United States Department of Labor
Employees' Compensation Appeals Board

M.Z., Appellant	)	
	)	
and	)	**Docket No. 13-23**
	)	**Issued: April 15, 2013**
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Washington, DC, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 3, 2012 appellant filed a timely appeal from a September 7, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her emotional condition claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish an emotional condition in the performance of duty.

FACTUAL HISTORY

On July 1, 2012 appellant, then a 30-year-old air traffic control specialist, filed a traumatic injury claim alleging an emotional condition due to sexual harassment and a hostile

[1] 5 U.S.C. §§ 8101-8193.

work environment caused by a coworker. She stopped work on July 2, 2010 and did not return. A disability slip dated July 1, 2010 containing an illegible signature indicated that appellant was off work and being evaluated for medical problems.

In a July 21, 2010 letter, OWCP requested additional factual and medical information in support of appellant's claim. A July 7, 2010 Form CA-16 completed by a social worker diagnosed appellant with generalized anxiety secondary to workplace harassment.

In a July 27, 2010 letter, appellant stated that she was a union president since 2007. While on maternity leave beginning in December 2009, Drew MacQueen acted as president and telephoned her with workplace updates. In these calls, he advised that Vince Shobe, air traffic manager, referred to her as "your girl." Mr. MacQueen told Mr. Shobe that this was inappropriate. That term bothered appellant. After returning to work on May 3, 2010, appellant met with Mr. Shobe on May 4, 2010 to go over issues and asserted that Mr. Shobe replied condescendingly "that isn't how Drew and I do things." She complained to upper management about Mr. Shobe's attitude and his inability to work with her.

In a May 18, 2010 weekly meeting with Mr. Shobe, Chuck Allaman, assistant air traffic manager, Laura Vilagi, manager of the operations managers, and Mr. MacQueen, appellant alleged that Mr. Shobe became belligerent, condescending and hostile toward her about her inquiry into an outstanding issue she wished to negotiate. She indicated that he replied "Darlin, I have been in the Gulf for the last week." Appellant stated that she was in disbelief, finding the comment completely inappropriate and offensive. Ms. Vilagi told appellant that she would escalate the issue and have the comment investigated. Also during the May 18, 2010 meeting, Mr. Shobe made threatening comments about another employee who was trying to get to "ZOB" about going behind his back to his congressman. Appellant stated that Catherine Clark, training manager, started to investigate several issues, including the "darling" comment, but recused herself when she heard Mr. Shobe had made "your girl" comments.

In a June 15, 2010 meeting in Mr. Shobe's office, appellant saw a statue of a scantily clad woman on his desk. Appellant commented to Ms. Vilagi that the statue was inappropriate and did not belong at work. In a June 16, 2010 meeting in Mr. Shobe's office, she noted that the statue was still there. Appellant alleged that Mr. Shobe barely spoke to her during the meeting and stared at her with his hand over his mouth. She remarked to Ms. Vilagi that Mr. Shobe's attitude to her was becoming worse. Appellant stated that she found the statue offensive and Ms. Vilagi was going to escalate the issue. On June 17, 2010 she entered Mr. Shobe's office for a meeting, but stopped when she saw the statue. Appellant refused to participate until the meeting was moved to a conference room. She stated that Mr. Shobe stomped down the hall, dropped his book from about two feet in the air next to her and plopped in his seat, letting out a loud "hmph." Mr. Shobe breathed heavily staring at her. Appellant became increasingly upset and afraid of his open hostility. She felt so intimidated by his behavior that she feared for her safety if she were alone with him. Appellant alleged that his emotional reaction to her was equivalent of a physical attack. Ms. Vilagi informed her that Mr. Shobe stated that the statue was art and was staying. Appellant stated that she was upset and needed to go home. She felt she had no option but to resign as union president due to the hostile environment and sexual harassment caused by Mr. Shobe and no support from his superiors.

Appellant noted that, while she pursued appropriate channels after each incident of improper behavior, Mr. Shobe became more hostile and she did not feel safe. She stated that nothing was resolved from his supervisors. Appellant noticed her stress after doing the Equal Employment Opportunity (EEO) intake on June 21, 2010 and started having panic episodes.

In an undated witness statement, William J. Gentry, a coworker, indicated that he was at a June 14, 2010 meeting with appellant, Mr. Shobe and Ms. Vilagi. He stated that appellant asked Ms. Vilagi if she had talked to Mr. Shobe about the statue and Ms. Vilagi indicated that Mr. Shobe had either stated that his mother had collected them or they reminded him of his mother. Appellant then stated that they had to meet elsewhere and they ended up in a meeting room. Mr. Gentry stated that, when Mr. Shobe came in, he slapped his paperwork on the table and plopped in his chair as if he was not interested in what they had to say. He stated that they talked about business and at no point did Mr. Shobe talk. Mr. Gentry stated that Mr. Shobe's body language was irritated, angry and he was unwilling to participate. He opined that it was clear that Mr. Shobe was upset or angry that they refused to meet in his office.

In an undated statement, Mr. MacQueen indicated that during the May 18, 2010 meeting with Ms. Vilagi, Mr. Allaman and Mr. Shobe, appellant was offended by language Mr. Shobe used when providing an example. During that meeting, when appellant asked Mr. Shobe whether he read her letter, he replied, "Darlin, I have been in the Gulf for a week and I wasn't answering anybody." Appellant appeared visibly shaken and upset by the comment and she later stated that she was upset and offended that he called her "Darlin." During the first several months she was on maternity leave, Mr. Shobe referred to her as "your girl" in several meetings that he and another coworker attended. Mr. MacQueen told Mr. Shobe that these references to appellant were inappropriate and offensive. Mr. Shobe agreed and stated that it would not happen again. He further stated that, since appellant returned to work after maternity leave and shed light on the behavior mentioned above, Mr. Shobe's attitude towards appellant became almost hostile. Since appellant filed a formal complaint, Mr. Shobe has appeared to be agitated or upset with her during meetings, which created an uncomfortable or hostile atmosphere.

In an August 5, 2010 statement, Ms. Vilagi acknowledged that, during the May 18, 2010 meeting, Mr. Shobe answered a question from appellant and prefixed it with the word "Darlin." She indicated that appellant told her that she did not like the way Mr. Shobe used that term in the conversation and that she had been advised by Mr. MacQueen and others that Mr. Shobe had referred to her in conversation as "your girl" on occasion. On May 20, 2010 Ms. Vilagi was advised by the "ZOB" administrative assistant that appellant had told her he additionally used the word "booty" in reference to an illustrated point Mr. Shobe was making and the matter was being investigated. On June 15, 2010 appellant advised Ms. Vilagi that she felt an angel statue in Mr. Shobe's office was inappropriate and should be removed. Ms. Vilagi advised Mr. Shobe and others of appellant's concerns. During the next scheduled meeting, appellant refused to have the meeting in Mr. Shobe's office when she saw the statue. The meeting was moved to the conference room and Mr. Shobe was quiet during the meeting. When Ms. Vilagi met with appellant later, appellant told her that the statues were creepy and that this was a place of work. She also stated that she felt Mr. Shobe did not respect women. Ms. Vilagi stated that she told appellant that Mr. Shobe viewed the statues as art and that she had spoken to him about all the issues appellant brought to her, but she could not make him do anything. She told appellant that she had elevated all issues. Ms. Vilagi also agreed to let appellant go home.

By decision dated August 19, 2010, OWCP denied the claim finding that the evidence did not support that an injury was sustained in the performance of duty.

On August 23, 2010 OWCP received a July 22, 2010 report from Dr. SheaLynne Baus, a psychologist, who provided a history of work incidents reported by appellant beginning in May 2010. Dr. Baus diagnosed acute stress disorder and generalized anxiety disorder.

On August 30, 2010 OWCP received several statements. In an August 3, 2010 statement, Mr. Shobe responded to appellant's allegations and provided photocopies of the statues. He noted making the "your girl" statement on occasion when others asked to negotiate things that he had already settled with appellant. Mr. Shobe stated that he stopped when Mr. MacQueen asked him. He noted that the term "your girl" meant partner, friend and confidant. Mr. Shobe stated that appellant's account of the "Darlin" statement was inaccurate. He admitted making it but not during a meeting; rather he made it in the lobby area during a break. Mr. Shobe was in a discussion with someone else when appellant snapped at him out of the blue and stated "I send you emails all the time that you don't read." He stated that in an unabridged thought he responded "Darlin I haven't read anyone's email. I was on a cruise in the Caribbean." Mr. Shobe noted that he did not mean to say it; it was a shock response to someone snapping at him about a conversation. He disagreed that his statues were scantily clad and opined that appellant had issue with all of his statues because they were African American. Mr. Shobe indicated that appellant had worn buttons that attacked the agency in representation of the union. With regards to the June 17, 2010 events, he stated that Ms. Vilagi informed him that appellant did not want to meet in his office because of the statue and suggested the conference room. Mr. Shobe denied stomping to the room and noted that the entire front office area was carpeted and that, at his size, stomping would have attracted everyone's attention. He noted that, upon entering the room, he nodded his head to everyone and said hello and put his notebook down on the table. Mr. Shobe denied slamming the notebook. During the meeting, there was a lot of dialogue between appellant and Ms. Vilagi and he listened to the conversation and did not glare at anyone. Mr. Shobe denied treating appellant different from Mr. MacQueen. He noted that appellant had a very demanding nature and she became upset when listening to any theory that was not in her personal interest. Mr. Shobe also stated that appellant wore revealing clothes. He indicated that success on issues was always constrained when appellant was involved as there was no middle ground or compromise. Mr. Shobe stated that he did not have this problem with Mr. MacQueen and they had a higher success rate.

In an August 24, 2010 statement, Ms. Vilagi denied that Mr. Shobe was belligerent, hostile or condescending on May 18, 2010. She stated that Mr. Shobe did make the statement and appellant had a conversation with her, but she did not recall Mr. Shobe acting as appellant described or making a threatening comment about another employee. Ms. Vilagi noted that Mr. Shobe did mention that a particular employee had filed a congressional inquiry and was seeking to return to the facility, but she heard it as more of a question than a threat. With regard to the June 17, 2010 meeting, she stated that appellant refused to go into Mr. Shobe's office as the statue was there and they held the meeting in a conference room. Ms. Vilagi noted that Mr. Shobe was quiet during the meeting and that she did most of the interacting with appellant. She stated that she did not know why Mr. Shobe did not interact and she did not recall Mr. Shobe dropping anything, breathing heavily or staring at appellant. Ms. Vilagi stated that, while appellant stated that she felt uncomfortable around Mr. Shobe, she did not see any change in

appellant. She indicated that they later had a conversation about Mr. Shobe and why he would not remove the statue and, when she suggested a third neutral party to proceed further in any meetings, appellant told Ms. Vilagi that she felt sick and Ms. Vilagi allowed appellant to go home. She stated that appellant did not appear sick and appellant did not relay any information about fear of attack to her.

In an August 24, 2010 statement, Mr. Allaman stated that Mr. Shobe referred to appellant as "Darlin" in a May 18, 2010 meeting. During the June 17, 2010 conference room meeting, Mr. Shobe was quiet and reserved.

On September 16, 2010 appellant requested a review of the written record. She clarified that Mr. Shobe's continued harassment of her caused her anxiety and panic attacks. Appellant also stated that, after she completed the initial EEO interview, where she detailed all of the harassment, she started noticing the panic attacks. OWCP also received a July 28, 2010 statement from appellant, which was identical to her June 27, 2010 statement.

Appellant also submitted an occupational disease claim for anxiety and panic disorders commencing October 20, 2010, which OWCP filed under claim number xxxxxx015. In a November 15, 2010 statement, she indicated that she had been seeing a therapist since July 2010. Appellant alleged that Mr. Shobe continued to harass her and that she had evidence of this. She stated that he showed up at her initial EEO mediation even though he knew his presence would cause medical issues for her and he was informed not to come. Appellant asserted that he filed a false statement with OWCP to harass and humiliate her. She indicated that Mr. Shobe's behavior caused her therapist to refer her to a psychiatrist due to her increase in panic and anxiety attacks. Appellant opined that this extended beyond a single incident after she realized that Mr. Shobe filed a false statement to retaliate against her for filing the EEO and OWCP claims. Statements from her therapist and psychiatrist were submitted.

In a December 2, 2010 decision, an OWCP hearing representative remanded the case to be developed as an occupational disease claim.[2]

In a December 20, 2010 statement, Mr. Shobe denied filing any false claims. He stated that he only reported to mediations when asked and confirmed that he reported to the August 6, 2010 mediation. Mr. Shobe stated that he never went to mediation without proper authorization.

In an undated statement received January 21, 2011, appellant stated that on August 6, 2010 she attended mediation for her EEO complaint and the employing establishment was advised not to send Mr. Shobe but he still arrived at the mediation. She indicated that Mr. Shobe was aware of the medical implications of his presence. Appellant asserted that Mr. Shobe's statements to OWCP were full of inaccuracies, outright falsifications and statements intended to retaliate, humiliate and harass her for filing an EEO complaint. She contrasted Mr. Shobe's definition of the term "your girl" and a dictionary definition. Appellant asserted that no one considered the term "girl" to mean partner, or friend or confidant as Mr. Shobe indicated. She also noted that, while Mr. Shobe claimed a higher success rate with Mr. MacQueen than with

[2] In a December 17, 2010 letter, OWCP noted that appellant's claim had been converted to an occupational claim. On December 23, 2010 it administratively combined claim numbers xxxxxx161 and xxxxxx015.

her, he refused to negotiate with Mr. MacQueen while she was on maternity leave. Appellant denied Mr. Shobe's allegation that she had issues with his statues because they were African American. She stated that, other than the scantily clad statue, she made no reference to any other statue in his office. Appellant denied wearing buttons attacking the employing establishment or wearing revealing clothes.

By decision dated March 31, 2011, OWCP denied the occupational disease claim on the grounds no compensable work factors were established.

On August 2, 2011 appellant requested reconsideration and provided a statement in which she alleged that OWCP did not review her allegations of harassment and contended that none of the supervisor's statements should have been considered. She stated that she filed a new claim in October 2010 with allegations that Mr. Shobe filed a false statement with OWCP, thereby continuing to harass her. Appellant asserted that Mr. Shobe's escalating and aggressive behavior and false statement went beyond a personality conflict. She also noted that Mr. Shobe had since been removed from his management position.

By decision dated November 17, 2011, OWCP modified the claim to reflect that appellant failed to establish an injury within the performance of her duties.

On April 11, 2012 appellant again requested reconsideration. In support of her reconsideration request, a December 7, 2011 decision from the EEO Commission was received. The EEO Commission decision combined appellant's appeals regarding hostile work environment and discrimination and sexual harassment on the basis of sex (female) and reprisal for prior protected EEO activity. It found that the employing establishment improperly dismissed her complaints for failure to state a claim and remanded the case to the employing establishment for further processing. The employing establishment had to provide further investigations of appellant's complaints.

By decision dated September 7, 2012, OWCP denied modification of its previous decisions.

LEGAL PRECEDENT

To establish a claim that an emotional condition arose in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.[3]

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 illness has some connection with employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability

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[3] *D.L.,* 58 ECAB 217 (2006).

results from an employee's emotional reaction to his or her regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of FECA. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of his or her work or his or her fear and anxiety regarding his or her ability to carry out his or her work duties.[4] By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.[5]

For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.[6] Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.[7] The primary reason for requiring factual evidence from the claimant in support of his or her 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

Appellant, in representing her union, attributed her condition to stress related to sexual harassment and a hostile work environment in dealing with Mr. Shobe and his supervisors.[9] The

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[4] *Ronald J. Jablanski*, 56 ECAB 616 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[5] *Id.*

[6] *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Arthur F. Hougens*, 42 ECAB 455 (1991) and *Ruthie M. Evans,* 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence established such allegations).

[7] *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice,* 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

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

[9] Although union activities, in general, are personal in nature and not considered in the course of the employment, the Board has found that the involvement of union activities does not preclude the possibility that compensable factors of employment have been alleged. The Board has recognized that employees performing representational functions which entitle them to official time are in the performance of duty and entitle them to all benefits of FECA if injured in the performance of those functions. The underlying rationale for this exception is that an activity undertaken by an employee in the capacity of union office may simultaneously serve the interests of the employing establishment. *Shelly D. Duncan*, 54 ECAB 367 (2003). In the present case, the record indicates that appellant's allegations pertain to interactions while in the performance of "representational functions" and could, if substantiated by the record, constitute compensable factors since they arose out of covered representational duties. The Board's analysis will examine if the allegations are established and otherwise qualify as compensable employment factors.

Board must, thus, initially review whether these alleged incidents and conditions of employment are established as covered employment factors under FECA. The Board notes that appellant's allegations do not pertain to her regular or specially assigned duties under *Cutler*.[10] Rather, appellant has alleged error and abuse in administrative matters and harassment and discrimination by Mr. Shobe and management in general.

Several of appellant's harassment allegations are not established as factual or as occurring as alleged. In the May 4, 2010 meeting, she stated that Mr. Shobe replied in a condescending tone, "this isn't how Drew and I do things" when she brought up issues. Mr. Shobe denied treating appellant different from Mr. MacQueen but noted that he had a higher success rate with Mr. MacQueen than appellant. Appellant stated that Mr. Shobe refused to negotiate with Mr. MacQueen while she was on maternity leave. There is insufficient evidence to show that Mr. Shobe addressed appellant in a condescending manner as alleged or treated her differently from Mr. MacQueen in a way that would rise to the level of a compensable employment factor.

During the May 18, 2010 meeting, appellant alleged that Mr. Shobe was condescending and hostile. Other than noting that Mr. Shobe was quiet during the meeting, no witness present at the meeting noted any hostility by Mr. Shobe. While Mr. MacQueen provided his opinion on Mr. Shobe's attitude toward appellant after she returned from maternity leave, there is no specific showing of hostility by Mr. Shobe. While appellant may have become offended with Mr. Shobe's language used when providing an illustrative example, Mr. Shobe's comment was not directed at appellant, nor was Mr. Shobe's comment about another employee who was trying to get to "ZOB" directed at appellant or perceived to be threatening by Ms. Vilagi. Therefore, there is insufficient evidence to substantiate that Mr. Shobe was hostile toward appellant in general or on May 18, 2010.

There is also insufficient evidence to show that the employing establishment failed to address appellant's concerns. Ms. Vilagi stated that appellant's concerns were brought to Mr. Shobe and escalated to the next level.

Appellant alleged that Mr. Shobe filed a false statement to OWCP to intimidate, harass and humiliate her. Although Mr. MacQueen has disputed some of the facts presented by Mr. Shobe as it relates to the May 4, 2010 meeting, there is insufficient evidence to show that Mr. Shobe filed a false statement as claimed. Mr. Shobe denied acting improperly. Since there is insufficient evidence establishing that these incidents occurred as alleged; these allegations do not establish harassment, retaliation or hostile work environment as a compensable employment factor.[11]

There is evidence that Mr. Shobe called appellant "your girl" and "Darlin." The Board has recognized the compensability of verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under

[10] *Supra* note 4.

[11] *See William F. George*, 43 ECAB 1159, 1167 (1992).

FECA.[12] With regard to the "your girl" comment, the evidence reflects the statement was made to Mr. MacQueen, who was conducting union activities while appellant was on maternity leave. When Mr. MacQueen related the comment to appellant and she indicated that it bothered her, he spoke to Mr. Shobe and he stopped using such expression. The comment was not made in appellant's presence and the context in which the comment was made cannot be assessed. Appellant's reaction is found to be self-generated and not compensable under FECA.

During the May 18, 2010 meeting, Mr. Shobe referred to appellant as "Darlin" in response to her inquiry about a business matter. Appellant found the comment to be inappropriate and offensive. While Mr. Shobe indicated that the comment was made outside the meeting, the witness statements support that the comment was made during the course of the weekly union meeting while appellant and Mr. Shobe were involved in a discussion. Mr. MacQueen interpreted the tone to be condescending and demeaning. However, the other witnesses failed to comment on the tone or the context of the "Darlin" comment, other than it occurred. Mr. Shobe explained his comment was not meant to demean or harass appellant. Appellant has not submitted sufficient evidence that use of the term in the context of that meeting rose to the level of a compensable employment factor. While her reports may have led to the employing establishment's investigation of these issues, there is no evidence from the employing establishment to support any claim of verbal abuse, retaliation, discrimination or harassment.

Appellant has alleged stress due to the employing establishment's failure to take appropriate administrative action regarding a statue on Mr. Shobe's desk.[13] On June 15, 2010 she saw a statue of what she perceived to be a scantily clad woman on Mr. Shobe's desk and commented to Ms. Vilagi that it was inappropriate and did not belong in the workplace. Ms. Vilagi indicated that appellant spoke to Mr. Shobe, who viewed his statues as art and he declined to remove them. She also indicated that she had elevated the issues. No persons other than appellant asserted that any of the statues were inappropriate. Appellant submitted no supporting evidence that the statue was inappropriate or that the employing establishment erred in allowing Mr. Shobe to keep such statue in the workplace. Thus, she has not established a compensable employment factor.

It is accepted that on June 17, 2010 a meeting was moved to a conference room when appellant saw the statue remained in Mr. Shobe's office. Appellant alleged that Mr. Shobe stomped down the hall, dropped his book next to her from about two feet in the air and loudly plopped in his seat. She alleged that Mr. Shobe breathed heavily and stared at her during the meeting. Appellant indicated that she became upset and afraid of his open hostility towards her. Mr. Shobe disputed appellant's contentions. He stated that he was fine with the meeting being moved and denied stomping into the room, slamming down his notebook or glaring at anyone. The witness statements support Mr. Shobe was quiet and did not participate in the meeting.

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

[13] Administrative and personnel matters, although generally related to the employee's employment, are functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA. 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. *See id.*

Mr. Gentry's statement supports that, when Mr. Shobe came into the meeting, he slapped his paper work on the table, plopped into his chair and had angry body language. However, he specified no particular hostile interaction with appellant. Ms. Vilagi did not recall Mr. Shobe dropping anything, breathing heavily or staring at appellant. The evidence is insufficient to establish a compensable factor of employment in this regard.

Appellant asserted that she began to have panic episodes after doing an EEO intake procedure. She has not specified whether the EEO intake was for her case or another employee. Assuming the EEO intake was for appellant, her reaction to completing the EEO complaint is self-generated and not compensable under FECA as it is an administrative issue not incidental to either her employment as an air traffic control specialist or her union activities. Additionally appellant claimed that she had no choice other than to resign as union president due to hostile work environment and sexual harassment caused by Mr. Shobe and lack of support from his supervisors. As previously explained, she has not submitted any evidence of hostile work environment and/or sexual harassment. While the record contains a December 7, 2011 EEO Commission decision, the decision did not make any findings of error or abuse; rather it remanded the case to the employing establishment for further investigation. There is no indication of any error by the employing establishment at this time. Thus, appellant has not established a compensable factor of employment.

Appellant alleged that Mr. Shobe showed up at the EEO mediation on August 6, 2010 knowing his presence would cause her medical issues. Mr. Shobe stated that he reported to the mediation as he was asked to attend. Appellant's participation in the mediation session is an administrative action which results from a personal matter and is not a regular or specially assigned duty. The Board has held that mere disagreement or dislike of a supervisory or of a managerial action will not be compensable absent error or abuse.[14] Mediation is part of an investigatory administrative action and there is no evidence that the employing establishment committed error or abuse in this administrative action.

Consequently, appellant has not established her claim for an emotional condition as she has not established any compensable employment factors.[15] On appeal, she argued that her injury occurred during the course of her employment. However, as noted above, appellant failed to establish any compensable employment factors.

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 her burden of proof to establish that she sustained an emotional condition in the performance of duty.

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[14] *D.L., supra* note 3.

[15] As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the September 7, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 15, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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