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K.H., Appellant)	
)	
and)	Docket No. 23-0002
)	Issued: February 4, 2025
DEPARTMENT OF VETERANS AFFAIRS,)	
C.W. BILL YOUNG VA MEDICAL CENTER,)	
Bay Pines, FL, Employer)	
)	

Capp P. Taylor, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 26, 2022 appellant, through counsel, filed a timely appeal from an August 30, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

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 an 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.*

³ The Board notes that, following the August 30, 2022 decision, appellant submitted additional evidence on appeal to the Board. However, the Board's *Rules of Procedures* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

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

FACTUAL HISTORY

On August 8, 2017 appellant, then a 54-year-old former police dispatcher, filed an occupational disease claim (Form CA-2) alleging that he developed post-traumatic stress disorder, anxiety, panic attacks, depressive disorder, and Type 2 diabetes after a former supervisor informed him in August 2014 that he “had been targeted by management and human resources (HR) for harassment and removal from Federal Service.” He noted that he first became aware of his condition and realized its relation to his federal employment on August 8, 2014. On the reverse side of the claim form, an employing establishment supervisor indicated that appellant stopped work on August 8, 2012 and resigned from employment on September 4, 2012.

In an accompanying undated statement, appellant explained that he was hired as a police dispatcher by the employing establishment in March 2009, and that he initially received outstanding evaluations. Appellant’s immediate supervisor was Sargent M.C., and his evaluations were reviewed by Chief R.S. and Assistant Chief L.B. He related that he applied for a police officer position in 2010, was selected and accepted the position, was then asked by Assistant Chief M.M., a supervisor, to spy on certain police officers and their attorneys, appellant refused to do so and was then subjected to harassment and retaliation. Appellant indicated that he filed an Equal Employment Opportunity (EEO) complaint, after which the harassment increased. He agreed to withdraw his EEO complaint in exchange for ending the harassment.

Appellant further alleged that he was informed by a nurse manager that the recently -merged Operator/Police Dispatch work center was causing critical patient safety delays, he reported the delays to his chief and after a week of inaction, reported the delays to Director S.K. and provided her with the operator log. He related that he was subsequently advised by his supervisors and a police lieutenant that he was being charged with removing government documents (the operator log) from Bay Pines property, and as a result, he resigned his position.

Appellant further alleged that, in 2014, two years after he had resigned from the employing establishment, he was informed by Lieutenant M.H. that he had been targeted for retaliation by the police chiefs at Bay Pines. He explained that this information made him realize that he was being bullied by the entire employing establishment from the Director’s office through HR, his chiefs, and his supervisor had all joined forces in what his psychiatrist described as “Mobbing” which was an insidious form of bullying. Appellant also described his emotional reactions and medical conditions, which he alleged were caused by factors of his federal employment.

Appellant also submitted a statement, wherein he related that he began his career with the employing establishment in December 2002 in the Emergency Management Service. He related that he served as a Narcotics Quality Control inspector, and subsequently became a police dispatcher. After two years appellant was selected for the position of police officer. He alleged that, M.M. then asked him if he was aware that other officers, including M.C., were suing M.M., R.S., and L.B. Appellant further alleged, that M.M. demanded to know what their attorney was planning. He declined to help, but M.M. insisted. Appellant explained that he again declined to help, explaining that it was unethical and not part of his job description. He alleged that M.M.

stated “okay, that’s good to know that you can’t do this.” Appellant related that he was subsequently informed by R.S. that H.B., an instructor at the Littlerock Police Academy, had objected to his hiring as a police officer because his claimed experience as a Duty Master at Arms (DMA) was not listed on his certificate of discharge from active duty form. He further alleged that, when he attempted to prove that he performed collateral duty as a DMA, his proof was rejected, and he was told by R.S. that H.B. was denying his hiring as a police officer for “personal reasons.” Appellant also asserted that R.S. had advised that he met all of the Office of Personnel Management requirements for the police officer position.

M.C. was later reassigned and replaced with J.D., a telephone operator supervisor who was a friend of M.M. Appellant alleged that J.D. harassed him by assigning his additional work center duties, including entering parking violations in a database, and that J.D. locked a computer in an attempt to set him up. He explained that he had no choice, but to file an EEO complaint against J.D. for harassment and that, after an investigation, the Equal Employment Opportunity Commission (EEOC) determined that a hostile work environment existed and that the case would move forward to being heard by a judge. Appellant indicated that he then requested leave through the Family and Medical Leave Act (FMLA), but his leave request was denied.

Appellant further alleged that the employing establishment improperly suspended him. He related that, after a veteran committed suicide and security camera footage was reviewed, it was discovered that appellant had pointed a security camera at a walkway where he parked his own electric bicycle. J.D. was put in charge of investigating appellant’s misuse of the security camera, despite appellant’s EEO complaint against him. During the investigation, appellant explained that he had repositioned the camera, not for personal reasons, but because it did not have night vision and the walkway was illuminated. However, a few weeks later he was served with a notice of 14-day suspension for violating the policy and procedures for camera placement and endangering the life and safety of a patient. Appellant related that, after submitting additional information and argument, the suspension notice was replaced with another suspension notice that deleted the reference to endangering patients and reduced the length of the suspension. He asserted the purpose of the suspension was to set him up so that he could be fired in case of another infraction. Appellant further alleged that he was told by a coworker that, as long as his EEO case was pending, the harassment would not stop.

Appellant related that, a few months later, he learned that the employing establishment was going to merge the Telephone Operators Suite and Police Communications Center and cross-train the employees and he objected to this merger for a number of reasons that he conveyed to management, but he was ignored. He further alleged that the cross-training was not conducted properly and that, when he objected to the manner in which the training was done, he was ignored and subjected to harassment in the course of his training.

In a development letter dated August 29, 2017, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor. It afforded the employing establishment 30 days to submit the requested evidence.

In a development letter dated October 16, 2017, 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 questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

On November 5, 2017, appellant responded to OWCP's development questionnaire. In an attached undated statement, M.C. indicated that he had been employed by the employing establishment from 1994 to 2013 and had been appellant's supervisor in the Bay Pines Police Communications Center. He noted that he had rated appellant's performance as "Outstanding" and that appellant applied to be a police officer and was duly promoted. M.C. related that appellant told him that M.M. requested that appellant "provide inside information on several Bay Pines Police Officers who had an EEO complaint and a lawsuit against Police Management." He further related that appellant refused to do so and that appellant "considered this request to spy on fellow Officers a travesty that served no legitimate purpose." M.C. noted that after appellant's refusal, appellant's job offer was withdrawn, and appellant was treated with contempt. He also related that in 2014 appellant told him that he had recently learned that "the abuse he had been subjected to was a collaborative effort through the HR Office all the way to the Director's Office."

In an undated statement, R.O., a shift command supervisor, indicated that appellant was a dedicated and a hard-working police officer on his team. He related that after appellant was selected to be a police officer he was "brought in behind closed doors and asked to provide inside information on litigants of a lawsuit against Police Upper Management." R.O. further alleged, "Sadly the position of Police Officer was rescinded by management because he would not participate in this prohibited practice."

In a January 25, 2018 decision, OWCP denied appellant's claim, finding that it was untimely filed.

On February 6, 2018, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on July 6, 2018. In a September 6, 2018 decision, OWCP's hearing representative found that appellant's claim was timely filed and remanded the claim for further development and issuance of a *de novo* decision.

By decision dated March 6, 2019, OWCP denied appellant's claim, finding that he had not established a compensable factor of employment. It concluded, therefore, that the requirements had not been met to establish that he sustained an injury as defined by FECA.

On May 24, 2019, appellant requested reconsideration and submitted witness statements in support thereof. K.K. indicated that she was one of a group of officers who were suing the employing establishment for harassment, retaliation, sexual harassment, and prohibited work force practices. She related that appellant "immediately told us about their attempt to get him to spy for them" and that within days thereafter appellant was "subjected to the same heinous harassment and relentless retaliation that we had suffered under the same administration." R.T. alleged that appellant was the recipient of administrative actions because of his refusal of management's request "seeking information to be utilized in formulating adverse actions" against the personnel engaged in an EEO action and federal lawsuit. He alleged that management requested that appellant "seek out employees to assist in gathering derogatory information about employees, including the solicitation of reports of contact, which are written complaints by one employee against another and are used as a basis for steps in discipline; spying on employees." R.T. further alleged that, after appellant filed an EEO action, appellant "suffered adverse employment actions and other adverse actions, conduct, acts."

J.L. indicated that he worked in the Bay Pines communications center in 2009. He alleged that, "During a private meeting with [R.S.] and M.M.], both of them told me that [appellant] was

under a watchful eye and that I should not associate with him. When I asked why, nothing was [stated].” J.L. further alleged that he was promised straight day shifts if he cooperated, but this did not happen because he was fired.

J.M. related that appellant told him that, “they had accepted his application to attend the police academy; however, he was approached by the assistant chief and asked to spy on other officers. He noted that after appellant, refused, he was told shortly after that he could not attend the police academy.” J.M. explained that “not long after” a veteran committed suicide, and appellant told him that “a dispatch supervisor was writing him up because the camera that was looking at the flagpole was pointed down at the door that the officers come in.” He related that appellant was forced to quit, due to the hostility.

G.B. related that appellant was accepted to become a police officer and after refusing to spy on his fellow officers, the position was rescinded. He alleged that “Senior Administration, up to and including the Director, [S.K.], were all involved in this retaliation and never-ending harassment of [appellant], to the point where [appellant] had to resign to get away from it.”

R.O. and M.Mc. related that appellant’s position as a police officer was rescinded after he refused to spy on his fellow police officers. M.Mc confirmed that appellant’s supervisor “started putting new and unreasonable demands on [appellant].” He also noted an incident, during which a computer which was to be checked at the beginning of each shift was disabled by the supervisor, who “was livid the next day that [appellant] noted the check as completed, although that he provided an explanation in the “police log that he was unable to complete that check at shift change because the computer had been disabled.”

M.C. repeated the assertions made in his prior statement, which was filed with appellant’s November 5, 2017 reconsideration request, including that “After [appellant’s] refusal to [Assistant] Chief M.M., the job offer to become a police officer was withdrawn and [appellant] was treated with contempt.”

By decision dated August 20, 2019, OWCP denied modification of the March 6, 2019 decision.

On February 26, 2020, appellant requested reconsideration and submitted a copy of the complaint and settlement agreement and release in his EEO claim, an e-mail from M.C., and a statement from R.S.

R.S. related that, as an HR Specialist, she evaluated appellant’s résumé packet for the VA Police Officer vacancy, determined his experience to have met the basic qualification requirements, and referred him to the hiring official for consideration. She explained that appellant was selected and “I extended a tentative job offer and [appellant] accepted it.” However, R.S. further noted that “During the time that follows, [appellant’s] résumé packet was sent to the VA Police Officer training school” and that instructor H.B., “decided that [appellant’s] experience did not qualify and did not accept [appellant] to the training school.” She further noted that appellant supplied statements from prior supervisors supporting his qualifications and these were sent to H.B., “but he stood by his determination that [appellant] did not qualify.” R.S. explained “Being accepted to the training school is a requirement and since [appellant] was not accepted, I had to rescind the job offer” and noted that it was unusual for the school to reject an applicant.

By decision dated June 16, 2020, OWCP modified the August 20, 2019 decision in part. It accepted as factors of employment that appellant's selection for a police officer position was withdrawn after it was determined that he did not meet the qualification requirements and that he was disciplined for misuse of the government security camera; however, it further found that he had not established that the employing agency erred in the administration of those personnel matters, and thus, not compensable. Additionally, OWCP found that him being told to spy did not occur as there was no factual evidence to support this allegation.

On June 8, 2021, appellant requested reconsideration and submitted another statement from G.B. dated October 8, 2020, and a September 30, 2020 statement from new Director P.R. G.B. alleged that he "overheard a [tele]phone conversation where [M.M.] was discussing [appellant] and how his police officer job offer had been pulled" and after the call M.M. told him that he "was n[o]t going to let [appellant] be a cop if he could n[o]t count on his loyalty," that when appellant refused to help with the litigation against the department, "[appellant's] chances of being a cop ended right there," and that it only took one telephone call to Little Rock (the Police Training Center in Arkansas). Director P.R. noted that he had concerns with quality and objectivity of the investigative report regarding appellant's discipline for misuse of the government security camera and that it was his opinion that appellant "experienced insidious retaliation from former Police management that impacted [appellant's] ability to function in his job."

By decision dated July 30, 2021, OWCP denied modification of the June 16, 2020 decision.

On July 27, 2022, appellant requested reconsideration and attached an additional statement from G.B. dated May 18, 2022. G.B. alleged "a failed attempt by Bay Pines Police management to force the police dispatchers and telephone operators to train in duties of each other's position in order to fill staffing shortages without hiring FTEs." He related that several dispatchers including appellant were "greatly troubled by this unprecedented increase in their workload and responsibilities without compensation."

By decision dated August 30, 2022, OWCP denied modification of the July 30, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including that 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 in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

⁴ *K.K.*, Docket No. 23-0545 (issued December 11, 2024); *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); *K.K.*, *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).

To establish an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or contributed to his or her claimed emotional condition; (2) medical evidence establishing that he or she has a diagnosed emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.⁶

Workers' compensation law does not apply to each and every injury or illness that is somehow related to 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 compensable.⁷ 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.⁸

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.⁹ 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.¹⁰

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.¹¹ Mere perceptions of harassment are not compensable under FECA.¹²

ANALYSIS

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

⁶ 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).

⁷ *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).

⁸ *Lillian Cutler*, *id.*

⁹ See *R.M.*, Docket No. 19-1088 (issued November 17, 2020); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹⁰ *M.A.*, Docket No. 19-1017 (issued December 4, 2019).

¹¹ 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).

¹² *Id.*

Appellant has not alleged that his emotional condition was due to the performance of his regularly or specially assigned duties under *Cutler*.¹³ Instead, he primarily attributed his condition to the employing establishment's actions with regard to administrative and personnel matters.

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. However, the Board has also held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, such action will be considered a compensable employment factor.¹⁵

Specifically, appellant alleged that his promotion to a police officer position was withdrawn because he had refused to spy on coworkers who had filed lawsuits against the employing establishment. Appellant's reaction to the withdrawal of his promotion would be compensable if he established error or abuse by the employing establishment.¹⁶ The evidence of record establishes that the employing establishment retaliated against appellant by withdrawing the promotion after he advised his supervisor of his refusal to spy on his fellow coworkers regarding pending lawsuits against it. Appellant has therefore established that the clandestine assignment is a compensable factor of employment.

Appellant also alleged that he was excessively punished with a suspension for redirecting government camera equipment to an area where he could watch his own parked bicycle. However, he failed to show that the employing establishment committed error or abuse with regard to his disciplinary suspension.¹⁷ Appellant, therefore, has not established a compensable work factor with regard to the disciplinary suspension.

Appellant also alleged that he removed telephone logs from the call center to convince Director S.K. that the call center was being mismanaged and when he was told he was going to be charged with removal of government property, he decided to resign. As this matter was never adjudicated and appellant was not further disciplined, the Board finds that he failed to show error or abuse on the part of the agency with regard to this allegation.

Regarding appellant's allegation that his request for FMLA leave was denied, the Board has held that mere dislike or disagreement with supervisory actions, including denial of leave, will not be compensable absent error or abuse on the part of the supervisor.¹⁸ Appellant, therefore, has not established error or abuse in this administrative matter.

¹³ *Supra* note 7.

¹⁴ *Supra* note 9.

¹⁵ See *M.B.*, Docket No. 25-0015 (issued November 12, 2024); *T.S.*, Docket No. 23-0213 (issued December 14, 2023); *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

¹⁶ *P.M.*, Docket No. 13-1182 (issued September 26, 2013).

¹⁷ See *P.B.*, Docket No. 21-0962 (issued February 23, 2023).

¹⁸ *F.W.*, Docket No. 19-0107 (issued June 10, 2020); *B.S.*, Docket No. 19-0378 (issued July 10, 2019).

Further allegations relate to alleged harassing/abusive behavior on the part of appellant's immediate supervisor in the call center, J.D. However, appellant has not submitted evidence to corroborate this allegation.

As OWCP found that there were no compensable employment factors, it has not analyzed or developed the medical evidence. Thus, the Board will set aside OWCP's August 30, 2022 decision and remand the case for consideration of the medical evidence with regard to whether appellant has established an emotional condition in the performance of duty causally related to the compensable employment factor.¹⁹ After other such further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's emotional condition claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the August 30, 2022 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: February 4, 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

¹⁹ *E.A.*, Docket No. 19-0582 (issued April 22, 2021).