United States Department of Labor
Employees' Compensation Appeals Board

S.S., Appellant	)	
and	)	**Docket No. 19-1021**
	)	**Issued: April 21, 2021**
U.S. POSTAL SERVICE, AUBURN POST OFFICE, Auburn, AL, Employer	)	

Appearances:
Paul H. Felser, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 10, 2019 appellant, through counsel, filed a timely appeal from an October 18, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). 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] 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 June 28, 2016 appellant, then a 54-year-old postmaster, filed a traumatic injury claim (Form CA-1) alleging that on October 5, 2015 he developed overwhelming depression, stress, and anxiety due to being expected to reach unattainable goals and constant badgering while in the performance of duty. On the reverse side of the claim form, appellant's supervisor indicated by checking a box marked "No" that appellant was not injured in the performance of duty. He further noted that appellant was a manager with the same duties as other managers.

In a June 30, 2016 statement, appellant's supervisor, M.C., Manager of Post Office Operations, noted that appellant stopped work on October 5, 2015 and had not returned. He issued corrective action for appellant in April 2016 as he was not in regular attendance and thereafter, he filed his Form CA-1.

In a September 6, 2016 development letter, OWCP advised appellant of the deficiencies of his claim. It requested additional factual and medical evidence and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In a September 26, 2016 response to OWCP's development questionnaire, appellant asserted that his condition resulted from an accumulation of events beginning on May 6, 2015. He stated that his duty station was qualified for a management staff of three supervisors and one postmaster, but that from May 9 through June 6, 2015 he was working with only one supervisor. Appellant noted that he was also short 18 employees or approximately 30 percent of the allotted workforce. He asserted that he was unable to meet his goals due to staffing shortages. Appellant alleged that he worked six days a week, approximately 56 to 64 hours a week.

Appellant alleged that on June 8, 2015 he removed an employee due to performance issues. The head of human resources, R.B., took three weeks to grant approval for removal, and in the interim, the employee was transferred to her mother's office and appellant was not notified. He asserted that this was a violation of employing establishment policy. R.B. forwarded appellant's confidential e-mail to his staff, and appellant was then unable to get employees processed to be hired. Appellant further alleged that R.B.'s human resources staff allowed medical tests to expire and lost paperwork.

Appellant alleged that he was directed to properly staff the window and that, while he was in charge, his duty station had two "mystery shops" rated at 100 percent. However, he was continually pushed due to window performance. Appellant noted that he was short staffed in management, and also had to help run the carrier operation.

In July 2015 appellant was assigned a new supervisor, T.S., who he felt was continually intimidating and threatening. He noted that he was unable to meet all deadlines due to short staffing. Appellant could not attend meetings scheduled during peak office productivity as he

could not be in two places at once. He alleged that his supervisor required him to work seven days a week, and made unfounded accusations that he was not working a full day. Appellant alleged that he was the subject of threats by M.C., his supervisor. M.C. remained as his supervisor for only a few weeks, left for a few weeks, and then returned and continued with threats. Appellant alleged that he was unable to reach the unattainable goals set by M.C.

In a July 17, 2015 e-mail, T.S. directed appellant to provide an action plan for improving the performance of the clerks in his post office. He also noted that appellant had failed six shops and that customers had rated his post office as unsatisfactory. In a separate e-mail of even date, T.S. provided a list of five directives for appellant including reviewing items with the clerks, creating a log, completing two forms daily, placing a bell in the lobby, and placing a member of management in the lobby to assist with lobby directing duties during peak lobby traffic times. Appellant suggested that management in the lobby would be a contract violation on July 19, 2015. T.S. disagreed and directed him to have a clerk and management in the lobby.

On July 18, 2015 T.S. e-mailed appellant and provided an additional five directives. He concluded that it was appellant's responsibility to operate his unit in an efficient manner and that he could not rely on overtime.

On July 20, 2015 appellant responded to T.S. and asserted that the time frames he provided would not allow him to complete his duties. He noted that he had assumed the duties of opening supervisor three days per week. Appellant noted that T.S. had required him to work on Sunday, so he would not be working a full day on Friday. He indicated that he would no longer be working 10- and 12-hour days regularly and that T.S.'s expectations were not realistic. T.S. responded that, if appellant felt that his responsibilities were too great for him, then he should make an appointment to discuss his options. He replied, "I expect you to manage your time and complete the task I assigned to you."

In a July 20, 2015 e-mail, T.S. indicated that he would no longer accept incorrect 1723 forms as an excuse. On July 21, 2015 T.S. noted that appellant was the last to provide information, that he had already completed his report, and that he was "really getting tired of [appellant's] untimeliness." Also on July 21, 2015 appellant requested that T.S. provide him with information about posting vacancies. On July 22, 2015 T.S. moved an employee and indicated that he would provide appellant with a replacement.

On July 22, 2015 appellant drafted an e-mail noting that since beginning work at the employing establishment, he had worked in a supervisory capacity for 8 of 11 weeks due to staff shortages. On one occasion he had to run the entire operation single handedly. Appellant alleged that he worked an average of 50 hours a week. He objected to T.S.'s management style and threats of discipline and removal.

On July 23, 2015 T.S. asked why appellant was not in his office on July 22, 2015 and why he did not notify him that he was leaving. He directed appellant to work a full day on July 24, 2015. Appellant responded that he had provided notification and that he started work between 4:45 a.m. and 5:00 a.m., as he was working in the opening supervisor position. He further noted that he would not be working Friday as he had already worked six days in the week. T.S. directed appellant to work a full day on Friday or submit to an investigative interview. Appellant

requested personal time. T.S. accused appellant of leaving the building before 12:00 p.m., such that he did not work an eight-hour day from 5:00 a.m. to 2:00 p.m. Appellant disagreed and asserted that he did not have time to take a lunch, that he left at 12:50 p.m. to meet with a customer for 30 minutes and that he therefore, worked more than 8 hours.

In an undated statement, R.D., postmaster at Valley, Alabama, contended that there had been issues at that post office, as it is located in a busy college town. He noted that while appellant was postmaster the office had numerous employee shortages. R.D. indicated that he was assigned as the delegate for hiring and had hired at least 20 employees in various roles. He asserted that appellant had been making improvements but the expectations were unrealistic, coupled with issues related to employee shortages. R.D. further noted that there were multiple management and guidance changes.

On August 28, 2015 M.C. directed appellant to set up a telecom with him every day. On October 2, 2015 he scheduled appellant for an investigative interview based on unsatisfactory work performance in association with a carrier's failure to have case labels put up.

In a January 5, 2016 note, Sandra J. Whitaker, a nurse practitioner, diagnosed anxiety and depression. On April 26, 2016 she found appellant was totally disabled from March 15 through May 18, 2016.

In a September 2, 2015 e-mail, M.C. exhorted appellant to direct and assist the supervisors in their duties, as well as to be strong and not accept failure. He requested a change and forbade excuses.

On May 19, 2016 M.C. issued appellant a letter of warning due to unsatisfactory attendance as a result of absences from April 6 through 22, 2016. On June 23, 2016 the employing establishment issued appellant a proposed letter of warning in lieu of a time-off suspension due to unsatisfactory attendance. On August 19, 2016 appellant entered an Equal Employment Opportunity (EEO) settlement agreement which noted that the May 12, 2016 letter of warning and seven-day suspension on June 23, 2016 would be held in abeyance until his disability retirement decision had been reached by the Office of Personnel Management (OPM).

In an e-mail dated September 28, 2015, M.C. directed appellant to work as a team with T.A. and provide abatement plans. He noted that failure was not an option. On August 28, 2015 M.C. informed appellant that the goings-on at his post office were not acceptable and that there should be no more excuses. He further directed that appellant would be set up for a telecom every day and establish a process to direct, guide, and have accountability. M.C. noted that the engagement from the management side with process and accountability was not where it needed to be.

On September 21, 2015 a review team assessed appellant's duty station and found 11 deficiencies. It concluded that management needed to work as a team and that currently each member of management seemed to place blame on the other instead of focusing on the issues within the unit. The review team noted that appellant needed to be able to address all areas of the operation within the unit and needed a functional knowledge to oversee and manage. It noted that management needed to carry out observation and correction.

In a November 10, 2016 letter, M.C. asserted that appellant's duty station was qualified for two supervisors and had two supervisors. He noted that there were performance issues and that he had sent a team to assist appellant in September. M.C. alleged that appellant failed to implement route changes which resulted in inefficiencies. He characterized this as a blatant failure to manage and on October 2, 2015 scheduled appellant for an October 6, 2015 investigative interview. Appellant stopped work on October 5, 2015 and did not return. He used all his Family and Medical Leave Act (FMLA) leave in both 2015 and 2016. M.C. then scheduled an investigative interview for appellant's failure to be regular in attendance and issued a letter of warning on June 23, 2016. He noted that appellant had filed an EEO complaint as well as the August 19, 2016 settlement agreement. M.C. asserted that appellant failed to perform the essential functions of his job, used leave to avoid in the initial investigative interview, and filed for FECA benefits and disability retirement once disciplinary action was started.

In a November 7, 2016 e-mail, T.S. asserted that appellant did not want to take responsibility for the failures at his duty station. He alleged that appellant did not mitigate the challenges he faced daily as a postmaster. T.S. asserted that appellant had hiring packets to fill the vacancies in his office, but that he failed to contact applicants to fill the positions. He alleged that he assigned appellant the same tasks he asked of other postmasters.

By decision dated December 16, 2016, OWCP denied appellant's emotional condition claim finding that he had not provided medical evidence of a diagnosed condition in connection with the alleged work incidents. It further found that appellant had not substantiated a compensable factor of employment. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA. On January 9, 2017 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Reviews.

On June 8, 2017 counsel appeared before an OWCP hearing representative and contended that appellant was overworked due to the shortages of staff and supervisors.

On June 29, 2017 appellant submitted additional information. On July 6, 2015 appellant's superior, J.W., noted that supervisory overtime was not allowed without approval. In a July 7, 2015 e-mail, appellant informed his superiors that he had only one supervisor in the office. He noted that he had adjusted schedules to minimize supervisory overtime usage. Appellant reported that his duty station qualified for three supervisors. He asked which duties could be left incomplete, if supervisory overtime was not allowed. In a July 20, 2015 e-mail, T.S. noted that if any employee was using pre-tour overtime or if a 1723 form was not submitted or submitted incorrectly, then the manager would be scheduled for an investigative interview.

On June 11, 2017 appellant submitted a statement addressing M.C.'s allegations regarding the team investigation. He noted that on September 21, 2015 a team of postmasters observed his office and noted that he did not have adequate resources. Appellant alleged that there were no suggestions regarding how to make improvements. M.C. then scheduled appellant for an investigative interview based on unsatisfactory work performance as one carrier had not updated case labels. He asserted that staffing levels had not improved and he was still short almost 30 percent of complement. Appellant felt he had been set up to fail and used sick leave due to anxiety and stress. M.C. scheduled investigative interviews due to appellant's attendance issues, although

he alleged that he had provided medical restrictions. Thereafter, appellant filed an EEO complaint against M.C.

On June 15, 2017 appellant explained that he began working as postmaster on May 6, 2015 and that at that time he had a staff shortage of approximately one-third or 14 employees. He was forced to manage daily operations with only one other supervisor, when a total of three were required. Appellant reported that almost all employees were working overtime each week, but that he was only able to hire two carriers. He noted that he was working approximately 60 hours a week, 6 to 7 days a week. M.C., appellant's manager, was aware of the employee shortage situation, but did not approve hiring until August 2015. When he left in September 2015, his staff shortage had increased to 18 employees.

Appellant further noted that on June 6, 2015 management provided appellant with a supervisor-in-training. He was required to spend a few weeks training this person and was still short-staffed by one manager. Appellant was reprimanded for using overtime when the other supervisor was on leave. He asserted that it was impossible for him to run the office, cover all shifts, manage the employees, answer customer calls, and complete reports without the use of overtime by himself and his supervisory employees.

On June 8, 2015 appellant initiated removal of a clerk for job performance and insubordination issues. The clerk was not removed until June 29, 2015, which caused delays for hiring a replacement as a position could not be filled until it was vacant. Appellant then discovered that the clerk had been transferred to a location where her mother was postmaster. He noted that this was a violation of employing establishment policy. Appellant further reported that the human resources officer had forward his confidential e-mail which he felt put him in a tenuous position.

Beginning on July 17, 2015, appellant and T.S. addressed improving window clerk performance. He alleged that clerk performance had dramatically improved as prior to his arrival there had been six failed mystery shops and after he became postmaster, he received two 100 percent successful shop ratings. Appellant noted that T.S. accused him of failing the six mystery shops and assigned him a long list of daily tasks which would have required his attention from 8:30 a.m. until 5:30 p.m. He also noted that T.S. directed him to supply a management employee to use a mobile point of sale (mPOS), a hand-held device, and to assist customers, which he believed was a clear contract violation. On July 18, 2015 T.S. directed appellant to work on Sunday. Appellant responded *via* e-mail that if he worked on Sunday, he would not work a full day on Friday.

Appellant noted that on July 18, 2015, T. S. informed him of the expectations that appellant would operate without relying on overtime. He asserted that this was not possible given the shortage of employees. Appellant described the cascade of difficulties caused by staff shortages, the inability to require employees to work on their day off, and the resulting necessity of overtime.

Appellant explained, that as it was located in a college town, his post office was subjected to a fluctuation of 25,000 student customers with changes of address in the spring and fall. He asserted that management's refusal to acknowledge the hardship he faced due to shortage of employees and extenuating circumstances of the college community was unreasonable.

On July 21, 2015 appellant noted that he requested approval for overtime, but that T.S. denied this request noting that he was the last one to send in the request, and that T.S. had already submitted this report. He also alleged that T.S. did not respond to his requests on July 21 and 22, 2015 for posting vacant positions and overtime.

On July 21, 2015 appellant addressed a series of e-mails concerning a financial issue. He noted that the district would have to resolve the issue, and that he had notified his superiors, but that his duty station continued to remain on the noncomplaint list. Appellant alleged that this was an example of continued expectations beyond his abilities.

On July 22, 2015 appellant provided T.S. with his clerk observation form. He noted that he had only completed one day of observation and that T.S. was not pleased. T.S. indicated that he had received a form for only one day and ended the e-mail with several question marks. Appellant indicated that he received the directive to observe clerks at 1:00 p.m. on July 20, 2015 and felt the expectation of more than one day was unreasonable pressure.

On July 22, 2015 T.S. determined to remove appellant's experienced supervisor and reassign her. He did not discuss this plan with appellant. Appellant noted that he would be left with a supervisor-in-training and a third of the management of complement for his duty station. He experienced panic, dread, and anxiety and felt he required professional help.

In a series of e-mails dated July 23, 2015, T.S. and appellant discussed his work schedule. He accused appellant of working less than eight hours a day. Appellant alleged that the false accusations, the impossible expectations, and unrealistic demands caused extreme anxiety, stress, and depression. He sought treatment from the Employee Assistance Program (EAP). T.S. directed appellant to appear the next day for an investigative interview. Appellant requested sick leave from July 24 through August 13, 2015. He returned to work on August 14, 2015 when T.S. was removed as acting manager and M.C. reinstated.

After his return to work in August 2015, appellant continued to work with staff shortages, was forced to violate the union contract by sorting packages, and was unable to gain hiring approval. He noted that he was required to work 10- to 12-hour days to cover all shifts and to cover all days of the supervisors' absence. M.C. assigned appellant to prepare a power point presentation. He did not know how to create the presentation and M.C. directed him to contact another supervisor. Appellant was unable to reach the supervisor for help and did not complete this project within the allotted one week time period.

On August 28, 2015 M.C. sent appellant an e-mail informing him that the events at his duty station were unacceptable and that he would set up a daily process to direct, guide, and promote accountability. He did not set up this daily system.

By decision dated July 11, 2017, OWCP's hearing representative set aside the December 16, 2016 OWCP decision and remanded the claim for additional development of the factual evidence by OWCP.

In a July 13, 2017 development letter, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding the allegations in appellant's

June 29, 2017 narrative statement and the accompanying documentation. It afforded 30 days for response.

On August 1, 2017 M.C. provided a statement agreeing that appellant began as postmaster in early May 2015. He asserted that appellant qualified for two supervisors and had two supervisors. In September, M.C. sent a team to assist appellant in getting his office to an acceptable performance level. At that time, the team discovered that the route adjustments in July had not been properly implemented. This failure in implementation contributed to the inefficiencies. M.C. found that this was a blatant failure to manage and on October 2, 2015 he scheduled appellant for an investigative interview. Appellant stopped work on October 5, 2015 and did not return. He noted that appellant had used 12 weeks of FMLA sick leave in 2015 and 2016. M.C. then scheduled another investigative interview for not being regular in attendance after appellant exhausted his protective leave. He issued a letter of warning on May 19, 2016 and a seven-day suspension on June 23, 2016. Appellant filed an EEO complaint and the parties agreed to hold discipline in abeyance until appellant's disability retirement was adjudicated. M.C. asserted that appellant failed to perform the essential functions of his job and began using sick leave as soon as the first investigative interview was scheduled.

In an August 25, 2017 statement, M.C. asserted that appellant was given the same deadlines and instructions as any other manager. He denied asking him to violate any contractual provision or policies. M.S. noted that hiring, controlling attendance, and addressing performance was part of appellant's duties. He further noted that if appellant qualified for a third supervisor, then he should have submitted this request to human resources for approval. M.C. denied that appellant was entitled to a third supervisor.

M.C. provided June and July lists of the authorized employees for appellant's duty station including two earned supervisors. The list indicated that in June 10.2 points were needed for the next supervisor and in July 9.5 points were needed for the next supervisor.

On August 3, 2017 T.S. alleged that he treated appellant with dignity and respect. He alleged that he held appellant to the same standard as other managers. T.S. noted that appellant was in control of his staffing and that he had the ability to complete a hiring request to gain approval to hire additional employees. He noted that appellant was only entitled to two supervisors. T.S. concluded that appellant had all the tools and resources he needed to be successful and that his allegations were false and not supported by facts.

By decision dated September 29, 2017, OWCP denied appellant's emotional condition claim finding that he had not established compensable factors of employment and as there was no medical diagnosis of any condition resulting from an employment activity. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA. On October 6, 2017 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

On March 19, 2018 counsel appeared before OWCP's hearing representative and contended that appellant had substantiated compensable factors of employment as contributing to or causing his alleged emotional condition. He asserted that appellant was unable to perform his duties and developed an emotional reaction to the demands of his work.

On April 12, 2018 appellant provided additional information. He contended that the refusal of the employing establishment to remove an employee as he requested and its transfer of her to another post office was error or abuse. Appellant further alleged error or abuse by the human resources officer in forwarding his e-mails despite the marking of confidentiality. He noted that it took three weeks to remove the employee from his employment rolls and that this caused a month of delay in his hiring a replacement resulting in understaffing at his duty station.

Appellant contended that T.S. directed him to improve the performance of his window clerks by submitting a performance improvement plan. He further alleged that T.S. provided him with a list of daily tasks to perform to improve including making sure there was coverage of the window in the busiest times of day. Appellant asserted that this list was so extensive that he would not have time in the day to complete the other duties that must be performed to operate his duty station. He noted that since he had arrived his duty station had the first 100 percent mystery shop, an event wherein an outside person acts as a customer, mails a package, and completes a survey. Appellant also noted that prior to his arrival the station had six failed mystery shops. He alleged that T.S. directed him to use an mPOS used to complete basic transactions such as buying stamps or mailing a priority package. Appellant asserted that management was not allowed to use an mPOS as this violated the union contract.

Appellant alleged that T.S. had unreasonable expectations and used threatening and intimidating behavior. He noted that he was not allowed to use overtime despite being understaffed. Appellant again alleged that he had only 2/3 of the needed employees.

Appellant reviewed the number of supervisors allowed at his workstation and noted that the number of supervisors was determined by the number of employees. He noted that his workstation was short 14 employees. Appellant alleged that while his workstation only qualified for two supervisors, this did not include the vacant positions. He asserted that if it was fully staffed, then it would qualify for three supervisors. Appellant alleged on April 2016, that the workstation qualified for three supervisors. He asserted that management rejected his request for three supervisors, denied him the craft employee's needed, and added to his workload as well as demanding unreasonable expectations while threatening him with discipline. Appellant also disagreed with the assessment of his failure to manage and contended that only two routes had incorrect case labels.

On July 23, 2015 and May 30, 2016 Dr. Viengxay Malavong, an osteopath, examined appellant and diagnosed generalized anxiety disorder, panic disorder, and depression. On October 21, 2015 Dr. Zenon Bednarski, a family practitioner, diagnosed depression and anxiety. In a report dated July 16, 2017, Dr. Ramakanth Vemuluri, a Board-certified psychiatrist, diagnosed major depressive disorder, generalized anxiety disorder, and chronic dysthymia.

By decision dated October 18, 2018, OWCP's hearing representative affirmed OWCP's September 29, 2017 decision denying appellant's emotional condition claim. He found that he had not substantiated a compensable factor of employment as causing or contributing to his diagnosed emotional condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim[4] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that 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 the following: (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 identified compensable employment factors are causally related to the 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.[8] In the case of *Lillian Cutler*,[9] the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition under FECA. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the concept or coverage under FECA.[10] 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.[11] On the other hand, when an injury or illness results from an employee's feelings of job insecurity *per se*, fear of a reduction-in-force, his or her frustration from not being permitted to work in a particular environment or hold a particular

[3] *Id*.

[4] *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[5] *O.G.*, *id.*; *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[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] *O.G.*, *supra* note 4; *George H. Clark*, 56 ECAB 162 (2004).

[8] *T.L.*, Docket No. 18-0100 (issued June 20, 2019); *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

[9] 28 ECAB 125 (1976).

[10] *S.K.*, Docket No. 18-1648 (issued March 4, 2019); *A.K.*, 58 ECAB 119 (2006); *David Apgar*, 57 ECAB 137 (2005).

[11] *Cutler*, *supra* note 9; *O.P.*, Docket No. 19-0445 (issued July 24, 2019) *Trudy A. Scott*, 52 ECAB 309 (2001).

position, unhappiness with doing work, or frustration in not given the work desired or hold a particular position, such injury or illness falls outside FECA's coverage because they are found not to have arisen out of employment.[12]

To the extent that disputes and incidents alleged as constituting harassment by coworkers are established as occurring and arising from a claimant's performance of his or her regular duties, these could constitute employment factors.[13] However, for harassment to give rise to a compensable disability under FECA there must be evidence that harassment did, in fact, occur. Mere perceptions of harassment are not compensable under FECA.[14]

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 compensable factors of employment and may not be considered.[15] If an employee does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. If a compensable factor of employment is substantiated, OWCP must base its decision on an analysis of the medical evidence which has been submitted.[16]

OWCP's regulations provide that an employer who has reason to disagree with an aspect of the claimant's allegation should submit a statement that specifically describes the factual argument with which it disagrees and provide evidence or argument to support that position.[17] Its regulations further provide in certain types of claims, such as a stress claim, a statement from the employer is imperative to properly develop and adjudicate the claim.[18]

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.[19] The nonadversarial policy of proceedings

[12] *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *William E. Seare*, 47 ECAB 663 (1996).

[13] *T.L.*, *supra* note 8; *M.R.*, Docket No. 18-0304 (issued November 13, 2018); *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[14] *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[15] *B.S.*, *supra* note 12; *Dennis J. Balogh*, 52 ECAB 232 (2001).

[16] *O.G.*, *supra* note 4; *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[17] 20 C.F.R. § 10.117(a); *D.L.*, Docket No. 15-0547 (issued May 2, 2016).

[18] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7(a)(2) (June 2011).

[19] *D.B.*, Docket No. 19-0443 (issued November 15, 2019); *K.S.*, Docket No. 18-0845 (issued October 26, 2018); *D.L.*, 58 ECAB 217 (2006); *Jeral R. Gray*, 57 ECAB 611 (2006).

under FECA is reflected in OWCP's regulations at section 10.121.[20] Once OWCP undertakes to develop the evidence, it has the responsibility to do so in a proper manner.[21]

ANALYSIS

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

Appellant alleged that he developed depression, anxiety, and stress due to overwork, unrealistic demands, and impossible expectations. He asserted that he experienced emotional stress in carrying out his employment duties including attempting to meet deadlines, goals, and directives. OWCP denied appellant's claim finding that he had not established a compensable employment factor. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.

Appellant has attributed his emotional condition to performing the regular or specially assigned duties of his position as postmaster. He alleged that he was overworked as his duty station was chronically understaffed with only two supervisors and a shortage of a total of 18 employees or one-third of the number allotted. Appellant also noted he was required to work seven days a week, 56 to 64 hours a week, and he could not meet assigned deadlines, goals, and directives. 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.[22]

On July 13, 2017 OWCP requested that the employing establishment address the accuracy of appellant's allegations and claims. In response, the employing establishment denied a shortage of supervisors, noting that appellant's duty station was only entitled to two supervisors. However, it did not clarify the period during which appellant had two supervisors, whether he was included within the calculation of the number of supervisors, or whether a supervisor-in-training was considered as filling a full supervisory position. The employing establishment's response also focused solely on the number of supervisors and did not otherwise address appellant's contentions that he was overworked. It failed to respond to appellant's allegations regarding the number of hours and days he worked, or the deadlines, goals, and directives that he was unable to meet. Thus, the Board finds that the employing establishment did not fully respond to the July 13, 2017 development letter. Moreover, OWCP did not request further information from the employing establishment that is normally in the exclusive control of the employing establishment (*e.g.*, time schedules, appropriate staff levels, and the time period, if any, during which appellant's duty station was fully staffed). As discussed, OWCP's procedures provide that, in emotional condition cases, a statement from the employing establishment is necessary to adequately adjudicate the claim.[23]

[20] 20 C.F.R. § 10.121.

[21] *F.V.*, Docket No. 19-0006 (issued September 19, 2019); *Cutler, supra* note 9.

[22] *I.P.*, Docket No. 17-1178 (issued June 12, 2018); *William H. Fortner*, 49 ECAB 324 (1998).

[23] *Supra* note 18; *M.T.*, Docket No. 18-1104 (issued October 9, 2019).

The Board finds that it is unable to make an informed decision in this case as the employing establishment did not adequately respond to the request for comment made by OWCP in the July 13, 2017 development letter.[24]

Although it is a claimant's burden of proof to establish his or her claim, OWCP is not a disinterested arbiter but, rather, shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.[25]

This case will accordingly be remanded to OWCP for further development of the evidence regarding appellant's allegations of overwork. OWCP shall request that the employing establishment provide a detailed statement and relevant evidence and/or argument regarding appellant's allegations. Following this and any necessary further development, it shall issue a *de novo* decision regarding whether appellant has established an emotional condition in the performance of duty.

CONCLUSION

The Board finds that this case is not posture for a decision.

[24] *V.H.*, Docket No. 18-0273 (issued July 27, 2018).

[25] *R.A.*, Docket No. 17-1030 (issued April 16, 2018); *K.W.*, Docket No 15-1535 (issued September 23, 2016) (remanding the case for further development by OWCP when the employing establishment did not provide an investigative memorandum in an emotional condition claim based on sexual harassment).

ORDER

IT IS HEREBY ORDERED THAT the October 18, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 21, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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