

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

M.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Little Rock, AR, Employer**

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**Docket No. 19-1850
Issued: May 5, 2020**

Appearances:

Debra Hauser, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Deputy Chief Judge

PATRICIA H. FITZGERALD, Alternate Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 4, 2019 appellant, through counsel, filed a timely appeal from a May 20, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

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, as alleged.

FACTUAL HISTORY

On July 13, 2017 appellant, then a 51-year-old manager, filed an occupational disease claim (Form CA-2) alleging that the requirements of his postal position exacerbated the symptoms of the stroke he suffered on March 18, 2016. He asserted that, since his stroke, his cognitive skills had declined which increased his levels of anxiety and further exacerbated his ability to function. Appellant indicated that he initially became aware of his condition on March 18, 2016 and first realized its relation to factors of his federal employment on June 19, 2017. He stopped work on June 19, 2017.

In a work excuse note dated July 13, 2017, Dr. B. Brooks Lawrence, a Board-certified family practitioner, excused appellant from work from July 13 to August 15, 2017.

In a development letter dated July 26, 2017, OWCP acknowledged receipt of appellant's claim and informed him that additional evidence was needed to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a narrative response, appellant provided his title as manager of post office operations and a description of his work duties. He indicated that he monitored all post office operations, established objectives for the efficient and effective service for a group of post offices, managed the development and implementation of operational programs for large complex post office operations, oversaw the development of the consolidated budget for large post offices, collaborated with labor relations, and participated in the selection and development of postmasters and supervisors. Appellant reported working as a manager since August 2015. Following his stroke on March 18, 2016 and subsequent hospitalization, he returned to work and his symptoms and overall condition began to improve. Appellant indicated that his difficulty speaking, expressing thoughts, his ability to mentally focus, and function effectively in his position continued to improve. He noted that his improvement occurred while under the direction of his former direct supervisor, D.C. In August 2016, leadership roles changed and the current plant manager, M.H., became acting district manager. Appellant asserted that the change in leadership and management style had a direct effect on his symptoms, specifically the intensity in which he was managed and the continually changing requirements placed upon him by the acting district manager began to exacerbate his symptoms. He indicated that his cognitive skills as it related to his ability to retain a working memory and focus digressed, he lost concentration and focus during telecoms, he had difficulty making decisions, and experienced overall mental confusion.

On July 28, 2017 appellant underwent a neuropsychological evaluation. In a report dated August 16, 2017, Mark L. Clark, Ed. D., a licensed psychologist and clinical neuropsychologist, noted that appellant exhibited significant attentional disorder, mild executive dysfunction, mildly slowed novel information processing speed, mildly impaired visuospatial constructional skills,

mild impairments of phonemic fluency, depressive disorder, and anxiety disorder. He diagnosed attention deficit hyperactivity disorder, depressive disorder and unspecified anxiety disorder.

Appellant was treated by Dr. Lawrence on August 23, 2017 and he indicated that appellant had a stroke on March 18, 2016 which affected his memory, balance, and coordination. Dr. Lawrence noted that he stabilized and improved to the point where he could return to work but, over the course of the next few months, he experienced worsening problems with his memory, focus, thought processing, anxiety, and depression. He advised that the tasks appellant normally did well with were now difficult to complete. Appellant further developed worsening anxiety while trying to keep up with his work duties. Dr. Lawrence opined that his worsening symptoms were a direct result of the stress and intensity of his job duties. In a work excuse note dated January 3, 2018, he excused appellant from work from January 2 to April 2, 2018.

Dr. Lawrence completed an employing establishment medical information and restriction assessment form on January 9, 2019 which noted that appellant had physical and mental impairment. He diagnosed anxiety disorder, post-traumatic stress disorder (PTSD), depression, memory loss, attention deficit disorder, and status post cerebral vascular accident. Dr. Lawrence opined that appellant was permanently unable to maintain gainful employment. He noted that appellant's attempt to fulfill the duties of his position at work lead to increased anxiety and exacerbated his symptoms after his stroke. Dr. Lawrence advised that as a result of his stroke and dealing with the high stress at his work he developed PTSD. He reiterated that he could not see a position in which appellant would be able to function.

By decision dated January 17, 2018, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish an emotional condition arising from a compensable factor of employment.

On February 12, 2018 appellant requested an oral hearing and on June 29, 2018 he rescinded that request and sought reconsideration of the January 17, 2018 decision.

In reports dated from March 29, 2016 to January 29, 2019, Dr. Lawrence reiterated the history of appellant's March 2016 stroke and subsequent treatment. Appellant reported that after his stroke he suffered cognitive deficits which made it difficult to perform his job duties. Dr. Lawrence opined that stress from performing his work duties exacerbated his PTSD and appellant was unable to work in any capacity since June 19, 2017.

In a statement dated January 11, 2019, appellant reported having a stroke in March 2016 and explained that the stroke symptoms made it difficult for him to keep up at work. He reported dealing with issues such as transportation, mail redirections, and dispatch quality. These issues required appellant to hurriedly read through e-mails and sometimes the e-mails prompted telephone calls. Appellant reported having to execute complex and critical tasks. He indicated that he had to constantly listen and speak on a daily telecom while simultaneously communicating with post offices which increased his anxiety. Appellant reported losing his train of thought in meetings as his anxiety rose and there was no time to focus or concentrate which made performing his job more stressful.

In a narrative report dated January 29, 2019, Dr. Lawrence again noted appellant's history of a stroke in March 2016 and asserted that, while he initially showed signs of improvement, his condition began to deteriorate as he continued to perform managerial duties in a high-stress work environment. He noted symptoms of cognitive difficulties, confusion, forgetfulness, and problems with communicating. Dr. Lawrence reported referring appellant to Dr. Keith Schluterman, a neurologist, for a neurological evaluation in July 2017. He opined that the performance of appellant's work duties, following his stroke and over time, worsened appellant's generalized anxiety disorder and PTSD. Dr. Lawrence concluded that appellant had been totally disabled from work since June 19, 2017 through the date of his report as he developed severe functional limitations as a direct result of performing his job duties.

In a supplemental reconsideration request dated January 30, 2019, appellant, through counsel, asserted that he experienced emotional stress in carrying out his employment duties and the medical evidence from Dr. Lawrence established that his disability resulted from an emotional reaction to his work situation. Counsel cited to the case of *Lillian Cutler*³ and noted that when an employee's disability results from his emotional reaction to a special assignment or other requirements imposed by the employing establishment or by the nature of the work it is generally regarded as due to an injury arising out of and in the course of employment.

By decision dated March 20, 2019, OWCP denied modification of the January 17, 2018 decision.

On May 9, 2019 appellant, through counsel, asserted that the senior claims examiner had not reviewed all the evidence before issuing the March 20, 2019 decision. Counsel specifically noted that appellant's January 11, 2019 updated statement and Dr. Lawrence's January 29, 2019 report were not properly reviewed before issuing the decision. She requested that the evidence be reviewed and a new decision be reissued.

By decision dated May 20, 2019, OWCP issued a corrected decision replacing the decision dated March 20, 2019. It denied modification of the January 17, 2018 decision.

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) 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.⁴

³ 28 ECAB 125 (1976).

⁴ *C.M.*, Docket No. 17-1076 (issued November 14, 2018); *Kathleen D. Walker*, 42 ECAB 603 (1991).

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.⁵ There are situations where an injury or an illness has some connection with the employment, but nevertheless does not come within the concept or 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.⁶ On the other hand, the disability is not covered when 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.⁷

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.⁸ However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.⁹ 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.¹⁰

ANALYSIS

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

Appellant has attributed his emotional condition in part to *Cutler*¹¹ factors. He contended that he was overwhelmed by his work duties when returning to work after suffering a stroke. Appellant reported working as a manager since August 2015 and that he suffered a stroke on March 18, 2016. Since his stroke, his cognitive skills declined which increased his levels of anxiety and further affected his ability to function in his job. Appellant asserted that after he returned to work, the symptoms from his stroke made it difficult for him to keep up with his employment duties. The tasks appellant normally performed well were difficult to complete. Appellant reported dealing with issues such as transportation, mail redirections, and dispatch

⁵ 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).

⁶ *L.H.*, Docket No. 18-1217 (issued May 3, 2019); *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, *supra* note 3.

⁷ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁸ See *G.R.*, Docket No. 18-0893 (issued November 21, 2018); *Andrew J. Sheppard*, 53 ECAB 170-71 (2001), 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

⁹ See *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *D.R.*, Docket No. 16-0605 (issued October 17, 2016); *William H. Fortner*, 49 ECAB 324 (1998).

¹⁰ *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹¹ *Lillian Cutler*, *supra* note 3.

quality. These issues required appellant to hurriedly read through e-mails and sometimes the e-mails prompted telephone calls. Appellant reported having to execute complex and critical tasks and reported losing his train of thought in meetings as his anxiety rose and there was no time to focus or concentrate. He further reported having difficulty with memory, experiencing mental confusion, and a lack of ability to concentrate.

Pursuant to *Cutler*, these allegations could constitute compensable employment factors if appellant establishes that his regular job duties or 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.¹² However, appellant has not submitted evidence such as witness statements, or time and attendance forms or work logs supporting his allegation of overwork. It is appellant's burden to submit the requisite factual evidence supporting his allegation that he was overworked, which he failed to provide.¹³ Appellant made vague allegations, but did not provide specific dates or times or other details to establish overwork.¹⁴ Thus, the Board finds that appellant has not established overwork as a compensable factor of employment.

Appellant made other allegations that relate to administrative and personnel actions. As a general rule, administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regularly or specially assigned work duties of the employee and are not covered under FECA.¹⁵ In *Thomas D. McEuen*,¹⁶ the Board has held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of an employee. 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, such action will be considered a compensable employment factor.¹⁷ 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.¹⁸

¹² *W.F.*, Docket No. 18-1526 (issued November 26, 2019); *J.E.*, Docket No. 17-1799 (issued March 7, 2018); *Bobbie D. Daly*, 53 ECAB 691 (2002).

¹³ *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

¹⁴ *See Y.J.*, Docket No. 15-1137 (issued October 4, 2016) (the Board noted that a claimant did not provide the requisite detail regarding specific dates and the duties she performed, which allegedly overwhelmed her and caused her stress).

¹⁵ *Matilda R. Wyatt*, 52 ECAB 421 (2001).

¹⁶ *See supra* note 8.

¹⁷ *William H. Fortner*, *supra* note 9.

¹⁸ *Ruth S. Johnson*, *supra* note 10.

Appellant asserted that under prior management, his symptoms seemed to improve and he was doing well. He began to feel stressed and have increased anxiety when M.H. became his new manager. Appellant indicated that the August 2016 change in leadership exacerbated his symptoms, specifically the intensity in which he was managed and the continually changing requirements being placed upon him by the acting district manager. He alleged that his cognitive skills as it related to his ability to retain a working memory and focus digressed. In this instance, appellant asserted that the change in leadership and “style” of management had a direct effect on his symptoms. He has not, however, provided independent or probative evidence to establish that the employing establishment erred or was abusive in the handling of the above-noted administrative matters. The Board notes that the assignment of work is an administrative function¹⁹ and the manner in which a supervisor exercises his or her discretion falls outside the ambit of FECA. Absent evidence of error or abuse, appellant’s mere disagreement or dislike of a managerial action is not compensable.²⁰ The Board finds that appellant has not offered sufficient evidence to establish error or abuse regarding his work assignments. The evidence of record does not establish that the employing establishment acted unreasonably and, therefore, the Board finds that he has not established a compensable factor of employment due to these allegations of error and abuse.²¹

On appeal appellant reiterates his allegations asserting that he has established his emotional condition claim. As explained above, he has not established his claim for an emotional condition as he has not established a compensable employment factor.²²

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, as alleged.

¹⁹ *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

²⁰ *See Barbara J. Latham*, 53 ECAB 316 (2002); *see also Peter D. Butt Jr.*, 56 ECAB 117 (2004) (allegations such as improperly assigned work duties, which relate to administrative or personnel matters, unrelated to the employee’s regular or specially assigned work duties do not fall within the coverage of FECA).

²¹ *R.V.*, Docket No. 18-0268 (issued October 17, 2018).

²² As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record. *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 5, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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