United States Department of Labor
Employees' Compensation Appeals Board

G.M., Appellant	)	
and	)	**Docket No. 14-0841**
	)	**Issued: July 10, 2015**
DEPARTMENT OF THE NAVY, MARINE CORPS AIR STATION, Camp Pendleton, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 5, 2014 appellant filed a timely appeal of a February 19, 2014 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 the case.

ISSUE

The issue is whether appellant met his burden of proof to establish a traumatic emotional condition in the performance of duty on September 6, 2013.

FACTUAL HISTORY

On September 30, 2013 appellant, then a 57-year-old installation ground safety manager, filed a traumatic injury claim alleging that he developed a traumatic mental illness on

[1] 5 U.S.C. § 8101 *et seq.*

September 6, 2013 after an intense discussion with his supervisor over the submission of two financial reports. He developed chest pains and a headache.

Appellant's supervisor completed a statement on October 15, 2013. On September 6, 2013 he requested that appellant provide more information on a project. Appellant then became defensive and argumentative. Appellant's supervisor stated, "Remembering that [appellant] twice before became enraged when asked about providing information … about his job, I calmingly explained that I needed this information and that it was not an unreasonable request. At no time did the argument become 'heated' or 'intense'…." Appellant's supervisor returned and requested additional information a few hours later and appellant stated that he was experiencing a severe headache.

Appellant sought treatment at the employing establishment hospital on September 6 and 7, 2013. He reported a heated argument with his command and the development of a headache and chest pressure. Appellant exhibited right-sided facial droop, slurred speech and unsteady gait. He underwent cardiac and neurological testing which was negative. Appellant received diagnoses of anxiety and anxiety-related phenomena. Dr. Earl E. Miller, an osteopath, diagnosed stress and cerebrovascular accident on September 9, 2013. He stated that appellant could return to work on November 9, 2013.

In a letter dated October 24, 2013, OWCP requested additional factual and medical evidence regarding appellant's claim. Dr. Miller completed a report on October 30, 2013 and noted that appellant's hospitalization determined that his chest pain was not cardiac and that he had no evidence of a stroke. He diagnosed acute stress. Dr. Miller stated, "Patient had a heated discussion with his command on September 6, 2013 that was followed by a transient ischemic attack (mini-stroke)."

Dr. Luke Oakley, a Board-certified internist specializing in cardiology, completed a report on October 29, 2013 and stated that he examined appellant during his hospitalization. He diagnosed anxiety not otherwise specified. Dr. Oakley stated, "[Appellant's] anxiety was the direct result of an argument at work which manifests with physical pain and apparent temporary neurologic changes." He stated that appellant's anxiety symptoms were not consistent with ischemic heart disease and that neurological testing did not establish a stroke or transient ischemic attack.

Appellant submitted a narrative statement noting that the discussion with his supervisor on September 6, 2013 related to two financial data reports. He stated that he had difficulty explaining the data contained in the reports to his supervisor and had difficulty relating the department financials using the required report. Appellant stated that after the discussion they had reached an understanding. The second topic was the Red Line Project which was an evolving data call with changing data fields which was also difficult to explain to his supervisor. Appellant noted that he was unable to change the format of the report. He asserted that he could not explain to his supervisor's satisfaction his input for the report as it was based on pure speculation due to the pending government budget. Appellant noted that he was signing furlough notices and that he could not explain to his supervisor where the regulations described

the funding of a safety program. He stated that the discussions were "intense" as he felt he had to explain the same points over and over causing him to become tense. Appellant stated:

> "It seems whatever and however I stated a fact or readdressed a position it was not being received by my supervisor. The intensity increased. Because of my supervisor's lack of knowledge of the overall safety department's financial program which he was not willing to compromise. To me, it is hard to answer speculative questions with an ideology that one has to answer the correct way, *i.e.,* not debatable."

By decision dated February 19, 2014, OWCP denied appellant's claim finding that the evidence had not established that he actually experienced the incident or employment factor alleged to have caused an injury. It found that the meeting between appellant and his supervisor was an administrative action and that there was no evidence of error or abuse.

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

[2] 28 ECAB 125 (1976).

[3] 5 U.S.C. §§ 8101-8193.

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

[5] *Supra* note 2.

[6] *Id.*

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

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]

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of a heated discussion with his supervisor on September 6, 2013. OWCP denied his emotional condition claim finding that he had not established any compensable employment factors. The Board must review whether the alleged incidents and conditions of employment are covered employment factors under the terms of FECA.

Initially, the Board finds that there are no *Cutler* factors. Appellant and his supervisor agree that the discussion in question pertained to work matters, but appellant did not specifically attribute his claimed emotional and/or physical conditions to his regular or specially assigned work duties or to a requirement imposed by the employment. Thus, appellant has not established a compensable employment factor under *Cutler*.[10] Rather, he has alleged error or abuse in administrative matters.

Appellant attributed his diagnosed condition of anxiety to "intense" discussions with his supervisor on September 6, 2013 related to two fiscal data reports. He stated that he had difficulty explaining the data to his supervisor. Appellant stated that his supervisor did not understand funding of a safety program. He noted that having to explain the same points over and over caused him to become tense.

The assignment of work is an administrative function of a supervisor.[11] The manner in which a supervisor exercises his or her discretion falls outside FECA's coverage. This principle recognizes that supervisors must be allowed to perform their duties, and at times employees will disagree with their supervisor's actions. Mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor. Appellant has indicated that he disagreed with the manner in which his supervisor conducted discussions regarding fiscal reports and a safety program.[12] He has not submitted any evidence of error or abuse in the method through which his supervisor conducted these discussions. Therefore appellant has not established a compensable factor of employment in this regard.

[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).

[10] *Supra* note 2; *A.S.,* Docket No. 15-101 (issued April 24, 2015).

[11] *A.S., id*.

[12] *See C.L.,* Docket No. 14-983 (issued January 23, 2015).

Appellant's supervisor indicated that the discussion did in fact occur and stated that appellant became defensive and argumentative. Appellant alleged that the discussion was "intense." While the Board has recognized that verbal abuse, when sufficiently detailed by the claimant and supported by evidence, may constitute a compensable employment factor, appellant has provided no support that this occurred.[13] The Board has generally held that being spoken to in a raised or harsh voice does not of itself constitute verbal abuse or harassment.[14] Appellant's supervisor denied raising his voice or any improper conduct during the meeting on September 6, 2013 and appellant has provided no corroborative evidence. As appellant has not established a factual basis for his claim for verbal abuse, he has not established a compensable factor of employment in this regard.

The Board finds that appellant's emotional condition is not employment related as it is based on his frustration over not being allowed to work in a specific environment. Appellant attributed his condition to difficulties in communicating with his supervisor, in part because he felt that his supervisor was either unable to understand his position or unwilling to accept his description of forms and financial information.[15] Appellant's desire for unquestioning acceptance of his positions regarding financial reports constitutes self-generated frustration is not compensable under FECA.[16]

Where a claimant has not established any compensable employment factors, the Board need not consider the medical evidence of record.[17]

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 as appellant failed to establish a compensable factor of employment, he has not met his burden of proof in establishing an emotional condition claim.

[13] *T.G.*, 58 ECAB 189 (2006); *A.S.,* Docket No. 15-28 (issued April 20, 2015).

[14] *Id.; M.D.,* Docket No. 13-867 (issued September 26, 2014).

[15] *Katherine A. Berg*, 54 ECAB 262 (2002).

[16] *M.M.,* Docket No. 06-1130 (issued September 14, 2006).

[17] *A.K.,* 58 ECAB 119 (2006).

ORDER

IT IS HEREBY ORDERED THAT the February 19, 2014 decision of the Office of Workers' Compensation Programs is affirmed.[18]

Issued: July 10, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[18] Michael E. Groom, Alternate Judge, participated in the original decision but was no longer a member of the Board effective December 27, 2014.