

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 21, 2017 appellant, then a 49-year-old benefit authorizer, filed a traumatic injury claim (Form CA-1) alleging that he has had frequent intrusive, ruminative, and “perseverative” thoughts, and preoccupation regarding events that happened at work on August 8, 2016 which generated a high level of disturbance for him.³ He also alleged difficulty regulating his emotions and high levels of hyperarousal and hypervigilance. Appellant attributed his conditions to being informed by management of a workplace threat levied against him, that he had not received written information concerning the threat, that he was directed by management to stay indoors during work hours, that police were notified, and that a report was filed regarding the incident. Thereafter, he contended that his work relationships with management began to change. He submitted medical evidence in support of his claim. On the reverse side of the claim form, M.P., appellant’s supervisor, related that he was unable to verify that the alleged injury occurred at work. He further related that he had no knowledge of a threat made against appellant.

In a development letter dated March 1, 2017, OWCP informed appellant of the deficiencies of his claim and advised him of the type of factual and medical evidence needed to establish his claim. It also provided a questionnaire for his completion. Appellant was afforded 30 days to respond.

On March 2, 2017 appellant provided a summary of events that he perceived had occurred at work. He noted that on August 8, 2016 M.P. informed him that the husband of his former team leader, A.V., became agitated and levied a threat against him on August 3, 2016, after being denied access to the parking lot and building by a security guard.⁴ Appellant also alleged in the statement that management denied his requests for a copy of the documentation detailing the alleged threat on August 3, 2016. He noted that M.P. directed him to speak with C.W., an employing establishment manager, but C.W. had no information to provide and noted an investigation was ongoing. Appellant indicated that C.G., an employing establishment management analyst, had informed him that a report regarding the alleged threat had been filed by a federal security team and the report had been provided to C.W., which C.W. denied.⁵ He further indicated that on

³ OWCP assigned the present claim OWCP File No. xxxxxx245. On March 13, 2017 OWCP received an occupational disease claim (Form CA-2) dated March 2, 2017 in which appellant attributed his post-traumatic stress disorder (PTSD) and anxiety to being informed by management that an employee’s spouse had threatened him. The occupational disease claim was assigned OWCP File No. xxxxxx107. On March 21, 2017 OWCP deleted OWCP File No. xxxxxx107 because it had created two separate cases for the same injury. It moved the documents from OWCP File No. xxxxxx107 into the case record for OWCP File No. xxxxxx245.

⁴ The case record indicates that A.V. had previously filed a sexual harassment complaint against appellant.

⁵ Appellant contended that on August 23, 2016 he met with M.S., a manager, who informed him “off the record” of the alleged threat by A.V.’s husband.

August 29, 2016 C.W. directed him to obtain the requested documentation through a Freedom of Information Act request.

In his narrative statement, appellant further alleged harassment on the part of management. He claimed that in June 2016 S.H., another team lead, mistakenly sent an e-mail to appellant in which she called him a “cupcake.” He reported the incident, but it was not resolved to his satisfaction, which caused him to feel ostracized. Appellant further alleged that on September 1, 2016 M.P. ignored appellant’s request for assistance with validating and certifying his timecard, which he reported to C.W.⁶ Appellant also complained that he had difficulty with submitting a “work report” which caused M.P. to become upset. He alleged that M.P. rolled his eyes, threw the “blue envelope” on his desk, and shook his head.⁷ Appellant contended that when he announced that he was leaving, M.P. proceeded to follow him down a hallway, and then down a staircase and all the way out to his car and questioned why he remained off work.

In a statement dated March 15, 2017, M.P. denied appellant’s allegation that he and other managers had withheld documentation from appellant or engaged in harassment and reiterated that he had no knowledge of the alleged threat. He contended that appellant made false allegations against him after informing appellant of A.V.’s sexual harassment allegations in 2016. M.P. noted that he received an e-mail from C.G. indicating that no verbal threats were communicated during an incident with A.V. and her husband on August 3, 2016. He denied appellant’s allegations that he refused to help him with his timecard on September 1, 2016, or at any other time. M.P. also denied ostracizing him at any time. He further denied that he rolled his eyes, threw anything handed to him, or inappropriately followed appellant to his car on December 5, 2016. Rather, M.P. asked appellant if he could talk to him regarding his leave status and appellant responded that he was not supposed to be in the building. He then asked him if he could walk him to his car and he responded “yes.” M.P. attempted, in accordance with employing establishment leave procedure, to ascertain when appellant would return to work and whether he or the employing establishment could do anything to help him return.

By development letter dated March 22, 2017, OWCP requested that the employing establishment respond to appellant’s additional allegations and provide additional information regarding accommodations for appellant, if any.

In a March 22, 2017 narrative statement, appellant responded to OWCP’s March 1, 2017 development questionnaire providing a summary of events that he alleged had occurred at work between August 8 and September 1, 2016. He reiterated his contentions regarding the alleged August 8, 2016 incident, M.P.’s handling of A.V.’s sexual harassment allegation against him, and C.W.’s failure to respond to his request for documentation related to the alleged August 3, 2016 threat caused his diagnosed emotional condition. Appellant described the effects his emotional

⁶ On September 9, 2016 a physician placed appellant off work due to PTSD, depression, panic attacks, and a sleep disorder.

⁷ Appellant specifically noted that on September 23, 2016 he planned to submit a “work report” from his physician to M.P., but he was not at his desk and after placing the report on C.W.’s desk, C.W. became visibly upset and raised his voice declaring that appellant was insubordinate and would be written up for failing to follow directions.

condition had on his daily life. He indicated that there were no sources of stress outside of his federal employment.

Appellant also submitted an August 12, 2016 addendum to his initial statement related to A.V.'s allegations of sexual harassment. He contended that management had improperly made A.V. his team leader following the initial complaint she had filed against him. Appellant specifically alleged that he also contended that A.V. harassed him until he was transferred to Module 2 on May 3, 2013.

An August 11, 2016 incident report from the Richmond Police Department indicated that appellant had telephoned about receiving threats from A.V.'s husband. Attached was a statement dated August 10, 2016 from police officers D.L. and J.E. which noted that appellant had called and alleged that threats had been made against him by an employee's husband who came to the workplace because appellant had harassed the employee. It noted that the police spoke with A.V. and management, who indicated that appellant had previously been accused of harassing A.V. Appellant was informed that he could file a restraining order and to call back if a threat was made.

The record also contains e-mails between appellant and the employing establishment which indicate that on August 11, 2016 appellant had filed a police incident report regarding the August 3, 2016 incident and that he had requested a temporary restraining order against A.V., as suggested by the police.⁸

On April 12, 2017 C.W. responded to OWCP's March 22, 2017 development letter. He denied appellant's allegations of harassment, and specifically denied the claimed failure to turn over a federal report about the alleged threat. C.W. denied that he had questioned appellant about his conversation with C.G. and maintained that he routinely left the "PCACS report" on appellant's desk on Wednesday mornings, unless appellant was on leave. He also contended that appellant was never assigned the full range of his workload responsibility since being assigned to Module 2 as he was a union representative, and therefore was responsible for only 75 percent of his full benefit authorizer workload. C.W. acknowledged that appellant did have additional voluntary duty assignments.

OWCP subsequently received additional medical evidence.

By decision dated June 8, 2017, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish a compensable employment factor.

On July 6, 2017 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a letter dated November 20, 2017, appellant, through counsel, withdrew his request for an oral hearing and instead requested reconsideration. No evidence accompanied the reconsideration request.

⁸ The record indicates that appellant was not granted a permanent restraining order.

By decision dated January 3, 2018, OWCP denied appellant's request for reconsideration finding that he neither raised substantive legal questions, nor included relevant and pertinent new evidence sufficient to warrant a merit review.

On June 7, 2018 appellant, through counsel, again requested reconsideration.

Appellant subsequently submitted a narrative statement dated May 7, 2018 in which he attributed his emotional condition to additional actions of A.V. dating back to 2012. He reiterated that he had been harassed by A.V. including that, while a supervisor-in-training, she listened in on his telephone calls and provided her observations, made unfounded negative comments about his work, and falsely accused him of revving his truck engine as she walked by him.

Appellant also submitted additional medical evidence.

C.W. subsequently submitted a statement dated June 28, 2018 indicating that an employing establishment incident report explicitly indicated that although A.V.'s husband came to the employing establishment and "requested to speak to" appellant, no verbal threats were communicated during the August 3, 2016 incident. He further indicated that appellant was not "directly threatened" by A.V. or her spouse on August 3, 2016 as appellant had not reported to work on that date. C.W. related that on August 3, 2016 M.P. initiated an investigation of A.V.'s allegations concerning aggressive and threatening behavior. He maintained that M.P. explicitly told appellant that the phrase "... no verbal threats communicated ..." was included in the summary of the August 3, 2016 incident. C.W. acknowledged that an e-mail he sent to L.K., an employee, and M.P. in which he indicated that appellant was notified about a "looming physical threat" made against him by A.V.'s partner. He explained, however, that the e-mail was not shared with appellant or verbally communicated to him and his intent for using the phrase "looming physical threat" was to capture and convey appellant's "verbal perception of the August 3, 2016 incident," not the incident as it had occurred.

By decision dated September 5, 2018, OWCP denied modification of its prior decision. It again found that appellant had not established a compensable employment factor.

LEGAL PRECEDENT

To establish an emotional condition causally related to factors of a claimant's federal employment, he or she must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to the condition; (2) rationalized medical evidence establishing an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.⁹

Workers' compensation law does not apply to each and every injury or illness that is somehow related to a claimant'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

⁹ C.M., Docket No. 17-1076 (issued November 14, 2018); Kathleen D. Walker, 42 ECAB 603 (1991).

assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.¹⁰ 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.¹¹

An employee's emotional reaction to administrative or personnel matters generally falls outside of FECA's scope.¹² Although related to the employment, administrative and personnel matters are functions of the employer rather than the regular or specially assigned duties of the employee.¹³ However, to the extent 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.¹⁴

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.¹⁵ 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.¹⁶

ANALYSIS

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

Appellant primarily attributed his emotional condition to being told by his supervisor, M.P., on August 8, 2016, that a threat had been made against him on August 3, 2016 by the husband of A.V., his former team leader. Harassment and discrimination by supervisors and coworkers, if established as occurring and arising from the performance of work duties, can constitute a compensable employment factor.¹⁷ A claimant, however, must substantiate allegations

¹⁰ *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

¹¹ *Cutler, id.*

¹² *G.R.*, Docket No. 18-0893 (issued November 21, 2018); *Andrew J. Sheppard*, 53 ECAB 170, 171 (2001); *Matilda R. Wyatt*, 52 ECAB 421, 423 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹³ *C.M.*, *supra* note 9; *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005); *McEuen, id.*

¹⁴ *Id.*

¹⁵ *G.R.*, *supra* note 12; *Roger Williams*, 52 ECAB 468 (2001).

¹⁶ *See C.M.*, *supra* note 9; *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. *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

¹⁷ *E.K.*, Docket No. 17-0246 (issued April 23, 2018); *T.G.*, 58 ECAB 189 (2006); *Doretha M. Belnavis*, 57 ECAB 311 (2006).

of harassment and discrimination with probative and reliable evidence.¹⁸ Additionally, the Board has recognized the compensability of physical threats or verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.¹⁹ The Board finds that the factual evidence of record fails to support appellant's allegations of being informed about a threat against him by management or that the threat of physical violence had actually occurred. Appellant did not submit a witness statement nor did he provide other evidence setting forth a detailed description of actions that could be considered a threat which would corroborate his allegations. Rather, appellant has merely alleged, without corroboration, that a threat was made against him while the preponderance of the evidence suggests that A.V.'s husband was denied access to the employing establishment when he requested to speak to appellant, but no actual threat was made. Based on the evidence of record, the Board finds that appellant has not established, with corroborating evidence, that a specific threat was made against him on August 3, 2016 or that management informed him of an alleged threat on August 8, 2016.²⁰

Appellant made numerous allegations of harassment by employing establishment employees. However, the employing establishment provided detailed statements from the alleged harassers refuting appellant's allegations of harassment. Furthermore, appellant's allegations are not supported by independent or probative evidence, such as witness statements to corroborate his allegations. As appellant's allegations of harassment have not been established, the Board finds that appellant has not met his burden of proof to establish a compensable employment factor with respect to his allegations of harassment.

The Board further finds that appellant's allegations regarding M.P.'s requests for medical documentation,²¹ investigations of the alleged August 3, 2016 incident and A.V.'s allegations of harassment,²² attendance matters,²³ and denial of his requests for documents related to the investigation of the August 3, 2016 incident relate to administrative functions or personnel matters of the employer and not the regular or specially-assigned work duties of the employee. For an administrative or personnel matter to be considered a compensable factor of employment, the evidence must establish error or abuse on the part of the employer.²⁴ CW. noted that while he and M.P. informed appellant that they would look into his request for documentation regarding the alleged August 3, 2016 threat, he denied telling him that he would provide the incident report to him within five days. He explained that he later learned that management did not have access to

¹⁸ *E.K., id.*; *C.W.*, 58 ECAB 137 (2006); *Robert Breedon*, 57 ECAB 622 (2006).

¹⁹ *See Charles D. Edwards*, 55 ECAB 258 (2004).

²⁰ *See T.G.*, Docket No. 18-1718 (issued May 9, 2019).

²¹ *See W.M.*, Docket No. 15-1080 (issued May 11, 2017); *James P. Guinan*, 51 ECAB 604, 607 (2000); *John Polito*, 50 ECAB 347, 349 (1999).

²² *See M.R.*, Docket No. 17-1803 (issued February 8, 2019); *M.R.*, Docket No. 18-0304 (issued November 13, 2018); *D.G.*, Docket No. 17-0514 (issued May 4, 2018).

²³ *See B.O.*, Docket No. 17-1986 (issued January 18, 2019); *Judy Kahn*, 53 ECAB 321 (2002).

²⁴ *C.M.*, *supra* note 9; *David C. Lindsey, Jr.*, *supra* note 13; *Thomas D. McEuen*, *supra* note 12.

the report as it belonged to the building security contractor. C.W. further noted that he then recommended that appellant contact S.B., the employing establishment's Privacy Act coordinator, to obtain the requested documentation. He maintained that M.P. appropriately conducted an investigation of A.V.'s allegations of harassment by appellant. M.P. denied that he refused to assist appellant with his timecard on September 1, 2016 or on other occasions. The employing establishment has either denied appellant's allegations or explained the reasons for its actions in these administrative matters. Appellant did not provide independent or probative evidence to establish that the employing establishment erred or was abusive in the handling of the above-noted administrative matters and, therefore, the Board finds that he has not established a compensable factor of employment due to these allegations of error and abuse.

Consequently, appellant has not established his claim for an emotional condition as he has not attributed his claimed condition to a compensable employment factor. The Board therefore needs not consider the medical evidence of record.

On appeal counsel contends that the evidence of record supports a finding that appellant has established a compensable employment factor and that his emotional condition developed in the performance of duty. For the reasons set forth above, the Board finds that appellant has not met his burden of proof to establish a compensable employment factor.

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.

ORDER

IT IS HEREBY ORDERED THAT the September 5, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 24, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board