 16, 2018 appellant filed a timely appeal from a September 19, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] 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.

[1] Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from September 19, 2017, the date of OWCP's last merit decision, was March 19, 2018. Since using March 20, 2018, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights for this merit decision, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is March 16, 2018, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

On February 3, 2017 appellant, then a 53-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained "psychic trauma" on January 28, 2017 while at work. In an attached statement, he related that at about 9:30 a.m. on January 28, 2017, C.K., a supervisor, charged into his work area as he was sorting and loading parcels into his assigned postal truck. Appellant maintained that she was irate, infuriated, and out of control, telling him that she was writing him up for not following orders. He indicated that her tone and behavior were very exaggerated and that she started to advance further into his work area in an extremely threatening manner. Appellant reported that he was trapped between two eight-foot tall vans and a concrete wall so that there was no way for him to escape the attack, but that he took a defensive position and thought through his options to fend off the assault. He indicated that she stopped the assault when she realized that a union steward, R.G., was nearby, so she turned away from him and stormed toward R.G. Appellant related that since that morning the image of being trapped continually played in his mind leaving him confused and unable to concentrate or to sleep.

The employing establishment indicated on the claim form that it did not agree with appellant's statements, noted that appellant and the supervisor provided conflicting statements and that discussion with the union steward R.G. did not support appellant's perception of events.

In a February 1, 2017 note, Dr. Joseph C. DiPirro, a Board-certified internist, requested that appellant be excused from work from February 1, 2017 for an indefinite amount of time due to illness/injury.

In correspondence dated February 9, 2017, the employing establishment controverted the claim.

Supervisor C.K. provided an undated statement in which she described the events of January 28, 2017. She related that at about 8:45 a.m. appellant came to her desk requesting 30 minutes of aid for his route. C.K. informed him that it was not the proper time to request aid, but agreed for him to give her the last 30 minutes of his route. She noted that about 15 minutes later appellant came in and pushed a hamper of mail to his case, and when she checked it, he had added more than the agreed upon 30 minutes. C.K. indicated that she then pushed the hamper to the garage where he was loading and went to get R.G. to come with her to speak to him. She related that R.G. questioned appellant who told her that the hamper was not the last 30 minutes of his delivery route, and C.K. informed them both that she would be conducting a post-delivery inspection (PDI) the following week for appellant's failure to follow instructions. C.K. then instructed appellant to give her the correct amount of mail, instructed R.G. to leave for her route, and then returned to her desk. Appellant brought her the required mail. C.K. indicated that she had given appellant a previous PDI which led to a letter of warning due to unauthorized overtime.

In a February 8, 2017 statement, R.G. indicated that as she was in the postal garage at approximately 9:00 a.m., C.K. came to get her to go and talk with appellant because she was going to charge him for expanding his office time. She indicated that there was a discussion about which half hour of mail appellant was to leave, and when she looked at appellant, he was emotionally upset. R.G. related that C.K. walked her half-way back to her truck.

In an undated statement, L.A., an employing establishment manager, indicated that appellant reported for work on January 31, 2017 and then left abruptly without giving a reason. Union representatives tried to contact appellant, but he did not respond. He called in the next day reporting an employment injury, and on Friday, February 3, 2017, the union president brought in appellant's Form CA-1 and an injury statement with a request for sick leave. L.A. noted that appellant worked his full day on January 28, 2017, the date of the alleged incident, and the next day, and during that time he did not mention or report an incident or accident.

By development letter dated February 16, 2017, OWCP informed appellant that the factual and medical evidence submitted was insufficient to support his claim and advised him of the evidence needed. It also provided appellant a questionnaire to complete. In a second February 16, 2017 letter, OWCP asked the employing establishment to respond to appellant's claim. It afforded 30 days for submission of the additional evidence.

In an emergency department report dated February 7, 2017, Dr. Michael A. Manka, Jr., Board-certified in emergency medicine, noted appellant's complaint that he kept thinking of an incident at work when the supervisor "acted very aggressive," which made him feel "very threatened" and unable to sleep or concentrate. He described physical examination findings and diagnosed anxious mood and stress at work. Dr. Manka discharged appellant to see a psychiatrist.

Dr. Victoria L. Brooks, a Board-certified psychiatrist, provided an assessment on February 7, 2017. She noted that appellant brought a statement describing an incident that occurred at work when he felt threatened by a supervisor's behavior, became very distressed and afraid, and since the incident had been having nightmares and would ruminate about it. Following a mental status examination, Dr. Brooks diagnosed anxiety disorder (acute stress disorder) with secondary diagnoses to rule-out cluster C personality traits, rule out adjustment disorder with anxiety, and rule out post-traumatic stress disorder. She recommended outpatient mental health treatment.

In a February 17, 2017 statement, appellant indicated that he had reviewed C.K.'s statement. He maintained that when she arrived at his work area with the hamper, she committed the assault resulting in his injury because she was irate, infuriated, out of control, and started to advance further into his work area in an extremely violent manner, threatening physical violence which caused him to be trapped with no way to escape the attack. Appellant also described an incident on October 27, 2016 when C.K. yelled at him, and that on January 25, 2017 he witnessed her yell at coworkers.

In a February 23, 2017 statement, appellant repeated that on January 28, 2017 he was trapped in a situation where he was completely helpless and had no escape because he could not walk or run away from this threat of physical harm. He indicated that his mind remained trapped in the garage for over three weeks following the incident, that he continued to have no clear

recollection of anything that happened during the next three days, and that he had limited recollection for the next several days. Appellant described ensuing medical treatment, noting that he was diagnosed with acute stress disorder triggered by the January 28, 2017 incident, and that his condition had improved. He also forwarded a grievance settlement dated November 30, 2016, finding that there would be mutual respect between appellant and C.K. It did not mention a specific incident.

Medical evidence submitted included a February 15, 2017 report in which Dr. Brooks noted appellant's complaints of visual hallucinations/flashbacks of a work incident he perceived as being traumatic. In a February 16, 2017 report, Dr. John M. Improta, a Board-certified psychiatrist, noted the history provided by appellant regarding the January 28, 2017 incident. He indicated that throughout the interview appellant was focused on getting a diagnosis and a cause so that he could move forward with his workers' compensation claim and was now reporting that since this event he had been having attention problems because he would get intrusive images of this workplace incident and this resulted in having trouble functioning in his daily life. Dr. Improta noted that appellant specifically requested that he give him a written statement that his diagnosis, whatever it is, was attributable to the incident he experienced at work. He declined to provide such a report. Dr. Improta performed a mental status examination and diagnosed anxiety disorder (other), indicating that it should read as an acute stress disorder. He concluded that appellant had impairment in occupational functioning and in social settings and recommended outpatient mental health treatment.

The employing establishment forwarded an undated statement from L.A. in which she disagreed with appellant's statement regarding the January 28, 2017 incident. L.A. related a past incident where appellant filed a grievance regarding a letter of warning he was issued on November 19, 2016 for unauthorized overtime. She indicated that appellant and his union representative met with C.K. to discuss the removal of this discipline and that appellant later informed C.K. that he did not like her aggressive tone. L.A. noted that they agreed to show mutual respect going forward, but that the original grievance regarding the letter of warning was not resolved.

In a March 16, 2017 report, Erin S. Cornelius, Ph.D., a licensed psychologist, advised that she was currently treating appellant for acute stress disorder. She opined that it was more probable than not that appellant developed symptoms of acute stress disorder as a result of the January 28, 2017 employment incident.

By decision dated March 27, 2017, OWCP denied appellant's traumatic injury claim. It found that fact of injury had not been established because the statements submitted did not support that C.K. charged at him or was irate, infuriated, loud, or threatening. As such, appellant did not establish a compensable factor of employment.

In an appeal form postmarked April 25, 2017, appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. In a statement dated April 21, 2017, he claimed that C.K. did not follow proper procedure when she came into the garage on January 28, 2017 and acted aggressively toward him. Appellant maintained that his injury statement dated February 3, 2017 provided an accurate and true description of how he sustained psychic trauma on January 28, 2017.

In an August 17, 2017 statement, L.A. asserted that C.K. did not violate procedures on January 28, 2017, noting that it was the supervisor's responsibility to instruct the employee regarding the performance of his duties, and that C.K. had R.G, the union representative, accompany her to speak with appellant about his failure to follow instructions.

In a September 5, 2017 response to L.A.'s statement, appellant maintained that the employing establishment was a hostile work environment where C.K. mistreated many employees. He attached a Step B grievance decision dated May 22, 2017 on the issue of whether management violated any agreements by harassing appellant on January 28, 2017. The decision indicated that the dispute resolution team resolved the issue, finding that a minimal effort by both parties to communicate better would avoid this type of violation and that, in the future, they should treat each other with dignity and respect. The union's request for relief regarding management's attempt to intimidate appellant to perform work faster than he was capable and because he was threatened by the supervisor's anger on January 28, 2016 was denied. Seven witness statements by coworkers were attached to the grievance decision. None of these indicated that the January 28, 2017 incident had been witnessed.

By decision dated September 19, 2017, an OWCP hearing representative affirmed the March 27, 2017 decision. She found no compensable work factors, noting that S.G. confirmed C.K.'s statement, but indicated that appellant was upset. The hearing representative also referenced the May 22, 2017 grievance decision which resolved appellant's complaint and denied the union's requested remedy. She found that appellant submitted no evidence to establish that the January 28, 2017 incident was not handled properly. In conclusion, the hearing representative noted that appellant had made reference to additional work factors, and if he felt "he sustained an injury or condition due to work factors occurring on more than one work shift, he should file the appropriate [occupational disease] claim form…."

LEGAL PRECEDENT

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his stress-related condition.[3] If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.[4] When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.[5]

[3] *Leslie C. Moore*, 52 ECAB 132 (2000).

[4] *Dennis J. Balogh*, 52 ECAB 232 (2001).

[5] *Id.*

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,[6] the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under FECA.[7] When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.[8] Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[9] Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.[10] Personal perceptions alone are insufficient to establish an employment-related emotional condition.[11]

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.[12] 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.[13]

For harassment or discrimination to give rise to a compensable disability, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations that the harassment occurred with probative and reliable evidence.[14] With regard to emotional claims arising under FECA, the term "harassment" as applied by the Board is not the equivalent of "harassment" as defined or implemented by other agencies, such as the Equal Employment Opportunity Commission (EEOC), which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers' compensation under FECA, the term "harassment" is synonymous, as generally defined, with a

[6] 28 ECAB 125 (1976).

[7] *See Robert W. Johns*, 51 ECAB 137 (1999).

[8] *Supra* note 6.

[9] *J.F.*, 59 ECAB 331 (2008).

[10] *M.D.*, 59 ECAB 211 (2007).

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

[12] *Charles D. Edwards*, 55 ECAB 258 (2004).

[13] *Kim Nguyen*, 53 ECAB 127 (2001).

[14] *James E. Norris*, 52 ECAB 93 (2000).

persistent disturbance, torment or persecution, *i.e.*, mistreatment by co-employees or coworkers. Mere perceptions and feelings of harassment will not support an award of compensation.[15]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an emotional condition in the performance of duty.

Appellant alleged that he developed an emotional condition as a result of an incident at work on January 28, 2017 involving his supervisor. OWCP denied his emotional condition claim finding that he had not established any compensable employment factors. The Board must initially review whether the alleged incidents and conditions of employment as set forth by appellant are compensable employment factors under FECA.

The Board notes that appellant's allegations do not pertain to his regular or specially assigned duties under *Lillian Cutler*.[16] Rather, he alleged that on January 28, 2017 C.K., a supervisor, charged into his work area as he was sorting and loading parcels into his assigned postal truck. Appellant maintained that she was irate, infuriated, and out of control, telling him that she was writing him up for not following orders. He indicated that her tone and behavior were very exaggerated and that she started to advance further into his work area in an extremely threatening manner. Appellant reported that he was trapped between two eight-foot tall vans and a concrete wall so there was no way for him to escape the attack. He indicated that she stopped the assault when she realized that a union steward, R.G. was nearby, so she turned away from him and stormed toward R.G. Appellant maintained that this caused his diagnosed acute stress disorder.

As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of FECA.[17] The Board has long held that disputes regarding assignment of work and discipline are administrative functions of the employer and, absent error or abuse, are not compensable. Although assignment of work and disciplinary actions are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[18]

The Board finds that the evidence of record establishes that the claimed incident of January 28, 2017 did not occur as alleged. C.K. submitted a statement contradicting appellant's recitation of events. She indicated that at about 8:45 a.m. he asked for aid on his route. C.K. agreed to let him give her the last 30 minutes of his route, but that when she checked the hamper of mail he had returned to his case, he had added more time than the agreed upon 30 minutes. She related that she then pushed the hamper to the garage where he was loading his truck and got R.G. to come with her to speak to him. C.K. related that R.G. questioned appellant who admitted that

[15] *Beverly R. Jones*, 55 ECAB 411 (2004).

[16] *Supra* note 6.

[17] *Carolyn S. Philpott*, 51 ECAB 175 (1999).

[18] *Peter D. Butt*, 56 ECAB 117 (2004).

the hamper was not the last 30 minutes of his route. C.K. informed them both that she would be conducting a PDI the following week for appellant's failure to follow instructions. She then instructed appellant to give her the correct amount of mail, instructed R.G. to leave for her route, and returned to her desk. Appellant brought C.K. the required mail. C.K. indicated that she had given appellant a previous PDI which led to a letter of warning for unauthorized overtime.

The Board further finds that R.G. also did not agree with appellant's recitation of the January 28, 2017 incident. In a February 8, 2017 statement, R.G. indicated that C.K. came to get her to go and talk with appellant because she was going to charge him for expanding his office time. She indicated that there was a discussion about which half hour of mail appellant was to leave, and noted that appellant appeared to be emotionally upset. R.G. did not indicate that C.K. acted inappropriately at any time during this discussion.

Mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent evidence of error or abuse.[19] The above statements contradict appellant's assertion regarding the events of January 28, 2017. Moreover, the record contains a Step B grievance decision dated May 22, 2017 on the issue of whether management violated any agreements by harassing appellant on January 28, 2016. The decision indicated that the dispute resolution team resolved the issue finding that with minimal effort both parties could communicate better and the parties should treat each other with dignity and respect. The union's request for relief regarding appellant's assertions regarding the January 28, 2017 incident was denied.

The Board has recognized that a verbal threat when sufficiently detailed by the claimant and supported by evidence may constitute compensable employment factors.[20] Appellant has not established with corroborating evidence that C.K. threatened him or acted aggressively on January 28, 2017. The factual aspects of a claimed threat must be established in order to show a compensable employment factor.[21] Although appellant submitted statements from coworkers, these statements are of limited probative value as they do not address the events of January 28, 2017. He, thus, submitted no supportive evidence to establish that the discussion on January 28, 2017 constituted a verbal assault.[22]

Regarding appellant's perception that the January 28, 2017 employment incident constituted harassment by C.K., generally, complaints about the manner in which a supervisor performs his or her duties or the manner in which a supervisor exercises his or her discretion fall, as a rule, outside the scope of coverage provided by FECA. This principle recognizes that a supervisor or manager in general must be allowed to perform his or her duties and employees will, at times, dislike the actions taken.[23] Here again, the record contains no evidence that C.K.'s treatment of appellant on January 28, 2017 constituted error or abuse in discharging her

[19] *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

[20] *T.G.*, 58 ECAB 189 (2006).

[21] *M.J.*, Docket No. 16-0695 (issued September 16, 2016).

[22] *Supra* note 20.

[23] *See Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

management duties.[24] As supported by R.G.'s statement, C.K. was discussing whether appellant had returned the agreed upon mail that day.

As noted, perceptions of harassment or discrimination are not compensable under FECA,[25] and unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.[26] As discussed above, the grievance regarding the January 28, 2017 incident was resolved, and the union's assertion that management was attempting to intimidate appellant to perform work faster than he was capable and that he was threatened by the supervisor's anger was denied. Appellant submitted no evidence to show a persistent disturbance, torment or persecution, *i.e.*, mistreatment by employing establishment management regarding the January 28, 2017 incident.[27] He, therefore, did not establish a factual basis for his claim of harassment by probative and reliable evidence.[28]

Thus, 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 emotional or stress-related condition in the performance of duty.[29] As he has not established a compensable employment factor, the Board need not consider the medical evidence of record.[30]

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

[24] *Id.*

[25] *James E. Norris, supra* note 14.

[26] *Id.*

[27] *Beverly R. Jones, supra* note 15.

[28] *See Robert Breeden*, 57 ECAB 622 (2006).

[29] *See G.M.*, Docket No. 17-1469 (issued April 2, 2018).

[30] *Katherine A. Berg*, 54 ECAB 262 (2002).

ORDER

IT IS HEREBY ORDERED THAT the September 19, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 21, 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