United States Department of Labor
Employees' Compensation Appeals Board

R.B., Appellant	)	
and	)	**Docket No. 15-257**
	)	**Issued: May 7, 2015**
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Roanoke, VA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 14, 2014 appellant filed a timely appeal from the July 31, 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 review the merits of this case.

ISSUE

The issue is whether appellant sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On July 23, 2013 appellant, a 24-year-old air traffic control specialist, filed a traumatic injury claim alleging that he suffered severe depression affecting cognitive functions as a result

[1] 5 U.S.C. § 8101 *et seq.*

of workplace bullying while undergoing training on July 2, 2013.[2] He offered examples of trainer conduct that he believed was condescending, intimidating, and unprofessional. Appellant alleged that Charlie Schroder, his supervisor, was condescending and belittling and that he and the other trainers did not care if appellant succeeded. Mr. Schroder had his job, and they had theirs.

Brian Carroll was allegedly condescending, belittling, harsh, and hostile. He told appellant that he hated training developmentals. Mr. Carroll yelled and had an "in your face" attitude. After an hour, a trainee asked, "with all due respect," why does the training have to be so harsh. Mr. Carroll confronted the trainee and made a condescending joke out of the phrase "with all due respect." He even wrote the phrase on appellant's training report.

Jason Mogensen was equally condescending and belittling. When appellant had back-taxied an aircraft, Mr. Mogensen asked, "Are you a f***ing retard?" Appellant was not paying attention because appellant that back-taxied the aircraft correctly. Mr. Mogensen was also unprofessional when appellant requested sick leave on a separate occasion.

Austin Leclerc was also condescending and belittling. He told appellant in an intimidating and humiliating way that the entire training team had to watch him carefully, insinuating that appellant was not up to par. Mr. Leclerc told appellant to "sit down" in a condescending, controlling tone. He told appellant, "You're so stupid, how did you get this job?" Although appellant was certified on ground control, Mr. Leclerc would not allow him to work the position, and he gave no reason. Appellant added that Mr. Leclerc asked him in an intimidating, condescending, and controlling way to throw away a drink that was not his.

Finally, appellant stated with regard to the training environment, "this is the way training is at the employing establishment and that if I brought attention to the issues, it would only make things worse and harder for me."

Appellant subsequently submitted a somewhat more detailed account of his interactions. He summarized:

> "Jason, Austin, Brian Carroll, and Charlie were not interested in my success there were interested in bullying me and destroying my confidence (a vital component in air traffic control); this was clearly and personally explained to me when Charlie told me he along with Jason and Austin had their jobs and they did not care if I certified. This was evidence in the way I was treated and trained in the various examples I have noted above. The bullying I experienced from Jason, Austin, Brian Carroll and Charlie cost me my confidence and negatively affected my training and success from the beginning. It has been an uphill battle from that very first training session with Brian Carroll and nothing was done to correct what had happened. The bullying events by Jason, Austin, Brian Carroll, and Charlie occurred almost every training session for 200 plus hours of training on ground control and then not quite as often for the 160 training hours on local control since

[2] Appellant later clarified that his was an occupational disease claim.

I only had to train with Jason; however, incidents continued to happen throughout my training and work days."

Appellant filed a formal Equal Employment Opportunity (EEO) complaint on September 9, 2013, which he indicated was settled. He submitted a statement from a coworker, who was also a family member, which read in its entirety: "I concur that the examples in which I was named are recorded correctly." The coworker was the trainee who asked Mr. Carroll, with all due respect, why the training had to be so harsh.

In a decision dated October 23, 2013, OWCP denied appellant's emotional condition claim. It accepted that the incidents occurred as alleged but found that the evidence was insufficient to establish a compensable factor of employment. OWCP explained that appellant did not submit sufficient evidence to show that management acted improperly. "Disagreement with or dislike of a management action or with the manner in which a supervisor exercises his/her discretion is not compensable."

Appellant provided testimony at a telephonic hearing on May 13, 2014. In a decision dated July 31, 2014, an OWCP hearing representative affirmed the denial of appellant's claim for workers' compensation. He found that appellant had not provided corroborative evidence sufficient to establish any error or abuse by the employing establishment regarding his training or employment.

On appeal, appellant contends that the record should reflect that the coworker politely addressed Mr. Carroll and that it was Mr. Carroll who immediately challenged the coworker, even though the coworker was polite and did not want to argue. Further, Mr. Carroll who turned "with all due respect" into a belittling facility joke directed at both the coworker and appellant. Appellant also notes that the coworker provided a witness statement.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[3] But workers' compensation does not cover each and every illness that is somehow related to the employment. As the Board explained in *Lillian Cutler*,[4] when an employee experiences emotional stress in carrying out his or her employment duties or has fear and anxiety regarding his or her ability to carry out his or her duties, and the medical evidence establishes that the disability resulted from his or her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation because they are not found to have arisen out of employment, such as when disability results from 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.

[3] 5 U.S.C. § 8102(a).

[4] 28 ECAB 125 (1976).

Further, as the Board explained in *Thomas D. McEuen*,[5] workers' compensation does not cover an emotional reaction to an administrative or personnel action unless the evidence shows error or abuse on the part of the employing establishment. The Board has also held that being spoken to in a raised or harsh voice does not in itself constitute verbal abuse or harassment.[6]

As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[7] In claims for a mental disability attributed to work-related stress, the claimant must submit factual evidence in support of his allegations of stress from harassment or a difficult working relationship. The claimant must specifically delineate those factors or incidents to which the emotional condition is attributed and submit supporting factual evidence verifying that the implicated work situations or incidents occurred as alleged. Vague or general allegations of perceived harassment, abuse, or difficulty arising in the employment are insufficient to give rise to compensability under FECA. Based on the evidence submitted by the claimant and the employing establishment, OWCP is then required to make factual findings which are review able by the Board. The primary reason for requiring factual evidence from the claimant in support of his allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by OWCP and the Board.[8]

ANALYSIS

It is clear from appellant's account of events that he is not attributing his severe depression affecting cognitive functions to the stress of carrying out his regular duties as an air traffic control specialist. When describing what happened in the workplace, he did not implicate *Cutler*-type work factors. Instead, appellant attributed his emotional condition to workplace bullying by trainers. He provided specific examples of trainer conduct that he believed were condescending, intimidating, and unprofessional. By questioning the actions of his trainers, appellant has implicated *McEuen*-type work factors. Accordingly, to establish the compensability of these work factors, appellant must establish error or abuse by the employing establishment.

Appellant alleged abuse when he cited workplace bullying. He stated that his trainers were condescending, belittling, harsh, and hostile. This is to some extent a matter of perception and judgment on appellant's part and for that reason, evidence that independently corroborates such allegations is usually required.

Appellant submitted a witness statement from coworker and a family member who concurred that the examples in which he was named were recorded correctly. This trainee asked

[5] 42 ECAB 566, 572-73 (1991).

[6] *Beverly R. Jones*, 55 ECAB 411, 418 (2004).

[7] *See Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

[8] *Paul Trotman-Hall*, 45 ECAB 229 (1993) (Groom, Alternate Member, concurring).

why the training had to be so harsh. Notwithstanding the witness' relationship to appellant, this evidence tends to support the assertion that the trainers were harsh. This is also supported by the specific actions and words that appellant described. The Board has held, however, that being spoken to in a raised or harsh voice does not in itself constitute verbal abuse or harassment.[9]

The fundamental question raised by appellant's claim is whether the manner in which his trainers conducted his training constituted error or abuse. The Board has insufficient evidence to make such a finding. The harsh demeanor appellant attributed to his trainers does not constitute error or abuse, such that he should be compensated for any emotional reaction. Appellant filed an EEO complaint over his trainers' conduct, but he has not submitted a final decision finding that the employing establishment had violated any of his rights or had committed any error or abuse with respect to his training.

As appellant has failed to produce any evidence that his trainers committed error or abuse in their treatment of him during training, the Board finds that he has failed to establish a compensable factor of employment. His emotional reaction, although related in some way to his federal employment, does not fall within the scope of workers' compensation. Accordingly, the Board will affirm OWCP's July 31, 2014 decision denying appellant's claim for benefits

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 has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

[9] *Supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the July 31, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 7, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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