United States Department of Labor
Employees' Compensation Appeals Board

W.J., Appellant	)	
and	)	**Docket No. 20-1226**
	)	**Issued: January 6, 2023**
U.S. POSTAL SERVICE, POST OFFICE, Palm Bay, FL, Employer	)	

Appearances:
Joanne Wright, 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
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On May 29, 2020 appellant, through his representative, filed a timely appeal from a February 19, 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 an emotional condition in the performance of duty, as alleged.

FACTUAL HISTORY

On October 4, 2018 appellant, then a 57-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed anxiety, depression, and a sleep disorder due to factors of his federal employment. He noted that he first became aware of his conditions on October 7, 2015 and realized their relation to his federal employment on September 13, 2018. Appellant explained that multiple managerial changes created a hostile workplace where he encountered disparaging remarks and constant humiliation and harassment over work methods. He referred to confrontations regarding a February 23, 2012 work-related injury and ongoing treatment.[3] Appellant stopped work on September 13, 2018.

In an October 24, 2018 development letter, OWCP informed appellant that it had received no evidence in support of his occupational disease claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor on the accuracy of appellant's statements. It afforded both parties 30 days to respond.

Appellant submitted duty status reports (Form CA-17) dated June 15 and August 17, 2018 providing work restrictions, including no overtime work or work longer than eight hours.

In a September 13, 2018 Form CA-17, Dr. Richard Bunt, a Board-certified psychiatrist, diagnosed anxiety disorder due to harassment and stress, experienced that same day at work. He also provided work restrictions.

In medical reports dated September 13 to 28, 2018, Dr. Bunt noted that appellant became "shaky" and experienced an anxiety attack at work due to stress he encountered after his manager questioned him about his 2012 workers' compensation injury. He diagnosed recurrent major depressive disorder, panic disorder, unspecified anxiety disorder and adjustment disorder with anxiety. In a September 19, 2018 medical report, Dr. Bunt provided notes on appellant's psychotherapy treatment. In a September 28, 2018 work excuse note, he held appellant off work commencing September 13, 2018.

Appellant submitted an unsigned October 1, 2018 Form CA-17 describing his mental health anxiety due to a September 13, 2018 injury and providing work restrictions.

[3] On February 27, 2012 appellant filed a traumatic injury claim (Form CA-1), alleging that on February 23, 2012 he injured his back while in the performance of duty under OWCP file No. xxxxxx323. OWCP accepted his claim on June 26, 2012 for a lumbar strain/sprain. On September 13, 2012 it expanded the acceptance of the claim to include displacement of lumbar intervertebral disc without myelopathy.

In an October 4, 2018 report, Dr. Bunt noted that he had been treating appellant since October 7, 2015 and diagnosed major depressive disorder, anxiety disorder, panic disorder, adjustment disorder with anxiety, and Circadian sleep disorder. He summarized his treatment and stated that appellant experienced a severe elevation in anxiety due to being overwhelmed from having to go on Family and Medical Leave Act (FMLA) leave for medical reasons. Dr. Bunt opined that, due to his psychological condition, appellant would need to continue his current course of treatment. In a form report of even date, he noted a September 13, 2018 employment incident in which appellant reported that his supervisor stressed him out to the point he had an anxiety attack, and was unable to complete his work for the day. Dr. Bunt related that he had seen appellant since 2015 for anxiety and depression, and was stable. He estimated that he would need to remain out of work until November 5, 2018 as his anxiety attacks prevented him from continuing his daily talks. Dr. Bunt diagnosed anxiety disorder, panic attacks, and major depressive disorder.

In an October 19, 2018 statement, M.R., a former station manager, noted that at some time in 2014 and again in 2015, he became aware that appellant was taking medication for anxiety.

In an October 25, 2018 statement, A.A., appellant's supervisor, controverted his claim. She detailed the September 13, 2018 meeting in which management requested that he provide documentation of his scheduled medical appointments, so that they could plan his carrier schedule in advance. Management questioned why appellant needed to leave work 2 hours prior to his appointment that was 15 minutes away. A.A. claimed that appellant became irate and loud over management's requests, stormed out of the office and did not return to work. She recounted that appellant had previously been very hostile with management, and had yelled at management several times before. A.A. acknowledged that there were times where appellant's stress and workload increased, as with any job, but noted that appellant was prohibited from working longer than eight hours, and that he was given assistance to relieve him of excess work. She asserted that appellant had conduct problems and described him as combative, argumentative, and defensive when he was asked simple questions.

In an October 27, 2018 letter, R.S., appellant's manager, controverted his claim. She detailed the September 13, 2018 meeting with him where she requested that he bring in documentation of his scheduled medical appointments so that she could plan her weekly schedule accordingly. R.S. questioned appellant about his use of four hours of leave for his appointments because the location was only 15 minutes away and the appointments lasted no longer than an hour. She asserted that he stood up and began yelling and pointing his finger in her face. R.S. attempted to speak to him in a calmer tone, but appellant eventually left, and stated that he was going out on stress. She contended that his condition was not work related; rather that he was upset over the fact that she had requested his appointment times in advance.

In medical reports dated October 1 through November 1, 2018, Dr. Bunt diagnosed recurrent major depressive disorder, unspecified anxiety disorder, panic disorder and adjustment order with anxiety. He provided notes on appellant's psychotherapy treatment related to his complaints of anxiety, anger, and employment difficulties. Dr. Bunt recommended that appellant continue psychotherapy treatment and prescribed medication.

In a November 1, 2018 attending physician's report (Form CA-20), Dr. Bunt noted the September 13, 2018 employment incident as well as his history of generalized anxiety disorder.

He diagnosed anxiety disorder and checked a box marked "Yes" to indicate that appellant's condition was caused or aggravated by his federal employment. In a Form CA-17 of even date, Dr. Bunt related that appellant had experienced symptoms of a panic attack on September 13, 2018, and provided work restrictions.

In a November 5, 2018 statement, S.Z., a union representative, noted several changes in management during his time at the employing establishment. He asserted that appellant and his previous manager had an arrangement for scheduling his medical appointments. When management changed in 2017, they immediately began questioning him on his time estimates for his routes and his time needed for doctor's appointments. S.Z. recounted that there were multiple arguments and appellant requested union representation to help work out these arrangements. He noted that he met with management at appellant's request for union representation, and that management did not dispute that it questioned the validity of his Form CA-17 for his previous injury. S.Z. claimed that management said he was "faking" his injury while management claimed that it only said that he was "milking it." After this meeting, he noted that there were no further grievances between the parties involved. In January 2018, a new manager, C.K., was appointed and she immediately began questioning appellant daily on his time estimates for his work, and the time he used for his medical appointments. She frequently accompanied him on his mail routes because she did not believe his estimated times. S.Z. contended that because appellant was never disciplined or instructed on what he was doing wrong, management was simply harassing him because they were inconvenienced by his need for accommodations. He further contended that in June 2018 R.S. and A.A. were assigned to manage the employing establishment, and continued to harass appellant. S.Z. indicated that appellant informed him on September 11, 2018 that management began requesting his timecards for his appointments, something that had not been done for him in his previous six years of working with his injury. He detailed the September 13, 2018 meeting, and claimed that R.S. and A.A. engaged with appellant in a confrontational and hostile manner, and questioned the validity of his injury. S.Z. noted that appellant was visibly upset because his hands were shaking and his voice was unsteady. He asserted that appellant appeared to be in a highly stressed state of mind, and suggested that he go to the breakroom to try and relax. Thereafter, appellant left work and scheduled a doctor's appointment later that day. S.Z. concluded that, in his opinion, he had been subjected to unnecessary stress and harassment due to his employment injury.

In a November 5, 2018 medical note, Gloria Johnson, a nurse practitioner, noted appellant's history of treatment beginning October 7, 2015. She also noted that since September 13, 2018 he experienced anxiety and having panic attacks.

In a November 7, 2018 response to OWCP's questionnaire, appellant noted that new management arrived in the summer of 2018. He asserted that management was aware of his work restrictions due to his 2012 employment injury but chose to ignore them and questioned his medical treatment. Appellant detailed daily calls about his estimated workload that caused confrontations as well as his request for overtime and additional assistance when he was working heavy workloads. He claimed that management also complained about having no coverage during the times he leaves work for medical treatment and instructed him to do his work himself whenever he called asking for assistance due to his work restrictions. Appellant alleged that management was more concerned with their numbers and used intimidation, threats, harassment and lies to

achieve their goals. He noted that he began attending therapy in 2015 with Dr. Bunt due to anxiety as a result of his treatment at work.

Appellant submitted an undated statement in which he recounted that on September 13, 2018 he was called into the office and confronted over time used for a previously-accepted OWCP injury. His managers questioned him over his need for treatment, the dates and times he went for treatment, whether he even went to his appointments and the reasons why he could not attend his appointments when he was off the clock. Appellant asserted that as his managers continued asking him questions, he became anxious and began to feel ill. He claimed that he had experienced harassment from multiple managers over the past two years that has added stress to the office. Appellant asserted that each manager would bully, harass, intimidate, confront and make disparaging comments and remarks on the workroom floor. He discussed instances where management harassed him over his workload, confronted him over the phone about his need for help, and ordered him to disobey his OWCP work restrictions as outlined in his CA-17 forms. Appellant alleged that these actions created a hostile workplace and caused him to become anxious, stressed and unable to sleep. He also noted that he also experienced a heart attack in 2013.

The employing establishment submitted a position description of appellant's duties as a city carrier.

By decision dated January 18, 2019, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that his medical condition arose in the course of employment and within the scope of compensable work factors.

On December 26, 2019 appellant requested reconsideration of OWCP's January 18, 2019 decision. In an attached statement, he explained that when his requests for assistance on his routes were denied management would improperly instruct him to violate his work restrictions and discipline him if he failed to do so. As a result of his inability to perform his job duties, appellant began to experience anxiety.

Appellant attached a copy of S.Z.'s November 5, 2018 statement signed by D.C., a union steward.

In a March 7, 2019 statement, M.R. noted that during his time as station manager from 2009 to 2016 he became aware of appellant's anxiety in 2014 and 2015 and provided that he was able to perform his job functions in a professional manner. He claimed that appellant's attendance at work did not suffer, that he always made an effort to do his job and also attempted work around his doctor's appointments so that his workload would not be affectively negatively.

In a March 29, 2019 statement, N.D., a lead clerk, related that she had worked with appellant for approximately 15 years and that he had a good attitude, did his job in a straight-forward manner and was always polite and courteous. During the timeframe of June to November 2018 she observed him become more upset as he struggled with management. N.D. noted that she did not know specific details, but she just knew appellant looked like he was "pulling his hair out" trying to get his manager to understand what he was going through. As management changed his workday around to perform more work at the post office and less carrying mail on his route, his personality changed back to easygoing.

In a May 5, 2019 statement, S.Z. again described appellant's treatment regarding his 2012 employment injury. He opined that appellant was unfairly harassed and questioned by management because they did not understand or believe the validity of his injury. S.Z. asserted that this harassment caused or contributed to his emotional state.

Appellant submitted a May 10, 2019 Form CA-17 providing work restrictions related to his accepted lumbar condition.

In a May 16, 2019 statement, T.J., appellant's coworker, related that he worked across from appellant and that on multiple occasions he heard phone conversations where managers would repeatedly question, harass, and make comments to him. Both managers would inform him that they did not have personnel to cover for his route and also that neither manager did anything to stop other employees from making derogatory comments about his work habits concerning his work-related injury. T.J. described the work environment from June to September 2018 as combative and taxing.

In a May 22, 2019 letter, Dr. Bunt provided notes related to appellant's treatment following the September 13, 2018 employment incident and reported that his anxiety had since stabilized.

Appellant submitted multiple carrier -- auxiliary control forms dated from August 20 to September 11, 2018 where he had to use auxiliary time for various reasons.

In an undated statement, appellant claimed that many of the statements A.A. and R.S. made to controvert his claim were false. He explained that even though A.A. asserted that he was not performing his duties and had a disciplinary problem, she submitted no evidence to support her statement, and that he was unaware of any disciplinary actions in his employment folder. Appellant recounted the changes in management and their multiple questions concerning his work restrictions, his inability to work overtime and his medical appointments. He alleged that due to A.A. and R.S.'s management the workplace became a hostile environment. Appellant described the workdays from September 8 to 13, 2018 in which he was harassed on the workroom floor. He asserted that he filed a 3996 form showing that he needed assistance on his route and that his managers ordered him to violate his work restrictions in order to complete his assignment without assistance.

In an undated statement, W.T., a retired postal worker, explained that he was regularly forced by management to carry mail for additional routes due to understaffing issues. He related that over the past 10 years, because of the lack of manpower, he had no choice but to carry mail unassigned to him and work overtime.

By decision dated February 19, 2020, OWCP denied modification of its January 18, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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.[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 causally related to factors of his or her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his or her condition; (2) rationalized medical evidence establishing that he or she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his or her emotional condition is causally related to the identified compensable employment factors.[7]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.[8] 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.[9] 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.[10] However, disability is not compensable when it results from factors such as an

[4] *Supra* note 2.

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

[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] *G.R.*, Docket No. 18-893 (issued November 21, 2018); *George H. Clark*, 56 ECAB 162 (2004); *Kathleen D. Walker*, 42 ECAB 603 (1991).

[8] *L.Y.*, Docket No. 18-1619 (issued April 12, 2019); *L.D.*, 58 ECAB 344 (2007).

[9] *W.F.*, Docket No. 17-640 (issued December 7, 2018); *David Apgar*, 57 ECAB 137 (2005).

[10] *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976). In the case of *Lillian Cutler*, the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition under FECA. 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. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment, or by the nature of the work.[10] 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 or his or her frustration from not being permitted to work in a particular environment, unhappiness with doing work, or frustration in not given the work desired, or to hold a particular position, such injury or illness falls outside FECA's coverage because they are found not to have arisen out of employment.

employee's fear of reduction-in-force, or frustration from not being permitted to work in a particular environment or to hold a particular position.[11]

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.[12] 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.[13] Additionally, verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.[14]

An employee's emotional reaction to administrative or personnel matters generally falls outside of FECA's scope.[15] Although related to the employment, administrative and personnel matters are functions of the employer rather than the regular or specially-assigned duties of the employee.[16] However, to the extent 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.[17]

Perceptions and feelings, alone, are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his or her allegations with probative and reliable evidence.[18] 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.[19]

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[11] *Lillian Cutler, id*.

[12] *See B.S.*, Docket No. 19-0378 (issued July 10, 2019); *M.R.*, Docket No. 18-0304 (issued November 13, 2018); *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker, supra* note 7.

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

[14] *Y.B.*, Docket No. 16-0193 (issued July 23, 2018); *Marguerite J. Toland*, 52 ECAB 294 (2001).

[15] *G.R., supra* note 7; *Andrew J. Sheppard*, 53 ECAB 170, 171 (2001); *Matilda R. Wyatt*, 52 ECAB 421, 423 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991).

[16] *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005); *Thomas D. McEuen, id*.

[17] *Id*.

[18] *G.R., supra* note 7; *Roger Williams*, 52 ECAB 468 (2001).

[19] *See C.M.*, Docket No. 17-1076 (issued November 14, 2018); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

ANALYSIS

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

Appellant has attributed his emotional conditions to overwork based upon his regular and specially-assigned job duties under *Cutler*.[20] The Board has held that overwork is a compensable factor of employment if appellant submits sufficient evidence to substantiate this allegation.[21] In multiple statements, appellant alleged that he made management aware of his work restrictions due to his accepted employment injury. He detailed multiple instances where management confronted him, questioned his time estimates and the validity of his employment injury and instructed him to ignore his work restrictions in order to complete his route for that day. Appellant asserted that management would complain about not having enough coverage and asked that he complete his work without assistance. To support his contentions, he submitted multiple statements from S.Z. and D.C. confirming that A.A. and R.S. asked appellant to ignore his work restrictions and work overtime to complete his routes. Additionally, even though management denied being understaffed, the statement from W.T. confirms that he was asked on multiple occasions to work multiple routes due to an understaffing issue at the employing establishment. Lastly, appellant submitted multiple carrier -- auxiliary control forms demonstrating that he worked auxiliary time for various reasons despite multiple Form CA-17s suggesting that he only work for eight hours. Thus, the Board finds that he has established overwork as a compensable factor of employment.[22]

The Board notes that appellant also alleged a hostile work environment, harassment, and error and abuse by his supervisors. Appellant asserted that, on multiple occasions, management used intimidation, threats, harassment, and confrontations when dealing with his work schedule and work restrictions related to his 2012 employment injury. For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did in fact occur.[23] While A.A. and R.S. disputed his allegations, appellant provided statements from S.Z. and D.C., his coworkers, that management engaged with him in a confrontational and hostile manner. Additionally, in T.J.'s May 16, 2019 statement, he recounted hearing management harass appellant over the phone and create a combative and taxing work environment. Lastly, appellant submitted multiple contemporaneous medical reports that made reference to the September 13, 2018 employment incident in particular that caused him anxiety and stress. Verbal altercations and difficult relationships with coworkers, when sufficiently detailed and supported by the record, may constitute compensable factors of employment.[24] The Board therefore finds that appellant has provided reliable and probative evidence regarding

[20] *Supra* note 7.

[21] *D.T.*, Docket No. 19-1270 (issued February 4, 2020); *W.F.*, Docket No. 18-1526 (issued November 26, 2019); *J.E.*, Docket No. 17-1799 (issued March 7, 2018); *Bobbie D. Daly*, 53 ECAB 691 (2002).

[22] *W.F., id.*; *J.E., id.*.

[23] *Supra* note 12. *See S.B.*, Docket No. 18-1113 (issued February 21, 2019); *Janet I. Jones*, 47 ECAB 345, 347 (1996).

[24] *J.M.*, Docket No. 16-0717 (issued January 12, 2017); *L.M.*, Docket No. 13-0267 (issued November 15, 2013).

management harassing and being confrontational towards him.[25] Thus, appellant has established compensable employment factors with respect to these allegations of harassment.

As appellant has established compensable factors of employment, OWCP must base its decision on an analysis of the medical evidence. The case will therefore be remanded to OWCP to analyze and develop the medical evidence.[26] After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the February 19, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: January 6, 2023
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

[25] *Id*.

[26] *C.S.*, Docket No. 19-0116 (issued January 10, 2020); *L.Y.*, *supra* note 8.