

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

D.W., Appellant)	
)	
and)	Docket No. 22-0639
)	Issued: May 10, 2023
DEPARTMENT OF DEFENSE, DEFENSE)	
LOGISTICS AGENCY, Quantico, VA, 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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 25, 2022 appellant filed a timely appeal from a September 28, 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 to consider the merits of this case.

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 July 9, 2019 appellant, then a 52-year-old training manager, filed a traumatic injury claim (Form CA-1) alleging that on June 27, 2019 he sustained work-related stress while in the performance of duty. He alleged that he left his desk for a short walk to the main floor and sensed

¹ 5 U.S.C. § 8101 *et seq.*

a sudden overwhelming fear that he would soon pass out. Appellant felt his heart racing and throbbing head pain. He noted that he entered the cafeteria and asked bystanders to call 911. Appellant explained that he was taken to the emergency room *via* ambulance, where he was initially diagnosed with a panic attack, and subsequently on July 9, 2019 he was diagnosed with panic disorder. He stopped work on June 27, 2019.

A June 27, 2019 emergency room note from Dr. Stephen Balleh, an osteopath and emergency medicine specialist, related that appellant had a history of multiple chronic medical problems, presented with an occipital headache, had presented with similar episodes of headaches in the past, and “this is the first with a panic attack.” He diagnosed anxiety.

OWCP received May 6 and 23 and July 2, 2019 notes from a nurse practitioner who indicated that appellant was seen for panic disorder.

OWCP received July 3 and 9, 2019 progress notes from Dr. Chandrasekhar Kommu, Board-certified in family medicine, who indicated that appellant was disabled from work until July 23, 2019.

OWCP received April 16, 2019 notes from Dr. Tania White, an emergency medical specialist, and April 25 and July 18, 2019 treatment notes from Dr. Michael Cohen, a Board-certified neurologist, who treated appellant for headaches.

In a July 9, 2019 treatment note, Dr. Sandra Onyeagoro, a Board-certified psychiatrist, noted appellant’s history of unspecified anxiety disorder and that on June 27, 2019 he had a severe panic attack, with a feeling of doom, fearful that he was going to die. She related that he had stress as a training manager with a lot of responsibilities, had started the job in March 2019, but had not worked since June 27, 2019, after he experienced a severe panic attack. Dr. Onyeagoro noted that appellant’s first panic attack occurred in April 2012, after his brother was killed in December 2011, and that appellant had been to the emergency department for panic attacks three times since 2011. She noted a history of mild depression, diagnosed panic disorder, and opined that appellant was disabled and unable to work. In a July 22, 2019 treatment note, Dr. Onyeagoro repeated her opinion that he was disabled and unable to work, and noted that she was unable to provide an opinion with regard to the cause of his disability as she did not know his job requirements.

By development letter dated July 25, 2019, OWCP advised appellant of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. It afforded him 30 days to submit the requested evidence.

In an August 23, 2019 response to OWCP’s questionnaire, appellant alleged that when he started his current position on March 18, 2019 he first learned about the large, complex, and demanding transition that the employing establishment would be undergoing by October 1, 2019. He explained that the employing establishment was merging with another bureau and adding roughly 4,000 employees to the agency. Appellant noted that his job as supervisory training manager was to lead or participate in multiple, complex transition-related tasks, while also leading daily functions to maintain existing training programs. He listed “key factors” that led to the buildup of anxiety beginning in March 2019 and a panic attack on June 27, 2019. Appellant noted that on March 18, 2019 he was told second hand by others that his GS-15 supervisor would soon

retire and that one of his team's only two subordinates, a GS-12 employee, would be leaving in a month, which meant that his team was left with himself and one GS-8. He explained that "[t]his immediately had me very concerned about our ability to perform all the duties associated with existing training requirements and critical transition-related requirements due by 10/1/19." Appellant further explained that both the GS-15 supervisor and the GS-12 subordinate had vast background knowledge of how policies were implemented and day to day operational knowledge needed to manage training programs. He alleged that facing the loss of these coworkers was highly stressful and that performance of routine tasks began to erode soon after they departed. Appellant also alleged that the stressful work environment was acknowledged by senior leaders during employee gatherings, who stated things like, "We understand that because of this transition we are all under tremendous stress," and that this was regularly echoed by supervisors. He also noted comments by others that his current position was vacated by at least two other people in recent years because "no one could last in that position," which added to my stress level. Appellant alleged that he had productive conversations with his GS-15 supervisor before she retired regarding work tasks or routine functions that could be temporarily postponed until after October 2019, but those conversations were not passed on to their Director. He noted that he witnessed his subordinate employee become very stressed and she regularly expressed that she had too many responsibilities. Appellant related that, in a weekly staff meeting in May 2019, the team was asked, "What keeps you up at night?" and he responded that over 30 transition-related projects were on their large, highly-visible, agency-wide, transition-related plan of action, had his name as project lead, had no other designated team members, no clear prioritization, and were due on or before October 2019, which seemed like the impossible was expected of him, and was highly stressful. He alleged that, during a June 25, 2019 team meeting, two days before his panic attack on June 27, 2019, he was told by his Director that his position could be moved from Quantico, VA to Baltimore, MD. Appellant indicated that he asked whether he was given this information before he was hired. He explained that this was a shock as he lived in Fredericksburg, VA, and that he told the Director that after being selected for the job, his supervisor informed appellant that he may sometimes have to travel to Linthicum, MD, since retirement courses were hosted there. Appellant alleged that the Director responded that he had told appellant's former supervisor to tell appellant that his position could possibly be relocated. He indicated that this was probably the anxiety tipping point for the severe panic attack on June 27, 2019.

Appellant further alleged that, between March and June 2019, management officials were relating in various employee gatherings that in order to avoid failure during the transition, employees needed to do more, take on more, do things we normally do not do, and work harder. He indicated that everyone was already doing more and that hearing this added additional stress. Appellant explained that, with only one subordinate employee on his team, he was faced with managing all training programs, and an impossible amount of complex and multi-faceted transition-related tasks, that he felt isolated, without clear task priorities, lacking support, possibly faced with a job relocation, and that he began to have small panic attacks at work in April 2019.

Appellant provided a copy of one of his desk "notes to self" from May 16, 2019, which documented, "Coming to work regularly and about 1-3 per week having overwhelming dizziness, some panicked feelings, sense of about to lose it, some confusion, sense of can't do this or keep up, wondering if there is a D55 chaplain or other resource to talk to about how to cope w/ workload and feeling of tremendous anxiety. J. now gone and sense of being very unprepared for ownership of so many tasks. There is more info and required work tasks pouring in that I can't keep up with

and I am struggling w/thinking that something important will slip through the cracks. Everything seems sort of monumental in terms of priority.”

Appellant explained that his older brother was murdered by his wife in 2011, and thereafter he began suffering from anxiety and panic attacks. He noted that, between 2012 and 2014, he was diagnosed with anxiety disorder and adjustment disorder with mixed anxiety and depression, but had not needed significant treatment for anxiety or panic attacks since 2013. Appellant explained that the anxiety and panic attacks returned only after he had started his current position and he experienced an overwhelming fear of failure in his duties as a training manager and as a supervisor.

OWCP received hospital and treatment records from June 27 and July 3, 2019, noting appellant’s treatment for adjustment disorder with anxiety, depression, and panic attacks.

In an August 20, 2019 treatment note, Dr. Onyeagoro noted that she saw appellant on July 9, 2019, for an initial psychiatric evaluation and that he reported anxiety for the prior couple of months and a severe panic attack on June 27, 2019 while at work. She noted that the panic attack was associated with symptoms including severe headache, elevated blood pressure, feeling of doom, and nervousness, and that he identified “his current job as the main cause of the severe panic attack because of stressful environment.” Dr. Onyeagoro diagnosed panic disorder.

In an August 26, 2019 treatment note, Dr. Onyeagoro noted that appellant related that his stress and panic levels were down as he was currently working in a reasonable accommodation position. She explained that he was working remotely three days a week with the same job description. Dr. Onyeagoro also noted that appellant left work two weeks prior because he felt that he was going to have an anxiety attack and that he was having smaller anxiety attacks about once per week.

In a November 4, 2019 report, Dr. Syed M. Ahmed, a Board-certified neurologist, noted that, in March 2019, appellant was promoted to a new position and was not prepared for the additional responsibility, which provoked a panic attack. He noted that appellant’s psychiatric history began in 2011, after his brother’s murder, that appellant believed that the return of his panic attacks was a direct result of his professional duties. Dr. Ahmed opined that this was a possibility; however, he was not familiar with appellant’s occupational duties and therefore cannot formulate an opinion as to whether this is the direct cause.

By decision dated January 15, 2020, OWCP converted appellant’s claim to an occupational disease claim, but denied it, finding that he did not meet the requirements for an emotional condition in the performance of duty. It explained that there were no accepted events that were factors of employment and that there were accepted events that were not factors of employment.

On January 14, 2021 appellant requested reconsideration.

By letter dated April 6, 2021, OWCP requested that the employing establishment respond to appellant’s allegations.

In an April 28, 2021 letter, appellant alleged after he began work in March 2019, he took on extra work after his manager and an employee left, and that he was actively conducting work as outlined in his performance plan when the injury occurred.

In an April 30, 2021 response, the employing establishment concurred, with clarification, appellant's allegation that between March through June 2019 agency leadership told employees that they needed to do more, take on more work, and complete tasks that they normally would not, in preparation of the 2019 transfer of three existing organizations into one agency. However, it added that this request was not a request for employees to take on more work than they could handle. The employing establishment controverted appellant's remaining allegations. It explained that his duties were consistent with his position as a GG-14 training manager, this was the position he applied for, the duties of the previous manager were reassigned to him, and no additional work was assigned. The employing establishment noted that the copies of emails submitted by appellant provided clear direction from management regarding the work that needed to be done before the agency transition and asked employees to be flexible in support of the employing establishment goals which included other duties as assigned. It denied that a meeting took place on June 25, 2019 regarding a move of the agency to Baltimore, MD, there was a discussion regarding realignment of training functions, but no decisions were made. The employing establishment also indicated that there were no aspects of appellant's position that, could be perceived as stressful, he was not asked to work overtime or to perform additional duties, and he requested and was approved for a voluntary reassignment to a position as Human Resource Specialist (GG-13) with pay retention at his GG-14 salary.

OWCP also received copies of an announcement for the Human Resource Specialist (Training Manager) GG-14 position description; and a copy of the Performance Evaluation for FY 2019 with a successful rating. Appellant also submitted copies of various emails regarding work topics between his former supervisory and himself, as well as emails from his subordinate employee.

By decision dated September 28, 2021, OWCP modified the denial of the claim to find that the evidence did not support that the injury or events occurred as alleged.

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.²

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

² See *J.C.*, Docket No. 22-0254 (issued November 29, 2022); *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

compensable.³ 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.⁴

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.⁵ 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.⁶

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.⁷ Mere perceptions of harassment are not compensable under FECA.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, OWCP must base its decision on an analysis of the medical evidence.¹⁰

ANALYSIS

The Board finds that appellant has established overwork as a compensable factor of his federal employment.

³ *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).

⁴ *Lillian Cutler*, *id.*

⁵ *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).

⁶ *M.A.*, Docket No. 19-1017 (issued December 4, 2019).

⁷ *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).

⁸ *Id.*

⁹ *See R.B.*, Docket No. 19-0434 (issued November 22, 2019); *O.G.*, Docket No. 18-0359 (issued August 7, 2019).

¹⁰ *Id.*

Appellant has attributed his emotional condition to *Cutler*¹¹ factors. He alleged that he joined a four-person team in March 2019, only a few months before an agency transition project had to be completed in October 2019, that his supervisor retired and the employing establishment redistributed their duties to him, and when another subordinate coworker left, his team had only one other GS-8 employee, but the team remained responsible for handling the same workload. Appellant further asserted that his position description did not list all of his extra duties. He alleged that the increase in his duties reached an unmanageable level and, as a result, he was overworked and unable to perform his regularly-assigned duties. Although the employing establishment denied that appellant was overworked, the record reflects that the employing establishment did acknowledge that it had informed employees that they should perform additional work duties to help with the transition. It also admitted that his team was reduced to one staff member and himself. The Board has held that overwork may constitute a compensable factor of employment.¹² The Board finds that appellant has established a compensable employment factor with respect to the allegation of overwork.¹³

The Board further finds that, while appellant also alleged that his emotional condition was caused by being told that his work location may be moved to Baltimore MD, this allegation pertains to an administrative matter. In *Thomas D. McEuen*,¹⁴ 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. The assignment of a work location is recognized as an administrative function of the employer and, absent evidence of error or abuse, does not constitute a compensable employment factor.¹⁵ In this case, the record reflects that appellant was not moved to a different location. He has therefore not established that the employing establishment otherwise committed error or abuse in transferring his work location.

As appellant has established overwork as a compensable factor of employment, the case must be remanded for an evaluation of the medical evidence with regard to the issue of causal relationship.¹⁶ Accordingly, the Board will set aside OWCP's September 28, 2021 decision and remand the case for further development of the evidence with regard to whether appellant has established an emotional condition causally related to the accepted compensable employment

¹¹ *Lillian Cutler*, *supra* note 4; *see also R.R.*, Docket No. 20-0954 (issued December 8, 2022); *S.O.*, Docket No. 20-1271 (issued March 9, 2021); *A.C.*, *supra* note 3; *Pamela D. Casey*, *supra* note 3.

¹² *S.S.*, Docket No. 19-1021 (issued April 21, 2021); *I.P.*, Docket No. 17-1178 (issued June 12, 2018); *William H. Fortner*, 49 ECAB 324 (1998).

¹³ *See L.Y.*, Docket No. 20-1108 (issued November 24, 2021).

¹⁴ *Supra* note 5.

¹⁵ *Anita Martin*, Docket No. 02-1077 (issued November 12, 2002); *see also David M. Furey*, 44 ECAB 302, 306 (1992).

¹⁶ *L.Y.*, *supra* note 13; *S.S.*, Docket No. 21-0814 (issued July 14, 2021); *M.D.*, Docket No. 15-1796 (issued September 7, 2016).

factor of overwork.¹⁷ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has established overwork as a compensable factor of his federal employment. The Board further finds that this case is not in posture for decision as to whether appellant sustained an emotional condition causally related to the accepted compensable employment factor of overwork.

ORDER

IT IS HEREBY ORDERED THAT the September 28, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 10, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁷ *Id.*