United States Department of Labor
Employees' Compensation Appeals Board

C.C., Appellant	)	
and	)	**Docket No. 21-0283**
	)	**Issued: July 11, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Melville, NY, Employer	)	

Appearances:
Paul Kalker, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On December 17, 2020 appellant, through counsel, filed a timely appeal from an August 6, 2020 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 that he sustained an emotional condition in the performance of duty, as alleged.

FACTUAL HISTORY

On September 13, 2019 appellant, a 37-year-old tractor-trailer operator, filed an occupational disease claim (Form CA-2) alleging that he developed an anxiety disorder because he felt threatened while at work. He noted that he first became aware of his claimed condition on July 27, 2019 and realized its relation to his federal employment on August 28, 2019. Appellant stopped work July 28, 2019.

In a September 12, 2019 statement, appellant alleged that on March 22, 2019 his supervisor, A.B., wrongly denied his request for light-duty work following hernia surgery. He indicated that he filed an Equal Employment Opportunity (EEO) complaint on May 30, 2019 regarding the denial of light-duty work. Appellant indicated that he stopped work due to the hernia surgery and returned to work in June 2019. He alleged that on June 11, 2019 A.B., who was off duty at the time, ordered him to leave a coffee shop. Appellant indicated that his shop steward told him not to follow orders from a supervisor who was off duty. He asserted that he was issued a seven-day suspension on June 12, 2019 regarding the events of June 11, 2019. Appellant further alleged that, in regard to a request for overtime, A.B. used a vulgar phrase when discussing the matter with another supervisor. He indicated that on July 2, 2019 he filed an EEO complaint regarding the denial of overtime and asserted that A.B. attached a copy of the complaint to the wall of his duty station. Appellant alleged that A.B. told him that "some people" at the employing establishment wanted to hit him. He also claimed that on July 25, 2019 he was not assigned the proper truck.

In an August 2, 2019 statement, A.B. notified appellant that his request for continuation of pay (COP) was denied because the present claim was for an occupational disease and not a traumatic injury. He indicated that appellant's request for leave was also denied because the same Form PS 3971 was used to request 80 hours of leave across more than one pay period.

In a September 20, 2019 letter, the employing establishment challenged the claim. In a September 19, 2019 statement, A.B. explained that appellant's request for light-duty work was denied because he did not provide appropriate medical documentation. He advised that appellant was denied overtime to the extent that he would have to wait until the beginning of the next quarter for overtime. A.B. denied using a vulgar phrase when speaking about appellant's request for overtime with W.L., another supervisor. He noted that on June 11, 2019 he saw appellant at a coffee shop and that appellant told him that he was taking his meal break and using the bathroom at the shop. However, A.B. noted that appellant's vehicle was parked at a nearby automobile supply shop. He indicated that appellant could not take a lunch break at a private parking lot. A.B. acknowledged he was off duty at the time of the encounter and advised that he just happened to be passing the shop when he saw appellant. He asserted that appellant did not work on July 25, 2019 and, thus, there could not have been a truck assignment for him on that date. In a September 19, 2019 statement, W.L. indicated that appellant could not start working overtime until the beginning of the next quarter. He denied that A.B. used a vulgar phrase in reference to appellant. Another

supervisor, H.D., indicated in a statement produced on the same date that A.B. did not make the alleged vulgar phrase in his presence.

In support of is claim, appellant submitted medical reports from Dr. Joel King, a Board-certified psychiatrist, and Dr. Yalena Stone, a Board-certified family medicine physician.

In a September 30, 2019 development letter, OWCP informed appellant of the deficiencies of his claim. It notified appellant of the type of factual and medical evidence needed and afforded him 30 days to submit the necessary evidence.

In an October 16, 2019 statement, appellant asserted that A.B.'s June 11, 2019 order to him at the coffee shop was illegal. He submitted additional medical evidence in support of his claim.

By decision dated March 18, 2020, OWCP denied appellant's emotional condition claim, finding that he had not established a compensable employment factor.

On April 7, 2020 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Prior to the hearing, appellant submitted an April 17, 2020 statement from S.M, a union steward, who noted that appellant called him on July 26, 2019 and reported that he had not gotten his regularly-assigned truck, which was equipped with air conditioning. S.M. advised appellant that G.F., another union steward, had told him that A.B. was furious about appellant's grievance regarding vehicle assignments. He indicated that G.F had sent him a photograph of a notice posted in the truck driver's room at the employing establishment that mentioned appellant's name and referenced his grievance. S.M. indicated that he told G.F. to file a complaint with the National Labor Relations Board.

Appellant submitted a copy of a notice entitled, "Attention all drivers," which stated that appellant had filed a grievance regarding vehicle assignments. In a July 27, 2019 statement, A.G., a coworker of appellant, indicated that on July 27, 2019 he saw such a notice at the employing establishment.

During the June 29, 2020 hearing, appellant's then-counsel argued that the employing establishment had engaged in wrongdoing. Appellant testified that he told A.B. that he had to be assigned a particular truck as per the union agreement and that A.B. responded that someone else was driving appellant's truck and that he should just do his job by using another truck. Appellant also testified that G.F. warned him "some other guys" at the employing establishment stated that he "deserved a punch."

After the hearing, appellant submitted an October 8, 2019 statement in which G.F. indicated that a grievance decision had been issued, which found that nothing improper happened on July 27, 2019. G.F. asserted that this decision was erroneous. The case record contains a copy of the October 8, 2019 decision, which denied appellant's grievance regarding the posting of the notice on July 27, 2019.

The case record contains a document entitled, "Grievance summary – step 1" which memorialized an August 5, 2019 meeting and noted that appellant had filed a grievance concerning the employing establishment's denial of leave and COP.

In a September 14, 2019 statement, D.H., an acting supervisor, noted that on July 27, 2019 appellant told him that his grievance was posted at the employing establishment. D.H. also noted that appellant told him that he had received a "death threat" from a coworker.

The case record contains a March 7, 2020 document entitled, "Step 1 grievance outline worksheet," which discusses appellant's argument regarding the denial of his request for light-duty work. In a March 12, 2020 document entitled, "Grievance summary -- step 1" the employing establishment asserted that appellant failed to provide appropriate documentation to support the light-duty work request. The case record also contains an excerpt from a collective bargaining agreement.

In a May 28, 2020 e-mail statement, A.B. denied that any discrimination against appellant occurred. In an undated statement, he advised that appellant's grievances and EEO complaints had been dismissed.

By decision dated August 6, 2020, OWCP's hearing representative affirmed the March 18, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[4] 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.[5]

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

[3] 5 U.S.C. § 8101 *et seq*.

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

[5] 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).

evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.[6]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or 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.[7] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction in force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.[8]

A claimant has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.[9] This burden includes the submission of a detailed description of the employment factors or conditions which he or she believes caused or adversely affected a condition for which compensation is claimed, and a rationalized medical opinion relating the claimed condition to compensable employment factors.[10]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship, and which working conditions are not deemed factors of employment and may not be considered.[11] If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, it must base its decision on an analysis of the medical evidence.[12]

[6] *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).

[7] *Lillian Cutler*, 28 ECAB 125 (1976).

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

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

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

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

[12] *Id.*

ANALYSIS

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

Appellant has alleged that he sustained an emotional condition as a result of a number of incidents and conditions at his workplace. OWCP denied his emotional condition claim, finding that he had not established a compensable employment factor. The Board must, therefore, initially review whether these alleged incidents are covered employment factors under the terms of FECA.[13] The Board notes that appellant's claim does not directly relate to his regular or specially assigned duties under *Lillian Cutler*.[14] Rather, appellant primarily claimed that management committed error and abuse with respect to various administrative/personnel matters. He also claimed that management subjected him to harassment and discrimination.

With respect to administrative or personnel matters, appellant alleged that on March 22, 2019 his supervisor, A.B, wrongly denied his request for light-duty work following hernia surgery. He alleged that on June 11, 2019 A.B., who was off duty at the time, improperly ordered him to leave a coffee shop. Appellant indicated that his shop steward told him not to follow orders from a supervisor who was not on duty. He asserted that he was wrongly issued a seven-day suspension on June 12, 2019 regarding the events of June 11, 2019. Appellant indicated that on July 2, 2019 he filed an EEO complaint regarding the denial of overtime and asserted that A.B. improperly placed a copy of the complaint on the wall of his duty station. He claimed that on July 25, 2019 he was not assigned the proper truck. Appellant asserted that on July 27, 2019 A.B. improperly placed a notice in his duty station, which referenced his grievance concerning vehicle assignment. He claimed that management wrongly denied his requests for leave and COP.

The Board has held that administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.[15] However, the Board has also held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.[16] In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.[17]

The Board finds that appellant has not submitted sufficient evidence to establish the above-noted claims about administrative/personnel matters. Appellant did not submit documentation that

[13] *Y.W.*, Docket No. 19-1877 (issued April 30, 2020); *Dennis J. Balogh*, 52 ECAB 232 (2001).

[14] *See Lillian Cutler*, *supra* note 7.

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

[16] *M.S.*, Docket No. 19-1589 (issued October 7, 2020); *William H. Fortner*, 49 ECAB 324 (1998).

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

showed that the employing establishment committed error or abuse with respect to these matters. There is no indication that appellant obtained a final determination from an administrative body showing that the employing establishment committed error or abuse.[18] In fact, the case record contains a final decision finding that the employing establishment acted properly when, on July 27, 2019, it posted the notice regarding appellant's grievance on the duty station wall. In addition, management officials presented reasons for a number of its administrative actions, including noting that appellant did not provide appropriate documentation in connection with requests for leave, overtime, and light-duty work. Although appellant expressed dissatisfaction with the actions of his superiors, the Board has held that mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor.[19] Appellant has not substantiated error or abuse committed by the employing establishment in the above-noted matters and, therefore, he has not established a compensable employment factor with respect to administrative or personnel matters.

Appellant also alleged he was subjected to harassment and discrimination. He alleged that, in regard to a request for overtime, A.B. used a vulgar phrase when discussing the matter with another supervisor. Appellant alleged he was told that "some people" at the employing establishment wanted to hit him or otherwise injure him. To the extent that disputes and incidents alleged as constituting harassment or discrimination are established as occurring and arising from an employee's performance of his or her regular duties, these could constitute employment factors.[20] The Board has held that unfounded perceptions of harassment or discrimination do not constitute an employment factor.[21] Mere perceptions are not compensable under FECA and harassment or discrimination can constitute a factor of employment if it is shown that the incidents constituting the claimed harassment or discrimination actually occurred.[22]

Appellant, however, did not submit corroborative evidence in support of his allegations regarding harassment and discrimination. He did not submit witness statements or other documentary evidence demonstrating that the alleged harassment and discrimination occurred as alleged.[23] Appellant also did not submit the final findings of any administrative complaint or grievance he might have filed with respect to these matters. Therefore, appellant has not established a compensable employment factor with respect to the claimed harassment and discrimination.

[18] *See M.R.*, Docket No. 18-0304 (issued November 13, 2018).

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

[20] *D.B.*, Docket No. 18-1025 (issued January 23, 2019); *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

[21] *See F.K.*, Docket No. 17-0179 (issued July 11, 2017).

[22] *See id.*

[23] *See B.S.*, *supra* note 9.

As the Board finds that appellant has not established a compensable employment factor, it is not necessary to consider the medical evidence of record.[24]

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 that he sustained an emotional condition in the performance of duty, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the August 6, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 11, 2022
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

[24] *See B.O.*, Docket No. 17-1986 (issued January 18, 2019) (it is not necessary to consider the medical evidence of record if a claimant has not established any compensable employment factors). *See also Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).