United States Department of Labor
Employees' Compensation Appeals Board

K.M., Appellant	)	
and	)	**Docket No. 14-1860**
	)	**Issued: June 2, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Brick, NJ, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 22, 2014 appellant filed a timely appeal from a February 26, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

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

FACTUAL HISTORY

On April 18, 2011 appellant, then a 58-year-old mail processing clerk, filed an occupational disease claim alleging that on March 16, 2011 she sustained generalized anxiety and post-traumatic stress disorders in the performance of duty. She stated that she first became

[1] 5 U.S.C. § 8101 *et seq.*

aware of her conditions on March 16, 2011 and realized they were caused by her employment on April 11, 2011. Appellant attributed her conditions to harassment, discrimination, and disciplinary action related to her use of leave under the Family and Medical Leave Act (FMLA), changes in her work duties and hours, unreasonable time restraints for handling and submitting documents, and humiliation by her supervisors. She stopped work on April 23, 2011.

By letter dated May 27, 2012, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she submit factual and medical evidence.

In an undated letter, Dean B. Santulli, a customer service supervisor, noted that appellant had been working in a limited-duty capacity following a March 2005 arm injury. The last job offer made to appellant was dated August 2010. Due to declining mail volumes, changes in mail processing (*i.e.,* increases in automated mail), and operational necessity, it was necessary to modify her assigned duties to ensure that she performed necessary work within her restrictions. Appellant had not disputed any of these changes. She was unhappy and brooding over the employing establishment's failure to give her the work she desired and, as a result, she believed that she suffered from an emotional condition. Mr. Santulli contended that appellant's injury did not constitute an injury in the performance of duty within the meaning of FECA. He noted that disciplinary action taken against her regarding an FMLA-related condition had been addressed through the grievance and arbitration process and was now closed.

Medical records dated April 18 to June 2, 2011 diagnosed appellant as having generalized anxiety and post-traumatic stress disorders, and addressed her work-related disability and medical treatment.

In a June 27, 2011 decision, OWCP denied appellant's claim, finding that the weight of the evidence did not establish that the claimed incidents occurred as alleged.

In an appeal request form dated July 25, 2011 and received by OWCP on August 8, 2011, appellant requested a telephone hearing with an OWCP hearing representative.

In a June 30, 2011 letter, appellant described her physical symptoms and stated that on or about March 16, 2011 it was becoming extremely difficult for her to come to work as she was harassed, intimidated, and discriminated against by management and her coworkers. In a separate June 30, 2011 letter, she described an alleged pattern of harassment, discrimination based on her age, disability, and sex, and being subjected to disparate treatment, and alleged various actions. Appellant claimed that management was trying to force employees out like her who were in the National Reassessment Program (NRP). Her start time constantly changed. When appellant requested time to perform her job in accordance with the employing establishment's regulations, she was told to do as instructed by her supervisor or she would get a failure to follow instruction letter. Mr. Santulli, Janine Lapi, a supervisor, and former postmaster, Bob Weldon, made accusations against appellant and purposefully tried to get her to yell back at them in her defense, but she refused to do so. Appellant received a letter of warning for covered FMLA absences which were brought to step 2 of a grievance process. Prior letters of warning were removed from her record. Appellant was notified less than one week before her start time was changed from 3:00 a.m. to 9:00 a.m. On April 16, 2011 Ms. Lapi requested that appellant start work at 2:00 a.m. Employees who had numerous late arrivals were allowed to

change their schedules while appellant was verbally disciplined and received letters of warning for being late. Appellant's medical and personal paperwork were improperly handled by management. She never refused to perform any job due to her injury and she did not receive reasonable accommodation while employees who had nonjob-related injuries or illnesses refused to perform certain jobs and received accommodation.

Appellant's supervisors allegedly talked about her personal situation with employees. A female employee called her a derogatory name as she left the lunch room immediately reported to the union vice president. Ms. Lapi yelled at appellant on the workroom floor in the presence of coworkers. Appellant was not afforded time to study a scheme change while other employees were allowed to do so. Mr. Santulli held a "PDI" discussion with appellant for abusing her FMLA rights and asked her to provide more paperwork. A March 16, 2011 letter of warning was issued to appellant, which resulted in step 1 and 2 of a grievance process. She was placed on restricted sick leave and deemed disabled for FMLA-covered absences. Appellant's supervisors refused to remove these restrictions.

In an undated letter, Mr. Santulli informed appellant that she had five days to produce updated medical documentation explaining her physical status and work capacity. In a separate undated letter, he informed her that her new tour from 9:00 a.m. to 6:00 p.m. would begin on April 16, 2011.

In a March 16, 2011 letter of warning, the employing establishment stated that appellant failed to be in regular attendance from January 3 to February 28, 2011.

A March 28, 2011 document indicated that appellant's request for leave under FMLA was approved.

Medical records dated April 18 to June 30, 2011 addressed appellant's generalized anxiety and post-traumatic stress disorders, emotional and physical conditions, work capacity, and medical treatment.

In a September 8, 2011 decision, the Branch of Hearings and Review denied appellant's hearing request, finding that it was not filed within 30 days. An OWCP hearing representative also denied a discretionary hearing, noting that she could instead file a request for reconsideration.

In a memorandum dated June 28, 2012, appellant, through counsel, requested reconsideration. Counsel attributed appellant's emotional condition to several work incidents. On or about March 29, 2009 the employing establishment used appellant's scheduled day of annual leave as an aggravating factor when issuing a letter of warning to her. On or about March 25, 2011 Mr. Santulli issued a letter of warning to appellant for taking protected leave under FMLA. Counsel stated that he wrongfully asserted that approved leave could serve as a basis for disciplinary action. He also argued that, since approximately 2008, appellant worked beyond her OWCP accepted medical restrictions and limitations despite being offered a limited-duty job by the employing establishment. Ms. Lapi and Postmaster Weldon refused her request for assistance to perform her regular and specially assigned work. They responded that, if she could not perform the job, she was not needed on the tour. Since approximately December 2008,

Postmaster Weldon, Ms. Lapi, Mr. Santulli, and Ms. Salerno allegedly harassed appellant by repeatedly and abusively asking about her age and when she was eligible for retirement. Appellant filed a grievance regarding the March 16, 2011 letter of warning for failure to be in regular attendance despite her absences being protected under FMLA and as a result, the letter was expunged from her file. A union steward suggested that management was trying to harass her into resigning due to her use of the FMLA and previously accepted employment injury.[2] Appellant's supervisor and management discarded or destroyed her submitted medical documentation and FMLA approval certifications. They also repeatedly asked appellant to submit medical documentation that she had previously submitted. Her supervisor and management verbally abused her in front of coworkers by stating that she had the worse attendance record in the district and that she should retire before being fired. Pompi Nagilia, a supervisor, Ed Regula, an employee, and Mr. Kirschenbaum had FMLA certification and were late for work due to their or a family member's medical condition, but none of them was repeatedly asked to submit medical documentation and disciplined as appellant.

By letter dated April 11, 2011, Mr. Santulli and Ms. Lapi informed appellant that her start time was being changed from 3:00 a.m. to 9:00 a.m. which was in violation of a collective bargaining agreement. They also reassigned her to dispatch duties without assignment through competitive seniority bidding in violation of the employing establishment's rules, regulations, policies, or procedures. The dispatch duties were outside of appellant's medical restrictions and limitations related to her accepted claim under File No. xxxxxxx496. Other employees were accommodated with work within their medical restrictions and limitations. Ms. Lapi told appellant that she did not want to issue the April 11, 2011 letter or reassign her work duties. The employing establishment discriminated against appellant based on her sex and age as no males and no females under the age of 40 were similarly reassigned. In another letter dated April 11, 2011, Mr. Santulli and Ms. Lapi requested that she submit updated medical documentation within five days while clerks with on-the-job and off-the-job injuries were not required to do so. On or about April 16, 2011 Ms. Lapi yelled at appellant on the workroom floor in front of her coworkers about her age, job performance, personal matters, request for and use of leave under the FMLA, and work ethics in a demeaning, intimidating, condescending, embarrassing, and humiliating manner. Ms. Lapi invited Mr. Santulli to come nearer to hear her tongue lashing. Postmaster Weldon failed to reprimand Ms. Salerno who called appellant a profane name during a meeting.

In letters of warning dated March 24, 2009 and March 16, 2011, the employing establishment stated that appellant failed to be in regular attendance from February 5 to March 14, 2009 and January 3 to February 28, 2011, respectively. In a grievance dated April 7, 2009, appellant alleged that she was on scheduled annual leave on at least one of the dates listed in the March 24, 2009 letter.

Documents dated May 12 and April 19, 2011 indicated that appellant was eligible and approved for leave under FMLA.

[2] Appellant filed a traumatic injury claim for an injury sustained on March 21, 2005 under File No. xxxxxx496.

In an undated letter, Mr. Santulli informed appellant that her new work hours from 9:00 a.m. to 6:00 p.m. would begin on April 16, 2011.

Medical records dated June 6, 2011 to March 22, 2012 diagnosed appellant as having generalized anxiety and depressive disorders, emotional conditions, physical restrictions, disability, and medical treatment.

In a January 22, 2013 decision, OWCP denied modification of the June 27, 2011 decision, finding that the additional evidence did not establish the claim. It noted that appellant did not submit probative and reliable evidence to support her allegations.

By letter dated November 6, 2013, appellant, through counsel, requested reconsideration.

In an August 19, 2011 letter, Mr. Santulli informed appellant that her new tour of duty would begin at 9:00 a.m. effective immediately upon her return to duty.

In a September 17, 2012 witness statement, Quartryce Skyes, an employee, addressed appellant's contentions. She related that it was improper for the employing establishment to use approved leave as a basis for disciplinary action. Ms. Skyes further related that, since appellant's work-related shoulder injury under File No. xxxxxx496, appellant had not been given limited-duty work despite having a limited-duty assignment offer signed by a supervisor or management. Appellant was regularly assigned full-work duties without restrictions or limitations. She told Ms. Skyes that Mr. Santulli and Postmaster Weldon repeatedly asked her about her age, eligibility for retirement, and ability to perform her job. Appellant also told her about Postmaster Weldon's statement that, if she could not do the job, she was not needed on the tour. Ms. Skyes stated that appellant was not allowed work time to study a scheme change, while all male clerks and female clerks younger than her were afforded scheme study time. She was repeatedly asked to submit FMLA documentation by Ms. Lapi, Mr. Santulli, and the postmaster. They treated appellant in an abusive manner regarding her FMLA-protected absences. Mr. Nagilia knew about appellant's lifting restriction related to her accepted shoulder condition and her heart condition following a heart attack, but constantly directed her to work outside her restrictions on a daily basis. The change in her start time and reassignment to another bid position were in violation of the collective bargaining agreement. No man on appellant's tour received a new start time or was reassigned from mail processing duties to dispatch duties. Only one woman was given a new start time and reassigned from mail processing duties to dispatch duties. It was clear that these people were accommodated for either OWCP accepted work-related conditions or FMLA-certified medical conditions while appellant was not accommodated. Neither the postmaster nor supervisor spoke to them in an abusive, intimidating, demanding, embarrassing, and harassing manner.

On or about April 16, 2011 Ms. Skyes heard Ms. Lapi speak to appellant in a demanding, intimidating, condescending, embarrassing, and humiliating manner in the middle of the workroom floor and while assigning her work duties. Ms. Lapi often spoke to and about her subordinates in this manner which was clearly condoned and approved by the postmaster. Appellant was subjected to disparate treatment as she was repeatedly required to submit medical documentation to her immediate supervisors and postmaster in support of her FMLA certification while other employees were not required to do the same.

Mr. Santulli, Ms. Lapin, and Ms. Salerno responded to appellant's allegations. Mr. Santulli and Ms. Lapin stated that they did not remember issuing the March 24, 2009 letter of warning or appellant working beyond her restrictions and limitations. Mr. Santulli only remembered asking her for documentation regarding her FMLA absence. He and Ms. Lapi denied telling appellant that she was not needed on the tour if she could not do her job. Ms. Lapi stated that she was on a detail in Englishtown, New Jersey at that time. She also denied harassing appellant about her age, noting that they were the same age. Mr. Santulli stated that he did not care about appellant's age and that she did not work for him. Ms. Salerno did not recall having any conversations with appellant or any other employee about their age. Ms. Lapi stated that she was not concerned about appellant's retirement eligibility and Ms. Salerno did not recall having such a conversation with appellant. Ms. Lapi and Mr. Santulli stated that appellant was afforded the first two hours of tour to study scheme changes. Ms. Lapi stated, however, that she continually refused to swipe onto the correct operation code reflecting scheme study time. Mr. Santulli related that appellant did not apply and receive FMLA until March 2011 and she had 12 absences up to that point. He further stated that she had used invalid FMLA numbers. Ms. Lapi stated that she was not privileged to any of appellant's FMLA information as all information was sent to appellant from an FMLA coordinator. Mr. Santulli stated that he never received any FMLA documentation.

Regarding appellant's allegation of verbal abuse by management regarding her attendance record since December 2008, Ms. Lapi responded that she was in Englishtown, New Jersey in 2008. Mr. Santulli stated that he never made a comment about appellant's attendance. He and Ms. Lapi stated appellant's contention that her FMLA paperwork was found to be inadequate and that she had to repeatedly submit the paperwork was not true. Mr. Santulli stated that he was not allowed to ask for documentation when someone called out under FMLA documentation. Ms. Lapi stated that she never asked appellant for documentation. Mr. Santulli maintained that issuance of the March 16, 2011 letter of warning was not malicious. He further maintained that it was expunged as an act of good faith that appellant would not abuse her sick leave. Ms. Lapi stated that she was following Postmaster Weldon's instructions regarding issuing the April 11, 2011 letter which changed appellant's start time. Neither Mr. Santulli nor Ms. Lapi remembered that this letter changed appellant's work duties. Ms. Lapi believed she was on a detail in Lakewood, New Jersey when the letter was allegedly issued. Ms. Salerno did not recall appellant performing dispatch duties. Mr. Santulli stated that the male employees who did not have their start time or duties changed were not under NRP. Ms. Lapi stated that no other employees under NRP who were affected by its guidelines. She and Mr. Santulli denied treating appellant differently in accomodating the medical restrictions of other employees. Ms. Lapi was willing to accommodate her, however, she refused to provide all information and doctor's notes pertaining to her claim. Mr. Santulli stated that the required documentation was necessary to assign duties within her restrictions. Ms. Lapi denied that she lashed out at appellant on April 16, 2011. Mr. Santulli stated that this incident did not occur. Ms. Salerno stated that she never called appellant or any other employee a derogatory name.

In a February 26, 2014 decision, OWCP denied modification of the January 22, 2013 decision. It found that the evidence submitted failed to establish a compensable factor of employment.

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.[3] 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.[4]

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.[5] 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.[6]

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[7] 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.[8] In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.[9]

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

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[3] *Pamela R. Rice*, 38 ECAB 838 (1987).

[4] *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

[5] 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

[6] *Gregorio E. Conde*, 52 ECAB 410 (2001).

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

[8] *See William H. Fortner*, 49 ECAB 324 (1998).

[9] *Ruth S. Johnson*, 46 ECAB 237 (1994).

providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.[10] 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.[11]

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish an emotional condition causally related to factors of her federal employment. Appellant has not alleged any factors that would fall under the *Cutler* case as primarily, she alleged instances of harassment, discrimination based on her age, disability, and sex, intimidation, disparate treatment, and verbal abuse by Mr. Santulli, Ms. Lapi, Postmaster Weldon, and Ms. Salerno. Mere perceptions of harassment or discrimination are not compensable under FECA.[12] Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.[13]

Appellant claimed that Ms. Conrad witnessed the employing establishment treat her differently when she was verbally disciplined and received letters of warning for being late for work while other employees who had numerous late arrivals were not disciplined. She further claimed that Ms. Leary, Mr. Kirschenbaum, Mr. Collucci, and Mr. Hamby witnessed that employees were provided time to study a scheme change while she was not given such time. The record does not contain witness statements from any of these employees supporting appellant's allegations. The record fails to substantiate her allegation that management was trying to harass her into resigning because of her use of the FMLA and prior accepted employment injury.

Ms. Skyes generally maintained that appellant told her that Mr. Santulli and Postmaster Weldon repeatedly asked appellant about her age, retirement eligibility, and ability to perform her job. Her statements are insufficient to establish these incidents, however, as she did not claim to have actually witnessed them. Ms. Skyes further maintained that appellant told her that Postmaster Weldon stated that she was not needed on the tour if she could not perform her job. Ms. Lapi and Mr. Santulli denied this allegation and Ms. Lapi stated that she was on a detail in Englishtown, New Jersey when the alleged statement was made. She and Mr. Santulli also denied harassing appellant about her age or being concerned about her retirement eligibility. Ms. Lapi noted that she and appellant were the same age and Mr. Santulli stated that he did not care about appellant's age. Ms. Salerno did not recall having a discussion with appellant about her age.

[10] *Dennis J. Balogh*, 52 ECAB 232 (2001).

[11] *Id.*

[12] *James E. Norris*, 52 ECAB 93 (2000).

[13] *Id.*

Ms. Skyes' claim that Ms. Lapi, Mr. Santulli, and Postmaster Weldon treated appellant in an abusive manner regarding her FMLA-protected absences is general in nature and does not identify specific incidents of abuse. She maintained that appellant was subjected to disparate treatment because her accepted work-related or FMLA-certified medical conditions were not accommodated by the employing establishment while other employees with the same types of conditions were accommodated. Ms. Skyes noted that no male employee received a new start time or was reassigned and that only one other female employee received a new start time and was reassigned. She further maintained that appellant was repeatedly required to submit medical documentation to her immediate supervisors and postmaster in support of her FMLA certification while other employees were not required to do so.

A request for reasonable accommodation and medical documentation relate to administrative matters[14] and are not compensable absent a showing of error or abuse on the part of the employing establishment. Ms. Skyes' statements are general in nature and do not provide specific details sufficient to establish error or abuse by the employing establishment in denying appellant's request for reasonable accommodation and in requesting medical documentation. Ms. Lapi and Mr. Santulli denied disparate treatment of appellant regarding her request for accommodation of her restrictions. Ms. Lapi expressed her willingness to accommodate appellant's restrictions and stated that appellant refused to provide all the necessary medical documentation related to her claim. Mr. Santulli explained that the required documentation was necessary to assign duties within her restrictions. He and Ms. Lapi related that certain male employees were not assigned a new start time or duties as they were not under NRP. Based on the statements from Ms. Lapi, Mr. Santulli, and Ms. Salerno, the Board finds that appellant has not established a factual basis for her allegations that she was harassed, discriminated against based on her age, disability, and sex, intimidated, and subjected to disparate treatment by the employing establishment. Therefore, appellant has failed to establish a compensable factor of employment.

Ms. Skyes claimed that she heard Ms. Lapi verbally abuse appellant in front of her coworkers on April 16, 2011 regarding the assignment of work. She stated that Ms. Lapi often spoke to her subordinates in this manner. The Board has generally held that being spoken to in a raised or harsh voice does not of itself constitute verbal abuse or harassment.[15] Ms. Skyes' statements are general in nature and do not describe specific details of verbal abuse by Ms. Lapi on April 16, 2011 or on any other occasion directed at appellant. Ms. Lapi denied lashing out at appellant on April 16, 2011 and in December 2008. She stated that she was on a detail assignment in Englishtown, New Jersey in December 2008 when she allegedly verbally abused her. Mr. Santulli stated that the April 16, 2011 incident did not occur as alleged. Ms. Salerno denied calling appellant a profane name. The Board finds that appellant has not established that she was verbally abused by the employing establishment.[16] Appellant has not established a compensable factor of her employment.

[14] *James P. Guinan*, 51 ECAB 604, 607 (2000); *John Polito*, 50 ECAB 347, 349 (1999).

[15] *T.G.*, 58 ECAB 189 (2006).

[16] *See Judy L. Kahn*, 53 ECAB 321 (2002) (the fact that a supervisor was angry and raised her voice does not, by itself, support a finding of verbal abuse).

Appellant's allegations regarding changes in her work schedule,[17] assignment of work,[18] dislike of a supervisory or managerial action in being directed to follow instructions,[19] issuance of the March 29, 2009 and March 16 and 25, 2011 letters of warning,[20] the handling of her medical and personal paperwork, requests for medical documentation for her absences from work,[21] the filing of grievances,[22] and being placed on restricted sick leave,[23] are administrative matters[24] and not compensable absent a showing of error or abuse on the part of the employing establishment.[25] Mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor.[26] The Board finds that the record does not establish error or abuse in these matters and they are not compensable factors of employment. Ms. Skyes stated that it was improper for management to use approved leave as a basis for disciplinary action taken against appellant. She further stated that appellant's new start time and reassignment to another bid position were made in violation of a collective bargaining agreement. Ms. Skyes' statements are general in nature and do not provide specific details sufficient to establish error or abuse by the employing establishment in handling these administrative matters. She maintained that appellant's supervisor and management discarded or destroyed appellant's medical documentation and FMLA approval certifications. Ms. Skyes' statements are insufficient to establish any error or abuse as she did not indicate that she actually witnessed the employing establishment act erroneously or abusively as alleged by appellant in handling her submitted documents.

Regarding her statement that the disciplinary letters issued to appellant had been expunged from her file as a result of a grievance she filed, the Board notes that the mere fact that personnel actions were later modified or rescinded does not, in and of itself, establish error or abuse.[27] While the March 16, 2011 letter of warning was expunged from appellant's file, the record does not contain a final decision finding that the employing establishment committed error or abuse in issuing this letter or the other disciplinary letters. Mr. Santulli explained that issuance of the March 16, 2011 letter was not malicious. He further explained that it was expunged from appellant's file as an act of good faith that she would not abuse her sick leave.

[17] *Ernest J. Malagrida*, 51 ECAB 287 (2000).

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

[19] *See Marguerite J. Toland*, 52 ECAB 294 (2001).

[20] *See Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[21] *James P. Guinan*, 51 ECAB 604, 607 (2000); *John Polito*, 50 ECAB 347, 349 (1999).

[22] *Michael A. Salvato*, 53 ECAB 666, 668 (2002).

[23] *C.T.*, Docket No. 08-2160 (issued May 7, 2009); *Jeral R. Gray*, 57 ECAB 611 (2006).

[24] *J.C.*, 58 ECAB 594 (2007).

[25] *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

[26] *A.K.*, Docket No. 14-437 (issued June 9, 2014).

[27] *Dennis J. Balogh*, 52 ECAB 232 (2001).

Mr. Santulli noted that she had 12 absences before she applied and received leave under the FMLA in March 2011. He also noted that appellant had used invalid FMLA numbers. Mr. Santulli and Ms. Lapi denied repeatedly asking her to submit FMLA paperwork and deeming the submitted paperwork as inadequate. Mr. Santulli maintained that he was not allowed to ask for such documentation. Ms. Lapi stated that she was not privileged to any of appellant's information since it was sent to her by an FMLA coordinator.

Regarding the issuance of the April 11, 2011 letter informing appellant that her start time had been changed from 3:00 a.m. to 9:00 a.m., Ms. Lapi stated that she only followed Postmaster Weldon's instructions to do so. Neither she nor Mr. Santulli recalled issuing the April 11, 2011 letter which informed appellant about her reassignment to a new work position. Ms. Lapi related that she was on a detail in Lakewood, New Jersey when the letter was allegedly issued. Mr. Santulli did not recall appellant performing dispatch duties. He noted that her work duties were last modified in August 2010 due to changes in mail volumes and processing and operational concerns. Mr. Santulli explained that this modification was also necessary to ensure that appellant performed work within her restrictions. He stated that she claimed a work-related emotional condition because she was unhappy and brooding about the employing establishment's failure to provide her with the work she desired. As stated, appellant's desire to work in a particular work environment does not relate to any requirement of her assigned duties and, thus, her reaction did not arise in the performance of duty.[28] Based on the statements from Mr. Santulli and Ms. Lapi, the Board finds that appellant has failed to establish that the employing establishment committed error or abuse in handling the above-noted administrative matters. Therefore, appellant has failed to establish a compensable factor of employment.

Appellant alleged that since 2008 the employing establishment did not abide by her work restrictions and management failed to provide assistance with her work duties. Being required to work beyond one's physical limitations may constitute a compensable employment factor, but such allegation must be substantiated by probative and reliable evidence.[29] The record does not contain sufficient evidence to establish that appellant had specific limitations that were not accommodated by the employing establishment. Ms. Skyes claimed that appellant was assigned full-work duties despite having a limited-duty job offer related to her accepted shoulder condition under File No. xxxxxx496 and that Mr. Nagilia directed appellant to work outside her lifting restriction on a daily basis. The Board finds that Ms. Skyes' statement is general in nature and does not specifically identify the nature of appellant's restrictions and assigned work duties. Further, appellant did not submit any evidence to support her claim that management failed to provide assistance with her work duties. She has not submitted evidence sufficient to establish that her physical restrictions were exceeded or that management failed to provide her with assistance. The Board finds that appellant has not established a compensable employment factor.

Since appellant has not established a compensable work factor, the Board will not address the medical evidence.[30]

[28] *Supra* note 6.

[29] *Diane C. Bernard*, 45 ECAB 223 (1993); *Lizzie McCray*, 36 ECAB 419, 421 (1985).

[30] *Karen K. Levene*, 54 ECAB 671 (2003).

On appeal, appellant has submitted new evidence. The Board lacks jurisdiction to review evidence for the first time on appeal.[31] Appellant may submit new evidence to OWCP with a written request for reconsideration within one year of this merit decision.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the February 26, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 2, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[31] 20 C.F.R. § 501.2(c)(1).