United States Department of Labor
Employees' Compensation Appeals Board

J.C., Appellant	)	
and	)	**Docket No. 22-0254**
	)	**Issued: November 29, 2022**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Pittsburgh, PA, Employer	)	

Appearances:
Joseph J. Chester, 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 8, 2021 appellant, through counsel, filed a timely appeal from a June 11, 2021 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 to consider 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.

FACTUAL HISTORY

On October 9, 2020 appellant, then a 60-year-old operations program specialist, filed an occupational disease claim (Form CA-2) alleging that he sustained a generalized anxiety disorder, recurrent severe major depressive disorder, and acute stress disorder causally related to factors of his federal employment. He attributed his condition to a retaliatory and toxic atmosphere at his agency work location, the employing establishment's failure to promptly act upon his reasonable accommodation request, and becoming aware that there was office space at other locations. Appellant stopped work on February 24, 2020 and returned to work on August 24, 2020.[3]

On April 1, 2019 appellant accepted a position in Pittsburgh, PA working as an operations program specialist.

In April 2019 appellant requested a period of reduced hours per week as a reasonable accommodation. On May 24, 2019 C.B., a supervisor, approved his reasonable accommodation request to work three consecutive days a week for four months. She advised appellant to contact her if he subsequently required a new or different accommodation.

On July 19, 2019 J.K., a labor relations manager and member of the district reasonable accommodation committee (DRAC) team, noted that appellant's union representative had requested that he not work weekends and that his work location be changed with a reduced commuting time. He advised that Sunday would remain included as a workday due to appellant's job functions. J.K. requested updated medical information addressing limitations on commuting time or appellant's work location.

In a medical information form dated August 22, 2019, a social worker indicated that appellant should be relocated because of the distance and stress.

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[3] Appellant had previously filed a March 3, 2016 occupational disease claim for stress, anxiety, and depression due to a hostile work environment. OWCP assigned OWCP File No. xxxxxx390. It found that appellant had established working overtime from April 2014 through January 2016 as a compensable employment factor. OWCP determined that he had not established as a compensable work factor that he was investigated from January through March 2016 for complaints that he had created a hostile work environment. On September 26, 2016 the employing establishment placed appellant on paid administrative leave and, on March 18, 2019, demoted him for misconduct. On December 27, 2019 OWCP accepted that he had sustained a single episode of major depressive disorder without psychotic features and a generalized anxiety disorder under OWCP File No. xxxxxx390. Appellant's claims have been administratively combined with OWCP File No. xxxxxx390 serving as the master file.

On March 17, 2020 appellant filed a claim for wage-loss compensation (Form CA-7) due to disability from work for the period February 29 to March 13, 2020 under OWCP File No. xxxxxx390. OWCP developed the claim as a recurrence of disability.[4]

In response to OWCP's development letter under OWCP File No. xxxxxx390, on April 14, 2020 appellant related that he had spoken with his managers C.B. and M.K. several times from August 2019 through January 2020 about reasonable accommodation measures regarding office space. His mangers told him that there was no vacant office space for him. Appellant asserted that employees at other locations had informed him that office space was available. He filed an Equal Employment Opportunity (EEO) complaint for his reasonable accommodation request, noting that he had submitted the reasonable accommodation request in August 2019 but did not receive an answer until February 10, 2020. Appellant's EEO complaint was combined with another EEO complaint that he had filed, which he maintained was retaliatory in nature. M.K. told him that he was placed in his current location so he would "blow up" or "go off the deep end." On February 24, 2020 appellant left work after an anxiety attack. He advised that upon returning to work from administrative leave he performed computer work even though he was not trained or familiar with the that type of work. Appellant asserted that management's delay in acting on his reasonable accommodation request had exacerbated his condition.

In an EEO investigative affidavit dated March 26, 2020, J.K., advised that he was unaware of a reasonable accommodation request on February 10, 2020. He indicated that he did not know what appellant had requested and that it was "not presented to the RAC team."

In an EEO investigative affidavit dated April 20, 2020, C.B. advised that appellant's condition had not affected his ability to perform his work duties, though he was on leave at the present time. She related that she had been involved in appellant's reasonable accommodation request for a work hardening period to "ease back into work in a stepped manner," and noted that DRAC had approve the request in May 2019. C.B. asserted that a "request for working in another facility was not part of that request or decision." She related that she had not received further reasonable accommodations requests or documentation of a medical condition or impairment. C.B. indicated that appellant had brought up being moved to another facility several times because he felt stressed at his current location but was unsure. She related, "In our conversations he has indicated that he would like to be moved to another facility but during the same conversation states that it is not needed at this time." C.B. advised that appellant had not formally requested a change of facility as accommodation. She indicated that M.K. had contacted two facilities to see if they had office space for appellant but both said that they had no space. In a supplemental statement dated May 15, 2020, C.B. maintained that she would never have told appellant that he was put in the work location to "blow up or go off the deep end." She related that appellant had anxiety about working in the building and left work "visibly upset" on February 24, 2020.

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[4] By decision dated November 3, 2020, issued in OWCP File No. xxxxxx390, OWCP's hearing representative found that appellant had not established a recurrence of disability as he had attributed his condition to new exposure after his returning to work in the position of operations programs specialist in March 2019. The hearing representative instructed OWCP to combine OWCP File No. xxxxxx390 into OWCP File No. xxxxxx502, and to move all documents related to the February 20, 2020 work stoppage into OWCP File No. xxxxxx502.

In an EEO investigative affidavit dated April 2020, M.K. indicated that appellant had requested working off site 10 or more times, but each time subsequently informed him that he did not want to proceed with the request. M.K. told him to make his request to the DRAC. He advised that he did not "know how to accommodate someone who changes their mind." In a supplemental statement, M.K. related that appellant believed that management was conspiring against him and that he did not "have the heart to tell him that I think he is chasing something crazy." He denied that he made such comments. M.K. related that some jobs were posted for off-site work. He indicated that he did not know of offices that were vacant in the other work locations.

On June 17, 2020 appellant maintained that he had provided C.B. with information that he required new accommodation and that it was provided to the DRAC committee in August or September 2019. He noted that she was aware that he was uncomfortable at work and that M.K. had attempted to find him an alternate work site. Appellant questioned why M.K. would try to find him another location if he did not know that he had requested reasonable accommodation.

On June 30, 2020 OWCP received an April 11, 2020 statement from B.P., a retired coworker, who related that he had worked with appellant as an operational support specialist since April 2019. He advised that on two occasions he was present when M.K. told appellant that he was working at the Pittsburgh location because they wanted him to either "blow up" or "go off the deep end." B.P. indicated that the comments occurred in a manager's office and in appellant's cubicle.

In a statement dated October 10, 2020, counsel noted that after his demotion, appellant was moved to a facility in Pittsburgh, an hour away from his usual work location. He indicated that managers at that location shunned him because of his demotion. Appellant received four months of working a modified schedule as a reasonable accommodation beginning May 2019. Management told him that there were no offices available in other locations. Counsel asserted that in January and February 2020, appellant "learned that he had been lied to and that office space was indeed available…." As a result, he experienced an exacerbation of his depression and anxiety.

In a development letter dated October 15, 2020, OWCP advised appellant of the factual and medical evidence necessary to establish his claim and attached a questionnaire for his completion. By separate letter of even date, it also requested additional information from the employing establishment. OWCP afforded both parties 30 days to respond. No response was received.

By decision dated December 4, 2020, OWCP denied appellant's emotional condition claim. It found that he had not established any compensable factors of employment.

On December 23, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on April 5, 2021. Appellant provided a recitation of his 2016 emotional condition case. He noted that in September 2016 the employing establishment placed him on administrative leave. Nothing happened until September 2018, when he received a proposed demotion, which became effective March 2019. Appellant appealed the demotion to the Merit Systems Protection Board (MSPB). Right before the MSPB hearing, the employing

establishment withdrew the demotion and returned him to his original position in November 2020. Counsel advised that appellant was currently claiming an emotional condition due to work factors that had occurred during his demotion from March 2019 through November 2020. The employing establishment initially told him that he would have weekends off but subsequently scheduled him to work 7:00 a.m. until 4:00 p.m. on Sundays and then changed his Sunday shift to 10:00 a.m. until 7:00 p.m. Appellant related that his new position required computer literacy and that it took him time to get over "culture shock." On May 14, 2019 he met with the reasonable accommodation board to request returning to work two to three days for a period of time as work hardening. The employing establishment agreed that he could work a three-day schedule for four months. At an DRAC meeting on May 14, 2020 the attorney for the employing establishment involved with appellant's MSPB claim appeared and told him that he could not have representation. He had to leave work because of a panic attack. The meeting was rescheduled and appellant received an apology letter from the occupational health nurse. Appellant related that in August 2019 he submitted accommodation papers to his supervisor with a request to be moved. In 2020 his supervisor, M.K., asked two locations closer to his residence if they had extra offices available but was told there was no space. Appellant spoke with individuals that told him that office space was available in both locations. He told management but they ignored him. Appellant filed an EEO complaint, but it was combined with another EEO complaint.

The hearing representative noted that appellant had not attributed his condition to performing his duties from March 31, 2019 until February 2020. Counsel confirmed that appellant attributed his condition to the employment action and the response to his request for reasonable accommodation. After mediation, the employing establishment found him office space in a hallway that had been vacant for nine years. Appellant related that his job could be done from any location, including remotely. He advised that he had to stop work because of the misrepresentation made that there was no office space available for him in another location closer to his residence.

Appellant submitted a January 22, 2020 email from M.K. to L.K. asking if there was office space available for appellant at her location. She responded that they were "kind of full-up" but that she would check. In a February 7, 2020 email, S.T. advised M.K. that he had no office space.

On May 5, 2021 counsel noted that when appellant returned to work after administrative leave and a demotion in March 2019, he had to work Sundays and at reduced pay. The employing establishment assigned him to a position 28 miles from his house even though it was a desk position that could be done from anywhere. Counsel related that appellant had a relapse on March 14, 2019 when he asked for two days off weekly. The employing establishment approved his request and he worked three days a week until August 2019. Counsel noted that C.B. had told appellant on May 24, 2019 to contact her if he required additional accommodation and indicated that an accommodation request could be made orally or in writing. The employing establishment told him that there was no office space available, but he subsequently learned this was not true and had a breakdown due to the employing establishment's "delay and duplicity." Appellant resumed work on August 24, 2020 at a desk in a hallway/reception area that could have been provided months earlier.

In an email dated July 8, 2019, appellant's union representative noted that he had asked during the DRAC meeting if he could be reassigned to a location to reduce travel time and anxiety.

By decision dated June 11, 2021, OWCP's hearing representative affirmed the December 4, 2020 decision.

LEGAL PRECEDENT

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 evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.[5]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to a claimant's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.[6] However, disability is not compensable when it results from factors such as an employee's fear of a reduction-in-force, or frustration from not being permitted to work in a particular environment, or to hold a particular position.[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] Where, however, 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.[9]

For harassment or discrimination to give rise to a compensable disability under FECA, there must be probative and reliable evidence that harassment or discrimination did in fact occur.[10] Mere perceptions of harassment are not compensable under FECA.[11]

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[5] *See S.K.*, Docket No. 18-1648 (issued March 14, 2019); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

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

[7] *Lillian Cutler, id.*

[8] *See R.M.*, Docket No. 19-1088 (issued November 17, 2020); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 556 (1991).

[9] *M.A.*, Docket No. 19-1017 (issued December 4, 2019).

[10] *See E.G.*, Docket No. 20-1029 (issued March 18, 2022); *S.L.*, Docket No. 19-0387 (issued October 1, 2019); *S.B.*, Docket No. 18-1113 (issued February 21, 2019).

[11] *Id.*

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.[12] 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, OWCP must base its decision on an analysis of the medical evidence.[13]

ANALYSIS

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

Appellant has not attributed his condition to the performance of his regularly or specially assigned duties under *Cutler*.[14] Instead, he maintained that he sustained an emotional condition due to administrative actions by the employing establishment. In *Thomas D. McEuen*,[15] the Board 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 the 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.[16]

Appellant maintained that he had repeatedly asked for a transfer but was told that there was no office space available at two locations closer to his residence. He asserted that he submitted accommodation papers to his supervisor in 2019. Appellant submitted an email dated July 8, 2019 from his union representative noting that he had asked during the DRAC meeting if he could be reassigned to another location to reduce his travel time and anxiety and have weekends as off days. On July 19, 2019 J.K. noted that his representative had asked about a schedule and location change and requested supporting medical information. Appellant maintained that he had spoken to C.B. and M.K. at various times between August 2019 and January 2020 about reasonable accommodation but was told there was no office space. He filed an EEO complaint regarding his reasonable accommodation request. Appellant asserted that the employing establishment's delay in acting on his reasonably accommodation request had exacerbated his condition. He further contended that he learned in January and February 2020 that management had lied to him about there being space available. Appellant submitted January 22 and February 7, 2020 emails from

[12] *See R.B.*, Docket No. 19-0434 (issued November 22, 2019); *O.G.*, Docket No. 18-0359 (issued August 7, 2019).

[13] *Id*.

[14] *Supra* note 7.

[15] *See Thomas D. McEuen, supra* note 8.

[16] *M.B.*, Docket No. 20-1160 (issued April 2, 2021); *William H. Fortner*, 49 ECAB 324 (1998).

M.K. asking if there was office space available at a different location. Both locations advised that there was no office space. Appellant noted that on August 24, 2020 he was moved to another location and provided a desk in a hallway/reception area.

The Board has held that conditions resulting from a desire for a different job or transfer are administrative matters and not compensable absent a showing of error or abuse by the employing establishment.[17] In an EEO investigative affidavits dated March 26, 2020, J.K., a member of the DRAC team and labor relations manager, advised that he was not aware that appellant had made a reasonable accommodation request. In an April 20, 2020 EEO affidavit, C.B. noted that the DRAC committee had approved appellant's request for work hardening but contended that he had not requested working at another facility as part of the request. She asserted that he had informed her that he wanted to switch locations due to stress but would also tell her that he did not require the move at this time. C.B. related that appellant had not formally requested a facility change as accommodation. M.K., in an EEO investigative affidavit from April 2020, related that he had frequently requested working off site, but each time asserted that he did not currently want to proceed with the request. Appellant alleged that M.K. told him that the employing establishment had placed him in his current work location so that he would "blow up" or "go off the deep end." She has not submitted any evidence demonstrating that he formally requested a transfer as a reasonable accommodation or that management erred in failing to reasonably accommodate him by transferring him to a new work location.[18] Consequently, he has not established a compensable work factor for this administrative matter.

Appellant further maintains that the employing establishment initially advised that he would not work weekends but later required him to work on Sundays from 10:00 A.M. until 7:00 p.m. The assignment of a work schedule or tour of duty is recognized as an administrative function of the employer and, absent evidence of error or abuse, does not constitute a compensable employment factor.[19] Appellant has not submitted any corroborating evidence to establish error or abuse by management in its administrative action in setting his work schedule. Therefore, he has not met his burden of proof to establish error or abuse by the employing establishment in this administrative matter.[20]

Appellant additionally alleges that he was demoted in 2019 and that the employing establishment rescinded the demotion before his MSPB trial. An emotional reaction to an administrative action such as a demotion may be compensable if the evidence establishes error or abuse by the employing establishment.[21] Appellant, however, has not submitted any factual evidence showing error or abuse on behalf of the employing establishment.

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[17] *See R.V.*, Docket No. 16-0182 (issued June 15, 2016); *Charles E. McAndrews*, 55 ECAB 711 (2004).

[18] *See F.W.*, Docket No. 18-1526 (issued November 26, 2019); *John Polito*, 50 ECAB 347 (1999).

[19] *See C.J.*, Docket No. 19-1722 (issued February 29, 2021); *Helen Allen*, 47 ECAB 141 (1995).

[20] *See I.M.*, Docket No. 19-1189 (issued November 16, 2020); *D.R.*, Docket No. 16-0605 (issued October 17, 2016).

[21] *See D.B.*, Docket No. 18-1025 (issued January 23, 2019); *K.W.*, Docket No. 15-1353 (issued September 23, 2016).

Regarding appellant's allegation that he did not receive training for his new position, the Board notes that an emotional reaction to being made to perform duties without adequate training is compensable.[22] However, appellant has not submitted any evidence supporting his allegation that he was not provided the requisite training to perform his job, and thus has failed to meet his burden of proof to establish error or abuse.

As appellant has not established a compensable employment factor, the Board finds that he has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the June 11, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 29, 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

[22] *See P.B.*, Docket No. 19-1673 (issued December 1, 2021); *M.S.*, Docket No .19-1589 (issued October 7, 2020).