

**United States Department of Labor
Employees' Compensation Appeals Board**

P.M., Appellant

and

**U.S. POSTAL SERVICE, PROOTER STATION,
Tacoma, WA, Employer**

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**Docket No. 13-1182
Issued: September 26, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 17, 2013 appellant filed a timely appeal of a January 29, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his emotional condition claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained an emotional condition due to factors of his federal employment.

FACTUAL HISTORY

On August 1, 2012 appellant, then a 46-year-old letter carrier, filed an occupational disease claim alleging that on July 10, 2012 he developed post-traumatic stress disorder due to factors of his federal employment. He first attributed his condition to his employment on that

¹ 5 U.S.C. § 8101 *et seq.*

date. Appellant stopped work on June 29, 2012. He stated that since his absence from work on June 30, 2012 his symptoms had decreased and stopped.

By letter dated August 9, 2012, OWCP requested additional factual and medical evidence from appellant in support of his claim. It allowed 30 days for a response. On March 5, 2012 the employing establishment informed appellant that the decision to make him a full-time regular carrier had been rescinded and that he remained a part-time flexible carrier.

On March 17, 2012 appellant related that on March 16, 2012 at 10:00 a.m. he was given four hours of work by Dan, the station manager, who informed appellant that the route should take no more than five hours as appellant had not previously delivered the route. At 2:15 p.m., Pete Duban, his supervisor, approached him on the route to advise him that he was behind schedule. He stated that another carrier was coming to take the remaining mail and that appellant was to return to the employing establishment. Once there, Mr. Duban informed appellant that as a part-time flexible carrier, he had worked his four hours and was done for the day. Appellant asked about a "new route learning curve" and Mr. Duban stated that appellant was too slow, inefficient and not meeting minimum expectations or standards. He protested that he had never been taken off a route before and that he still had time to complete the route. Mr. Duban stated, "You are done and goodbye."

Appellant submitted a statement dated August 1, 2012 and detailed his work activities beginning January 9, 2012. "Manager Brenda" criticized him for calling the automated call-in system due to his absence from work as the result of a migraine. Appellant received a promotion letter on March 2, 2012 which was rescinded on March 5, 2012. On March 5 and 10, 2012 Judy Thompson, a supervisor, blamed appellant for a late return without factual justification. Also on March 10, 2012 appellant alleged there was a "bullying incident with supervisor" and that he filed a grievance. He was absent on March 31, April 25 and 26 and June 9 and 23, 2012 due to migraines and stomach upsets. Appellant stated that on June 11, 2012 he received unwarranted criticism from "Supervisor Dennis" regarding his leave usage on June 9, 2012. On June 29 2012 he was assigned an unrealistic amount of work with an unrealistic deadline. Beginning on June 30, 2012 appellant was absent from work due to post-traumatic stress disorder.

On August 8, 2012 Dr. Walter Hollow, Board-certified in family practice, diagnosed post-traumatic stress disorder and migraine headaches secondary to stress and overwork. He opined that appellant's condition was caused by work as his symptoms lessened after he removed himself from the stressful environment.

Appellant submitted a grievance form dated April 26, 2012 filed against Mr. Duban alleging a hostile work environment. The grievance was resolved through an agreement of mutual cooperation and clear communications.

By decision dated January 29, 2013, OWCP denied appellant's claim finding that he failed to submit sufficient evidence to establish a compensable factor of employment.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,² the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.³ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.⁴ 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.⁵ 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, nor is disability covered when it results 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 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.⁷ Where 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.⁸ A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.⁹

For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under FECA. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination

² 28 ECAB 125 (1976).

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Robert W. Johns*, 51 ECAB 136 (1999).

⁵ *Lillian Cutler*, *supra* note 2.

⁶ *Id.*

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

⁸ *Kim Nguyen*, 53 ECAB 127 (2001). See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁹ *Roger Williams*, 52 ECAB 468 (2001).

occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹⁰

ANALYSIS

Appellant attributed his diagnosed post-traumatic stress disorder to his work duties. He stated that on June 29, 2012 he was assigned an unrealistic amount of work with an unrealistic deadline. The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable under *Cutler*.¹¹ While appellant generally alleged that his specially assigned duties on June 29, 2012 caused or contributed to his emotional condition, he did not submit sufficient evidence to establish that the employing establishment required him to complete an unrealistic amount of work with an unrealistic deadline.¹² He did not provide an adequate description of either the specific work required or the time period allotted. Without supporting evidence, this allegation is not a compensable employment factor.

Appellant also attributed his emotional condition to administrative actions of his supervisor, Mr. Duban, on March 16, 2012. An administrative or personnel matter will be considered to be an employment factor only where the evidence discloses error or abuse on the part of the employing establishment.¹³ Mr. Duban allegedly removed appellant from his assigned route for the day because he had not completed the route in the allotted four hours. Appellant alleged that Mr. Duban stated that he was too slow, inefficient and not meeting minimum expectations and standards. On March 5 and 10, 2012 Judy Thompson, a supervisor, blamed appellant for a late return without factual justification. Appellant has submitted no witness statements or other corroborating evidence regarding Dr. Duban's or Ms. Thompson's actions and statements. While appellant has alleged error or abuse in his supervisors' actions, the Board has frequently held that allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim, but rather must be corroborated by evidence.¹⁴ Without any substantiating evidence that the events described above occurred as alleged, appellant has failed to establish compensable factors of employment in these events.

Appellant also attributed his emotional condition to his leave usage and the response to this usage by the employing establishment. He alleged on January 9, 2012 "Manager Brenda" criticized him for calling the automated call-in system due to his absence from work as the result of a migraine. Appellant was absent on March 31, April 25 and 26 and June 9 and 23, 2012 due to migraines and stomach upsets. He stated that on June 11, 2012 he received unwarranted criticism from "Supervisor Dennis" regarding his leave usage on June 9, 2012. Although the handling of leave requests is generally related to employment, this is an administrative function

¹⁰ *Alice M. Washington*, 46 ECAB 382 (1994).

¹¹ *Lillian Cutler*, *supra* note 2.

¹² *D.L.*, 58 ECAB 217 (2006).

¹³ *C.S.*, 58 ECAB 137 (2006).

¹⁴ *J.F.*, 59 ECAB 331 (2008); *M.D.*, 59 ECAB 211 (2007).

of the employer and not duties of the employee and subject to the standard discussed above. Appellant alleged error or abuse by the employing establishment in response to his leave usage; but did not submit adequate evidence to establish his alleged difficulties with supervisors regarding his leave usage. Without corroborating evidence he has not established any error or abuse on the part of the employing establishment.

Appellant received a promotion letter on March 2, 2012 which was rescinded on March 5, 2012. The Board has held that disability is not covered where it results from an employee's frustration over not being able to secure a promotion.¹⁵ Assignment of work duties is a management prerogative, so that appellant's reaction to the withdrawal of his promotion would be covered only if he could establish error or abuse by the employing establishment which he has not done.¹⁶

On March 10, 2012 appellant alleged that there was a "bullying incident with supervisor" and that he filed a grievance. The record contains a grievance form dated April 26, 2012 filed by appellant against Mr. Duban alleging that he created a hostile work environment. The grievance does not contain any specific details of the bullying. Without a clear and detailed account of the events of March 10, 2012, the Board is unable to determine whether these events could rise to the level of a compensable factor of employment if established. Furthermore, the grievance was resolved through an agreement for mutual cooperation and clear communications. The grievance settlement provided no indication of a finding of error by the employing establishment.¹⁷

The Board concludes that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty causally related to factors of his federal employment.

As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record.¹⁸

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 established that he sustained an emotional condition in the performance of duty.

¹⁵ *R.F.*, Docket No. 12-1816 (issued May 21, 2013).

¹⁶ *H.D.*, Docket No. 12-1246 (issued April 11, 2013).

¹⁷ *W.B.*, Docket No. 12-1369 (issued May 1, 2013).

¹⁸ *A.K.*, 58 ECAB 119 (2006).

ORDER

IT IS HEREBY ORDERED THAT the January 29, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 26, 2013
Washington, DC

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

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

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