

United States Department of Labor
Employees' Compensation Appeals Board

L.B., Appellant)	
)	
and)	Docket No. 13-1582
)	Issued: September 25, 2014
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS ADMINISTRATION MEDICAL)	
CENTER, Iron Mountain, MI, Employer)	

Appearances:
Benjamin Balkum, for the appellant
Jim Gordon, Jr., Esq., for the Director

Oral Argument April 22, 2014

DECISION AND ORDER

Before:
RICHARD J. DASHCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 21, 2013 appellant, through her representative, filed a timely appeal from the January 2, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

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

¹ 5 U.S.C. §§ 8101-8193.

² Appellant submitted additional evidence after OWCP's January 2, 2103 decision, including several statements of coworkers. The Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

On March 1, 2011 appellant, then a 39-year-old pharmacist, filed an occupational disease claim alleging an emotional condition in the performance of duty.³ She noted first becoming aware of her claimed condition on February 22, 2011 and stated the relationship of the illness to her work: “Ongoing stressful relationship with supervisor. Extremely hostile work environment compounded by excessive workload. As relationship deteriorated, symptoms exacerbated.” Appellant stopped work on February 22, 2011.

In a March 7, 2011 letter, OWCP requested that appellant submitted additional factual and medical evidence in support of her claim.

In a March 18, 2011 statement, appellant described the work incidents and conditions that caused her claimed conditions. She noted beginning work in 1991 but stated that her stress started about a year and half earlier when she abruptly went from being a pharmacist/application data processing (ADP) coordinator to a specialty staff pharmacist.⁴ Appellant alleged that her reassignment to the specialty staff pharmacist position was due to harassment and discrimination. She had stress and anxiety due to harassment and discrimination by Daniel Aderman, the chief of the pharmacy service who served as her supervisor. Appellant asserted that on December 17, 2009 Mr. Aderman rudely interrupted a staff meeting regarding annual leave policy and that, on at least two occasions in March 2010, he screamed at her when she asked questions about pharmacy matters. She stated that on several occasions coworkers told her that management was specifically targeting her for harassment. On June 7, 2010 appellant filed a workplace violence incident report against Mr. Aderman. On that date, Mr. Aderman yelled at her and repeatedly demanded that she tell him what she stated to a coworker about a union representation matter.⁵ Appellant stated that on more than a dozen occasions between July 2010 and January 2011 Mr. Aderman screamed at her, unfairly criticized her about such matters as using a facsimile machine, talking to a coworker, failing to check in medications and neglecting to write down her lunch time. Mr. Aderman allegedly singled her out because her workstation was behind in completing work tasks and unfairly counseled her for not giving additional medication to a patient before hearing her explanation that the insurance provider had turned down the request. Appellant alleged that on January 3, 2011, Mr. Aderman screamed at her that she had “ruined his day,” slammed a cabinet with his hand and slammed down a cup. On other occasions in February and March 2011, Mr. Aderman improperly demanded that she return to her work station and screamed at her about what type of leave she should take. Appellant generally indicated that Mr. Aderman screamed at her continuously, encouraged her coworkers to harass her, often failed to address her when in her presence and commonly walked away from her when she asked a question. She also asserted that Mr. Aderman improperly placed her under surveillance and monitored her daily activities.

³ Appellant indicated that she sustained daily headaches, backaches, stress, insomnia, diarrhea and chest pain.

⁴ The evidence indicates that appellant changed to being a specialty staff pharmacist effective January 7, 2010.

⁵ The record contains the incident report but does not contain a response to the report.

In her March 18, 2011 statement, appellant alleged that beginning in November 2009 she felt Mr. Aderman subjected her to improper discipline or administrative oversight. She claimed that he and other management officials wrongly counseled her for using sick leave, improperly gave her a “record of contact” for attempting to coerce a coworker and unnecessarily gave her a difficult time about taking her child to the doctor. Appellant asserted that in January and March 2010 management officials improperly evaluated her job performance. She stated that she received outstanding performance ratings from 1991 up until the time she began to be harassed. In January 2010, management requested that appellant train coworkers but did not allow her the time to complete classes she needed to be qualified to train the coworkers. In February 2010 Mr. Aderman terminated her computer options without appropriate notification or justification. Appellant discussed communication problems she had with Mr. Aderman including an occasion in March 2010 when he refused to address her regarding a patient’s question but instead addressed a coworker that was next to her. She alleged that in April 2010 management forced her to take calls on her day off when no one else was required to do so, and that in May 2010 management changed past practice and did not allow her to switch work shifts.

In November and December 2010, appellant’s holiday and overtime work was adversely affected when Mr. Aderman did not fully address a memorandum regarding these matters. She claimed stress when her tour of duty was changed from Monday through Friday, 8:00 a.m. to 4:30 p.m., and she was forced to work different variations of her tour of duty with more early and late shifts. The reassignment required appellant to work weekends, nights, holidays and to be on call, including taking more calls on weekends, nights and holidays. She stated that she never left work on time on weekends and holidays and that she was constantly required to work overtime to complete tasks that were never ending. When on call, appellant was expected to go right back into work no matter how many times during the night she was called in. She stated that she had no flexibility in using leave and indicated that this circumstance made it difficult to manage her family life, particularly because her husband often worked out of town in the law enforcement field. Appellant asserted that the change to the position of specialty staff pharmacist left her with absolutely no professional growth potential, thereby depriving her of potential increased opportunities and salaries.

Appellant submitted an October 1, 2010 statement in which Helen Murra, a coworker, stated that she worked for 10 years as a pharmacy technician. Ms. Murra stated that appellant was constantly harassed by Mr. Aderman, her supervisor, noting that she was targeted for such harassment. She stated, “The hostility continued and worsened to the point I left the VA Medical Center Pharmacy. This was due to the job-related stress and anxiety that he inflicted on me.” In a January 6, 2011 joint statement, appellant’s coworkers Lisa Sutherland and Sarah Thaler stated that they recently observed pharmacy management officials harass appellant during her duty hours. Since the fall of 2009 they saw management officials treat appellant differently from other staff members and encouraged such behavior from other pharmacy employees. The coworkers stated, “[L.B.] continues to work in a hostile environment in the pharmacy and is harassed and targeted daily by management. [L.B.] seems to be stressed and anxious due to her treatment by pharmacy management and the heavy workload.” On September 16, 2010 Benjamin Balkum, a union official and appellant’s representative, stated that there was a hostile work environment at the employing establishment.

Appellant submitted a job description of her specialty staff pharmacist position. The position involved multiple tasks, including compounding and dispensing both inpatient and outpatient medications as well as ordering controlled substances. She also submitted performance evaluations of both the pharmacy/ADP coordinator and specialty staff pharmacist positions which showed that her performance was “fully successful” in both positions.⁶ The record contains documents indicating that appellant filed an Equal Employment Opportunity (EEO) claim regarding her treatment by supervisors. However, the record does not contain a copy of a final decision of an EEO claim.⁷

In a February 22, 2011 report, Dr. William Batti, a family practitioner, noted that appellant related having stress and anxiety centered around her work. He diagnosed situational stress/anxiety. In a March 22, 2011 report, Dr. Steven Miljour, an osteopath and Board-certified psychiatrist, noted seeing appellant that day. Appellant reported being in a hostile work environment with an excessive workload. Dr. Miljour stated that appellant had panic disorder without agoraphobia and major depressive disorder, single episode. On March 23, 2011 he indicated that appellant was disabled for periods in March and April 2011 and, on May 17, 2011, he recommended that she work four days in a row and then have three days off.

In an undated statement received on April 15, 2011, Mr. Aderman and Gina Hakamaki, assistant chief of the pharmacy service, jointly responded to appellant’s assertions. They advised that she was exposed to no more stress than the seven other staff pharmacists employed at her workplace because all the work assignments, deadlines, quotas were the same for each pharmacy staff. With the exception of when appellant was carrying the on-call beeper, all of her overtime was at her request. Appellant had the same opportunity to work overtime as the other staff but that she usually chose to earn compensatory time which could be taken as time off at a later date. After becoming a specialty staff pharmacist, she was placed on a rotating schedule as the other staff pharmacists and had to occasionally work weekends and holidays. Although appellant claimed that this placed a stress on her family, she still had the time and energy to perform volunteer work not related to her staff pharmacist duties, including volunteering as a union steward (later chief steward), mediator, pharmacy student tutor, visitor door greeter and member of the ethics committee. These activities were all carried out during duty hours.⁸ Mr. Aderman and Ms. Hakamaki stated that appellant’s duties other than ordinary dispensing of medications included checking in controlled substances and handling e-pharmacy billing, but noted that all other staff pharmacists also had such additional duties. Appellant traded tours and days off with the other pharmacists to accommodate her outside activities and, while she generally had friendly

⁶ In a performance evaluation of her specialty staff pharmacist position from 2010, Mr. Aderman discussed the speed that appellant processed and dispensed various medications and indicated that her other duties include e-pharmacy work and checking in controlled substances.

⁷ In an April 22, 2011 e-mail, an employing establishment official indicated that she had received a Notice of Dismissal of the claim on December 15, 2010, but the record does not contain any such document.

⁸ The record contains documents pertaining to these activities in 2010 and 2011.

interactions with staff pharmacists and technicians, she was counseled regarding her statements to coworkers about their application for the pharmacist/ADP coordinator position.⁹

In their statement, Mr. Aderman and Ms. Hakamaki denied that appellant was subjected to harassment or discrimination.¹⁰ The decision to move appellant from her pharmacist/ADP coordinator position to the specialty staff pharmacist was made by top management as a cost-cutting measure and appellant retained her former pay after the transfer. Appellant was afforded the opportunity for additional training when she transitioned into her new position and was given more time for training than a new employee. Management developed procedures so that pharmacists could “give away” weekend workdays and work schedules were posted further in advance than previously to give employees a chance to make arrangements for home activities. Mr. Aderman and Ms. Hakamaki noted that certain early and late shifts were worked on a voluntary basis in anticipation of a union-management agreement on this matter, but that there were no “shortages during this time period that affected appellant or any of the other staff pharmacists’ workload.” Appellant was not able to provide the same level of production as other pharmacists and her performance evaluations fairly reflected this. Her current position had more accountability than her prior pharmacist/ADP coordinator position and her work was compared with individuals who had similar duties. Mr. Aderman and Ms. Hakamaki noted that some computer privileges were taken away from appellant because she abused those privileges. Appellant was counseled regarding various matters on an objective basis, including with respect to her interactions with pharmacy customers and use of leave.¹¹

In an April 22, 2011 statement, Mr. Aderman noted that he had never screamed at any employee during his 31 years with the employing establishment and alleged that appellant commonly used the word “screamed” in an exaggerated manner.¹² He responded to the specific allegations made by appellant and denied that he subjected her to harassment or discrimination or wrongly handled administrative matters on these occasions. Mr. Aderman checked to see whether appellant formally filed a workplace violence report and found no evidence that she had done so. He stated that appellant was able to switch shifts more often than any other staff

⁹ The record contains several documents detailing counseling sessions held by supervisors with appellant, including an instance in February 2010 when appellant was counselled after potential candidates for the position of pharmacist/ADP coordinator reported that they felt intimidated and harassed by negative comments she made about the position. In an August 13, 2010 report of contact, a pharmacist indicated that appellant called him “childish” and “unprofessional” when he asked her why she had not filled a particular prescription. The pharmacist indicated that appellant then “proceeded to yell” at the chief pharmacist on duty.

¹⁰ In a portion of the statement, Mr. Aderman appears to speak solely on his own behalf. He stated that “[t]here have been a few conflicts between myself and [appellant]” but noted that he had less contact with her after she moved to the specialty staff pharmacist position in January 2010. Mr. Aderman stated that since appellant became a union steward in July 2011 the scope of their conversation had changed. Appellant sometimes tried to “take over” the conversation in staff meetings but he was able to get the meetings back on track.

¹¹ The record contains counseling documents from 2009 and 2010 regarding a complaint against appellant by a pharmacy customer, appellant’s use of leave and her coverage of the pharmacy intake window.

¹² The statement was also signed by Ms. Hakamaki but its contents show that it is meant to describe the direct experiences and viewpoints of Mr. Aderman.

pharmacist and that her requests to switch shifts were almost always accepted.¹³ Appellant's work was not unduly monitored, she was provided adequate training and any counseling was based on objective deficiencies.

OWCP later requested that management provide additional details about appellant's encounters with supervisors and other potential stress factors. In an undated supplemental statement received on May 23, 2011, Mr. Aderman indicated that, when he stated that appellant was exposed to no more stress than any of the other staff pharmacists, he was referring to her workload. All assignments and work schedules were assigned on a fair and equitable basis among appellant and her peers. Mr. Aderman stated that the conflicts he had with appellant mainly revolved around her not being at her place of duty during duty hours, her lack of production, her leave issues and her excessive use of duty time for union issues. These instances resulted in either a written or verbal counseling.

In an April 18, 2011 statement, a pharmacy secretary noted that she had worked with Mr. Aderman for 15 years at a desk located just outside his office. She stated that she had never heard Mr. Aderman scream or raise his voice to anyone and noted that he was "a very even-tempered supervisor." In a statement signed on April 20, 2011, Ms. Hakamaki stated that on December 18, 2009 appellant became "very argumentative" with Mr. Aderman during a meeting and that two coworkers came to her to say that her behavior and attitude showed a lack of respect for pharmacy supervisors.

In a May 2011 statement, appellant's representative asserted that the evidence showed that appellant had been subjected to harassment and discrimination, particularly by Mr. Aderman. Appellant had also been subjected to improper disciplinary actions, performance evaluations and surveillance. Appellant's representative stated that appellant performed work duties that other staff pharmacists were not required to perform, including checking in controlled substances and handling e-pharmacy and ADP computer tasks. Appellant's voluntary work activities were encouraged by the upper levels of management and Mr. Aderman had removed a portion of her computer duties in order to make her look ineffective.

In an August 17, 2012 decision, OWCP denied appellant's claim on the grounds that she did not establish any compensable work factors. It found that appellant had not shown that she was subjected to harassment and discrimination, that she had not established error or abuse in various administrative actions carried out by management and that she had not adequately implicated her required work duties as a source of stress.

Appellant requested a hearing. During the hearing held on October 16, 2013, appellant alleged that her emotional condition was aggravated by her exposure to continued harassment and an excessive workload. She reiterated that Mr. Aderman had created a hostile work environment and that her stress and anxiety conditions were precipitated by her movement in January 2010 from the position of pharmacist/ADP coordinator, a position involving mostly computer-based tasks, to the position of specialty staff pharmacist. Appellant stated that her assignment to this position was due to harassment and discrimination. She alleged that she was subjected to more than 60 incidents of harassment and that she was wrongfully placed under

¹³ The record contains documents regarding the switching of work shifts among staff pharmacists.

daily surveillance. Appellant noted that she had excellent performance evaluations from 1991 up until the time she moved to the specialty staff pharmacist position. She had a high workload and there was a constant requirement to work overtime because she was the only one who could perform the specialty functions, including duties relating to controlled substances and e-pharmacy tasks. Appellant asserted that she worked nights, weekends, holidays and early and late shifts and that she had to take calls, a task which was not voluntary. She was not given any technician help and she had to go right back to work no matter how many hours she had worked or how many times she was called in. It was difficult for appellant to take off work and she was unfairly counseled for taking leave and unfairly charged with trying to intimidate coworkers regarding their application for the pharmacist/ADP coordinator position. The position was now performed by two to four employees. Appellant filed an EEO claim regarding her allegations of harassment and discrimination and noted that, despite her employer's assertion that the claim was dismissed, it was still pending a final decision.

Appellant submitted additional medical evidence, including an April 12, 2011 report in which Dr. Miljour indicated that she reported increased stress at work. Dr. Miljour continued to diagnose panic disorder without agoraphobia and major depressive disorder, single episode, but he also diagnosed adjustment disorder with depressed/anxious mood and obsessive compulsive personality disorder characteristics. In a November 27, 2012 statement, appellant's representative contended that appellant was harassed, discriminated against, and had an excessive workload. He indicated that she did not become a union steward until July 2011, *i.e.*, a time period well after she was first exposed to stress in the workplace.

In a January 2, 2013 decision, OWCP's hearing representative affirmed OWCP's August 17, 2012 decision denying appellant's emotional condition claim on the grounds that she did not establish any compensable work factors. She determined that appellant had not shown harassment and discrimination, error or abuse in administrative actions or required work duties as a source of stress.

LEGAL PRECEDENT

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 her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.¹⁴ 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.¹⁵

¹⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

¹⁵ *Gregorio E. Conde*, 52 ECAB 410 (2001).

As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.¹⁶ In claims for a mental disability attributed to work-related stress, the claimant must submit factual evidence in support of his or her allegations of work-related stress. 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, management wrongdoing or other difficulty arising in the employment are insufficient to give rise to compensability under FECA.¹⁷ For example, in the cases of *M.B.*¹⁸ and *L.G.*,¹⁹ the claimants made general assertions regarding heavy workloads and demanding work schedules (including overtime work), but the Board found in both cases that the claimant's assertions were vague and unsupported by the evidence of record. 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.²⁰

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from the employee's performance of his or her regular duties, these could constitute employment factors.²¹ However, for harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under FECA.²²

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.²³ 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.²⁴ In determining whether the employing establishment has erred or acted abusively, the Board will

¹⁶ 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).

¹⁷ *Paul Trotman-Hall*, 45 ECAB 229 (1993) (Michael E. Groom, Alternate Member, concurring).

¹⁸ Docket No. 13-1294 (issued September 20, 2013).

¹⁹ Docket No. 11-647 (issued February 2, 2012).

²⁰ See *Paul Trotman-Hall*, *supra* note 17.

²¹ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

²² *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

²³ *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

²⁴ *William H. Fortner*, 49 ECAB 324 (1998).

examine the factual evidence of record to determine whether the employing establishment acted reasonably.²⁵

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.²⁶ Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete and accurate factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.²⁷

ANALYSIS

Appellant alleged that she sustained an emotional condition due to a number of employment incidents and conditions. OWCP denied the claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under FECA. Appellant has alleged that she sustained stress due to the performance of her regular or specially assigned duties under *Cutler*.²⁸ She has also claimed that her emotional condition is related to the fact that management acted improperly with respect to administrative matters and subjected her to harassment and discrimination. Appellant asserted that most of these improper actions were carried out by Mr. Aderman, her direct supervisor.

Before OWCP and on appeal, appellant and her representative asserted that she sustained stress due to an “excessive workload” and maintaining a difficult work schedule, noting that she had to work weekends, holidays and late and early shifts and that she had to be on call. Appellant thus appears to be arguing that she experienced emotional stress in carrying out her employment duties, which may constitute a compensable employment factor. As noted above, allegations alone are insufficient, as a rule, to establish a factual basis for an emotional condition claim. Appellant 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 difficulty arising in the employment are insufficient to give rise to compensability under FECA.²⁹

²⁵ *Ruth S. Johnson*, 46 ECAB 237 (1994).

²⁶ *Id.*

²⁷ *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

²⁸ *See supra* note 14.

²⁹ *See supra* notes 16 through 20.

The Board finds that appellant has not established a factual basis for her claim that she sustained stress due to her work duties and work schedule. Many of her allegations lack specificity, context and explanation and are unsupported by the evidence of record. Appellant claimed that she had an excessive workload but she did not provide any extensive discussion of the nature of her duties or why she felt they were excessive. She claimed that she had more duties than any other staff pharmacist, including those relating to checking in controlled substances and handling e-pharmacy tasks, but Mr. Aderman stated that all assigned tasks were evenly distributed among the eight staff pharmacists. Appellant alleged that she worked a great deal of overtime to meet her work requirements but she did not submit sufficient evidence to support this assertion. She noted that she had to work weekends, holidays, late and early shifts and to be on call, but she did not provide evidence of how often she had to work under such circumstances.³⁰ Appellant's claims regarding her work duties are similar to those made in the cases of *M.B.* and *L.G.*, where the claimants made general assertions regarding heavy workloads and demanding work schedules, including overtime work. The Board found in both cases that the claimant's assertions were vague and unsupported by the evidence of record.³¹ For these reasons, appellant has not established a factual basis for her claim of stressful work duties and work schedule.

Appellant also alleged that management officials, especially Mr. Aderman, erred by unfairly subjecting her to discipline for perceived deficiencies, improperly handling her leave requests, giving inaccurate performance evaluations, improperly denying adequate training and taking away computer duties, and unreasonably placing her under surveillance and monitoring her work. She also alleged that the employing establishment committed error when it transferred her from a pharmacist/ADP coordinator position to a specialty staff pharmacist position in January 2010.³² Such 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. 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.

The Board finds that appellant has not established that management committed error or abuse with respect to these administrative matters. For example, she did not submit a finding of a grievance against the employing establishment which showed that any of these actions were improper. Mr. Aderman, the individual who carried out most of these administrative actions, provided a detailed statement explaining why his actions were proper. Regarding appellant's claim that she was wrongly transferred in January 2010, there is no indication that management committed any wrongdoing in this matter. Mr. Aderman explained that the decision to effectuate the transfer was made by top management as a cost-cutting measure. Moreover, the Board has

³⁰ Appellant suggested that there was no flexibility to her work schedule, but Mr. Aderman indicated that she was able to switch shifts more often than any other staff pharmacist and that her requests to switch shifts were almost always accepted.

³¹ See *supra* notes 18 and 19.

³² Appellant asserted that the change to the position of specialty staff pharmacist left her with absolutely no professional growth potential, thereby depriving her of potential increased opportunities and salaries.

previously held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under FECA, as they do not involve appellant's ability to perform his or her regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.³³ For these reasons, appellant has not established a compensable work factor with respect to management's handling of administrative matters.

Appellant claimed that management subjected her to harassment and discrimination. In particular, she alleged that Mr. Aderman screamed at her, singled her out for criticism, unreasonably monitored her activities, failed to acknowledge her existence and ignored her questions and concerns. Appellant claimed that on at least one occasion Mr. Aderman became violent by slamming a cup down and pounding on a cabinet.

The Board finds that appellant has not submitted sufficient probative evidence to establish that she was harassed or discriminated against by any management official.³⁴ Mr. Aderman submitted a detailed statement in which he denied that appellant was subjected to harassment or discrimination.³⁵ He denied that he screamed at appellant, singled her out for criticism or unreasonably monitored her work activities.³⁶ Appellant alleged that Mr. Aderman made statements and engaged in actions which she believed constituted harassment and discrimination, but she did not provide evidence, such as probative witness statements, to establish that the statements actually were made or that the actions actually occurred.

Appellant submitted an October 1, 2010 statement in which Ms. Murra, a coworker, stated that she worked at the employing establishment for 10 years as a pharmacy technician and alleged that she was constantly harassed by Mr. Aderman. However, Ms. Murra did not provide any details of this alleged harassment and she did not indicate that she directly observed any actions of Mr. Aderman towards appellant. In a joint statement dated January 6, 2011, appellant's coworkers Ms. Sutherland and Ms. Thaler stated that since the fall of 2009 they had seen management officials treat appellant differently from other staff members and encouraged such behavior from other pharmacy employees. The coworkers stated that appellant continued to work in a hostile environment and was harassed and targeted daily by management. The statement of Ms. Sutherland and Ms. Thaler is of limited probative value to establish harassment or discrimination because it is vague and general in nature. They did not describe any of the specific actions of management officials which they believed constituted improper actions or created a hostile work environment. Appellant's representative generally stated that Mr. Aderman subjected appellant to a hostile work environment, but he did not provide any detailed discussion about any specific incidents and conditions he personally witnessed that

³³ *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

³⁴ *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

³⁵ The statement was cosigned by Ms. Hakamaki, the assistant chief of the pharmacy service.

³⁶ Appellant indicated that on June 7, 2010 she filed a workplace violence incident report against Mr. Aderman alleging that on that date he yelled at her and repeatedly demanded that she tell him what she stated to a coworker. Mr. Aderman indicated that he found no evidence that such a report was formally filed by appellant.

created such an environment. The Board notes that it appears that appellant filed an EEO claim with respect to her harassment and discrimination claims, but the record does not contain a final EEO decision.³⁷ For these reasons, appellant has not established a compensable employment factor under FECA with respect to the claimed harassment and discrimination.

For the foregoing reasons, appellant has not established any compensable employment factors under FECA and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.³⁸

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 appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the January 2, 2013 decision of the Office of Workers' Compensation Programs is affirmed.³⁹

Issued: September 25, 2014
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

³⁷ The record contains a document in which an employing establishment official indicated that appellant's EEO claim had been dismissed, but the record does not contain evidence of such a dismissal and appellant maintained in the hearing before an OWCP hearing representative that her claim was still pending a final decision.

³⁸ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

³⁹ Richard J. Daschbach, Chief Judge, who participated in the preparation of the decision, was no longer a member of the Board after May 16, 2014.