United States Department of Labor
Employees' Compensation Appeals Board

K.C., Appellant	)	
and	)	**Docket No. 22-1033**
	)	**Issued: August 17, 2023**
U.S. POSTAL SERVICE, MOUNT VERNON POST OFFICE, Mount Vernon, WA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On June 30, 2022 appellant filed a timely appeal from a January 4, 2022 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 to consider the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish an emotional/stress-related condition in the performance of duty.

FACTUAL HISTORY

On September 27, 2018 appellant, then a 54-year-old customer service supervisor, filed an occupational disease claim (Form CA-2) alleging that he sustained extreme anxiety and panic attacks causally related to factors of his federal employment. He attributed his condition to being

[1] 5 U.S.C. § 8101 *et seq*.

falsely accused, treated like a criminal, being escorted out of the employing establishment in front of his subordinates, and being told he could not talk to or contact anyone at the employing establishment. Appellant indicated that he first became aware of his illness on July 26, 2018, and realized it was related to factors of his federal employment on September 7, 2018.

In a separate statement accompanying the claim form, appellant related that he had been experiencing stress at work for four plus years. He noted that on July 26, 2018 he was called by Postmaster B.W., for an "interview" that included Postmasters F.F. and M. Appellant explained that halfway through the interview, he was told that a coworker had made a complaint against him and that an official management inquiry (IMIP) was being opened. He was told to hand over his keys, not to talk to anyone, and that he could not return to the employing establishment property without being escorted or he would be fired. Appellant was threatened with the use of handcuffs, and was escorted out of the building, without handcuffs, in front of his subordinates with some of his personal belongings. He was told to report to the Arlington location where he would be given clerk duties. Appellant noted that his heart started racing and was beating loudly with pressure in his chest as he worried about being terminated after 29 years of service. He stated that he was later told that the complainant's charges were unfounded, and no charges were filed, but that he could not have anything in writing clearing him of misconduct.

Appellant related that his symptoms had worsened since the July 26, 2018 work incident. He noted that on August 29, 2018, his physician advised him to take several weeks off work, but on September 6, 2018 he was told by his postmaster that he could not take time off until October. On September 7, 2018 appellant received written notification that leave was denied and he was being assigned to another post office in Snohomish, Washington, which was known for being understaffed. He related that he immediately began to have tightness and pain in his chest. While at the emergency room that night, appellant sent a text message to the Arlington postmaster that he would not be in the next day and 30 minutes later he received a group text advising that if he did not provide medical documentation, he would be considered absent without leave and subject to discipline/removal. He described his subsequent panic attack symptoms and medical treatment. Appellant explained that he had anxiety issues for years, but the panic attacks were new.

In an October 3, 2018 statement, R.E., the employing establishment postmaster, noted that appellant had disclosed to him in 2015 that appellant's wife was going through an Internal Revenue Service audit and that this was the cause of his stress. He noted that he was advised by Postmaster W. that appellant was accused of sexual harassment by another supervisor, that Postmaster W. was to conduct an investigation, that Postmaster W. wanted to separate appellant and the complainant so there would not be an escalation, and that appellant was asked to report to the Arlington location pending the outcome of the investigation. R.E. related that appellant agreed to the transfer and that he was not escorted off the property or treated like a criminal. He noted that he spoke to appellant and the other supervisor when Postmaster W. advised him that there was no conclusive evidence of harassment. The complainant M.L., a supervisor of customer service, agreed that she could work with appellant again. R.E. explained that appellant requested two weeks of annual leave and he denied the leave request due a rural route count being conducted in the office which required appellant's attendance. He noted that appellant reported that his doctor did not want him to work for 120 hours, as appellant did not want to work with M.L. R.E. then gave appellant options to work in two other locations, but appellant refused.

A September 27, 2018 report from Dr. David M. Escobar, a Board-certified family practitioner and osteopath, diagnosed persistent adjustment disorder with mixed anxiety and depressive symptoms directly associated with occupational stress.

In a development letter dated October 9, 2018, OWCP advised appellant of the deficiencies in his claim. It further advised appellant of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded him 30 days to submit the requested evidence.

In a letter dated October 11, 2018, H.M., a health and resource management employee with the employing establishment, controverted the claim. She noted that appellant had not alleged that his emotional condition was caused by a compensable factor of employment.

OWCP thereafter received a November 8, 2018 statement from appellant indicating that R.E. had falsely stated that personal issues were the source of his stress. Appellant listed four causes for his alleged emotional condition. He reiterated his prior allegations and added that on July 26, 2018, he was removed from a supervisor role at one employing establishment location, told to report to a different location, and instructed to perform clerk duties, a *de facto* demotion, which violated the contract between the USPS and the union. Appellant also alleged that in his new work location he was assigned to work in close proximity with females sorting packages where it was nearly impossible not to have physical contact. He submitted a copy of the Collective Bargaining agreement. Article 1.6, Section 6, Performance of Bargaining Unit Work, Article B, provided that in offices with less than 100 bargaining unit employees, supervisors are prohibited from performing bargaining unit work except as enumerated in Section 6.A.1 through 5 above or when the duties are included in the supervisor's position description.

In a November 7, 2018 report, Dr. Jess McClelland, a Board-certified psychiatrist, diagnosed acute stress reaction. He related that after appellant was accused of sexual harassment, he was assigned to a different office and was given clerical duties with minimal supervisory responsibilities. Dr. McClelland noted that the clerical duties involved working alone with females sorting packages in a confined space that created situations where bumping into each other was unavoidable. He opined that the stress disorder was caused by the work events.

In a separate development letter dated November 13, 2018, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor and witness statements from employees with additional information. It afforded the employing establishment 30 days to submit the requested evidence.

By decision dated January 9, 2019, OWCP denied appellant's claim finding that the evidence did not support that the injury or events occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On February 7, 2019 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review.

Following preliminary review, by decision dated May 3, 2019, OWCP's hearing representative found that the case was not in posture for hearing and set aside the January 9, 2019 decision. The hearing representative explained that the January 9, 2019 decision denying the claim

was based on fact of injury, which was incorrect, given that OWCP cited accepted events, but concluded that the accepted events were not factors of employment. The hearing representative noted that on remand, OWCP should ask appellant to confirm whether he had filed any grievance, Equal Employment Opportunity (EEO) complaint, or any other action related to the working conditions or alleged events, and if so, to provide copies of all relevant documents, including conclusions of factfinders and final decisions. The hearing representative found that the employing establishment had not been provided with all of appellant's statements and supporting documents and indicated that on remand, OWCP should provide all of this information for review and comment by the supervisor or manager most knowledgeable about appellant's allegations and work conditions. The hearing representative also noted that OWCP should advise the employing establishment that it should submit the requested response within 30 days and that 20 C.F.R. § 10.117(b) provides that, in the absence of a full reply from the agency, OWCP may accept appellant's allegations as factual. OWCP's hearing representative indicated that following receipt of the employing establishment's response, or lack thereof, and any further development deemed necessary, OWPC should carefully assess the factual evidence and make clear findings of fact, and if it found that appellant established one or more accepted events that would be considered factors of employment, OWCP should then address the medical evidence in an appropriate *de novo* decision.

In a development letter dated May 13, 2019, OWCP requested that appellant confirm whether he had filed any grievance, EEO complaint, or any other action related to the working conditions or alleged events, and if so, provide copies of all relevant documents, including conclusions of factfinders and final decisions. It afforded appellant 30 days to submit the requested evidence. In a development letter dated May 14, 2019, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor or manager with regard to appellant's statements. It afforded the employing establishment 30 days to submit the requested evidence.

In a Pre-Complaint Counseling Form dated September 18, 2018, appellant reiterated his allegations regarding the events of July 26, 2018. He alleged that he was never told his comments were inappropriate until he was removed from the employing establishment. Appellant also noted that females had made similar comments but were not removed.

In a letter dated September 26, 2018, J.W., an EEO Specialist, notified appellant that she had reviewed his complaint, identified the specific EEO allegations, and would contact management and make an inquiry.

In a letter dated December 6, 2018, J.W., an EEO specialist, notified appellant that she had concluded her investigation of his EEO discrimination claim. She explained that Postmaster E. related that an allegation was made by a female officer-in-charge (OIC), M.L., that appellant had made sexual comments to her, that Postmaster E. was sent to appellant's office to gather facts, and that appellant responded that the complainant reminded him of an old girlfriend. The EEO specialist noted that Postmaster E. related that appellant was told that he was moved to another employing establishment to protect both parties; that appellant understood this was protocol; that when appellant was told he could return to the employing establishment, he stated that he did not want to do so; that he could not work with the complainant because of stress; that he also did not want to work at the Snohomish employing establishment or do route counts; and that he had not

returned to work. She also noted that Postmaster E. related that appellant was not threatened with handcuffs, that postmasters do not carry handcuffs, and that he walked with appellant to make sure there was no communication with the complainant on the way out and "nothing more." The EEO specialist informed appellant that he had two options, do nothing or file a formal complaint within 15 days from the date of the letter.

By decision dated June 26, 2019, OWCP denied appellant's claim because the evidence did not support that the injury and/or event(s) occurred in the manner alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On July 12, 2019 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review.

In support of his hearing request, appellant argued that he had established several events and there was no reply from the employing establishment; therefore, his allegations should be accepted as factual. He included a February 6, 2019 statement from Postmaster J.N., indicating that appellant worked with females sorting packages and that Postmaster J.N. did not have any complaints or concerns regarding appellant. Appellant also submitted a statement from a coworker who confirmed that the sorting area was small and unintended touching occurred. He also submitted a September 7, 2018 e-mail advising that he was being transferred to the Snohomish employing establishment, and news articles regarding negative activities and complaints from customers at that location. OWCP also received work excuses and a work schedule.

By decision dated October 3, 2019, OWCP's hearing representative found that the case was not in posture for a hearing, as OWCP did not review and address appellant's allegations and make clear findings of fact, as instructed in the prior remand.

By decision dated June 4, 2020, OWCP denied appellant's claim as he had not established that his emotional condition occurred in the performance of duty. It explained that appellant did not establish compensable work factors as defined by FECA.

On June 19, 2020 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review.

A hearing was held on December 8, 2020. Appellant confirmed that he was not demoted, but he was relocated due to the allegations of sexual harassment and required to perform clerk work, in violation of the union contract.

The employing establishment provided a January 4, 2021 response. G.K, with health and resource management, noted that the employing establishment had a right to investigate as part of an IMIP, if wrongdoing was suspected. She noted that wrongdoing by appellant was identified by another employee, that the employing establishment had the right to diffuse the work environment, and that appellant was moved to another office until the investigation was completed. G.K. also noted that appellant was asked not to contact anyone from the employing establishment because the OIC at the time, M.L., was the complainant; however, no formal complaint was filed, and the complainant agreed to work again with appellant. G.K. provided an October 3, 2018 statement from Postmaster E. who noted that after the investigation and prior to September 7, 2018, appellant was asked to go back to the employing establishment; however, he refused and it was the last day

he worked. She noted that he also provided medical documents related to prior treatment with a psychiatrist and mental health counselor, including treatment on January 24 and March 14, 2018. G.K. related that appellant alleged that he was demoted; however, during the hearing, he indicated that, "I have no problem being instructed to do any job at the [employing establishment]." G.K. further explained that appellant was never demoted, and that grievances could be resolved later with local unions.

In a December 31, 2020 statement, M.L. discussed her interaction with appellant. She explained that appellant's desk faced her desk and she noted that he stared at her and that it made her very uncomfortable. M.L. related that she told him to stop staring at her and he would just get red faced and grin and later do it again. She also stated that several employees mentioned to her not to stay late with appellant as he was always odd and had strange manners around women. M.L. discussed an e-mail that he responded to inappropriately, which she forwarded to other managers for guidance; that Postmaster B.W. was sent by Postmaster F.F. to speak with appellant regarding the inappropriate e-mail; that Postmaster B.W. spoke with appellant in a closed-door meeting; and that the meeting resulted in appellant apologizing for his behavior and inappropriate comments. She reported an additional incident that occurred the following week that she shared with other employees and that the temporary resolution was to move appellant to Arlington until the IMIP was concluded, after which appellant was to return to the employing establishment; however, appellant called out on sick leave and then took family leave for 12 weeks. This went on for a year or so, until he was eligible for retirement. M.L. related that appellant would come to the employing establishment and drive around watching and waiting for her to come out, which caused her concern.

By decision dated February 12, 2021, OWCP's hearing representative vacated the June 4, 2020 decision and remanded the case. The hearing representative indicated that appellant should be provided with a copy of the new documentation submitted by the employing establishment on January 4, 2021, and allowed an opportunity to comment.

In development letters dated February 19 and March 25, 2021, OWCP requested that appellant review the January 4, 2021 letter from the employing establishment and the December 31, 2020 statement from M.L., and provide comments.

In an April 9, 2021 statement, appellant provided a response noting that he had not timely pursued his EEO claim. He also alleged that the coworker who accused him of making inappropriate comments also made inappropriate comments. Appellant also indicated that he avoided the employing establishment. He provided copies of documents previously submitted.

By decision dated May 20, 2021, OWCP denied appellant's claim, finding that appellant did not establish an emotional condition in the performance of duty. It explained that there were no compensable factors of employment.

On June 17, 2021 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was held on October 20, 2021.

By decision dated January 4, 2022, OWCP's hearing representative affirmed the May 20, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of proof to establish the essential elements of his or her claim,[3] including that he or she sustained an injury in the performance of duty, and that any specific condition or disability from work for which he or she claims compensation is causally related to that employment injury.[4] 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.[5]

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.[6]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to a claimant's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.[7] However, disability is not compensable when it results from factors such as an employee's fear of a reduction-in-force, or frustration from not being permitted to work in a particular environment, or to hold a particular position.[8]

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.[9] Where, however, the evidence demonstrates that the employing establishment either erred or acted abusively in

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[2] *Id.*

[3] *L.N.*, Docket No. 22-0126 (issued June 15, 2023); *S.S.*, Docket No. 19-1021 (issued April 21, 2021); *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[4] *L.N., id.*; *S.S., id.*; *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] 20 C.F.R. § 10.115; *R.S.*, Docket No. 20-1307 (issued June 29, 2012); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Michael E. Smith*, 50 ECAB 313 (1999).

[6] *See J.C.*, Docket No. 22-0254 (issued November 29, 2022); *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[7] *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[8] *Lillian Cutler, id.*

[9] *See R.M.*, Docket No. 19-1088 (issued November 17, 2020); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.[10]

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.[11] 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.[12]

ANALYSIS

The Board finds that this case is not in posture for decision.

Appellant has not attributed his condition to the performance of his regularly or specially assigned duties under *Cutler*.[13] Instead, he maintained that he sustained an emotional condition due to administrative actions by the employing establishment.

In a November 8, 2018 statement, appellant outlined the alleged events which caused his emotional condition. Appellant alleged that on July 26, 2018, he was advised that he was being investigated for alleged sexual harassment and was told he would be handcuffed, escorted out, and fired if he spoke to anybody at the employing establishment. On the same date of July 26, 2018, he was removed from a supervisor role at the employing establishment, told to report to a different location, and instructed to perform clerk duties, in violation of the union contract. Appellant also alleged that at the new location he was assigned to work in a small area with females while sorting packages where it was nearly impossible not to have physical contact. In subsequent statements, appellant further alleged that he submitted a request for leave that was denied and that he was asked to transfer to the Snohomish employing establishment.

In *Thomas D. McEuen*,[14] the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA, absent a showing of error or abuse, as such matters pertain to procedures and

[10] *M.A.*, Docket No. 19-1017 (issued December 4, 2019).

[11] *See R.B.*, Docket No. 19-0434 (issued November 22, 2019); *O.G.*, Docket No. 18-0359 (issued August 7, 2019).

[12] *Id.*

[13] *Lillian Cutler*, *supra* note 7.

[14] *Supra* note 9.

requirements of the employer and do not bear a direct relation to the work required of the employee.[15]

In this case, the Board finds that appellant has alleged administrative actions by the employer, including notification that he was being investigated after an allegation of sexual harassment,[16] reassignment to a different post offices,[17] working in close proximity to female coworkers,[18] and denial of a leave request.[19] The Board finds that appellant has established that these actions occurred, however, he has not submitted any evidence to establish error or abuse on behalf of the employing establishment in these administrative actions.[20] These actions therefore do not constitute compensable employment factors.

However, the Board has also held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, such action will be considered a compensable employment factor.[21]

The Board finds that appellant's allegations that he was improperly demoted to work as a clerk in violation of the union contract warrants additional development. While OWCP found that a violation of the union contract could be handled through the grievance process, the Board notes that OWCP did not make any findings as to whether appellant's assignment of work in violation of the union contract constituted error and abuse.

In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment's actions were reasonable. On remand, OWCP should make further findings of fact regarding this allegation. Following such further development as necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

[15] *See C.J.*, Docket No. 19-1722 (issued February 29, 2021); *Helen Allen*, 47 ECAB 141 (1995).

[16] *F.R.*, Docket No. 20-0793 (issued December 13, 2022); *J.T.*, Docket No. 20-0390 (issued April 2, 2021).

[17] *See J.C.*, Docket No. 22-0254 (issued November 29, 2022); *R.V.*, Docket No. 16-0182 (issued June 15, 2016); *Charles E. McAndrews*, 55 ECAB 711 (2004).

[18] *See R.B.*, Docket No. 21-0962 (issued February 23, 2023).

[19] *See K.W.*, Docket No. 20-0832 (issued June 21, 2022); *M.R.*, Docket No. 18-0305 (issued October 18, 2019); *A.L.*, Docket No. 17-0368 (issued June 20, 2018).

[20] *Id*.

[21] *See M.V.*, Docket No. 22-0227 (issued March 28, 2023); *William H. Fortner*, 49 ECAB 324 (1998).

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2022 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 17, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board