

FACTUAL HISTORY

On January 10, 2017 appellant, then a 56-year-old evaluator specialist, filed a traumatic injury claim (Form CA-1) alleging that on January 5, 2017 he thought he was having a heart attack when he read a January 5, 2017 e-mail from A.B., a manager, while in the performance of duty. He indicated that the e-mail, which was copied to other team members, related that he was behind on his work. On the reverse side of the claim form, A.B. indicated that appellant was teleworking on January 5, 2017. Appellant stopped work on January 6, 2017.

On January 5, 2017 appellant was seen by Dr. Rodney Biglow, Board-certified in emergency medicine. Dr. Biglow related appellant's history of injury noting that appellant was in an argument with his daughter and was under a lot of stress, he then received an e-mail from work accusing him of not doing a good job, and he then felt as though he was having a "panic attack." He diagnosed anxiety, stress reaction and atypical chest pain. A January 5, 2017 computerized tomography angiogram (CTA) of appellant's chest revealed normal cardiac findings and no pulmonary embolus.

OWCP received a copy of the January 5, 2017 e-mail at issue. A.B. outlined appellant's workload and deadlines, as appellant was heading to San Diego, California the next week for fieldwork. The e-mail was addressed to appellant, but other team members were copied to ensure all team members were on the same page.

Appellant's January 5, 2017 response to the e-mail was also received. He objected to A.B. poking fun at his work and calling it "CRAPPY." (Emphasis in the original.) Appellant related his belief that A.B.'s e-mail was punishment/retaliation for his use of Family and Medical Leave Act (FMLA) leave the prior week and that his work assignments were a setup. He related that assigning him three active high profile assignments with unreasonable goals was counterproductive.

On January 6, 2017 OWCP issued an authorization for examination and/or treatment (Form CA-16) to Dr. James E. Sellman, a Board-certified psychiatrist. Dr. Sellman completed the attending physician's report, which is Part B of the Form CA-16, on January 6, 2017 noting that appellant's diagnosis of panic disorder/panic attack was due to the events of January 5, 2017. He related that appellant was unable to return to work. In a January 6, 2017 note, Dr. Sellman indicated that appellant was totally disabled from work as of January 6, 2017, based on the traumatic incident he had experienced while on duty.

In a January 11, 2017 letter, the employing establishment's OWCP case manager, controverted appellant's claim. He noted that FMLA documentation on file indicated that appellant had preexisting bipolar disorder, post-traumatic stress disorder (PTSD) and generalized anxiety.

OWCP, by development letter dated February 1, 2017, informed appellant of the deficiencies in his claim and requested that he submit additional factual and medical evidence to support his emotional condition claim. It afforded appellant 30 days to respond. By separate letter of even date, OWCP requested that the employing establishment respond to appellant's emotional condition claim.

In a February 13, 2017 statement, A.B. indicated that there were no aspects of appellant's job that differed from the position description. He indicated that team leads were in constant communication and, since appellant had a lot of work to complete, it was decided that a manager would send an e-mail to him outlining his workload and deadlines so that everyone would be on the same page. A.B. noted that appellant had not indicated that he was stressed or that he could not complete his work, but rather had informed the team leads that he could not complete all of his work by the assigned deadlines. He also noted that appellant never asked for any accommodations. A.B. advised that there were no staffing shortages or extra demands which affected appellant's workload. He provided a chart summarizing appellant's projects and due dates and completion dates, indicating that appellant's assignments were completed after the due date. A.B. indicated that appellant performed the required duties of the position in accordance with expectations, noting that for fiscal year (FY) 2016, he met expectations for three elements -- results, innovation and leadership and professionalism -- and exceeded expectations for two elements -- knowledge and flexibility. Appellant also received a Time Off award during FY 2016.

In an undated statement, received February 22, 2017, appellant denied that he had bipolar disorder and PTSD and indicated that his doctor mixed up his chart. He explained that he had been under the care of a psychiatrist since late 2013 for family therapy and sought treatment for himself in late 2015 for anxiety related to work-related incidents. Appellant alleged that he was subject to a hostile work environment beginning 2015 and that he had filed an Equal Employment Opportunity (EEO) complaint, internal hotline and workplace environment claim, and a whistleblower claim, all which were resolved or temporarily inactive. He indicated that when he returned from FMLA leave on January 3, 2017, he was aware and ready to complete his two previously assigned jobs. Appellant learned of the third assignment and alleged that completing three jobs in a four-day time frame was not reasonable or achievable, noting that fieldwork on the third job started January 9, 2017. He alleged that the January 5, 2017 e-mail and the third assignment was reprisal for taking FMLA leave from December 26 to 30, 2016 as the third assignment was assigned during that time. Appellant asserted that the January 5, 2017 e-mail brought about an acute panic attack. He alleged the e-mail was unwarranted and insulting, as he had never received a negative performance appraisal. He further alleged that it was extremely embarrassing as it was sent to his colleagues.

In a separate undated statement, also received on February 22, 2017, appellant alleged that he was subject to a hostile work environment beginning in 2015. He stated that when M.M. became the new Director on May 3, 2015, she referred to him as the person "who called the newspaper," suggesting that he was a whistleblower. Appellant alleged that on November 19, 2015 he noticed a pattern of abuse that he believed to be discrimination. He stated that on December 10, 2015 he found out that he was not included in the top 35 percent of employees who were given a cash award. Appellant alleged that an April 4, 2016 e-mail, which described employee awards, indicated that a subordinate, R.G., had received a day off award for her work, while he did not. He alleged that he was treated differently because he was required to work in the office rather than work remotely ("smartwork"). Appellant also alleged that management told other employees not to help him.

OWCP also received a February 20, 2017 report, from Dr. Sellman, who indicated that appellant discussed at length his concerns over stress and anxiety at work since mid-2015 that culminated in his January 5, 2017 traumatic injury. Dr. Sellman diagnosed major depression,

recurrent, severe; acute stress disorder, generalized anxiety disorder and panic disorder directly related to the employment events from approximately January 5, 2017. He opined that appellant was temporary totally disabled from work, but that he should be able to return to full-time work within the next 30 to 60 days with adequate treatment and support from his workplace environment. Dr. Sellman clarified that the bipolar disorder referenced on the FMLA request form did not relate to appellant.

By decision dated March 3, 2017, OWCP denied appellant's claim for an employment-related emotional condition, finding that he had not established a compensable employment factor. It concluded, therefore, that the requirements had not been met to establish an emotional condition "that arose during the course of employment and within the scope of compensable work factors as defined by FECA."

On March 16, 2017 appellant, through counsel, requested an oral hearing before an OWCP hearing representative. A telephonic hearing was scheduled for August 31, 2017, however, on August 29, 2017, counsel withdrew the oral hearing request and requested that the hearing be converted to a review of the written record.

In a September 12, 2017 narrative statement, appellant described events leading up to the January 5, 2017 traumatic injury. He alleged that in October or November 2014, auditor-in-charge (AIC), M.D, indicated "who should I fire." In May 2015, appellant's daughter was involved in a car accident and appellant informed management, M.M. and B.B., that he would need additional time off to take her to appointments. In October 2015, B.B. instructed him and another coworker, J.G., to come in everyday because they were assigned a very important job. However, another coworker, A.L., who was also assigned the same job, was not required to come in every day. In November 2015, appellant received his annual performance rating, which he alleged was much lower, even though he had met the requirements. On November 19, 2015 he alleged that an e-mail M.M. sent, which discussed the rules surrounding leave usage, was abusive. On November 20, 2015 appellant filed a hostile work environment claim and a whistleblower complaint. He noted that everyone who was interviewed had either left the agency or was facing disciplinary action. On December 1, 2015 appellant told M.M. that as he needed to take his daughter to medical appointments twice a day, it was problematic for him to come into the office every day. He alleged that M.M. told him that this situation should not last longer than the end of the month of December 2015. M.M. also told him to talk to the human capital (HC) manager, who directed him back to M.M. On December 3, 2015 a manager told him to be careful as management was asking for every e-mail associated with him. Appellant alleged that soon after that he was assigned to be an AIC, even though he had little training. He alleged that this was an effort to see him fail. On December 10, 2015 appellant found out that he was not in the top rated 35 percent of employees and, thus, did not receive a cash award. On August 9, 2016 he was assigned a job dealing with "analysis capacity issues" for which he alleged that he had no experience and that coworkers told him they were not allowed to help him. At a town hall meeting on August 15, 2016, M.D. stated that management would back managers rather than poor performers.

Prior to taking leave on December 27 through 30, 2016, appellant indicated that he was actively working two audit jobs. He found out that he was assigned a third audit job on January 3, 2017, when he returned to work. Appellant alleged that it seemed insurmountable to complete all the assignments as well as the required preparation work on the third audit job prior to starting

fieldwork on January 9, 2017. He noted that, during the week of January 3, 2017, he was under the direction of seven management officials: two audit managers; four AIC's; and an HC manager. Appellant alleged that this had never before happened and that the amount of managers he needed to report became counterproductive due to the numerous calls and e-mails from them while he was trying to complete assignments. He alleged that this was an effort to make him fail. Appellant indicated that, while continuing to work through his assignments on January 5, 2017, he broke down as he realized that he could not get to the prep work needed for the third audit job prior to the fieldwork on January 9, 2017. He e-mailed AIC A.M. and indicated that he could no longer go on or complete the job. Appellant simultaneously received the January 5, 2017 harsh e-mail from the HC manager, which compounded his breakdown, and he sent an ill-advised e-mail in response. He alleged that the deadlines imposed were unprecedented and unreasonable. Appellant alleged that, during the week of January 5, 2017, A.L. told him that his manager constantly asked him what appellant was working on and referred to one of appellant's work papers as "crappy" and that it needed to be redone. A.L. also asked him why another coworker had completed one of his planning steps. Appellant indicated that he went to the hospital on January 5, 2017 and saw Dr. Sellman, his psychiatrist, the next day. He returned to work on March 13, 2017 against his doctor's advice as his claim was denied.

Appellant alleged that on Thursday, March 23, 2017, while attending a training event at the Colorado headquarters, he asked A.B if he could leave that evening after training instead of staying to Friday, due to his daughter's medical appointment. A.B. referred appellant to his manager. Appellant noted that, deputy director, M.H., had approved a coworker to leave early, and when he asked him for approval, he was told to ask his manager. He alleged that he was later stopped in the hallway by the deputy director and to discuss leaving early. Appellant alleged that the deputy director stated that appellant had "attacked his manhood." While he received approval to leave on Thursday, appellant indicated that A.B. and D.S. asked him what his plans were for Friday. Appellant alleged that no one else was singled out and asked what they would be doing on Friday.

Appellant alleged that on March 29, 2017 his performance evaluation was extended and, as of July 10, 2017, he was told that he was still being evaluated. He alleged that management was waiting for him to make a mistake.

Appellant alleged that he was told by coworkers that it was obvious that he had a target on his back. He alleged that the managers were not trustworthy or competent, lacked leadership skills and allowed favoritism.

Additional medical evidence was also received by OWCP.

By decision dated September 25, 2017, an OWCP hearing representative affirmed the March 3, 2017 decision. The hearing representative found that appellant's claim was indicative of an occupational disease claim, not a traumatic injury claim, and found that he had not established any compensable factors of employment.

On May 14, 2018 appellant requested reconsideration. He summarized his previous allegations, noting that he was targeted after M.M. became his director in May 2015 and his health

and employment have since suffered. Appellant noted that, during the March 23, 2017 training in Colorado, he was also involved in an altercation spearheaded by Deputy Director M.H.

Appellant submitted March 29 and May 19, 2017 letters from A.B. which discussed appellant's performance expectations. The first letter noted in detail that appellant had fallen below expectations on three projects. Appellant was placed on a 45-day performance improvement plan (PIP). The second letter advised that the evaluation period would be extended 45 days until June 26, 2017 as, beginning that week, appellant would be working on two projects. In both letters, A.B. outlined his requirements for appellant during the extended performance expectation period. Additional medical reports from Dr. Sellman were received along with FMLA forms.

By decision dated June 20, 2018, OWCP denied modification of its September 25, 2017 decision.

LEGAL PRECEDENT

To establish an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) rationalized medical evidence establishing that he or she has 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.³

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*,⁴ 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.⁵ When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.⁶

Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.⁷ Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.⁸ Personal perceptions alone are

³ See *W.F.*, Docket No. 18-1526 (issued November 26, 2019); *C.M.*, Docket No. 17-1076 (issued November 14, 2018); *C.V.*, Docket No. 18-0580 (issued September 17, 2018); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁴ 28 ECAB 125 (1976).

⁵ See *G.M.*, Docket No. 17-1469 (issued April 2, 2018); *Robert W. Johns*, 51 ECAB 137 (1999).

⁶ *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, *supra* note 4.

⁷ *A.C.*, *id.*

⁸ *G.R.*, Docket No. 18-0893 (issued November 21, 2018).

insufficient to establish an employment-related emotional condition, and disability is not covered where it results from such factors 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.⁹

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.¹⁰ 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.¹¹

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.¹² Mere perceptions of harassment or discrimination are not compensable under FECA.¹³ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.¹⁴ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹⁵ Additionally, verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.¹⁶

ANALYSIS

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

The Board notes that appellant has attributed his emotional condition in part to *Cutler* factors.¹⁷ Appellant alleged that the employing establishment assigned too much work with

⁹ See *A.C.*, *supra* note 6.

¹⁰ *C.V.*, *supra* note 3.

¹¹ *Id.*

¹² *O.G.*, Docket No. 18-0350 (issued August 7, 2019); *K.W.*, 59 ECAB 271 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

¹³ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁴ *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, *supra* note 12.

¹⁵ *T.Y.*, Docket No. 19-0654 (issued November 5, 2019); *G.S.*, Docket No. 09-0764 (issued December 18, 2009); *Ronald K. Jablanski*, 56 ECAB 616 (2005); *Penelope C. Owens*, 54 ECAB 684 (2003).

¹⁶ *Y.B.*, Docket No. 16-0193 (issued July 23, 2018); *Marguerite J. Toland*, 52 ECAB 294 (2001).

¹⁷ See *supra* note 4.

unreasonable deadlines. Pursuant to *Cutler*¹⁸ these allegations could constitute compensable employment factors if appellant establishes that his regular job duties or a special assignment caused an emotional condition. The Board has held that overwork, when substantiated by sufficient factual information to corroborate appellant's account of events, may be a compensable factor of employment.¹⁹ The Board finds, however, that appellant submitted no evidence supporting his allegation that he was overworked or was given insufficient time to perform his duties with regard to deadlines or timeframes and that he was not provided with adequate tools to perform his job. The employing establishment denied those allegations, noting that appellant had informed the team leads on the projects he was working that he could complete his work by the deadlines assigned and that he never asked for accommodations. Rather, appellant indicated that when he realized on January 5, 2017 that he was not able to complete the work within the deadlines, he e-mailed the acting manager and told her that he could no longer continue and would not complete the job. He thus stopped work when he realized that he could not complete the assigned tasks within the allotted time. The evidence does not support that appellant was overworked or that the tasks could not be completed within their respective deadlines. Without evidence substantiating that he was overworked, or that the deadlines to complete the tasks were unattainable, he has not met his burden of proof to establish a compensable factor of employment under *Cutler*.²⁰

Appellant also alleged error and abuse in administrative matters on the part of his supervisors. These incidents identified by him include: receiving a January 5, 2017 e-mail regarding his work assignments and deadlines from his manager, A.B., which was also sent to other team members; being assigned a third active high level job while on leave; not receiving a performance award; not receiving his performance appraisal for FY 2017 in a timely manner; not being allowed to work from home; being treated differently from others with regard to leave requests; and being assigned AIC duties for which he had little training.

As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of FECA.²¹ Absent evidence establishing error or abuse, a claimant's disagreement or dislike of such a managerial action is not a compensable factor of employment.²² Work assignments,²³ and modification of work schedule,²³ management's comments and directives,²⁴

¹⁸ *See id.*

¹⁹ *W.F.*, Docket No. 18-1526 (issued November 26, 2019); *see T.M.*, Docket No. 15-1774 (issued January 20, 2016); *Bobbie D. Daly*, 53 ECAB 691 (2002).

²⁰ *See R.V.*, Docket No. 18-0268 (issued October 17, 2018); *K.S.*, Docket No. 15-1426 (issued December 29, 2015).

²¹ *See C.V.*, Docket No. 18-0580 (issued September 17, 2018); *Carolyn S. Philpott*, 51 ECAB 175 (1999).

²² *See S.S.*, Docket No. 18-1519 (issued July 17, 2019); *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

²³ *V.M.*, Docket No. 15-1080 (issued May 11, 2017); *Donney T. Drennon-Gala*, *id.*

²⁴ *S.B.*, Docket No. 18-1113 (issued February 21, 2019).

performance awards and appraisals,²⁵ the handling leave requests and attendance matters,²⁶ and the monitoring of appellant's activities at work and training²⁷ are administrative functions of the employer, and not duties of the employee.²⁸ Appellant has not established a compensable factor of employment as he has not submitted corroborating evidence of error or abuse in these administrative and personnel matters.²⁹

OWCP accepted as factual that on January 5, 2017 A.B. sent an e-mail to appellant and other team members which outlined appellant's workload and deadlines. It also accepted as factual that appellant had two assignments and, while on leave, was assigned a third assignment. Subsequent evidence on reconsideration supports that appellant's performance appraisal was extended on March 29, 2017 and was not completed as of July 10, 2017. However, he did not submit any evidence that the employing establishment committed error or abuse in these matters. While appellant perceived the January 5, 2017 e-mail as a form of criticism and embarrassment, the employing establishment provided a reasonable explanation that it was sent to keep all the team members on the same page. It did not state that he was behind in his work; it just outlined appellant's workload and deadlines. While appellant was assigned a third job while he was on leave, which he perceived had an unattainable deadline given his other assignments and the amount of managers involved, appellant did not explain or provide any evidence to substantiate that this assignment was unreasonable. Appellant also did not submit any evidence that it was error or abuse for the employing establishment to place him on a PIP plan and to extend his 2017 performance appraisal. Absent evidence establishing error or abuse, a claimant's disagreement or dislike of such a managerial action is not a compensable factor of employment.³⁰

Appellant has not submitted any corroborative evidence to establish a factual basis for his allegations that he should have received a performance award; that he was treated differently from others with regard to telework and leave requests, and that he was improperly assigned AIC duties for which he had little training. While the lack of adequate training may be a compensable employment factor,³¹ the hearing representative found that this allegation was not established as factual. The hearing representative further noted that appellant's job description required him to lead complex audit evaluations with limited oversight and that he had met or exceeded expectations in FY 2016, which suggested that he had the level of training or assistance needed to

²⁵ See *D.I.*, Docket No. 19-0534 (issued November 7, 2019).

²⁶ *B.O.*, Docket No. 17-1986 (issued January 18, 2019); *Lori A. Facey*, 55 ECAB 217 (2004); *Judy L. Kahn*, 53 ECAB 321 (2002).

²⁷ See *R.L.*, Docket No. 17-0883 (issued May 21, 2018); *L.R.*, Docket No. 14-1990 (issued January 27, 2015).

²⁸ See *M.C.*, Docket No. 18-0585 (issued February 13, 2019); see *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

²⁹ See *R.V.*, *supra* note 20.

³⁰ See *E.S.*, Docket No. 18-1493 (issued March 6, 2019).

³¹ See *S.S.*, *supra* note 22; *L.R.*, *supra* note 27.

perform his job within expectations. As appellant had not identified the training or assistance he would require to competently perform his job, this allegation was not established as factual.

Appellant has further attributed his emotional condition to retaliation and a hostile work environment by management from May 3, 2015, when M.M. became the new Director. While he alleged that the employing establishment treated him differently from other employees, assigned too much work as retaliation for using FMLA leave, filing an EEO complaint and engaging in whistleblower activities, appellant did not submit any evidence to corroborate his statements or allegations of harassment. As such, the Board finds that he has not established harassment as a compensable factor of employment.³²

Thus appellant has not established any compensable employment factors under FECA and, therefore, has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty. As such, the Board need not consider the medical evidence of record.³³

On appeal appellant disagrees with OWCP's denial of his emotional condition claim and alleges that OWCP had not properly evaluated the medical evidence submitted. For the reasons noted above, he has not established a compensable employment factor under FECA. Thus, appellant has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty.³⁴

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.

³² *R.B.*, Docket No. 19-0434 (issued November 22, 2019).

³³ *M.A.*, Docket No. 19-1017 (issued December 4, 2019); *A.K.*, 58 ECAB 119 (2006).

³⁴ The Board notes that the employing establishment issued a Form CA-16. A properly executed Form CA-16 may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the June 20, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 14, 2020
Washington, DC

Patricia H. Fitzgerald, Deputy 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