United States Department of Labor
Employees' Compensation Appeals Board

T.S., Appellant	)	
and	)	**Docket No. 20-1194**
	)	**Issued: April 14, 2021**
U.S. POSTAL SERVICE, POST OFFICE, Appleton, WI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 19, 2020 appellant filed a timely appeal from an April 8, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 has met his burden of proof to establish an emotional condition in the performance of duty, as alleged.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.[2] The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On September 10, 2014 appellant, then a 47-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that he sustained emotional conditions, including post-traumatic stress disorder, anxiety disorder, and depressive disorder, causally related to factors of his federal employment.[3] He maintained that his medical condition was caused by an incident that was handled improperly by management. Appellant stopped work on June 14, 2014.

In a development letter dated September 23, 2014, OWCP requested that appellant submit additional factual and medical evidence in support of his emotional condition claim. It afforded him 30 days to submit the requested evidence.

In response, appellant submitted statements prepared in September and October 2014 in which he alleged that he sustained stress because a coworker, L.C., falsely accused him on June 11, 2010 of having placed poison or some other harmful substance in her drink on that date. He claimed that he was performing his regular work duties on June 11, 2010 when L.C. made this accusation. Appellant maintained that L.C. attempted to have him arrested and she later confessed that she had made a false accusation. He asserted that management did not properly investigate the June 11, 2010 incident and failed to properly discipline L.C., resulting in L.C. returning to the same work unit where he worked in 2013.[4]

Appellant submitted a statement he prepared on July 7, 2010, as well as July 7, 2010 statements from coworkers, which contained similar content. The statements indicated that there was no support for L.C.'s assertion that poison had been placed in her drink at work. Appellant also submitted medical evidence in support of his claim, including an October 15, 2014 attending physician's report (Form CA-20) from Dr. Yazmin Fuentes, a Board-certified psychiatrist, who noted that he reported that on June 11, 2010 a coworker falsely accused him of poisoning her drink. Dr. Fuentes diagnosed post-traumatic stress disorder, major depression, and anxiety, and checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the reported employment activity.

In a September 23, 2014 letter, an employing establishment official challenged appellant's emotional condition claim and argued that there was "[n]o fact of injury or causal relationship established medically."

In a development letter dated February 4, 2015, OWCP requested that the employing establishment respond to appellant's assertions. It afforded the employing establishment 30 days to reply. In February 27, 2015 statements, V.G. and D.B., appellant's supervisors, acknowledged that L.C. had claimed that someone tampered with her drink at work on June 11, 2010. Both V.G.

[2] Docket No. 19-0164 (issued November 13, 2019).

[3] Appellant also claimed an elevated cholesterol condition due to work-related stress.

[4] Appellant asserted that management wrongly transferred him to another employing establishment facility in 2014.

and D.B. asserted that the June 11, 2010 incident was adequately investigated, and that all disciplinary actions relating to it were appropriately carried out. They maintained that, due to a January 31, 2013 decision of an arbitrator, management was obligated to allow L.C. to return to the work facility where appellant also worked, and that in 2014 he was properly excessed to another employing establishment facility due to his low seniority. In her February 27, 2015 statement, V.G. indicated that a union official had advised that L.C. accused appellant of placing something in her drink. She also noted that, in July 2010, L.C. admitted that there was nothing placed in her drink at work on June 11, 2010 and that she "made up the story." V.G. further advised that, soon after this retraction, the district attorney for Fond du Lac County, Wisconsin, charged L.C. with "obstructing an officer" and she entered an Alford plea to the obstruction charge and was sentenced to 12 months of deferred prosecution pending no further criminal activity.

By decision dated March 19, 2015, OWCP denied appellant's emotional condition claim. It determined that he had not submitted sufficient evidence to establish a compensable employment factor. OWCP found that appellant had not provided sufficient details and corroborating evidence regarding his allegations.

On April 7, 2015 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review. He provided a statement, which was similar to those previously considered, and provided additional medical evidence.

By decision dated September 25, 2015, OWCP's hearing representative affirmed the March 19, 2015 decision. She determined that appellant had not established a compensable employment factor.

On September 20, 2016 appellant, through his then-counsel, requested reconsideration of the September 25, 2015 decision. In an accompanying brief dated September 15, 2016, then-counsel argued that the June 11, 2010 incident occurred while appellant was performing his regular duties and, therefore, constituted a compensable employment factor under the principles of *Lillian Cutler*.[5] Appellant submitted additional medical reports, as well as statements from family members, which described the June 11, 2010 incident and the impact it had on him.

By decision dated December 6, 2016, OWCP denied modification of the September 25, 2015 decision.

On November 27, 2017 appellant, through counsel, requested reconsideration of the December 6, 2016 decision. In an accompanying brief dated November 21, 2017, then-counsel continued to argue that the June 11, 2010 incident, and the employing establishment's mishandling of it, constituted compensable employment factors. Appellant submitted an August 29, 2016 report in which Dr. Natalie A. Krah, a Board-certified psychiatrist, discussed his emotional condition.

By decision dated May 31, 2018, OWCP denied modification of the December 6, 2016 decision.

[5] *See Lillian Cutler, infra* note 11.

Appellant appealed to the Board and, by decision dated November 13, 2019,[6] the Board set aside the May 31, 2018 decision and remanded the case to OWCP for further development. The Board noted that he had claimed that, while he was performing his regular duties on June 11, 2010, L.C. falsely accused him of placing poison in her drink, an action which he believed constituted a compensable employment factor. The Board indicated that the employing establishment had acknowledged that L.C. had in fact made a false accusation on June 11, 2010, but found that the case record remained vague with respect to the precise nature of the accusation and the circumstances under which it was made. Given the limited evidence in the case record from the employing establishment regarding the nature of the June 11, 2010 incident, the Board directed OWCP to request that the employing establishment provide additional evidence regarding the specific nature of the June 11, 2010 incident, to be followed by issuance of a *de novo* decision regarding appellant's emotional condition claim.

On remand, OWCP sent the employing establishment a January 3, 2020 letter, in which it requested the submission of a narrative statement from a knowledgeable supervisor regarding the June 11, 2010 work incident between appellant and L.C. where appellant "was falsely accused of putting something in [L.C.'s] drink." It requested that the employing establishment collect and submit documents that would corroborate, refute, and/or provide additional insight into the June 11, 2010 work incident.

In a March 20, 2020 e-mail, an employing establishment official, T.P., indicated that reference should be made to an attached February 2, 2018 decision of the Equal Employment Opportunity Commission (EEOC) in which the employing establishment prevailed on appellant's claim of discrimination (in part based on disability) when he was excessed to the Appleton, Wisconsin facility in 2014. She asserted that the EEOC rejected his claim that he was excessed because of a June 11, 2010 incident where L.C. falsely accused him of poisoning her. T.P. indicated that the EEOC accepted the employing establishment's evidence demonstrating that appellant was excessed because he was the most junior employee and L.C. had more seniority. She noted that the employing establishment investigated the June 11, 2010 incident and determined that L.C. should be removed for creating a hostile work environment and submitting false forms, including a Form CA-1 and PS Form 3971.

T.P. advised that the employing establishment issued L.C. a notice of removal on August 17, 2010 and that the union grieved L.C.'s August 2010 removal. She noted that the employing establishment defended L.C.'s removal through arbitration, but the arbitrator ruled in L.C.'s favor on January 31, 2013. T.P. indicated that the arbitrator determined that on June 11, 2010, L.C. did believe that her drink had been tampered with, but that no one actually tampered with the drink. While the arbitrator concluded that the employing establishment had just cause to place L.C. in an off-duty, nonpay status following the incident, the arbitrator found no just cause for L.C.'s removal. T.P. advised that, accordingly, L.C. was reinstated without back pay following the January 31, 2013 arbitration decision and, due to L.C.'s seniority over appellant, the reinstatement resulted in appellant being excessed to the Appleton, Wisconsin facility. She indicated that, based on the results of its investigation, the employing establishment accepted

[6] *Supra* note 2.

appellant's version of events and removed L.C. to ensure that appellant was not further exposed to her behavior.

T.P. attached a copy of the February 2, 2018 decision in which the EEOC concluded that the employing establishment did not discriminate against appellant when it excessed him to the Appleton, Wisconsin facility in 2014. The EEOC determined that the excessing of appellant was legitimate because he was the most junior employee in his work facility. It was noted that appellant's coworker, whom appellant believed falsely accused him of poisoning L.C.'s drink on June 11, 2010 had returned to the employing establishment, but was not subject to being excessed due to her seniority over appellant.

By decision dated April 8, 2020, OWCP denied modification of its prior decision, finding that appellant had not met his burden of proof to establish an emotional condition in the performance of duty, as alleged. It explained that he had not established a compensable employment factor.

LEGAL PRECEDENT

An employee seeking benefits under FECA[7] has the burden of proof to establish the essential elements of his or her claim, including 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 while 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.[8] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[9]

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.[10]

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

[7] *Supra* note 1.

[8] *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

[9] 20 C.F.R. § 10.115(e); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *T.O.*, Docket No. 18-1012 (issued October 29, 2018); *Michael E. Smith*, 50 ECAB 313 (1999).

[10] *See S.K.*, Docket No. 18-1648 (issued March 14, 2019); *M.C.*, Docket No. 14-1456 (issued December 24, 2014); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

employment, the disability comes within the coverage of FECA.[11] On the other hand, 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.[12]

A claimant has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.[13] This burden includes the submission of a detailed description of the employment factors or conditions which he or she 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.[14]

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 factors of employment and may not be considered.[15] 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, it must base its decision on an analysis of the medical evidence.[16]

ANALYSIS

The Board finds that appellant has established a compensable employment factor with regard to a false accusation made against him by a coworker on June 11, 2010.

The Board notes that appellant claimed that, while he was performing his regular duties on June 11, 2010, L.C., a coworker, falsely accused him of placing poison in her drink and he asserted that, therefore, he had established a compensable employment factor under the principles of *Lillian Cutler*.[17] Appellant also claimed that management committed error and abuse with respect to various administrative/personnel matters.

By decision dated November 13, 2019, the Board set aside OWCP's May 31, 2018 decision denying appellant's claim and remanded the case to OWCP for further development. With respect to the June 11, 2010 incident, the Board indicated that the employing establishment had

[11] *See Lillian Cutler*, 28 ECAB 125 (1976).

[12] *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

[13] *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[14] *P.B.*, Docket No. 17-1912 (issued December 28, 2018); *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[15] *See O.G.*, Docket No. 18-0359 (issued August 7, 2019); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[16] *Id.*

[17] *See supra* note 5.

acknowledged that L.C. had in fact made a false accusation on June 11, 2010, but found that the case record remained vague with respect the precise nature of the accusation and the circumstances under which it was made. Given the limited evidence in the case record from the employing establishment regarding the nature of the June 11, 2010 incident, the Board directed OWCP to request that the employing establishment provide additional evidence regarding the specific nature of the June 11, 2010 incident, to be followed by issuance of a *de novo* decision regarding appellant's emotional condition claim. On remand, OWCP conducted further development of the June 11, 2010 incident involving him and L.C. and then issued an April 8, 2020 decision denying his emotional claim finding that he had not established a compensable employment factor.

The Board finds that appellant has, in fact, established a compensable employment factor with respect to L.C.'s false accusation that he placed poison in her drink at work on June 11, 2010. During the evidentiary development carried out after the Board remanded the case, OWCP received evidence, including a February 2, 2018 EEOC decision and a March 20, 2020 e-mail from T.P., an employing establishment official, which clarified the nature of the June 11, 2010 incident. T.P. indicated that the employing establishment accepted appellant's version of events of the June 11, 2010 incident, *i.e.*, that L.C. made a false accusation of placing poison in appellant's drink during work hours, and that the employing establishment took action to remove L.C. from the workplace to ensure that appellant was not further exposed to her behavior.[18] TP. advised that the employing establishment issued L.C. an August 17, 2010 notice of removal for, *inter alia*, creating a hostile work environment with respect to the June 11, 2010 incident.

The Board finds that the June 11, 2010 incident occurred while appellant was performing his regular work duties, and constitutes an employment factor under the principles of the *Lillian Cutler* case which dictate that disability from a reaction to a regular or specially assigned work duty or to a requirement imposed by the employment comes within the coverage of FECA.[19] The Board has recognized that there may be coverage under FECA when friction and strain arise as an inherent part of the conditions of employment, or when work brings employees together and creates the conditions that result in an altercation or incident.[20] In the present case, the work setting

[18] Previously, V.G. had advised that L.C. admitted in July 2010 that there was nothing placed in her drink at work on June 11, 2010 and that she "made up the story." V.G. further noted that, soon after this retraction, the district attorney for Fond du Lac County, Wisconsin, charged L.C. with "obstructing an officer" and she entered an Alford plea to the obstruction charge and was sentenced to 12 months of deferred prosecution pending no further criminal activity.

[19] *See supra*, note 5.

[20] Under the friction and strain doctrine, the fact that employees with their individual characteristics (emotions, temper, *etc.*) are brought together in the workplace creates situations leading to conflicts which may result in physical or emotional injuries. Because these conflicts have their origin in the employment they arise out of and in the course of employment even though they have no relevance to the employee's tasks. In other words, a conflict between employees involving a nonwork topic may be found to have occurred in the performance of duty because the employment brought the employees together and created the conditions which resulted in the conflict. However, the friction and strain doctrine does not apply to privately motivated quarrels or disputes imported from outside the employment. *See A.B.*, Docket No. 15-0288 (issued May 21, 2015); *F.S.*, Docket No. 10-1398 (issued May 12, 2011). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.12b (March 1994, January 1997).

brought together appellant and L.C., and created the conditions that resulted in the events of June 11, 2010.[21]

In its prior decision dated November 13, 2019, the Board noted that appellant alleged wrongdoing with respect to administrative or personnel matters, but found that he had not submitted sufficient evidence to establish these allegations. The Board indicated that appellant claimed that management mishandled the investigation of the June 11, 2010 incident, had not properly disciplined L.C. with respect to the accusation made against him on June 11, 2010, and had improperly allowed L.C. to return to work in his work unit. The Board also noted that appellant asserted that management wrongly transferred him on a later date to another employing establishment facility. The Board concluded that he had not established employment factors with respect to administrative/personnel matters because he had not shown that the employing establishment committed error or abuse in carrying them out.[22]

The Board notes that the aforementioned February 2, 2018 EEOC decision, submitted after the Board's November 13, 2019 decision, found that the employing establishment did not discriminate against appellant when it excessed him to the Appleton, Wisconsin facility in 2014. Given that appellant has not substantiated error or abuse committed by the employing establishment in connection with any of the above-noted administrative/personnel matters, he has not established a compensable employment factor with respect to these matters.

In the present case, appellant has established a compensable factor of employment with respect to the false accusation made against him by a coworker at work on June 11, 2010. However, his burden of proof is not discharged by the fact that he has established an employment factor which may give rise to a compensable disability under FECA. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional condition and that such conditions are causally related to the accepted compensable employment factor.[23] Therefore, the case shall be remanded to enable OWCP to review the medical evidence of record and to determine whether he has established that his emotional condition is causally related to this compensable employment factor.[24] Following this and such further development as may be deemed necessary, OWCP shall issue a *de novo* decision on appellant's emotional condition claim.

CONCLUSION

The Board finds that appellant has established a compensable employment factor with respect to a false accusation made against him by a coworker at work on June 11, 2010, *i.e.*, that he poisoned her drink. The case is remanded to OWCP for further development.

[21] The Board notes that there is no indication in the case record that the events of June 11, 2010 resulted from a dispute imported from outside the employment.

[22] *M.S.*, Docket No. 19-1589 (issued October 7, 2020); *William H. Fortner*, 49 ECAB 324 (1998).

[23] *See supra* note 10.

[24] *See M.D.*, Docket No. 15-1796 (issued September 7, 2016).

ORDER

IT IS HEREBY ORDERED THAT the April 8, 2020 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: April 14, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board