

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

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, Appellant)	
)	
and)	Docket
)	Issued:
)	
Employer)	
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Appearances:
Paul H. Felser, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

Chief Judge
Judge
Alternate Judge

JURISDICTION

On _____ appellant, through counsel, filed a timely appeal from an October 18, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish an emotional condition in the performance of duty, as alleged.

FACTUAL HISTORY

On [redacted] appellant, then a [redacted] filed a traumatic injury claim (Form CA-1) alleging that on [redacted] he developed overwhelming depression, stress, and anxiety due to being expected to reach unattainable goals and constant badgering while in the performance of duty. On the reverse side of the claim form, appellant's supervisor indicated by checking a box marked "No" that appellant was not injured in the performance of duty. He further noted that appellant was a manager with the same duties as other managers.

In a June 30, 2016 statement, appellant's supervisor, [redacted] Operations, noted that appellant stopped work on October 5, 2015 and had not returned. He issued corrective action for appellant in April 2016 as he was not in regular attendance and thereafter, he filed his Form CA-1.

In a September 6, 2016 development letter, OWCP advised appellant of the deficiencies of his claim. It requested additional factual and medical evidence and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In a September 26, 2016 response to OWCP's development questionnaire, appellant asserted that his condition resulted from an accumulation of events beginning on May 6, 2015. He stated that his duty station was qualified for a management staff of three supervisors and one postmaster, but that from May 9 through June 6, 2015 he was working with only one supervisor. Appellant noted that he was also short 18 employees or approximately 30 percent of the allotted workforce. He asserted that he was unable to meet his goals due to staffing shortages. Appellant alleged that he worked six days a week, approximately 56 to 64 hours a week.

Appellant alleged that on June 8, 2015 he removed an employee due to performance issues. The head of human resources, [redacted] took three weeks to grant approval for removal, and in the interim, the employee was transferred to her mother's office and appellant was not notified. He asserted that this was a violation of employing establishment policy. [redacted] forwarded appellant's confidential e-mail to his staff, and appellant was then unable to get employees processed to be hired. Appellant further alleged that [redacted] human resources staff allowed medical tests to expire and lost paperwork.

Appellant alleged that he was directed to properly staff the window and that, while he was in charge, his duty station had two "mystery shops" rated at 100 percent. However, he was continually pushed due to window performance. Appellant noted that he was short staffed in management, and also had to help run the carrier operation.

In July 2015 appellant was assigned a new supervisor, [redacted] who he felt was continually intimidating and threatening. He noted that he was unable to meet all deadlines due to short staffing. Appellant could not attend meetings scheduled during peak office productivity as he

could not be in two places at once. He alleged that his supervisor required him to work seven days a week, and made unfounded accusations that he was not working a full day. Appellant alleged that he was the subject of threats by his supervisor. remained as his supervisor for only a few weeks, left for a few weeks, and then returned and continued with threats. Appellant alleged that he was unable to reach the unattainable goals set by

In a July 17, 2015 e-mail, directed appellant to provide an action plan for improving the performance of the clerks in his post office. He also noted that appellant had failed six shops and that customers had rated his post office as unsatisfactory. In a separate e-mail of even date, provided a list of five directives for appellant including reviewing items with the clerks, creating a log, completing two forms daily, placing a bell in the lobby, and placing a member of management in the lobby to assist with lobby directing duties during peak lobby traffic times. Appellant suggested that management in the lobby would be a contract violation on July 19, 2015. disagreed and directed him to have a clerk and management in the lobby.

On July 18, 2015 e-mailed appellant and provided an additional five directives. He concluded that it was appellant's responsibility to operate his unit in an efficient manner and that he could not rely on overtime.

On July 20, 2015 appellant responded to and asserted that the time frames he provided would not allow him to complete his duties. He noted that he had assumed the duties of opening supervisor three days per week. Appellant noted that had required him to work on Sunday, so he would not be working a full day on Friday. He indicated that he would no longer be working 10- and 12-hour days regularly and that expectations were not realistic. responded that, if appellant felt that his responsibilities were too great for him, then he should make an appointment to discuss his options. He replied, "I expect you to manage your time and complete the task I assigned to you."

In a July 20, 2015 e-mail, indicated that he would no longer accept incorrect 1723 forms as an excuse. On July 21, 2015 noted that appellant was the last to provide information, that he had already completed his report, and that he was "really getting tired of [appellant's] untimeliness." Also on July 21, 2015 appellant requested that provide him with information about posting vacancies. On July 22, 2015 moved an employee and indicated that he would provide appellant with a replacement.

On July 22, 2015 appellant drafted an e-mail noting that since beginning work at the employing establishment, he had worked in a supervisory capacity for 8 of 11 weeks due to staff shortages. On one occasion he had to run the entire operation single handedly. Appellant alleged that he worked an average of 50 hours a week. He objected to management style and threats of discipline and removal.

On July 23, 2015 asked why appellant was not in his office on July 22, 2015 and why he did not notify him that he was leaving. He directed appellant to work a full day on July 24, 2015. Appellant responded that he had provided notification and that he started work between 4:45 a.m. and 5:00 a.m., as he was working in the opening supervisor position. He further noted that he would not be working Friday as he had already worked six days in the week. directed appellant to work a full day on Friday or submit to an investigative interview. Appellant

requested personal time. accused appellant of leaving the building before 12:00 p.m., such that he did not work an eight-hour day from 5:00 a.m. to 2:00 p.m. Appellant disagreed and asserted that he did not have time to take a lunch, that he left at 12:50 p.m. to meet with a customer for 30 minutes and that he therefore, worked more than 8 hours.

In an undated statement, postmaster at contended that there had been issues at that post office, as it is located in a busy college town. He noted that while appellant was postmaster the office had numerous employee shortages. indicated that he was assigned as the delegate for hiring and had hired at least 20 employees in various roles. He asserted that appellant had been making improvements but the expectations were unrealistic, coupled with issues related to employee shortages. further noted that there were multiple management and guidance changes.

On August 28, 2015 directed appellant to set up a telecom with him every day. On October 2, 2015 he scheduled appellant for an investigative interview based on unsatisfactory work performance in association with a carrier's failure to have case labels put up.

In a January 5, 2016 note, a nurse practitioner, diagnosed anxiety and depression. On April 26, 2016 she found appellant was totally disabled from March 15 through May 18, 2016.

In a September 2, 2015 e-mail, exhorted appellant to direct and assist the supervisors in their duties, as well as to be strong and not accept failure. He requested a change and forbade excuses.

On May 19, 2016 issued appellant a letter of warning due to unsatisfactory attendance as a result of absences from April 6 through 22, 2016. On June 23, 2016 the employing establishment issued appellant a proposed letter of warning in lieu of a time-off suspension due to unsatisfactory attendance. On August 19, 2016 appellant entered an Equal Employment Opportunity (EEO) settlement agreement which noted that the May 12, 2016 letter of warning and seven-day suspension on June 23, 2016 would be held in abeyance until his disability retirement decision had been reached by the Office of Personnel Management (OPM).

In an e-mail dated September 28, 2015, directed appellant to work as a team with and provide abatement plans. He noted that failure was not an option. On August 28, 2015 informed appellant that the goings-on at his post office were not acceptable and that there should be no more excuses. He further directed that appellant would be set up for a telecom every day and establish a process to direct, guide, and have accountability. noted that the engagement from the management side with process and accountability was not where it needed to be.

On September 21, 2015 a review team assessed appellant's duty station and found 11 deficiencies. It concluded that management needed to work as a team and that currently each member of management seemed to place blame on the other instead of focusing on the issues within the unit. The review team noted that appellant needed to be able to address all areas of the operation within the unit and needed a functional knowledge to oversee and manage. It noted that management needed to carry out observation and correction.

In a November 10, 2016 letter, [redacted] asserted that appellant's duty station was qualified for two supervisors and had two supervisors. He noted that there were performance issues and that he had sent a team to assist appellant in September. [redacted] alleged that appellant failed to implement route changes which resulted in inefficiencies. He characterized this as a blatant failure to manage and on October 2, 2015 scheduled appellant for an October 6, 2015 investigative interview. Appellant stopped work on October 5, 2015 and did not return. He used all his Family and Medical Leave Act (FMLA) leave in both 2015 and 2016. [redacted] then scheduled an investigative interview for appellant's failure to be regular in attendance and issued a letter of warning on June 23, 2016. He noted that appellant had filed an EEO complaint as well as the August 19, 2016 settlement agreement. [redacted] asserted that appellant failed to perform the essential functions of his job, used leave to avoid in the initial investigative interview, and filed for FECA benefits and disability retirement once disciplinary action was started.

In a November 7, 2016 e-mail, [redacted] asserted that appellant did not want to take responsibility for the failures at his duty station. He alleged that appellant did not mitigate the challenges he faced daily as a postmaster. [redacted] asserted that appellant had hiring packets to fill the vacancies in his office, but that he failed to contact applicants to fill the positions. He alleged that he assigned appellant the same tasks he asked of other postmasters.

By decision dated December 16, 2016, OWCP denied appellant's emotional condition claim finding that he had not provided medical evidence of a diagnosed condition in connection with the alleged work incidents. It further found that appellant had not substantiated a compensable factor of employment. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA. On January 9, 2017 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Reviews.

On June 8, 2017 counsel appeared before an OWCP hearing representative and contended that appellant was overworked due to the shortages of staff and supervisors.

On June 29, 2017 appellant submitted additional information. On July 6, 2015 appellant's superior, [redacted] noted that supervisory overtime was not allowed without approval. In a July 7, 2015 e-mail, appellant informed his superiors that he had only one supervisor in the office. He noted that he had adjusted schedules to minimize supervisory overtime usage. Appellant reported that his duty station qualified for three supervisors. He asked which duties could be left incomplete, if supervisory overtime was not allowed. In a July 20, 2015 e-mail, [redacted] noted that if any employee was using pre-tour overtime or if a 1723 form was not submitted or submitted incorrectly, then the manager would be scheduled for an investigative interview.

On June 11, 2017 appellant submitted a statement addressing [redacted] allegations regarding the team investigation. He noted that on September 21, 2015 a team of postmasters observed his office and noted that he did not have adequate resources. Appellant alleged that there were no suggestions regarding how to make improvements. [redacted] then scheduled appellant for an investigative interview based on unsatisfactory work performance as one carrier had not updated case labels. He asserted that staffing levels had not improved and he was still short almost 30 percent of complement. Appellant felt he had been set up to fail and used sick leave due to anxiety and stress. [redacted] scheduled investigative interviews due to appellant's attendance issues, although

