

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On February 2, 2019 appellant, then a 35-year-old senior federal air marshal, filed an occupational disease claim (Form CA-2) alleging that he developed anxiety and stress due to factors of his federal employment, including a significant amount of physical and emotional stress. He explained that he was in the investigative process and had experienced retaliation from management. Appellant noted that he first became aware of his condition on December 7, 2018, and realized its relation to his federal employment on January 11, 2019.

Appellant submitted statements describing the employment factors that he believed contributed to his emotional/stress-related condition. He asserted that he had experienced a significant amount of physical and emotional stress since late October 2018 due to gross neglect and retaliatory actions taken by employing establishment officials, including a supervisory air marshal in charge, D.B., a deputy supervisory air marshal in charge, J.D., and an assistant supervisory air marshal in charge, C.T. Appellant asserted that employing establishment officials knowingly falsified his Fiscal Year (FY) 2018 performance rating, improperly removed documents from his personnel record and withheld them, refused to hold meetings with him or walked out of meetings, threatened him by making unwarranted claims of insubordination, and wrongly chose colleagues for advancement over him. He advised that in December 2018 he was diagnosed with an ulcer and gastritis, and that the symptoms increased to the point that he was admitted to the hospital in January 2019 for complaints of chest and stomach pain.

Appellant submitted medical evidence in support of his claim, including a January 31, 2019 note by Dr. Jason Hackett, a Board-certified family practitioner, who indicated that he was treating appellant for anxiety that was directly related to his work environment.

In a February 8, 2019 development letter, OWCP informed appellant of the deficiencies of his 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 also requested additional information from the employing establishment. It afforded both parties 30 days to respond.

In a March 6, 2019 response, appellant further discussed his claimed employment factors, including his assertion that the employing establishment mishandled his FY 2018 performance rating. He advised that in late October 2018 his immediate supervisor, D.V., and an assistant supervisory air marshal in charge, R.L., had recommended him for an "Achieved Excellence" rating, but that he ultimately received a lower rating of "Exceeded Expectations" because C.T. determined that he should receive that rating. Appellant indicated that he suspected that C.T. forged D.V.'s signature on the performance appraisal. He noted that he met with C.T., J.D., and D.V. on November 19, 2019, but J.D. left the meeting early and it ended abruptly without his concerns being addressed. Appellant indicated that D.V. advised him that other employing

² Docket No. 22-1086 (issued April 17, 2023).

establishment officials had characterized him as being insubordinate and that C.T. threatened to write him up as insubordinate because he expressed his discomfort in having a one-on-one meeting with him. He asserted that a less qualified person was chosen over him for a promotion to the position of primary watch officer. Appellant also asserted that OWCP improperly collected his law enforcement equipment and credentials at his home on February 6, 2019 after he had stopped work for medical reasons. He discussed at length his belief that the employing establishment discriminated against him due to his national origin, race, sex, and religion. Appellant asserted that on February 20, 2019 he was improperly denied a lateral reassignment for which he was fully qualified.

Appellant submitted a series of e-mails dated January 3 through 7, 2019, and February 14 through March 4, 2019 between himself and C.T.; e-mails dated November 19 through December 10, 2018 between himself and an assistant supervisory air marshal in charge, A.B.; an August 28, 2018 letter from D.V.; a supervisory candidate endorsement form dated September 19, 2018; an employing establishment grievance-mediation request form and statement dated December 2, 2018; a summary of complaint against C.T. and J.D.; his FY 2018 performance appraisal with his comments; and February 2, 2019 notes from a meeting with D.V.

On March 5, 2019 OWCP received November 27 and December 19, 2018 statements in which appellant further discussed the circumstances of the FY 2018 performance appraisal. Appellant asserted that after C.T. lowered the performance appraisal rating from the rating provided by D.V., the document memorializing D.V.'s rating was improperly removed from his personnel file. In the December 19, 2018 statement, he also alleged that the employing establishment discriminated against him due to his national origin, race, sex, and religion.

OWCP also received additional medical evidence. In a February 28, 2019 letter, Brian P. Jennings, a licensed clinical social worker, recounted that appellant's work environment had become very stressful since receiving a poor performance evaluation after years of receiving highly rated performance evaluations. He diagnosed general anxiety disorder.

In letters dated March 4 and May 3, 2019, Anthony Henley, Psy.D., a licensed clinical psychologist, recounted that appellant began to experience significant symptoms of chest and stomach pains, with sudden onset approximately December 7, 2018. He opined that appellant had generalized anxiety disorder which was directly caused by stress associated with his work.

In notes dated March 5 and April 24, 2019, Dr. Hackett indicated that he was treating appellant for anxiety that was directly related to his work environment. He opined that the actions by C.T., J.D., and D.B. caused appellant's anxiety. Dr. Hackett also completed employing establishment form reports wherein he repeated his findings and diagnoses.

In a report dated May 17, 2019, Dr. James Caviness, an occupational medicine specialist, noted that appellant had been off work since December 8, 2018. He indicated that appellant's treating physician and psychologist had unequivocally stated that he had generalized anxiety disorder due to work stress.

By decision dated June 27, 2019, OWCP denied appellant's emotional/stress-related condition claim, finding that he had not established a compensable employment factor.

On July 26, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on November 4, 2019.

Appellant submitted a June 28, 2019 letter from the U.S. Office of Special Counsel; witness affidavits from D.V. and an assistant supervisory air marshal in charge, R.L.; a February 24, 2019 letter by D.V.; an October 30, 2019 reasonable accommodation request form; counseling appointment notes dated March through November 2019; and documentation regarding an Equal Employment Opportunity (EEO) complaint. In his February 24, 2019 letter, D.V. indicated that appellant reported experiencing stress due to the employing establishment's internal grievance process.

In reports dated October 30 and November 4, 2019, Dr. Hackett indicated that he had treated appellant for anxiety, which was directly related to his work environment. He explained that appellant was physically fit for duty, but recommended that he not return to the current workplace with the current leadership because it would most likely increase his anxiety. Dr. Hackett also completed an employing establishment medical and psychological standards form dated December 3, 2019.

On December 18, 2020 OWCP received an undated statement in which D.V. indicated that on several occasions during his time as appellant's supervisor, appellant's work unit, known as squad 2, suffered from staffing shortages. He advised that squad 2 was purposely short staffed by employing establishment leadership because there was an understanding that, if there was a staffing issue, additional staff members could be pulled from over divisions. D.V. indicated that on several occasions these staff members were not available and that appellant volunteered to help make up for the staffing shortages. He maintained that appellant sustained additional stress when such shortages occurred.

By decision dated December 12, 2019, OWCP's hearing representative affirmed the June 27, 2019 decision.

On December 18, 2020 appellant requested reconsideration. He alleged that the mismanagement of his performance review process constituted error and abuse on behalf of the employing establishment. Appellant indicated that he was submitting e-mails from D.V., who described how he was asked to reproduce and sign a new performance evaluation. He asserted that C.T. mishandled his performance appraisal and indicated that he was submitting witness statements to support his contention that he worked in a hostile work environment. Appellant also contended that the mismanagement of his performance appraisal process should be considered part of his work duties since all employees are required to undergo the performance appraisal process. He further argued that he suffered stress and anxiety beginning in approximately December 2018 due to his work duties as a special mission coverage coordinator and significant understaffing in the employing establishment. Appellant asserted that between 2016 and 2018 the number of flights he had to ensure were properly covered by air marshals went from 3 to 5 per day to 80 to 100 per day.

Appellant provided e-mails dated November 19, 2018 and April 2, 2019 from D.V.; a memorandum by D.V. about appellant's performance appraisal; a FY 2018 performance appraisal with an "Exceeded Expectations" rating; a FY 2018 performance appraisal with an "Achieved

Excellence” rating; and various EEO documents, including witness affidavits from J.D., D.V., and C.T. regarding appellant’s performance appraisal and his non-selection for a primary watch officer position in January 2018, and appellant’s rebuttal to C.T.’s witness affidavit.

By decision dated February 5, 2021, OWCP denied modification of the December 12, 2019 decision.

On January 27, 2022 appellant requested reconsideration and submitted an August 2, 2019 e-mail in which he alleged that he continued to face retaliation at his workplace as a result of EEO proceedings. He explained that he was placed in a temporary-duty position, approximately one month prior, within a different section of the employing establishment, because of his inability to work under his previous leadership within his prior section of the employing establishment. Appellant asserted that the retaliatory acts began in his new position on “July 1” when management wrote him up for being absent without official leave (AWOL) even though he had previously informed management of his absence. He described situations where management had denied a request for leave without pay (LWOP) and to change shifts. On “July 2” appellant indicated that he was reprimanded by an assistant supervisory air marshal in charge, S.S., for addressing her by her first name instead of by her title when other employees were permitted to address her by her first name. On “July 7” he requested a change in shift to make him more available for training and meetings; however, he contended that management denied his request to preclude him from receiving the training and learning. Appellant also contended that he was required to furnish medical documentation for all his medical appointments, regardless of taking leave or not, even though no other employee was required to furnish a doctor’s note for every single medical appointment.

By decision dated March 3, 2022, OWCP denied appellant’s request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

Appellant appealed to the Board and, by decision dated April 17, 2023,³ the Board reversed OWCP’s March 3, 2022 decision and remanded the case to OWCP. The Board found that appellant had submitted pertinent new and relevant evidence not previously considered in the form of an August 2, 2019 e-mail, and was therefore entitled to a merit review, followed by the issuance of an appropriate decision.

On May 10, 2023 OWCP received a number of documents from appellant which had been previously submitted and considered.

By decision dated October 30, 2023, OWCP denied appellant’s emotional/stress-related condition claim, finding that he had not established a compensable employment factor.

On October 27, 2024 appellant requested reconsideration of the October 30, 2023 decision.

In an October 27, 2024 statement, appellant claimed that the employing establishment improperly managed the review process for his performance evaluation. He asserted that his performance appraisal rating should not have been lowered based on the opinion of an upper-level

³ Docket No. 22-1086 (issued April 17, 2023).

management official because this official did not have sufficient information to appraise his performance. Appellant asserted that the employing establishment transferred him to a temporary detail and then forced him to request reassignment to a local field office in order to avoid working under the managers who previously committed wrongdoing. He claimed that the employing establishment did not provide appropriate accommodation that would allow him to return to work after stopping work due to his generalized anxiety condition.

Appellant submitted a blank employee performance plan and appraisal form, and excerpts from the employing establishment's handbook pertaining to the management of performance appraisals.

OWCP also received a series of documents from appellant which were previously of record.

By decision dated January 27, 2025, OWCP denied modification of its October 30, 2023 decision. It determined that appellant had not established a compensable employment factor, noting that he had not established his claims that the employing establishment mishandled the processes for his FY 2018 performance appraisal, the selection process for the position of primary watch officer, the internal grievance process, and the collection of his law enforcement equipment and credentials on February 6, 2019. OWCP further noted, "Your allegations of harassment, discrimination, retaliation, and hostile work environment are not supported by the evidence of record."

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 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

⁴ 5 U.S.C. § 8101 *et seq.*

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).

evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.⁷

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 has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability 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.⁸ On the other hand, the disability 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.⁹

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.¹⁰ 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.¹¹

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.¹² Mere perceptions of harassment are not compensable under FECA.¹³

ANALYSIS

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

In the present case, OWCP denied appellant's stress-related condition claim in a January 27, 2025 decision, finding that he had not established any compensable employment factors. It specifically noted that he had not established his claims that the employing establishment mishandled the processes for his FY 2018 performance appraisal, the selection process for the position of primary watch officer, the internal grievance process, and the collection

⁷ 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).

⁸ *Lillian Cutler*, 28 ECAB 125 (1976).

⁹ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

¹⁰ 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).

¹¹ *L.R.*, Docket No. 23-0925 (issued June 20, 2024); *M.A.*, Docket No. 19-1017 (issued December 4, 2019).

¹² See *E.G.*, Docket No. 20-1029 (issued March 18, 2022); *S.L.*, Docket No. 19-0387 (issued October 1, 2019); *S.B.*, Docket No. 18-1113 (issued February 21, 2019).

¹³ *Id.*

of his law enforcement equipment and credentials on February 6, 2019. OWCP further noted, “Your allegations of harassment, discrimination, retaliation, and hostile work environment are not supported by the evidence of record.”

However, the Board notes that OWCP failed to address a number of appellant’s claimed employment factors in connection with its denial of his claim for a work-related emotional/stress-related condition. For example, OWCP did not consider appellant’s claim that he suffered stress and anxiety due to his work duties as a special mission coverage coordinator and significant understaffing at the employing establishment.

In its January 27, 2025 decision, OWCP only made a general finding that the employing establishment did not subject him to harassment, discrimination or retaliation by noting without elaboration, “Your allegations of harassment, discrimination, retaliation, and hostile work environment are not supported by the evidence of record.” Appellant discussed at length his belief that the employing establishment discriminated against him due to his national origin, race, sex, and religion. He also claimed that managers threatened him by making unwarranted claims of insubordination and retaliated against him for filing an EEO complaint. However, OWCP did not provide any specific discussion of these allegations.

Appellant further alleged other instances of wrongdoing by the employing establishment in personnel matters. He asserted that management improperly removed documents from his personnel record and withheld them, forged a signature on his performance appraisal, improperly refused to hold meetings with him on various occasions, abruptly ended a meeting without addressing his concerns, and improperly denied him a lateral reassignment for which he was fully qualified. Appellant claimed that the employing establishment did not provide appropriate accommodation that would allow him to return to work after stopping work due to his generalized anxiety condition. He also alleged that the employing establishment mishandled leave requests, improperly characterized him as being AWOL, wrongly denied his request for additional training, and improperly disciplined him for the manner in which he addressed a superior. The Board notes that OWCP did not make findings on any of these allegations.

Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and an award for or against payment of compensation.¹⁴ Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings and facts and a statement of reasons.¹⁵ As well, OWCP’s procedures provide that the reasoning behind OWCP’s evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.¹⁶

In its January 27, 2025 decision, OWCP did not adequately explain its findings with regard to the denial of appellant’s claim for an emotional/stress-related condition. The Board therefore

¹⁴ 5 U.S.C. § 8124(a).

¹⁵ 20 C.F.R. § 10.126.

¹⁶ Federal (FECA) Procedure Manual Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013) (all decisions should contain findings of fact sufficient to identify the benefit being denied and the reason for the disallowance).

finds that OWCP did not discharge its responsibility to set forth findings of fact and a clear statement of reasons explaining the disposition so that appellant could understand the precise defect of his claim and the kind of evidence which would overcome it.¹⁷

As such, the Board shall set aside OWCP's January 27, 2025 decision and remand the case for findings of fact and a statement of reasons for its decision pursuant to the standard set forth in section 5 U.S.C. § 8124(a) and 20 C.F.R. § 10.126.¹⁸ After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the January 27, 2025 decision of the Office of Workers' Compensation Programs is set aside, and case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 19, 2025
Washington, DC

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

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

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

¹⁷ See *id.*; see also *N.R.*, Docket No. 22-0958 (issued February 21, 2025); *D.W.*, Docket No. 18-0483 (issued March 7, 2019).

¹⁸ *D.O.*, Docket No. 22-0315 (issued June 29, 2022).