United States Department of Labor
Employees' Compensation Appeals Board

R.W., Appellant	)	
and	)	**Docket No. 13-399**
	)	**Issued: September 26, 2013**
DEPARTMENT OF AGRICULTURE, ANIMAL PLANT HEALTH INSPECTION SERVICE, Raleigh, NC, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 10, 2012 appellant filed a timely appeal from the November 27, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied his claim for an emotional condition. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On May 10, 2012 appellant, a 54-year-old financial technician/budget analyst, filed an occupational disease claim alleging that his Graves' disease, anxiety and major depression

[1] 5 U.S.C. § 8101 *et seq.*

disorder, panic attacks and post-traumatic stress disorder were a result of his federal employment. He explained that he was diagnosed with Graves' disease in 2007. Symptoms included difficulty concentrating, anxiety, insomnia, rapid heartbeats, shortness of breath, tremors, fatigue and nervousness. It had become mentally and physically challenging in the past two to three years, and it worsened with agitation and a stressful environment.

From January 2010 to August 2011, appellant stated that he was frustrated everyday with hostility and conflict with a senior budget analyst, who constantly harassed him about how his work should be submitted, how reports should be reviewed, how his e-mails should be written, how he should talk on the telephone, how long he was away from his desk on breaks and about applying for a position in July 2010. The budget analyst did not think appellant was ready for the position and advised that he remove his name from consideration.

The constant harassment and comments by the senior budget analyst, appellant explained, aggravated his Graves' disease. He stated, "I felt attacked, bullied, and undermined daily with her constant harassments and comments." Appellant filed a grievance in September 2010. Due to stress and lack of concentration, he was unable to complete the requirements of his job. Appellant felt that the senior budget analysts were out to get him, and he had thoughts of physically hurting them. He added that a hiring freeze, personnel shortages, added workloads, having to work overtime and weekends to keep up with his tasks and reports, unexpected deadlines and meetings, and senior budget analyst demands had aggravated his Graves' disease. Appellant's major depression and anxiety disorders were diagnosed in August 2011. He was diagnosed with post-traumatic stress disorder in February 2012.

Appellant further alleged that stress at work increased his blood pressure and placed him at risk for stroke. He stated, "I feel if I continue to work under these stressful work environment conditions now or in the future, it would be instant death for me."

Appellant's supervisor confirmed that appellant worked a regular 40-hour week but did have overtime in evenings and occasionally on weekends. This was especially true around the status of funds period, he explained. Appellant performed much of this overtime while on telework.

Appellant submitted several e-mails discussing how different senior budget analysts gave him different instructions on how to review, format and report various reports. "When I challenge you on your decision," he wrote, "I feel the both of you think I am not a team player by your reactions and e-mail responses. When the truth is, I do not like being pulled in one direction by one lead Budget Analyst and in another direction by the other lead Budget Analyst when there is a difference between you both on how reports should be reviewed, formatted and reported."

On July 16, 2012 OWCP denied appellant's occupational disease claim. It found that he failed to establish any compensable factor of employment. On November 27, 2012 an OWCP hearing representative affirmed the denial. Although appellant had made several allegations of work factors, there was no factual support for any abuse or error on the part of the employer. He documented no wrongdoing. There remained no factually established, compensable factor of employment upon which to predicate a claim for benefits.

On appeal, appellant argues that he submitted medical records, e-mails and letters to support his claim. He repeated his allegations about hostility and conflict with a senior budget analyst.

LEGAL PRECEDENT

FECA provides compensation for disability resulting from personal injury sustained while in the performance of duty.[2] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."[3] "In the course of employment" relates to the elements of time, place and work activity. To "arise out of employment," the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration.[4]

Workers' compensation does not apply to each and every injury or illness that is somehow related to employment. In the case of *Lillian Cutler*,[5] the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the scope of coverage. 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. In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a personal 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 or from such factors as an employee's frustration in not being permitted to work in a particular environment or to hold a particular position.[6]

Administrative and personnel matters, although related to the employee's employment, are functions of the employer rather than the regular or specially assigned work duties of the employee.[7] As a general matter, workers' compensation does not cover an emotional reaction to

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[2] *Id*. at § 8102(a).

[3] This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

[4] *See Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

[5] 28 ECAB 125 (1976).

[6] *Id*.

[7] *Charles D. Edwards*, 55 ECAB 258 (2004).

administrative or personnel actions unless the evidence shows error or abuse on the part of the employing establishment.[8]

The Board has held that actions of an employer which the employee characterizes as harassment or discrimination may constitute a factor of employment giving rise to coverage under FECA, but there must be evidence that harassment or discrimination did in fact occur. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[9] Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.[10] The primary reason for requiring factual evidence from the claimant in support of his allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by OWCP and the Board.[11]

ANALYSIS

Appellant attributed his Graves' disease, anxiety and major depression disorder, panic attacks and post-traumatic stress disorder primarily to his interaction with a lead or senior budget analyst. It is well settled that an employee's reaction to supervision is not a compensable factor of employment under *Lillian Cutler*.[12] Complaints about the manner in which a supervisor performs his or her duties or the manner in which a supervisor exercises his or her discretion fall, as a rule, outside the scope of coverage provided by FECA. This principle recognizes that a supervisor or manager must be allowed to perform his or her duties and that employees will, at times, dislike the actions taken. Mere disagreement or dislike of a supervisory or managerial action is not compensable, absent evidence of error or abuse.[13]

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[8] *Thomas D. McEuen*, 42 ECAB 566, 572-73 (1991), *reaff'd on recon.*, 41 ECAB 387 (1990).

[9] *See Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

[10] *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

[11] *Paul Trotman-Hall*, 45 ECAB 229 (1993) (Groom, Alternate Member, concurring).

[12] *Reco Roncaglione*, 52 ECAB 454 (2001) (disagreement with the associate warden held not compensable, whether viewed as a disagreement with supervisory instructions or as perceived poor management); *Robert Knoke*, 51 ECAB 319 (2000) (where the employee attributed his emotional injury to the manner in which his supervisor spoke to him about undelivered mail, the Board found that a reaction to the instruction itself was not compensable, as work assignments given by supervisors in the exercise of supervisory discretion are actions taken in an administrative capacity and as such, are outside the coverage of FECA); *Frank A. Catapano*, 46 ECAB 297 (1994) (supervisory instructions, with which the employee disagreed, held not compensable in the absence of evidence of managerial error or abuse); *Rudy Madril*, 45 ECAB 602 (1994) (where the employee questioned his supervisor's instructions to move from belt number five to belt number six and unload mail and became upset because he felt he was being pushed and picked on, the Board found that the incident was not a compensable factor of employment).

[13] *T.G.*, 58 ECAB 189 (2006).

To bring this part of his claim within the scope of FECA, appellant must establish that the senior budget analyst committed a specific administrative error or abuse in dealing with him. He stated that he filed a grievance in September 2010, but the record contains no final decision finding that the senior budget analyst violated any particular rule or any of appellant's rights. Although appellant clearly took issue with the manner in which he was being supervised, he has submitted no proof that the conduct amounted to harassment or abuse. All he has submitted are his allegations and perceptions. This is not enough to establish a factual basis for his claim.

Appellant also attributes his Graves' disease and other conditions to his workload. This was due to the constant harassment, which led to stress and a lack of concentration, which in turn led to his being unable to complete the requirements of his job. This was also due, he stated, to a hiring freeze, a personnel shortage, added workloads, unexpected deadlines and meetings and senior budget analyst demands.

To the extent that appellant implicated constant harassment, the Board has found that he has failed to establish a factual basis for this allegation. To the extent that he implicates his workload, the Board has held that conditions related to stress resulting from situations in which a claimant is trying to meet his position requirements are compensable under *Lillian Cutler*,[14] but as with harassment, it is not enough simply to allege a compensable factor of employment. Appellant has the burden to submit probative and reliable evidence to corroborate the factor alleged. The Board has found no evidence of a hiring freeze,[15] personnel shortage, added workloads or unexpected deadlines and meetings.[16]

A supervisor, however, confirmed that appellant did perform overtime work in evenings and occasionally on weekends. Given that those duties were part of his job requirements, the Board finds that he has established a compensable factor of employment under *Lillian Cutler*.[17]

The question that remains is whether working overtime in evenings and occasionally on weekends caused or aggravated appellant's Graves' disease or other claimed conditions. This is a medical question, one that OWCP has not addressed. Accordingly, the Board will set aside OWCP's November 27, 2012 decision and remand the case for further adjudication. As the record establishes a single compensable factor of employment, OWCP shall issue a *de novo* decision on the outstanding issue of causal relationship.

Appellant argues that he has submitted medical records, e-mails and letters to support his claim. OWCP will review his medical records on remand. The e-mails appellant submitted help support that he was dissatisfied with the way in which he was being supervised, but as the Board has explained, absent proof that a supervisor has committed a specific administrative error or

[14] *E.M.*, Docket No. 12-999 (issued October 10, 2012); *Richard H. Ruth*, 49 ECAB 503 (1998); *supra* note 7.

[15] Appellant did not make clear how a hiring freeze increased his workload.

[16] The demands of the senior budget analyst are, again, not compensable.

[17] *See J.B.*, Docket No. 10-181 (issued October 1, 2010) (although a supervisor denied any stressful aspects relating to the overtime worked and refuted the claimant's allegation that she was overworked, the supervisor did not deny that the claimant was required to work overtime in order to complete her assigned duties); *supra* note 7.

abuse, this is not something that workers' compensation generally covers. Appellant's letters and statements reiterate his perceptions and allegations, but they are not the proof required to establish an additional compensable factor of employment.

CONCLUSION

The Board finds that this case is not in posture for decision. The record establishes a single compensable factor of employment. Further adjudication on the medical question of causal relationship is warranted.

ORDER

IT IS HEREBY ORDERED THAT the November 27, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action.

Issued: September 26, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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