

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

C.R., Appellant)	
)	
and)	Docket No. 21-0463
)	Issued: April 28, 2023
U.S. POSTAL SERVICE, COLLEGE STATION)	
POST OFFICE, College Station, TX, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 2, 2021 appellant filed a timely appeal from a January 4, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained an emotional/stress-related condition in the performance of duty, as alleged.

FACTUAL HISTORY

On September 24, 2018 appellant, then a 46-year-old postmaster, filed an occupational disease claim (Form CA-2) alleging that stress from his work caused him to develop kidney failure in 2016 and to suffer a minor stroke in September 2018. He noted that he first became aware of

¹ 5 U.S.C. § 8101 *et seq.*

his claimed condition on December 1, 2016, and first realized its relation to his federal employment on September 21, 2018. Appellant did not stop work.

In a September 21, 2018 e-mail to T.I., Manager Post Office Operations and appellant's immediate supervisor, appellant asserted that he noticed that stress from his work at the employing establishment began to affect his health "on or about November [or] December 2015 [to] January 2016." He indicated that appellant requested to be placed in a downgraded position in late-2015 or early-2016 due to his failing health and advised that the request was granted effective February 6, 2016. Appellant alleged that he was informed on September 20, 2018 that he had suffered a "[b]rain [s]troke due to stress."

In an October 3, 2018 development letter, OWCP notified appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding appellant's allegations. It afforded both parties 30 days to respond.

Appellant thereafter submitted an October 11, 2018 statement wherein he advised that he worked as the postmaster at the employing establishment and formerly worked as the postmaster at a different facility from 2013 to 2016. He asserted that his starting work at the current employing establishment post office on February 6, 2016 was the result of his voluntary request to move to a downgraded position due to his declining health. Appellant maintained that M.K., his former supervisor at the prior facility, failed to provide him with support, blocked him from hiring staff, and forced him to work for two years with only one supervisor. He claimed that M.K. ignored his request to repair the trailer behind the main building, thereby forcing employees to work under congested conditions at a time when mail volume had increased. Appellant asserted that, after the trailer was repaired in 2018, the congested working conditions continued because management instructed his work unit not to house mail from 14 new delivery routes in the trailer. He maintained that management officials, including M.K., subjected him to a hostile work environment by berating his work unit's performance, belittling him on a daily basis, and verbally threatening his job on a weekly basis. Appellant asserted that his work unit was understaffed and that he and other supervisors were tasked with casing delivery routes and throwing parcels on a daily basis until 2018 when postal support employees came to the unit. He claimed that management ignored repeated requests to increase the staffing of clerk and carrier positions and did not respond after he and his staff interviewed over 50 applicants. Appellant asserted that staffing shortages required him to perform tasks outside of his supervisory responsibilities, including casing mail routes, pitching parcels, cleaning the retail unit, and providing relief for window clerks at lunch time. He maintained that he had to meet daily, weekly, monthly, and quarterly deadlines without adequate staffing.

Appellant alleged that, after his work unit began to process Amazon mail in April 2016, it had to process 18 pallets of this mail each day during the regular delivery season and 26 to 34 pallets during the peak delivery season. He claimed that his work unit was temporarily assigned to process Amazon mail on each Sunday during the period October through December 2016, thereby increasing the processing days from five to six. Appellant asserted that management only provided him with one holiday clerk to help with the Amazon mail in December 2016, and he found it stressful to work six days per week. He maintained that the staffing shortage continued when the processing of Amazon mail on each Sunday became permanent in October 2017 and

that, as a result, some employees had to work for 10 to 15 consecutive days.² Appellant asserted that, despite interviewing and selecting more than 53 candidates in 2017 to handle Amazon mail, management refused to inform him why his staffing requests were not processed. He also claimed that in 2017, management refused to post new mail delivery routes for approximately nine months to a year, a circumstance, which prevented him from posting new jobs and thereby exacerbated the staffing problem. Appellant further asserted that, beginning in early-2016, there was only a single contract custodian who disposed of trash for two hours per day, and management ignored his request to hire a full-time custodian to care for the workplace's three buildings. He indicated that three part-time custodians were hired in June 2018, such that each of the three buildings received two hours of custodian attention per day, but the workplace remained dirty and poorly maintained.

Appellant also alleged that other employing establishment offices, which were smaller than his, were allowed to hire full-time custodians and postal support employees. He claimed that after he interviewed a particular job candidate, W.G., a maintenance manager, engaged in retaliation when he "pulled the job from the system" and prevented the hiring from occurring. Appellant alleged that W.G. and B.M, another maintenance manager, delayed the processing of his requests to have repairs done to his work unit, which resulted in a one-year wait to have a new air conditioning system installed. He indicated that the lack of an adequate air conditioning system created an unpleasant work environment and caused his staff to become disgruntled. Appellant claimed that egress violations occurred when the plant transportation department refused to clear empty equipment from the loading dock for months at a time, thereby creating safety problems and slowing down the processing of mail. He asserted that, in addition to managing three work units, he carried out work tasks as a dispute resolution backup team member, Equal Employment Opportunity (EEO) step-2 designee, overtime administration subject matter expert, finance subject matter expert, and mass interviewer for the district.

Appellant submitted numerous e-mails, dated March 3, 2016 through September 24, 2018, in which he discussed various matters with management officials, including the posting of announcements for job vacancies and other staffing issues, the handling of workload requirements, and the maintenance, space, and equipment needs of the work unit. He also submitted healthcare provider reports from September 2018, including reports of Stephanie Barker-Trejo, a physician assistant, who discussed the treatment of his ischemic stroke.

In an October 12, 2018 statement, T.I. indicated that he did not concur with appellant's claim that he sustained an emotional condition "related to exposure on the job." He noted that appellant had complained about his working relationship with M.K. and accepted a downgrade to work at the current employing establishment post office. T.I. indicated that for the prior nine months he had not noticed any problems with appellant's work performance. He acknowledged that the current employing establishment post office had experienced growth and space constraints, and noted that it was a difficult process to request a new facility space. T.I. indicated that the space problems appellant encountered were problems that all postmasters addressed. He advised that a trailer, which appellant had complained about had recently been repaired, and noted that appellant's sending of messages regarding the matter was part of his duties. T.I. advised that the posting of mail delivery routes involved the correct completion of forms and then following up, and maintained that appellant did not complete this job task as quickly as possible. He noted that

² Appellant claimed that he was unfairly reprimanded when employees had to work for more than seven consecutive days.

appellant was responsible for handling paperwork related to making mail delivery route cuts. T.I. advised that a maintenance employee was not hired as requested by appellant as this work was handled by a private company. He acknowledged that this private company initially failed to complete the contract as required because of poor communication, but that eventually sufficient custodial cleaning was carried out. T.I. noted that staffing issues were a continuing problem, as stated by appellant, but he asserted that such issues were not unique to that employing establishment post office. He indicated that the turnover of mail carriers at appellant's workplace was high and that finding reliable replacement employees was difficult. T.I. indicated that appellant was responsible for replacing employees and should constantly be in a hiring posture. He indicated that the hiring of clerk staff was a separate process from the hiring of mail carriers and advised that this created special constraints for postmasters such as appellant. T.I. acknowledged that handling the growth of Amazon mail, including the need to work on Sundays, was part of appellant's supervisory responsibilities and did, in fact, create staffing issues. He indicated that all offices, including appellant's office, had difficulty hiring and keeping employees who worked with Amazon mail. T.I. noted that work area maintenance was "spread thin" and that postmasters such as appellant sometimes had to involve their superiors to address such problems. He indicated that, a few times per month, equipment was not taken out the workplace by the transportation management department. T.I. concluded that the employing establishment was controverting appellant's claim because the issues he dealt with were "not out of the ordinary."

By decision dated February 27, 2019, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish a compensable employment factor and, therefore, did not establish an emotional condition in the performance of duty.

On March 14, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. After a preliminary review, by decision dated June 7, 2019, OWCP's hearing representative set aside the February 27, 2019 decision and remanded the case to OWCP for further development.

By *de novo* decision dated August 22, 2019, OWCP again denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish a compensable employment factor. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On September 13, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. After a preliminary review, by decision dated December 2, 2019, OWCP's hearing representative set aside the August 22, 2019 decision and remanded the case to OWCP for further development. The hearing representative found that OWCP had not considered all of appellant's claimed employment factors.

On December 5 and 31, 2019 OWCP received copies of e-mails, which had previously been of record.

By *de novo* decision dated January 16, 2020, OWCP again denied appellant's claim, finding that the evidence of record was insufficient to establish a compensable employment factor. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On January 28, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. After a preliminary review, by decision dated April 22, 2020, OWCP's hearing representative set aside the January 16, 2020 decision and remanded the case to OWCP for further development. The hearing representative found that OWCP had not adequately evaluated all the relevant factual evidence of record.

By *de novo* decision dated June 8, 2020, OWCP again denied appellant's claim, finding that the evidence of record was insufficient to establish a compensable employment factor and, therefore, did not establish an injury as defined by FECA.

On June 21, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. After a preliminary review, by decision dated September 4, 2020, OWCP's hearing representative set aside the June 8, 2020 decision and remanded the case to OWCP for further development. The hearing representative found that OWCP had not adequately considered all of appellant's allegations.

By *de novo* decision dated January 4, 2021, OWCP again denied appellant's emotional condition claim, finding that he failed to establish a compensable employment factor. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 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

³ *Supra* note 1.

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).

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).

has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. Where a condition 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, a condition 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

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.⁹ 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.¹⁰

Administrative and personnel matters, although generally related to 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.¹¹ 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.¹² 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.¹³

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.¹⁴ Mere perceptions of harassment or discrimination are not compensable under FECA.¹⁵ A claimant must substantiate allegations of harassment or discrimination with probative and reliable

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

¹⁰ *Id.*

¹¹ *See J.W.*, Docket No. 17-0999 (issued September 4, 2018); *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹² *See J.W.*, *id.*; *William H. Fortner*, 49 ECAB 324 (1998).

¹³ *J.W.*, *id.*; *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁴ *M.V.*, Docket No. 22-0227 (issued March 28, 2023); *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *K.W.*, 59 ECAB 271 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

¹⁵ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

evidence.¹⁶ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹⁷

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.¹⁸ 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.¹⁹

ANALYSIS

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

Appellant has alleged that he sustained an emotional condition as a result of a number of incidents and conditions at his workplace. The Board must, therefore, initially review whether appellant's allegations establish compensable employment factors under the terms of FECA.²⁰ The Board notes that appellant's allegations ostensibly relate to his regular or specially assigned duties under *Lillian Cutler*,²¹ as well as to claimed management wrongdoing with respect to administrative matters and harassment/discrimination.

The Board finds that appellant has established several employment factors, which relate to his work duties. Appellant has established that his job required him to address problems with hiring and maintaining adequate staff; removing equipment from workspaces; securing adequate areas to carry out work functions; managing paperwork for posting and cutting mail delivery routes; keeping workspaces in safe, clean, and comfortable physical condition; and addressing high work volume and deadlines, particularly with regard to handling Amazon mail. These allegations are supported by the factual evidence of record and constitute compensable employment factors as contemplated by *Cutler*.²²

In addition, with respect to administrative or personnel matters, appellant claimed that management officials committed error or abuse with respect to such matters as management of staffing, maintenance of safe, clean, and comfortable work facilities, management of work assignments, and handling of hiring processes. The Board has held that administrative and personnel matters, although generally related to the employee's employment, are administrative

¹⁶ *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, *supra* note 14.

¹⁷ *R.D.*, Docket No. 21-0050 (issued February 25, 2022); *T.Y.*, Docket No. 19-0654 (issued November 5, 2019); *G.S.*, Docket No. 09-0764 (issued December 18, 2009); *Ronald K. Jablanski*, 56 ECAB 616 (2005); *Penelope C. Owens*, 54 ECAB 684 (2003).

¹⁸ *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹⁹ *P.B.*, Docket No. 17-1912 (issued December 28, 2018); *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

²⁰ *Y.W.*, Docket No. 19-1877 (issued April 30, 2020); *Dennis J. Balogh*, 52 ECAB 232 (2001).

²¹ See *Lillian Cutler*, *supra* note 7.

²² *Id.*

functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.²³ 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.²⁴ 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.²⁵

The Board finds that appellant has not submitted sufficient evidence to establish the above-noted claims about administrative/personnel matters. Appellant submitted e-mails and memoranda, which concerned some of these administrative/personnel matters, but the communications did not show that the employing establishment committed error or abuse with respect to these matters. There is no indication that he obtained a final determination from an administrative body showing that the employing establishment committed error or abuse.²⁶ Although appellant expressed dissatisfaction with the actions of several 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.²⁷ He 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 that he was subjected to harassment and discrimination by superiors. In particular, he claimed that he was subjected to verbal abuse, that his work was discriminatorily scrutinized, that he was subjected to unfair discipline, and that his job was threatened on a regular basis. However, appellant did not submit corroborative evidence in support of his allegations regarding these matters. He did not submit witness statements or other documentary evidence demonstrating that the alleged harassment and discrimination occurred as alleged.²⁸ Appellant did not submit the final findings of any complaint or grievance he might have filed with respect to these matters, such as an EEO complaint or a grievance filed with the employing establishment.²⁹ 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.³⁰ The Board has held that unfounded perceptions of harassment or discrimination do not constitute an employment factor.³¹ Mere perceptions are not

²³ *T.L.*, Docket No. 18-0100 (issued June 20, 2019); *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, *supra* note 13.

²⁴ *M.S.*, Docket No. 19-1589 (issued October 7, 2020); *William H. Fortner*, *supra* note 12.

²⁵ *J.W.*, Docket No. 17-0999 (issued September 4, 2018); *Ruth S. Johnson*, *supra* note 13.

²⁶ *See M.R.*, Docket No. 18-0304 (issued November 13, 2018).

²⁷ *T.C.*, Docket No. 16-0755 (issued December 13, 2016).

²⁸ *See B.S.*, Docket No. 19-0378 (issued July 10, 2018).

²⁹ *See generally L.C.*, Docket No. 20-0461 (issued June 2, 2021); *see also C.T.*, Docket No. 08-2160 (issued May 7, 2009).

³⁰ *D.B.*, Docket No. 18-1025 (issued January 23, 2019); *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

³¹ *See F.K.*, Docket No. 17-0179 (issued July 11, 2017).

compensable under FECA and harassment or discrimination can constitute a factor of employment if it is shown that the incidents constituting the claimed harassment/discrimination actually occurred.³² The Board finds, for the reasons discussed above, that appellant has not established a compensable employment factor with respect to the claimed harassment and discrimination.

In the present case, appellant has established compensable factors of employment with respect to his work duties, as described above. However, his burden of proof is not discharged by the fact that he has established employment factors which may give rise to a compensable disability under FECA. To establish his occupational disease claim for an emotional/stress-related condition, appellant must also submit rationalized medical evidence by a qualified physician and/or clinical psychologist establishing that he has a diagnosed condition causally related to an accepted compensable employment factor.³³

As OWCP found that there were no compensable employment factors, the case must be remanded for an evaluation of the medical evidence with regard to the issue of causal relationship.³⁴ Following this and other such further development as deemed necessary, it shall issue a *de novo* decision regarding appellant's emotional/stress-related condition claim.

CONCLUSION

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

³² *See id.*

³³ *See supra* note 6.

³⁴ *See M.D.*, Docket No. 15-1796 (issued September 7, 2016).

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: April 28, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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