

FACTUAL HISTORY

On April 6, 2022 appellant, then a 22-year-old postal support employee (PSE) clerk, filed an occupational disease claim (Form CA-2) alleging that he developed adjustment disorder with mixed anxiety and depressed mood due to factors of his federal employment. He explained that he was harassed and bullied by his coworkers and supervisors. Appellant noted that he first became aware of his condition and realized its relation to his federal employment on November 12, 2021. He stopped work on March 4, 2022.²

On March 21 and 29, 2022 John W. Loranger, a therapist, examined appellant due to work-related depression and adjustment disorder.

In an April 14, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a factual questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

On April 22, 2022 appellant provided the employing establishment with medical records and requested that these records not be provided to B.M., his supervisor. Dr. Richard Brown, an osteopath and a Board-certified psychiatrist, on April 22, 2022, in an unsigned report, diagnosed major depressive disorder and anxiety disorder.

On April 28, 2022 appellant sought treatment from Mr. Loranger.

Appellant responded to the development questionnaire on May 8, 2022. He recounted that on November 12, 2021 he requested help with an oversized parcel from a coworker, W.J. She became upset and scolded him by stating, “Don’t be a p***y.” Appellant had been instructed to report problems to his team leader J.V. He did so, and J.V. agreed to handle the situation, but did not resolve the issue. Following that conversation, W.J. continued to speak to appellant in a way that he found disrespectful and distasteful. He characterized their interactions as “pure hell.” Appellant asserted that W.J. and B.M. belittled him, laughed at him, and stared at him making him feel uncomfortable. He related that J.V. made fun of his size, told him that he moved too slowly, and that he needed to make case or move faster.

On December 11, 2021 B.M. instructed appellant to set up the “F” routes. W.J. instead informed him that she would perform this task as the routes needed to be set up in a particular way. He walked off to prevent an argument. W.J. called him weird and both she and B.M. laughed. Appellant reported these interactions to J.V., who replied that he needed to stop being “petty” and coming to him with such problems. On December 16, 2021 appellant requested a shift change from A., who indicated that as a PSE his schedule was subject to her needs. B.M. overheard this

² Appellant previously filed a March 10, 2022 traumatic injury claim (Form CA-1) alleging that on March 4, 2022 he injured his back when he was lifting a box while in the performance of duty, to which OWCP assigned File No. xxxxxx722. OWCP denied this claim, by decisions dated April 15 and August 2, 2022, finding that he had not established a medical diagnosis in connection with his accepted employment incident. By decision dated July 17, 2023, OWCP denied appellant’s request for reconsideration of the merits of this claim, pursuant to 5 U.S.C. § 8128(a). OWCP has not administratively combined OWCP File No. xxxxxx722 with the current claim.

conversation and called J., the postmaster, to discuss the errors in appellant's schedule created by A. Appellant asserted that A. was rude, and B.M. agreed that she had an attitude problem.

After appellant recovered from COVID-19, J.V. loudly proclaimed that he was the man who wore a mask and still became ill. He further screamed, "Oh, I see you had the cooties." Appellant found these statements unnecessary, insensitive, embarrassing, and humiliating. B.M. became hostile after his COVID-19 diagnosis and discussions of the harassment by W.J. She ignored his work-related questions and reduced his work hours. Appellant attributed these changes to retaliation as a result of his reports of her harassment.

W.J. informed appellant that she had found a parcel in the wrong hamper and instructed him to pay more attention. M.P. also brought an out of place parcel to him and informed him that he had "an attitude" toward her. Appellant apologized and she replied, "Whatever." He notified B.M. of these interactions.

On February 21, 2022 appellant reported to work at the Franklin Station with a start time of 2:00. The doors were locked and he could not enter the building until 2:12. Appellant reported the problem to A., but she did not adjust his timesheet.

On March 3, 2022 appellant started work at 2:00 and at 6:20 ask B.M. how long he was to work. He was instructed to stay until the mail was up. At the end of appellant's shift, J.V. instructed him to complete "no routes" and then to finish parcels. He called appellant "childish" and stated that he "made him sick." J.V. further informed him that J. wanted to speak with him. After appellant confirmed with B.M. that J. wished to speak with him, B.M. instructed him to continue to work until J. arrived. J.V. became enraged that appellant was not at lunch and felt that he was disrespecting and overlooking him. J.V. repeated that appellant "got on his nerves" and acted like a child.

On March 3, 2022 appellant requested union representation during the meeting with J, J.V., and B.M. He expressed that J. bullied him by informing him that he was not being compliant by willfully attempting to leave the meeting and requesting union representation. After leaving the meeting under the pretext of using the restroom and speaking with a union official, M.T., appellant returned and followed M.T.'s directions to request a one-on-one meeting with J. J. continued to ignore him, talked over him, and raised his voice repeatedly instructing him to sit down. Appellant attempted to leave and B.M. hit his hand to prevent him from opening the door, and then stood in front of the door barricading it. He again called M.T., and J. related that the meeting did not involve discipline and that appellant was not being denied union representation. M.T. remained on the telephone line as J. observed that appellant was not following orders as J.V. had instructed him to take lunch, but he instead sought further work from B.M. Appellant disagreed with this characterization. J. related that he believed J.V. and B.M. Appellant expressed that he felt intimidated and was unclear why he was forbidden union representation. J. declared that he was not in control of appellant's feelings. J. began to discuss text messages between A., B.M., and appellant which occurred at 2:00 a.m. on March 1, 2022. Appellant disclosed that he did not appreciate his treatment and harassment by W.J. He further expressed that J.V. had caused a hostile work environment through unnecessary accusations and belittlement. Appellant also provided a series of photographs and text messages.

By decision dated July 12, 2022, OWCP denied appellant's claim for an employment-related emotional condition, finding that the evidence of record was insufficient to establish the factual component of fact of injury. It noted that the evidence submitted failed to establish the alleged incidents. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On April 19, 2023 appellant requested reconsideration and contended that he had provided medical documentation and legal argument regarding his alleged employment injury. He provided additional unsigned medical records from Dr. Joshua Hvidding, a Board-certified psychiatrist, dated May 13 through July 27, 2022.

By decision dated July 13, 2023, OWCP denied modification.

On July 13, 2023 appellant requested reconsideration. No additional evidence or argument accompanied this request.

By decision dated July 17, 2023, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

On July 20, 2023 appellant requested reconsideration. He provided a series of federal laws, policies, and regulations defining harassment and decisions by the Equal Employment Opportunity Commission regarding other claimants dated April 11, 2000 and January 12, 2012.

By decision dated July 25, 2023, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

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 timely filed within the applicable time limitation, that an injury was sustained in the performance of duty as alleged, and that any disability or medical 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 upon a traumatic injury or an occupational disease.⁵

To establish an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) medical evidence establishing that he or she has an emotional

³ *Id.*

⁴ *G.W.*, Docket No. 22-1360 (issued May 4, 2023); *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); *G.W., id.*; *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).

or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.⁶

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁷ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.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 of workers' compensation.⁹ 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

Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.¹¹ Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.¹² Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹³ A disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a person's injury sustained in the performance of duty within the meaning of FECA. Thus, disability is not covered when it results from an employee's fear of a reduction-in-force. Nor is disability covered when it results from such factors as an employee's frustration in not being permitted to work in a particular environment, or to hold a particular position.¹⁴

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.¹⁵ Where the evidence demonstrates that the employing establishment either erred, or acted abusively in discharging its

⁶ See *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *M.C.*, Docket No. 14-1456 (issued December 24, 2014); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁷ 28 ECAB 125 (1976).

⁸ *Supra* note 1.

⁹ *W.F.*, Docket No. 17-0640 (issued December 7, 2018); *David Apgar*, 57 ECAB 137 (2005); *Robert W. Johns*, 51 ECAB 136 (1999).

¹⁰ *Supra* note 7.

¹¹ *B.O.*, Docket No. 17-1986 (issued January 18, 2019).

¹² *Id.*

¹³ *M.R.*, Docket No. 18-0305 (issued October 18, 2018).

¹⁴ *Supra* note 7.

¹⁵ *C.V.*, Docket No. 18-0580 (issued September 17, 2018); *Charles D. Edwards*, 55 ECAB 258 (2004).

administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹⁶ A claimant must support his or her allegations with probative and reliable evidence.

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.¹⁷ Mere perceptions of harassment are not compensable under FECA.¹⁸ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.¹⁹ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.²⁰

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 compensable factors of employment and may not be considered.²¹ If an employee does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. If a compensable factor of employment is substantiated, OWCP must base its decision on an analysis of the medical evidence which has been submitted.²²

OWCP's regulations provide that an employing establishment who has reason to disagree with an aspect of the claimant's allegation should submit a statement that specifically describes the factual argument with which it disagrees and provide evidence or argument to support that position.²³ Its procedures further provide in certain types of claims, such as a stress claim, a

¹⁶ *Kim Nguyen*, 53 ECAB 127 (2001). *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹⁷ *S.B.*, Docket No. 18-1113 (issued February 21, 2019).

¹⁸ *Id.*

¹⁹ *See J.R.*, Docket No. 20-1382 (issued December 30, 2022); *L.J.*, Docket No. 20-0998 (issued December 14, 2022); *S.G.*, Docket No. 22-0495 (issued November 4, 2022); *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, 57 ECAB 622 (2006).

²⁰ *L.J. and S.G., id.; 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).

²¹ *L.J. and S.G., id.; B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Dennis J. Balogh*, 52 ECAB 232 (2001).

²² *L.J. and S.G., id.; O.G.*, Docket No. 18-0359 (issued August 7, 2019); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

²³ 20 C.F.R. § 10.117(a); *L.J. and S.G., id.; D.L.*, Docket No. 15-0547 (issued May 2, 2016).

statement from the employing establishment is imperative to properly develop and adjudicate the claim.²⁴

ANALYSIS -- ISSUE 1

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

In his April 6, 2022 Form CA-2, appellant alleged that he was harassed and bullied by his coworkers and supervisors. The Board finds that OWCP has not properly developed his claim. In its April 14, 2022 development letter, OWCP advised appellant of the type of factual and medical evidence necessary to establish his claim and attached a questionnaire for his completion. It, however, did not request a statement from the employing establishment concerning his allegations, as is required under its procedures.²⁵

As discussed, OWCP's regulations provide that an employer who has reason to disagree with an aspect of the claimant's allegation should submit a statement that specifically describes the factual argument with which it disagrees and provide evidence or argument to support that position.²⁶ Its procedures further provide in certain types of claims, such as a stress claim, a statement from the employer is imperative to properly develop, and adjudicate the claim.²⁷ While appellant provided a detailed response to OWCP's development letter, along with supporting documentation, OWCP did not request relevant information from the employing establishment, that is information normally in control of the employing establishment. It then denied his emotional condition claim, finding that he had not established a compensable employment factor.

Proceedings under FECA are not adversarial in nature, and OWCP is not a disinterested arbiter. While appellant has the burden to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.²⁸ It shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.²⁹ Since appellant's allegations and the evidence of record indicate that the employing establishment would have in its possession evidence relevant to his allegations of harassment and bullying by his coworkers and supervisors, OWCP

²⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7a(2) (June 2011).

²⁵ *Id.*

²⁶ *L.J.* and *S.G.*, *supra* note 19; and *supra* note 24.

²⁷ *Id.*; *see also S.S.*, Docket No. 19-1021 (issued April 21, 2021); *M.T.*, Docket No. 18-1104 (issued October 9, 2019).

²⁸ *See S.G.*, *supra* note 19; *L.G.*, Docket No. 21-0690 (issued December 6, 2021).

²⁹ *See id.*; *K.W.*, Docket No 15-1535 (issued September 23, 2016).

should obtain a response from the employing establishment to these allegations and any additional relevant evidence or argument.³⁰

The case must, therefore, be remanded to OWCP for further development of the evidence regarding appellant's emotional condition claim. On remand, it shall request that the employing establishment provide a detailed statement and relevant evidence and/or argument regarding his allegations. Following this and any such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding appellant's claim.

CONCLUSION

The Board finds that this case is not in posture for decision.³¹

³⁰ *Id.*; see 20 C.F.R. § 10.117(a), which provides that an employing establishment that has reason to disagree with any aspect of the claimant's report shall submit a statement to OWCP that specifically describes the factual allegation or argument with which it disagrees and provide evidence or argument to support its position. The employing establishment may include supporting documents such as witness statements, medical reports or records, or any other relevant information; see also *A.F.*, Docket No. 20-1635 (issued June 9, 2022); *P.K.*, Docket No. 21-0967 (issued December 3, 2021).

³¹ In light of the Board's finding in Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the July 13, 2023 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. The July 17 and 25, 2023 decisions are set aside as moot.

Issued: February 22, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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