

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

_____)	
T.S., Appellant)	
)	
and)	Docket No. 19-0164
)	Issued: November 13, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Appleton, WI, 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 October 31, 2018 appellant filed a timely appeal from a May 31, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

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

FACTUAL HISTORY

On September 10, 2014 appellant, then a 47-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that he sustained emotional conditions, including post-traumatic stress disorder, anxiety disorder, and depressive disorder, due to various incidents and conditions at his

¹ 5 U.S.C. § 8101 *et seq.*

workplace.² He maintained that his condition was caused by an incident that was not handled properly by management. Appellant stopped work on June 14, 2014.

In a development letter dated September 23, 2014, OWCP requested that appellant submit additional factual and medical evidence in support of his emotional condition claim. It afforded him 30 days to submit the requested evidence.

In response, appellant submitted statements prepared in October 2014 in which he alleged that he sustained stress because a coworker, L.C., falsely accused him on June 11, 2010 of having placed poison or some other harmful substance in her drink. He claimed that he was performing his regular work duties when L.C. made the false accusation. Appellant maintained that she attempted to have him arrested and later confessed that she had made a false accusation. He asserted that management did not properly investigate the June 11, 2010 incident and failed to properly discipline L.C., resulting in L.C. returning to the same work unit where he worked in 2013.³

Appellant submitted a statement he prepared on July 7, 2010, as well as July 7, 2010 statements from coworkers, which contained similar content. The statements indicated that there was no support for L.C.'s assertion that a harmful substance had been placed in her drink at work. Appellant also submitted medical evidence in support of his claim, including reports of Dr. Yazmin Fuentes, a Board-certified psychiatrist.

In a September 23, 2014 letter, an employing establishment official challenged appellant's emotional condition claim and argued that there was "[n]o fact of injury or causal relationship established medically."

In a development letter dated February 4, 2015, OWCP requested that the employing establishment respond to appellant's assertions. It afforded the employing establishment 30 days to reply. In February 27, 2015 statements, V.G. and D.B., superiors of appellant, asserted that the June 11, 2010 incident was adequately investigated, that all disciplinary actions relating to it were appropriately carried out, and that appellant's transfer requests were properly handled. Both V.G. and D.B. acknowledged that L.C. had claimed that someone tampered with her drink at work. V.G. indicated that a union official had advised that L.C. accused appellant of placing something in her drink.

By decision dated March 19, 2015, OWCP denied appellant's emotional condition claim. It determined that he had not submitted sufficient evidence to establish a compensable employment factor. OWCP found that appellant had not provided sufficient details and corroborating evidence regarding his allegations.

On April 7, 2015 appellant requested a review of the written record with a representative of OWCP's Branch of Hearings and Review. He provided a statement, which was similar to those previously considered, and provided additional medical evidence.

² Appellant also claimed an elevated cholesterol condition due to stress from work.

³ Appellant asserted that management mishandled his requests to be transferred away from the work unit.

By decision dated September 25, 2015, OWCP's hearing representative affirmed the March 19, 2015 decision. She determined that appellant had not established a compensable employment factor.

On September 20, 2016 appellant, through his then-counsel, requested reconsideration of the September 25, 2015 decision. He submitted additional medical reports and statements from family members, which described the June 11, 2010 incident and the impact it had on him as well as noting management's response. By decision dated December 6, 2016, OWCP denied modification of the September 25, 2015 decision.

On November 27, 2017 appellant, through his then-counsel, again requested reconsideration of the December 6, 2016 decision. In a November 21, 2017 brief, counsel argued that the June 11, 2010 incident, and the employing establishment's mishandling of it, constituted compensable employment factors. Appellant submitted an August 29, 2016 report in which Dr. Natalie A. Krah, a Board-certified psychiatrist, discussed his emotional condition.

By decision dated May 31, 2018, OWCP denied modification of the December 6, 2016 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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, that an injury was sustained while in the performance of duty, as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

To establish an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or contributed to his or her claimed emotional condition; (2) medical evidence establishing that he or she has a diagnosed emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.⁷

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

⁴ *Supra* note 1.

⁵ *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ 20 C.F.R. § 10.115(e); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *see T.O.*, Docket No. 18-1012 (issued October 29, 2018); *see Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *See S.K.*, Docket No. 18-1648 (issued March 14, 2019); *M.C.*, Docket No. 14-1456 (issued December 24, 2014); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

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.⁸ 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.⁹

A claimant has the burden of establishing 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 employment factors.¹⁰ This burden includes the submission of a detailed description of the employment factors or conditions which he or she believes caused or adversely affected a condition for which compensation is claimed, and a rationalized medical opinion relating the claimed condition to compensable employment factors.¹¹

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship, and which working conditions are not deemed factors of employment and may not be considered.¹² If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, it must base its decision on an analysis of the medical evidence.¹³

ANALYSIS

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

Appellant alleged that he sustained an emotional condition due to various incidents and conditions at work. OWCP denied his claim finding that he had not established compensable employment factors. Therefore, the Board must initially review whether these alleged incidents and conditions are covered employment factors under the terms of FECA. The Board notes that appellant claimed that, while he was performing his regular duties, L.C., a coworker, falsely accused him of placing a hazardous substance in her drink on June 11, 2010 and he asserted that, therefore, he had established a compensable employment factor under the principles of *Lillian*

⁸ *Lillian Cutler*, 28 ECAB 125 (1976).

⁹ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

¹⁰ *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹¹ *P.B.*, Docket No. 17-1912 (issued December 28, 2018); *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹² *See O.G.*, Docket No. 18-0359 (issued August 7, 2019); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹³ *Id.*

Cutler.¹⁴ Appellant also claimed that management committed error and abuse with respect to various administrative/personnel matters.

Appellant has made a number of statements regarding the June 11, 2010 incident and asserted that it is a compensable employment factor because the incident occurred while he was performing his regular duties at work. The employing establishment has acknowledged that L.C. had in fact made a false accusation on June 11, 2010, but the case record remains vague with respect to the precise nature of the accusation and the circumstances under which it was made. The employing establishment indicated that the June 11 2010 incident was investigated, but it did not provide a detailed discussion of the investigation, which would clarify the nature of the incident. Given the limited evidence from the employing establishment in the case record regarding the nature of the June 11, 2010 incident, the Board is not currently able to make a reasoned determination regarding whether the incident is sufficiently related to appellant's regular or specially assigned duties to constitute a compensable employment factor.

With respect to administrative or personnel matters, appellant claimed that management mishandled the investigation of the June 11, 2010 incident and had not properly disciplined L.C. with respect to the false accusation made against him on June 11, 2010. He also claimed that management improperly allowed L.C. to return to work in his work unit. The Board has held that 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.¹⁵ However, the Board has also 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.¹⁶ 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.¹⁷

The Board finds that appellant has not submitted sufficient evidence to establish the above-noted claims about administrative/personnel matters. There is no indication that he filed a grievance with the employing establishment regarding these matters or otherwise obtained a final determination from an administrative body showing that the employing establishment committed error or abuse. Although appellant expressed dissatisfaction with the actions of superiors, the Board has held that mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor.¹⁸ Appellant did not substantiate error or abuse committed by the employing establishment in the above-noted matters and, therefore, he has not established a compensable employment factor with respect to administrative or personnel matters.

¹⁴ See *Lillian Cutler*, *supra* note 8.

¹⁵ *T.L.*, Docket No. 18-0100 (issued June 20, 2019); *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹⁶ *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *William H. Fortner*, 49 ECAB 324 (1998).

¹⁷ *J.W.*, Docket No. 17-0999 (issued September 4, 2018); *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁸ *T.C.*, Docket No. 16-0755 (issued December 13, 2016).

Under FECA, although it is the burden of an employee to establish his or her claim, OWCP also has a responsibility in the development of the factual evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.¹⁹

On remand in order to ensure a comprehensive and well-reasoned consideration of appellant's emotional condition claim, OWCP should request that the employing establishment provide additional evidence regarding the specific nature of June 11, 2010 incident. After carrying out such development, it shall issue a *de novo* decision regarding appellant's emotional condition claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the May 31, 2018 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision of the Board.

Issued: November 13, 2019
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

¹⁹ *Willie A. Dean*, 40 ECAB 1208, 1212 (1989); *Willie James Clark*, 39 ECAB 1311, 1318-19 (1988).