

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

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**E.M., Appellant**

**and**

**DEPARTMENT OF LABOR, WAGE & HOUR  
DIVISION, Dallas, TX, Employer**

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**Docket No. 12-1238  
Issued: April 1, 2013**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge

**JURISDICTION**

On May 15, 2012 appellant filed a timely appeal of an April 2, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (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 established that she sustained an emotional condition in the performance of duty.

On appeal, appellant contends that the instant claim under OWCP File No. xxxxxx901 is the same claim filed under OWCP File No. xxxxxx703. These cases were split by OWCP.

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<sup>1</sup> Appellant requested an oral argument. The Clerk of the Board mailed a letter to appellant to confirm a continuing desire for an oral argument in Washington, DC. No written confirmation was received; thus, the Board has decided the appeal on the record.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

Appellant contends that she did not sustain an injury on October 6, 2010. She returned to work on that date.

### **FACTUAL HISTORY**

On November 26, 2010 appellant, then a 34-year-old human resources compensation specialist, filed an occupational disease claim (Form CA-2) alleging that on October 6, 2010 she first realized that her chronic and toxic stress, constant anxiety, migraine headaches, inability to sleep at night and entire body ache and pain were caused by an immediate, and continuous toxic and hostile work environment and harassment by Denise Flores, a supervisor, and Deborah Hollins, a senior analyst.<sup>3</sup> She asked the employing establishment administration for help and was told not to e-mail or contact upper management again about her allegations.

On the claim form, Ms. Flores stated that she was not aware of the conditions alleged by appellant who had worked intermittently since her return to work in October 2010 after an extended absence which began in June 2010.

By letter dated December 13, 2010, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. Appellant was advised about the medical and factual evidence to submit and given 30 days to provide the requested information. On December 13, 2010 OWCP also requested that the employing establishment respond to her allegations.

In a November 4, 2011 narrative statement, appellant contended that, despite all the work she performed from 2008 to 2009, she received “needs to improve” and “meets performance” ratings from Ms. Flores. On May 15, 2009 she was asked by Ms. Flores to submit a leave slip because she took more than 30 minutes for a lunch break while other employees including, Ms. Hollins took lunch breaks longer than 30 minutes on a daily basis. During training in San Francisco, California, from June 8 to 12, 2009, Ms. Hollins became angry and acted mean toward appellant because she asked Shirley Ebbeson, an employee, too many questions about a survey process. Appellant contended that from May 2009 to the present she received hateful and unnecessary e-mails from Ms. Flores and Ms. Hollins. When she returned to work on July 6, 2009 she was harassed by these employees.

On July 7, 2009 Ms. Flores informed appellant that she would have to meet with her and Ms. Hollins twice daily until 90 percent of her work was completed with no substantial errors and her work product reflected an efficient use of her time based on the nature and complexity of each assignment. Appellant contended that Ms. Hollins snatched papers from her and hollered at her on July 8, 2009. Ms. Flores took no action in response. On July 9 and 28, 2009 Theresa Brandon, appellant’s union representative, received no response from Ms. Flores regarding the filing of appellant’s grievance alleging harassment. On July 15, 2009 Ms. Flores denied appellant’s request to stop meeting with Ms. Hollins following the snatching incident. On

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<sup>3</sup> In a prior claim, filed under OWCP File No. xxxxxx954, the Board, in a January 12, 2012 decision, affirmed a December 27, 2010 OWCP decision, denying appellant’s emotional condition claim on the grounds that she failed to establish a compensable factor of her employment. Docket No. 11-796 (issued January 12, 2012). The instant claim was combined with File No. xxxxxx954, which serves as the master file.

July 30, 2009 appellant asked Ms. Hollins to place her assignment in her box instead of slamming it down on her desk or on her keyboard. She contended that Ms. Flores and Ms. Hollins treated Denise Clark, a 15-year employee, so badly that she requested a transfer out of the section. On August 20, 2009 Ms. Hollins hollered at appellant for failing to follow instructions. Appellant immediately informed the union and administration about this incident. On August 28, 2009 Ms. Flores instructed appellant to tell her about union meetings. She and Ms. Hollins retaliated against appellant from September 1 through 4, 2009 after Ms. Brandon met with management. On September 2, 2009 Ms. Flores advised appellant that they would no longer have daily meetings but, she failed to tell her whether her goal had been met. On September 17, 2009 Ms. Flores asked appellant to look for a file in an employee's area and cabinet. On October 20, 2009 appellant was not notified about changes related to a work assignment. She filed an Equal Employment Opportunity (EEO) complaint alleging a hostile work environment due to the above-noted incidents.

In e-mails dated February 1 to March 29, 2010, appellant alleged several incidents of harassment by the employing establishment. On February 1, December 1 and 7, 2010 Yolanda Hargraves, a program analyst, requested that she submit medical documentation from an attending psychiatrist in support of her workers' compensation claim. On March 26 and 29, 2010 Ms. Flores requested that appellant amend her timesheet to accurately reflect the hours she worked on that date, noting the procedure for signing in and out of work and requesting leave. On March 10, May 26 and June 14, 2010 appellant discussed the filing of claims with the EEO and Merit Systems Protection Board (MSPB) alleging a hostile work environment due to harassment by Ms. Flores and Ms. Hollins. On May 26, 2010 she alleged that Ms. Flores stopped her within-grade increase that she was due to receive in August 2010. On November 19 and 22, 2010 Ms. Hargraves addressed appellant's inability to access an electronic "SHIMS" system for filing a claim and determined that her account was revoked.

In an undated narrative statement and a February 1, 2010 e-mail, Teleah Hayes, a data entry clerk, informed appellant that she overheard a conversation in which Ms. Hollins discussed appellant's work ethics with another employee. Ms. Hollins stated that on January 28, 2010 appellant sat at her desk and did nothing. Appellant only submitted a small stack of files when she should have turned in more work. Ms. Hollins stated that Rachel Guerrero and LaDonna Vick, employees, could perform all the work that needed to be performed in the office. Ms. Hayes noted that she was treated differently and feared for her job after she warned appellant about this conversation. Ms. Flores suggested to her that it was best that she stay to herself since everyone was on edge at work. Ms. Hayes subsequently heard Ms. Flores yelling at appellant.

In a February 24, 2010 memorandum, Betty A. Lopez, an EEO program manager, stated that she reviewed interviews of appellant, Ms. Hollins, Ms. Flores and other employees which were conducted by James E. Varsalone, an EEO investigator, in response to appellant's September 10, 2009 harassment complaint filed against Ms. Hollins. Ms. Lopez determined that the evidence did not demonstrate that Ms. Hollins violated the employing establishment's harassment policy.

In a June 7, 2010 letter, Ms. Clark stated that she transferred to another section in the employing establishment as a result of the hostile treatment she received from Ms. Flores and

Ms. Hollins. She also witnessed these women harass appellant on several occasions. They had daily meetings with only her. Ms. Hollins disclosed confidential information about the work performance of appellant and other employees. Ms. Clark heard Ms. Hollins and/or Ms. Flores talk loudly or yell at appellant about her work performance. She believed that they did not like her and punished her in any possible manner.

In a June 9, 2010 letter, Rhonda L. Pettitt, an employee, stated that on at least three occasions appellant vented to Ms. Pettitt about being harassed at work. In one incident appellant was reduced to tears and had to go to the restroom to pull herself together before talking to a union representative. Other times appellant was on the verge of tears, but was able to calm down and return to her desk.

In a December 23, 2010 memorandum, Ms. Flores contended that appellant was not subjected to a hostile work environment or harassment. Appellant did not work from June 16 to October 5, 2010 due to an alleged occupational illness for which she filed a claim under OWCP File No. xxxxxx954. Ms. Flores stated that upon her return to work on October 6, 2010 appellant was given updated due dates for previously assigned work and an explanation regarding her work assignments. An investigation of appellant's September 3, 2009 grievance which alleged a hostile work environment determined that no law, regulation or policy regarding harassment was violated and that her allegation was false. Ms. Flores stated that since 2009 appellant was unable to perform her required duties in accordance with expectations and performance standards. She had difficulty understanding the Davis-Bacon survey program and consequently, had difficulty in performing her assigned duties. In October 2009, appellant received a "minimally satisfactory" performance rating based on deficiencies in her work. Her work assignments were regularly returned to her due to repetitive errors and errors in matters of substance. A senior wage analyst and a more experienced GS-11 wage analyst were assigned to appellant to provide additional training and to improve her work performance. Ms. Flores stated that, even with this additional training and assistance, she was not able to complete her work correctly or in a timely manner. On November 12, 2010 appellant was placed on a Performance Improvement Plan (PIP). She continued to have conduct problems and was counseled on several occasions regarding abuse of leave and inappropriate use of the Internet during work hours. Appellant has not worked since November 12, 2010.

Medical records dated November 24, 2010 to March 2, 2011 stated that appellant had several conditions including, chronic pain syndrome and work-related major depressive disorder. This evidence also addressed her work capacity.

In an April 26, 2011 decision, OWCP denied appellant's claim. It found that the factual evidence was insufficient to establish that the claimed incidents occurred as alleged. OWCP further found that, since appellant did not establish a compensable employment factor, it was not necessary to review the medical evidence of record.

On April 29, 2011 appellant requested reconsideration.

A March 24, 2011 memorandum from the employing establishment's Civil Rights Center noted the amendment of appellant's EEO complaint to include her allegation that on or around

February 17, 2011 a management official placed her on a PIP which she believed was based on untrue and incorrectly documented information.

In an undated summary of the union investigation, based on interviews of employees, Ms. Brandon determined there was a hostile work environment at the employing establishment. Her summary noted that Ms. Hollins shared information about staff performance, including appellant's work performance, with others which created embarrassment and tension in the unit. Ms. Hollins and Ms. Flores had meetings only with appellant to discuss her performance. Appellant did not receive any positive feedback during these meetings. On August 20, 2009 the voices of Ms. Hollins and Ms. Flores were raised while talking to appellant during their meeting. Ms. Brandon stated that Ms. Hollins assigned work, reviewed staff work and conducted training while it was management's responsibility to perform these duties. A witness stated that Ms. Hollins did not hide her emotions and could be difficult to work with if she did not like you, noting the firing of a former employee who splashed water on Ms. Hollins. On October 6, 2009 Ms. Brandon received an e-mail from appellant stating that she overheard Ms. Hollins talking to someone about appellant's confidential interview with Ms. Brandon.

An April 4, 2011 medical record reiterated the diagnosis of depression.

In e-mails dated April 28, May 12 and 20, 2011, appellant inquired about the status of her request for an approved medical reassignment and addressed the employing establishment's request for medical documentation in support of her request and emotional condition claim.

In a May 26, 2011 decision, OWCP denied appellant's request for reconsideration, on the grounds that she did not show that it erroneously applied or interpreted a point of law, did not advance a point of law not previously considered and did not submit pertinent new and relevant evidence.

On June 7, 2011 appellant requested an oral hearing before an OWCP hearing representative.

In a June 8, 2011 decision, OWCP's Branch of Hearings and Review denied appellant's hearing request on the grounds that she had previously requested reconsideration and received a decision on her reconsideration request on May 26 2011. The Branch of Hearings and Review stated that under these circumstances appellant was not entitled to a hearing on the same issue as a matter of right. It exercised its discretion and determined that the issue in the case could be equally well addressed through a reconsideration request and the submission of new evidence.

On June 8, 2011 appellant requested a review of the written record.

In e-mails dated June 8 to July 19, 2011, appellant alleged several incidents of harassment by the employing establishment. On June 8, 2011 the employing establishment denied her request for reasonable accommodation. On June 21, July 13 and 14, 2011 appellant requested administrative leave until her appeal of this decision. On June 23, 2011 she contended that Ms. Hollins incorrectly told her coworkers that she was placed on absence-without-leave (AWOL) status since she did not return to work on June 20, 2011. On July 13, 2011 Ms. Hollins noted her prior e-mails dated June 21 and 23, 2011 which provided instructions regarding the use of leave and submission of medical documentation, respectively. Appellant was charged with

leave without pay (LWOP) from June 27 to July 1, 2011 because she had exhausted all of her leave. She would also be charged with LWOP until July 20, 2011 and instructed to submit medical documentation if she could not return to work on July 21, 2011. On July 19, 2011 appellant contended that she received a threatening memorandum from Ms. Hollins stating that she would no longer be granted LWOP.

In a June 7, 2011 memorandum, Ms. Hollins denied appellant's March 3, 2011 request for reasonable accommodation and reassignment because appellant's attending physicians had not responded to the employing establishment's request for information regarding her work capacity and there was no available suitable accommodation in appellant's current position or vacant funded position for which she was qualified to perform.

Medical records dated November 24, 2010 to August 21, 2011 reiterated the diagnoses of chronic pain syndrome and major depressive disorder and addressed appellant's work-related physical conditions and work capacity.

In a September 15, 2011 decision, OWCP denied modification of its prior decision. It again found that appellant had not established a compensable factor of employment and, thus, it was not necessary to review the medical evidence of record.

On September 20, 2011 appellant requested reconsideration.

In a September 9, 2011 letter, a physician from the United States Department of Health and Human Services denied appellant's request for reasonable accommodation and reassignment. The additional medical evidence she submitted in support of her request did not contain any rationale explaining how a transfer out of her current position would allow her to perform in an alternate position. The severity and duration of appellant's symptoms suggested that she would experience difficulty concentrating and performing complex tasks required of her position or similar position due to her chronic pain syndrome.

Medical records dated June 14 to February 3, 2012 reiterated the diagnoses of major depressive disorder and chronic pain, stated that appellant had work-related chronic post-traumatic stress disorder and anxiety and addressed her work capacity.

In a February 15, 2012 decision, OWCP denied appellant's request for reconsideration on the grounds that she did not show that OWCP erroneously applied or interpreted a point of law, did not advance a point of law not previously considered and did not submit pertinent new and relevant evidence.

By letter dated February 8, 2012, appellant requested reconsideration.

In a February 21, 2012 e-mail, Ms. Hollins indicated receipt of notice from appellant's physician stating that she would not be able to return to work until March 15, 2012. She informed appellant to return to work by February 27, 2012 or be placed on AWOL status. Ms. Hollins explained that appellant had no more leave and the employing establishment could not extend any further leave as it had already provided every possible leave opportunity to facilitate her return to work.

A February 15, 2012 report addressed appellant's physical conditions and stress. She was unable to work.

In an April 2, 2012 decision, OWCP denied modification of its prior decision, again finding that appellant failed to establish a compensable employment factor.

### **LEGAL PRECEDENT**

A claimant has the burden of establishing 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 factors of his or her federal employment.<sup>4</sup> To establish that he or she sustained an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.<sup>5</sup>

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 employment, the disability comes within the coverage of FECA.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup> However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.<sup>9</sup> In determining whether the employing establishment has erred or acted abusively, the Board will

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<sup>4</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>5</sup> *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>6</sup> 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>7</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>8</sup> *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>9</sup> *See William H. Fortner*, 49 ECAB 324 (1998).

examine the factual evidence of record to determine whether the employing establishment acted reasonably.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup>

### ANALYSIS

The Board notes that appellant's allegations do not pertain to her regularly or specially assigned duties under *Cutler*.<sup>13</sup> Rather appellant has alleged harassment and unfair treatment or error and abuse by her supervisors in administrative matters. She alleged that she sustained an emotional condition due to several incidents at the employing establishment. Primarily, appellant alleged instances of harassment and unfair treatment by her supervisor, Ms. Flores, and senior analyst, Ms. Hollins. OWCP denied appellant's emotional condition claim on the grounds that she had not established any compensable employment factors. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.

Appellant contended that Ms. Flores and Ms. Hollins created a hostile work environment by subjecting her to harassment and verbal abuse. She contended that they sent her unnecessary, hateful and rude e-mails commencing May 2009 regarding her work performance. Appellant also contended that Ms. Hollins snatched papers from her hands and yelled at her on July 8, 2009. On July 15, 2009 her request to stop meeting with Ms. Hollins following this incident was denied by Ms. Flores. On August 20, 2009 Ms. Hollins again yelled at appellant for failing to follow instructions. Appellant alleged that on August 28, 2009 Ms. Flores instructed her to tell her about union meetings. She further alleged that on September 17, 2009 Ms. Flores asked her to look for a file in an employee's area and cabinet. Appellant asserted that Ms. Hollins slapped her work down on her keyboard. She also asserted that during training in San Francisco, California from June 8 through 12, 2009, Ms. Hollins reacted angrily and mean towards her when she questioned Ms. Ebbeson about a survey process. On May 15, 2009 Ms. Flores unfairly instructed appellant to submit a leave slip for an extended lunch break while no other employees in the same situation were asked to submit a leave slip. Appellant contended

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<sup>10</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>11</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>12</sup> *Id.*

<sup>13</sup> *Cutler*, *supra* note 6.



that Ms. Hollins and Ms. Flores unjustifiably reviewed her work twice a day from July 7 to September 2, 2009 until 90 percent of her work did not contain any errors. She also contended that on September 2, 2009 Ms. Flores never responded to her question about whether she had met her goal upon completion of the review period. Appellant asserted that from September 1 through 4, 2009 Ms. Flores and Ms. Hollins retaliated against her after Ms. Brandon met with management. She also asserted that on October 20, 2009 she was not notified about changes in her work assignment. On February 1 and December 1 and 7, 2010 Ms. Hargraves instructed appellant to submit medical documentation in support of her workers' compensation claim and request for reasonable accommodation. On March 26 and 29, 2010 Ms. Flores requested that she amend her timesheet to accurately reflect the hours she worked on that date. On May 26, 2010 she stopped her upcoming August 2010 within-grade increase. On August 30, 2010 management suggested that appellant resign or be placed on a PIP. On June 8, 2011 the employing establishment denied appellant's request for reasonable accommodation. On November 22, 2010 her access to "SHIMS" was revoked. Appellant's request for administrative leave was denied and on July 19, 2011 she received a threatening e-mail from Ms. Hollins stating that she was being charged with LWOP from June 27 to July 20, 2011. On June 23, 2011 Ms. Hollins incorrectly told coworkers that she was placed on LWOP because she did not return to work on June 20, 2011. On February 21, 2012 she ordered appellant to return to work by February 27, 2012 or be placed on AWOL status. Appellant filed EEO and MSPB complaints alleging harassment and retaliation by Ms. Hollins and Ms. Flores.

Appellant's contentions regarding the request for a leave slip and medical documentation,<sup>14</sup> the assignment<sup>15</sup> and monitoring of her work,<sup>16</sup> the denial of her requests for leave<sup>17</sup> and a different job,<sup>18</sup> time and attendance<sup>19</sup> and pay raise issues and filing of an EEO complaint alleging harassment<sup>20</sup> are administrative matters and not compensable absent a showing of error or abuse on the part of the employing establishment. Although she has alleged error or abuse by her coworkers, she did not submit any probative evidence establishing error or abuse regarding the above-noted administrative matters. Ms. Hollins explained that appellant's request for reasonable accommodation and reassignment was denied because her physicians had not responded to a request for information regarding her work capacity. She further explained that there was no suitable accommodation in her current position or another available position for which she was qualified to perform. Ms. Flores explained that since 2009 appellant's work performance was monitored because it did not meet management's expectations and her performance standards. She related that appellant had difficulty performing surveys under the Davis-Bacon program. Ms. Flores also related that appellant incorrectly performed her work

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<sup>14</sup> *James P. Guinan*, 51 ECAB 604, 607 (2000); *John Polito*, 50 ECAB 347, 349 (1999).

<sup>15</sup> *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

<sup>16</sup> *See Lori A. Facey*, 55 ECAB 217, 224 (2004).

<sup>17</sup> *T.G.*, 58 ECAB 189 (2006).

<sup>18</sup> *Ernest J. Malagrida*, 51 ECAB 287 (2000).

<sup>19</sup> *T.G.*, *supra* note 17; *Joe M. Hagewood*, 56 ECAB 479, 488 (2005).

<sup>20</sup> *Michael A. Salvato*, 53 ECAB 666, 668 (2002).

assignments which were regularly returned to her due to repetitive errors and she completed her assignments in an untimely manner even with additional training and assistance. She counseled appellant on several occasions for abusing leave and inappropriately using the Internet during work hours. In October 2009 Ms. Flores rated appellant's performance as minimally satisfactory due to deficiencies in her work performance. She eventually placed appellant on a PIP on November 12, 2010 due to her poor work performance. The Board finds that the counseling sessions,<sup>21</sup> performance appraisal<sup>22</sup> and disciplinary actions<sup>23</sup> are administrative matters and appellant has not submitted any probative evidence establishing error or abuse regarding these matters. Ms. Flores and Ms. Lopez related that the investigation of appellant's September 3, 2009 harassment complaint by the employing establishment's EEO office revealed that there was no violation of law, regulations, policy or union by the employing establishment. Appellant did not submit a final EEO decision. The Board finds, therefore, that appellant has failed to establish a compensable employment factor with regard to the above-noted administrative and personnel matters.

To the extent that incidents alleged as constituting harassment by a coworker are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors. However, for harassment to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.<sup>24</sup> An employee's charges that he or she was harassed or discriminated against, is not determinative of whether or not harassment or discrimination occurred.<sup>25</sup> To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>26</sup> The Board finds that the factual evidence fails to support appellant's claim for harassment. The record does not support her allegations of harassment. Appellant did not submit any witness statements from individuals describing the July 8 and October 6, 2009 incidents and retaliation by Ms. Flores and Ms. Hollins from September 1 to 4, 2009 as alleged. While Ms. Pettitt noted incidents involving appellant's reaction to being harassed at work, she failed to provide any specific details and dates of these incidents. Similarly, the statements of Ms. Clark and Ms. Hayes that they overheard negative comments made by Ms. Hollins to an employee regarding appellant's work performance are of a general nature and, therefore, are insufficient to establish harassment on the part of the employing establishment. Ms. Flores denied that appellant was subjected to a hostile work environment based on the finding of the employing establishment EEO office that no harassment law, regulations or policy had been violated and her allegations were false. The

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<sup>21</sup> *Barbara E. Hamm*, 45 ECAB 843 (1994); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

<sup>22</sup> *David C. Lindsey, Jr.*, 56 ECAB 263, 271-72 (2005).

<sup>23</sup> *Robert Breeden*, 57 ECAB 622 (2006); *Larry D. Passalacqua*, 32 ECAB 1859 (1981).

<sup>24</sup> *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

<sup>25</sup> *See William P. George*, 43 ECAB 1159 (1992).

<sup>26</sup> *See Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

summary of the unions investigation by Ms. Brandon similarly does not provide the specific statements upon which she relied to make her summary findings.

Regarding appellant's allegation that she was verbally abused by Ms. Hollins, the Board has generally held that being addressed in a raised or harsh voice does not of itself constitute verbal abuse or harassment.<sup>27</sup> In the instances she described above, the Board notes the fact that Ms. Hollins yelled at her on July 8 and August 20, 2009 regarding her poor work performance in a raised tone of voice is insufficient, by itself, to warrant a finding that her actions amounted to verbal abuse as she did not show how such a response would rise to the level of verbal abuse or otherwise fall within the coverage of FECA.<sup>28</sup> Although appellant contended that she was in tears following the August 20, 2009 incident and talked to Ms. Clark and another employee about the incident, the record does not contain any statement from these witnesses corroborating her version of this incident. Ms. Clark stated in a June 7, 2010 letter, that she heard Ms. Hollins and Ms. Flores talk loudly or yell at appellant about her work performance. She also stated that she observed these women harass appellant on several occasions. The Board finds, however, that these statements are insufficient as they are general perceptions made by Ms. Clark without describing in detail specific incidents. Her statements merely note that she has witnessed the described behavior by Ms. Hollins and Ms. Flores. Ms. Clark did not mention when or where appellant was allegedly subjected to this behavior. Further, appellant's allegation that Ms. Clark transferred to another section due to hostile behavior of Ms. Flores and Ms. Hollins does not establish that appellant was subjected to the same harassment and hostile behavior. The Board finds that appellant has not met her burden of proof to establish verbal abuse.

On appeal, appellant contended that the instant claim under OWCP File No. xxxxxx901 is the same claim filed under OWCP File No. xxxxxx703 which were split by OWCP. The claim under OWCP File No. xxxxxx703 is not currently before the Board on appeal. Appellant's AB-1 Form specifically indicated that she was appealing the claim under File No. xxxxxx901. As noted, this claim was combined with the claim under File No. xxxxxx954 which serves as the master file.

Appellant further contended that she did not sustain an injury on October 6, 2010. She explained that she returned to work at the employing establishment on that date. The Board finds, however, that this is harmless error since appellant alleged an injury that occurred over a period longer than a single workday or shift, which is consistent with the occupational disease claim she filed on November 26, 2010.<sup>29</sup>

Since appellant has not substantiated a compensable factor of employment as the cause of her emotional condition, the Board will not address the medical evidence.<sup>30</sup>

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<sup>27</sup> *T.G.*, *supra* note 17.

<sup>28</sup> *Peter D. Butt, Jr.*, 56 ECAB 117 (2004).

<sup>29</sup> 20 C.F.R. § 10.5(q) (2011).

<sup>30</sup> *Karen K. Levene*, 54 ECAB 671 (2003).

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 failed to establish that she sustained an emotional condition in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 2 and February 15, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 1, 2013  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board