

condition and its relationship to his federal employment on April 21, 2009.² OWCP informed appellant in an October 18, 2010 letter that additional evidence was needed to establish his claim. It gave him 30 days to submit a statement describing the employment factors that contributed to stress and a medical report from a physician explaining how these factors caused his emotional condition.

In an August 20, 2010 progress note, Dr. Akintayo O. Akinlawon, a Board-certified psychiatrist, recommended that appellant be off work for the period August 20 to 26, 2010 “due to mental health reasons.” An August 26, 2010 note from Dr. Paulette V. Lewis, a Board-certified internist, extended his medical leave through September 2, 2010. Appellant was released to full-time duty by Dr. Dawn R. Howell, a Board-certified family practitioner, in an October 5, 2010 note. An undated report containing an illegible signature stated that he sustained symptoms related to dysthymic disorder and substance abuse more than two years earlier. Appellant was prescribed psychotropic medications, including antidepressants, anxiolytics and mood stabilizers.³

In a November 1, 2010 statement, appellant specified that he started part-time work for the employing establishment on December 20, 2008. In or around March 2009, a new and inexperienced kitchen team leader, Andrew Wakely, transferred to appellant’s work area. Beginning in April 2009, appellant experienced stress, anxiety, hypertension, uncontrollable blood pressure and blistered lips during and after his shifts due to Mr. Wakely’s excessive micromanagement of his duties, which resulted in shouting matches and negative write-ups. On July 5, 2009 Mr. Wakely called campus police to arrest appellant on the suspicion that he was under the influence of alcohol, but he failed to comply with internal procedures. Appellant contested the disorderly conduct charge, which was eventually dismissed on July 21, 2010. During a mediation session in September 2009, Mr. Wakely conceded that he “was listening to the wrong people about [appellant]” and was required to attend supervisory training. A few months later, appellant was given a patient’s written complaint by a supervisor, Thomas Reinhart. After he consulted with his head supervisor, Brandy Weber, who told him that she did not receive notice of any such complaint, he determined that Mr. Reinhart fabricated the document.

During an August 17, 2010 meeting, appellant was accused by a coworker of evading tray collection about eight months earlier. He noted that Mr. Reinhart immediately sided with the accuser and tried to provoke an “ill” response.

On August 23, 2010 appellant informed Mr. Reinhart that Jamie Schaffer, a coworker, was standing too close to him on the conveyor belt in the kitchen and hastily snatched incoming trays before he could empty them. Later that evening, he was escorted by campus police to Mr. Reinhart’s office, where he was told to leave because he was being disorderly. Appellant

² A November 1, 2010 letter from the employing establishment indicated that appellant gave his two-week notice. Appellant subsequently clarified that he resigned near the end of October 2010.

³ Appellant also submitted copies of his prescriptions, an unsigned October 3, 2010 report exhibiting a high glycohemoglobin level and notes showing that he was scheduled for October 16 and 23, 2010 sessions with Dr. Sheikh A. Qadeer, a psychiatrist.

believed that both Mr. Wakely and Mr. Reinhart were influenced by certain coworkers who falsely characterized him as unreliable in an attempt to get him fired. Members of this “clique” also openly belittled, threatened and sabotaged him. Although appellant turned to the union for assistance, he did not receive any support. The case record demonstrates that he filed an unfair labor charge with the Federal Labor Relations Authority on August 18, 2010, but does not contain a final decision or finding of wrongdoing. Appellant described the work environment as stressful and hostile and no longer trusted anyone there.

OWCP received three reports from the employing establishment’s campus police. In an August 17, 2010 report charging disorderly conduct and disturbing the peace, Mr. Reinhart stated that appellant brought him to the dish room that evening and complained that Ms. Schaffer stood too close to him and “caus[ed] a hostile work environment.” When the supervisor disagreed, appellant remarked that he was disrespectful. Later, in the dining room, appellant approached Mr. Reinhart and taunted him in front of patients. Because of appellant’s service disruptions and inappropriate behavior, Mr. Reinhart dismissed him for the rest of the shift. A separate statement from Ms. Schaffer reiterated appellant’s account but denied that she “was in the wrong spot on the tray line” and “pulling trays out of his hands.” In an August 19, 2010 report, charging disorderly conduct, the investigating officer noted that appellant was seen in a parking lot yelling at behavioral health employees. An August 27, 2010 follow-up report contained e-mails from human resource personnel. In an August 26, 2010 e-mail, Christine Rechichi, a human resources specialist, detailed that various supervisors, managers, coworkers and staff members raised concerns over appellant’s outbursts and bizarre behavior. In an August 27, 2010 e-mail, Susan DeSalvo, a human resources manager, recalled his comment that he would “be real famous or a legend around here soon” and threatened to punch Ms. Weber in the face “if [she] were a man.”

By decision dated November 19, 2010, OWCP denied appellant’s claim, finding that the evidence did not establish an emotional condition arising from a compensable factor of employment.

Appellant requested a telephonic hearing, which was held on May 4, 2011. He testified that Mr. Wakely discriminated against him by frequently following him, inquiring about his whereabouts and activities, asking him to open his mouth to see if he was eating food, speaking to him “like I’m a child,” and criticizing the way he carried out his duties, such as dishwashing and transporting food on a cart, while letting others who performed in the same manner off the hook.⁴ Appellant stated that Mr. Wakely suffered from prefrontal cortex disorder, which made him susceptible to the influence of corrupt coworkers. He added that Mr. Wakely and the clique attempted to have him terminated following his July 5, 2009 arrest for being absent without official leave.⁵ After the hearing, appellant submitted a docket sheet from the U.S. District Court for the Western District of New York advising that an oral order was issued on July 21, 2010 dismissing a charge against him. The docket record indicated that on January 27, 2010 an agreeable disposition was reached wherein, if he “did not get into any trouble in the next three

⁴ Appellant indicated that he filed a complaint with the Equal Employment Opportunity Commission. However, the case record does not contain a final decision or finding of wrongdoing.

⁵ Subsequent statements from appellant reiterated his allegations.

months,” his ticket would be dismissed. Based on this, the government moved to dismiss the violation notice on July 12, 2010.

On July 20, 2011 an OWCP hearing representative affirmed the November 19, 2010 decision.

LEGAL PRECEDENT

To establish a claim that he or she sustained an emotional or stress-related condition in the performance of duty, an employee must submit: (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 or stress-related disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the condition. If a claimant implicates a factor of employment, OWCP should determine whether the evidence of record substantiates that factor. Allegations alone are insufficient to establish a factual basis for an emotional condition claim and must be supported with probative and reliable evidence. If a compensable factor of employment is established, OWCP must then base its decision on an analysis of the medical evidence.⁶

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to a claimant’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 under FECA. When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that a disability resulted from this emotional reaction, the disability is generally regarded as due to an injury arising out of and in the course of employment. This holds true when the disability results from an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work. On the other hand, there are disabilities that have some causal connection with the claimant’s employment but nonetheless fall outside FECA’s coverage because they are found not to have arisen out of employment, such as when a disability results from a fear of a reduction in force or frustration from not being permitted to work in a particular environment or hold a particular position.⁸

Administrative and personnel matters, although generally related to the claimant’s employment, are administrative functions of the employer rather than the regular or specially-assigned work duties of the claimant and are not covered under FECA.⁹ However, the Board has held that an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining

⁶ G.S., Docket No. 09-764 (issued December 18, 2009).

⁷ 28 ECAB 125 (1976).

⁸ *William E. Seare*, 47 ECAB 663 (1996).

⁹ *M.C.*, Docket No. 10-1628 (issued June 8, 2011); *Matilda R. Wyatt*, 52 ECAB 421 (2001).

whether the employing establishment erred or acted abusively, the Board will examine the factual evidence of record to determine whether the agency acted reasonably.¹⁰

ANALYSIS

Appellant claimed that he sustained stress, anxiety, hypertension, uncontrollable blood pressure and blistered lips as a result of mistreatment at the hands of his supervisors and coworkers. The Board must initially review whether the claimed incidents or activities constitute compensable factors under the provisions of FECA.¹¹

Appellant objected to certain managerial actions of his superiors. He alleged that Mr. Wakely, the kitchen team leader, constantly followed him, inquired about his whereabouts, asked him to open his mouth to show that he was not eating food, berated him verbally and in write-ups, criticized the manner in which he washed dishes and used a cart to transport food and tried to have him terminated for being absent without official leave. Appellant asserted that Mr. Wakely improperly had him arrested for being disorderly on July 5, 2009 and that the charges were later dismissed on July 21, 2009. He added that Mr. Reinhart, another supervisor, fabricated a patient's written complaint about him, attempted to provoke him during an August 17, 2010 staff meeting, failed to instruct Ms. Schaffer that she was standing too close and improperly snatching trays from him and thereafter called campus police to escort him off the premises on August 23, 2010.

None of these alleged events, however, gave rise to a compensable factor of employment. The Board has held that disciplinary actions,¹² team meetings,¹³ police escorts from the workplace,¹⁴ leave matters¹⁵ and monitoring an employee's job performance¹⁶ are administrative functions of the employer rather than duties of the employee. Unless the evidence discloses error or abuse on the part of the employer, they are not compensable employment factors. Here, apart from mere allegations, appellant did not offer evidence showing that Mr. Wakely improperly scrutinized or disparaged his job performance to the extent described or tried to have him terminated for being absent without official leave. Although the record supports that he was arrested at work on July 5, 2009 for disorderly conduct and that the charge was later dismissed on July 21, 2010, this is insufficient to rise to the level of a compensable employment factor. Court documents do not indicate that the charges were baseless but instead indicate that the

¹⁰ *M.D.*, 59 ECAB 211 (2007); *Ruth S. Johnson*, 46 ECAB 237 (1994). See also *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹¹ The Board notes that appellant did not attribute his emotional condition to the performance of regular or specially-assigned job duties. See *Cutler*, *supra* note 7.

¹² *G.S.*, *supra* note 6; *McEuen*, *supra* note 10.

¹³ *Sandra Shorridge*, 46 ECAB 356 (1994).

¹⁴ *Harley D. Crosby*, Docket No. 97-2526 (issued June 26, 2000).

¹⁵ *J.C.*, 58 ECAB 594 (2007).

¹⁶ *James P. Inzetta*, Docket No. 03-1899 (issued October 27, 2003).

charges were dropped contingent on appellant staying out of legal trouble for three months. The court documents do not indicate that the employer erred or acted unreasonably in its handling of the administrative matter. Consequently, these administrative matters relating to Mr. Wakely and the employing establishment are not compensable factors of employment.

Appellant also did not offer evidence showing that Mr. Reinhart fabricated a complaint or tried to incite him during an August 17, 2010 staff meeting.¹⁷ In addition, he did not establish that Mr. Reinhart erred or acted abusively in calling campus police on August 23, 2010. Instead, the case record contains documents from the employer's campus police indicating that Mr. Reinhart dismissed appellant from his August 23, 2010 shift due to unprofessional conduct. While appellant questioned Mr. Reinhart's supervisory discretion regarding Ms. Schaffer's job performance on August 23, 2010, an employee's dissatisfaction with perceived poor management constitutes frustration from not being able to work in a particular environment or to hold a particular position and is not compensable under FECA.¹⁸ He did not submit sufficient evidence to show that these matters rise to the level of a compensable work factor.

Appellant also claimed that his coworkers created a hostile work environment. In particular, they spread falsities about his work ethic to his superiors as well as openly belittled, threatened and sabotaged him on the job. To the extent that disputes and incidents alleged as constituting harassment and discrimination by coworkers and supervisors are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹⁹ Nonetheless, for harassment or discrimination to give rise to a compensable disability, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under FECA.²⁰ In this case, although appellant alleged that he suffered persistent harassment from his coworkers, he did not present witness statements, administrative findings or other documentation corroborating that his coworkers harassed or treated him disparately.

As appellant failed to establish any compensable factors of employment, OWCP properly denied his claim.²¹

Appellant contends on appeal that the evidence was sufficient to show that his stress, mental strain, psychiatric treatment and resignation were the result of workplace harassment, violence and corruption. As noted, the evidence failed to establish that a compensable factor of employment was causally related to a diagnosed emotional condition claim. Appellant also submitted new evidence after issuance of the July 20, 2011 decision. The Board lacks

¹⁷ See *Joel Parker, Sr.*, 43 ECAB 220 (1991) (factual evidence of record must substantiate allegations with evidence).

¹⁸ *Cyndia R. Harrill*, 55 ECAB 522, 529 (2004).

¹⁹ *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

²⁰ *Donna Faye Cardwell*, 41 ECAB 730, 741 (1990).

²¹ As appellant did not establish a compensable employment factor, the Board need not address the medical evidence of record. See *Kathleen A. Donati*, 54 ECAB 759 (2003); *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

jurisdiction to review evidence for the first time on appeal.²² However, appellant may submit new evidence or argument as part of a formal 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 establish that he sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the July 20, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 13, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

²² 20 C.F.R. § 501.2(c).