



Regarding the relationship of his condition to work, he stated, "While under the care of a physician, the symptoms get worse while at work." Appellant first became aware of his claimed condition on May 5, 2009 and first realized that it was caused or aggravated by his work on March 5, 2012. He did not stop work.

In a March 27, 2012 letter, OWCP requested that appellant provide additional factual and medical evidence in support of his claim.

Appellant submitted an April 10, 2012 statement addressing the incidents and conditions at work which he believed caused him to sustain an emotional condition. He alleged that the day-to-day stress of having to deal with fellow workers, supervisors and customers was the main cause of his condition which had progressively worsened over the past three years. Appellant stated that he could not be around people in the work environment without feeling like he was going to have a panic attack. He listed the embarrassment of people noticing that something was wrong due to his clammy hands and profuse sweating. This happened upon contact with people in the work environment but did not happen outside of work. Another contributing factor to appellant's stress was the fact that he had been through two reduction-in-force proceedings where he had to go down in rank and start a brand new profession. He first came to the employing establishment with the understanding that he would get back to his former pay grade, but had not done so. Appellant felt that he was in a "dead end position." When he took his position six years prior, he was assured that there would be a chief position installed, but the position had not been filled. Appellant raised several issues during work functions that everyone agreed would save a lot of money, but his ideas never got "to the right people who can do anything about it." There were rules for what first responders should wear and he was unfairly critiqued for wearing polyester pants and shirts instead of cotton clothes and for wearing long sleeved shirts instead of heavy jackets. Appellant claimed that when employees with bad work ethics were promoted the morale of his office suffered. He described instances at work when he experienced profuse sweating, shortness of breath and weakness.

In an April 9, 2012 witness statement, Ronnie Stallworth, a coworker, stated that he had worked in the same office with appellant for the past seven years. He had seen how appellant's illness had debilitated him. In meetings or other group situations at work, appellant would fidget, act in a nervous manner, start perspiring and then have to excuse himself. Mr. Stallworth stated that appellant had become "more irritable in his day-to-day duties" and generally avoided people when at all possible. He stated, "It is like [appellant] is under stress at work, but outside of work he is a more relaxed and different person. Anytime [appellant] can he will take leave. I know it bothers him that much."

Appellant submitted medical records, mostly dated in early 2012, including several reports of Dr. Charles R. Hicks, Jr., an attending Board-certified psychiatrist, who diagnosed major depression with melancholia and "specific occupational stress related to present job position."

In a June 4, 2012 decision, OWCP denied appellant's emotional condition claim on the grounds that he did not establish any compensable work factors.<sup>2</sup> It noted that most of his claimed factors related to his noncompensable desire for a different position or work environment or to administrative matters that were not established as in error or abusive.

In a January 14, 2013 brief, counsel argued that appellant's regular and specially assigned duties contributed to his emotional condition. He contended that appellant had a workload that exceeded the usual workload of one person, that an inadequate number of vehicles were at his disposal and that he had to work beyond his medical limitations.<sup>3</sup> Counsel submitted additional medical evidence on behalf of appellant.

In a March 13, 2013 statement, several agency officials addressed the January 14, 2013 brief. They asserted that appellant only had the workload of one person, that an adequate number of inspection vehicles were at his disposal and that he was not required to work beyond his medical limitations.

In a statement dated March 26, 2013, appellant responded to the employing establishment's March 13, 2013 statement. He asserted that he did the work of one inspector, but that the square footage was divided by four instead of the six required. Appellant noted, "Technically, I am inspecting 1 1/2 the amount of the square footage I should be." He stated that from 2005 to 2011 his office was doing twice the number of inspections that were required and he indicated that he was told that the rate of inspections would return to this level in the future. Appellant stated that the number of inspection vehicles was inadequate as there were three vehicles assigned to five inspectors. About 10 years ago he witnessed a fatality at the training ground when a truck ran over an employee. Appellant felt that the accident could have been avoided if a safety device was added to the truck and noted that the device was not added due to budget restraints. He noted that the truck driver was blamed for the accident and stated, "So, I don't feel like I personally would be supported if I made a mistake." Appellant stated that he had to show the number of projected and completed inspections each and that he had been asked why he had not completed 100 percent of the inspections.

In a decision dated April 22, 2013, OWCP affirmed its June 4, 2012 decision. It found that appellant did not establish any compensable work factors.<sup>4</sup>

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<sup>2</sup> OWCP included language in which it suggested that it had accepted a work factor and had denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish his claim. However, there is no indication in the remainder of the decision that OWCP accepted any specific compensable work factor.

<sup>3</sup> Counsel indicated that a January 12, 2013 statement from appellant was attached to the brief, but no such statement is in the record.

<sup>4</sup> OWCP indicated that it was modifying its June 4, 2012 decision to reflect that appellant did not establish any compensable work factors. However, as explained above, OWCP's June 4, 2012 decision already contained such a finding.

## LEGAL PRECEDENT

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.<sup>5</sup> 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.<sup>6</sup>

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA.<sup>7</sup> However, the Board has held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.<sup>8</sup> In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.<sup>9</sup>

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.<sup>10</sup> This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.<sup>11</sup>

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

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<sup>5</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>6</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>7</sup> *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>8</sup> *William H. Fortner*, 49 ECAB 324 (1998).

<sup>9</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>10</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>11</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

factors of employment and may not be considered.<sup>12</sup> 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.<sup>13</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete and accurate factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>14</sup>

### ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of various employment incidents and conditions. OWCP denied his emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA. Appellant claimed that he sustained stress due to his regular or specially assigned duties,<sup>15</sup> as well as due to error and abuse in administrative matters.

Appellant generally alleged that the day-to-day stress of having to deal with fellow workers, supervisors and customers was the main cause of his anxiety stress condition which had progressively worsened over the past three years.<sup>16</sup> As noted, an employee's reaction to his regular or specially assigned work duties may be a compensable factor.<sup>17</sup> The Board finds that appellant did not establish his claim that he sustained an emotional condition due to his work duties. Appellant did not adequately describe which work duties he felt caused his claimed condition. His allegations regarding his work duties were vague and generalized.<sup>18</sup> Appellant

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<sup>12</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>13</sup> *Id.*

<sup>14</sup> *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

<sup>15</sup> See *supra* note 5.

<sup>16</sup> Appellant indicated that he could not be around people in the work environment without feeling like he was going to have a panic attack and noted the embarrassment of people noticing that something was wrong due to his clammy hands and profuse sweating.

<sup>17</sup> See *supra* note 5.

<sup>18</sup> Appellant submitted a witness statement in which a coworker noted that he had become "more irritable in his day-to-day duties." The coworker did not describe the day-to-day duties to which appellant reacted.

asserted that he had to perform work that was beyond the workload of one employee and that he did not have adequate support for his work, including available inspection vehicles. The employing establishment denied his contentions and appellant did not submit sufficient supporting evidence.<sup>19</sup> For these reasons, appellant has not established any compensable factors with respect to his regular or specially assigned duties.

Appellant alleged that his employing establishment committed wrongdoing by unfairly criticizing his work attire, by ignoring his suggestions for saving money and by questioning why he had not completed 100 percent of inspections. Such administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA. However, the Board has held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded. The Board finds that appellant did not submit any evidence showing that the employing establishment committed error or abuse with respect to these matters and therefore he has not established a compensable work factor with respect to administrative matters.

Appellant asserted that when he first came to the employing establishment he had the understanding that he would get back to his former pay grade, but noted that he did get back to his former pay grade. Regarding this allegation, the Board has previously held that denials by an employing establishment of a request for a different job, promotion or pay level are not compensable factors of employment under FECA, as they do not involve the employee's ability to perform his regular or specially assigned work duties, but rather constitute his desire to work in a different position.<sup>20</sup> Appellant indicated that he developed stress because he was in a "dead end position" and a chief position was not installed in his office as promised. Moreover, he claimed a reaction to the fact that he had gone through two reductions in force and was subjected to low morale in the workplace when a person with a bad work ethic was promoted into his office. However, these claims all relate to appellant's noncompensable wish to work in a different position or work environment.<sup>21</sup>

For the foregoing reasons, appellant has not established any compensable employment factors under FECA and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.<sup>22</sup>

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<sup>19</sup> Appellant mentioned a fatal accident that he apparently witnessed 10 years prior and suggested that this incident showed that he could be blamed for accidents in the future. He did not further explain his comments in this regard.

<sup>20</sup> *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

<sup>21</sup> *Tanya A. Gaines*, 44 ECAB 923, 934-35 (1993).

<sup>22</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 22, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 4, 2013  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board