



attacks while in the performance of duty. He claimed that his conditions were due to his position being undermined and continuous pressure, stress, and unfair and malicious treatment at work, as well as fear of retaliation. Appellant first became aware of his claimed conditions and their relationship to his federal employment on June 18, 2015.

By development letter dated November 16, 2015, OWCP informed appellant of the deficiencies in his claim and requested that he submit additional factual and medical evidence. It also requested that the employing establishment respond to appellant's allegations.

In an undated statement, appellant noted that, during the evening shift roll call on December 11, 2014, he spoke briefly to officers about a suicide attempt that took place on the employing establishment's east campus on the previous evening. He asked an officer who was present at the scene to provide more details about this incident. At that time, Officer M. commented that had the watch commander had been present on the scene, followed procedures, and knew what he was doing, then the incident would not have turned out the way it did. Appellant ended roll call and requested Officer M. to stand by because he wanted to speak to him further. Officer M. refused to stay and left the room. The lead watch commander, Major J., instructed appellant to have Officer M. see him. Appellant then instructed MA1 C. to pick up Officer M. from his post at gate 3. Approximately 40 minutes later, Major J. asked appellant about Officer M.'s whereabouts. Appellant contacted MA1 C., who informed him that Officer M. was not going to return to the precinct. Appellant requested that Officer M. be "red tagged" and that an investigation be conducted on charges of gross insubordination and not following a direct order from his immediate supervisor.

In an undated letter, appellant also attributed his emotional condition to several other incidents at work. He alleged that he unjustifiably received low performance ratings on October 17, 2012, December 11, 2013, and September 30, 2014, as witnessed by Captain L.P. Appellant maintained that his performance was equal to or better than all of his peers. He related that he had never been put on a performance improvement plan (PIP) and had always accomplished his tasks. Appellant was the only supervisor who had been transferred to all three shifts twice, which continuously disrupted his quality of life. He asserted that, since 2013, his requests to wear the rank of Captain, GS-8, the pay grade at which he was already being paid, were denied. A lead watch commander informed appellant that he could wear the GS-8 captain rank only if Captain L.P. was awarded the same privilege. The lead watch commander noted, however, that the commandant did not want Captain L.P. to wear the rank. Subsequently, appellant was allowed to wear the rank of captain after two employees were hired at the GS-8 captain level. He contended that, although he had been a GS-8 since 2009, not being allowed to wear the rank belittled and degraded him in the work environment. Appellant asserted that a hostile work environment was created as he collected the same pay while working along with other GS-8 employees who were allowed to wear the captain rank.

During an investigation conducted by appellant, Officer M., who was serving as a union representative, threatened to have appellant fired because an investigative interview was invalid. Appellant claimed that when he reported Officer M.'s statements to Major J., Major J. dismissed his complaint by responding that Officer M.'s statements were just words.

Major J. became upset with appellant and called him derogatory names in front of his peers and subordinates. Appellant asserted that this incident occurred while he was a United States Army "Fort Story liaison and after he was unable to provide the status of Fort Story." He also asserted that Major J. demanded to be called major or sir. Appellant wished to discuss the incident with Major J., but he feared retaliation. He listed coworkers who witnessed these incidents.

Appellant went on to contend that Major J. created a hostile work environment by negatively speaking to civilians about military members and telling the civilian watch commanders not to give them supervisory tasks. He promoted segregation between military members and civilians in an environment where they were forced to work together. Appellant claimed that while he was following Major J.'s recommendation to segregate the staff and to run a strict shift, military members complained about him to the chain of command and commanding officer. He asked Major J. for documentation supporting these complaints, but none was provided. Appellant maintained that Major J. allowed the perception to exist that he (appellant) was acting on his own accord and that Major J. did not support his actions. He asked Major J. about being loyal to him and Major J. responded that he had no loyalty.

On April 20, 2015 the employing establishment issued a letter of reprimand to appellant for failing to timely notify Major J. about a February 8, 2015 incident. Appellant maintained that he followed protocol and notified everyone in his chain of command as he telephoned a command duty officer, Major J., and Precinct Commander Lieutenant Colonel D. about the incident. He asserted that a desk journal indicated that the incident occurred at 22:44 (10:44 p.m.). Appellant claimed that he provided notification at 22:50 while the letter of reprimand indicated that he did not provide notification until two hours and seven minutes after the incident. He related that he spoke to Lieutenant Colonel D. several times on the night of the incident and sent pictures to him from his personal cell phone shortly after the incident occurred. Appellant noted that a military member who was standing watch at the incident abandoned her post, but was never reprimanded for her action.

On June 30, 2015 appellant informed Lieutenant F. about his concerns, including being highly stressed and depressed. Lieutenant F. told him to go home because he was in no condition to work. On the next day, Major J. sent an e-mail to all of appellant's peers and personnel, who were not in his chain of command, stating that appellant was red-tagged for a "medical reason." When appellant returned to work to enter his time into the Standard Labor Data Collection and Distribution Application he noticed that Major J. had changed his sick leave to annual leave. He informed Major J. that he was on sick leave and that he would be on sick leave on future dates. Appellant claimed that Major J. responded that he was unaware of his leave usage. However, he noted that on July 1, 2015 Major J. sent an e-mail to his peers clearly indicating an awareness of his medical condition. Appellant alleged that his work environment had become so stressful that he was forced into early retirement by Major J.

Appellant submitted e-mails between himself and the employing establishment dated July 13 and August 3 and 4, 2015, which addressed the changing of his sick leave on June 30, 2015, the use of leave from July 12 to 16, 2015, and his request to have a meeting concerning the February 8, 2015 incident. He also submitted a copy of the April 20, 2015 letter of reprimand. The letter indicated that appellant refused to sign and acknowledge receipt of the letter. A Consolidated Law Enforcement Operations Center (CLEOC) journal document dated February 9,

2015 indicated that on February 8, 2015 appellant and several other employees responded to unauthorized entry by two male suspects. The document indicated that notification was provided on February 8, 2015 at 22:50 to Major J., 22:55 to Precinct Commander Lieutenant Colonel D., and 23:00 to “JEBLCFS CDO BM1” G.

Medical reports dated June 18 and July 13 and 28, 2015 from certified physician assistants indicated that appellant had adjustment disorder with depression and addressed his work capacity and mental health treatment.

Major J., in a December 11, 2015 statement, indicated that performance ratings were only acceptable or unacceptable and an award was separate. He further indicated that an employee could not challenge performance awards, reward recommendation scores, career stage determinations, or the substance of their job objectives. Major J. noted that appellant’s request to transfer to the night shift was granted. He further noted that appellant was subsequently moved to the day shift after repeatedly having issues on night shift duty. Appellant was then placed as a liaison officer and towing officer and performed well while working with a limited number of assigned personnel. Major J. maintained that he never asked nor demanded to be called major or sir. He related that this was simply a matter of professionalism and admired respect, but not required. Major J. expected his staff to be professional, respectful, and polite to others while performing their daily assigned duties. He noted that appellant held the position of watch commander for some time and was later reassigned as an assistant to have a layer between him and his subordinates to buffer or squash the many complaints employees had after interacting with him. Major J. further noted that wearing a collar device (rank insignia) was a management decision for an employee who transferred from the United States Army, Fort Story. He maintained that appellant failed as a supervisor as appellant did not put union officials on notice during interviews and allowed them to control meetings and intimidate management. Major J. related that no accommodations were made for appellant based on his submission of leave and that simultaneous extended leave was provided until his retirement date. He alleged that there were stressors with most jobs and the leader of troops (civilian/military police officers) bore the weight of his or her subordinates’ actions. Major J. further alleged that appellant’s personal stressors and financial problems added to his work stress. He refused help from the employing establishment’s employee assistance program. Major J. noted that appellant’s request to report to the night shift for additional pay was authorized. He also noted that appellant was generally able to perform his duties with supervisory oversight at times. Appellant received verbal and written counseling during his tenure. Major J. explained that the April 20, 2015 reprimand letter was issued because appellant had delayed immediate action following a serious incident at work. He related that his action remained very disturbing. Major J. indicated that appellant was afforded an opportunity to address the letter as part of his rights under the administrative grievance procedure.

Major J. submitted copies of several letters of counseling issued to appellant. An April 5, 2011 letter indicated that on April 2, 2011 appellant failed to notify the chain of command or an agency about mail that was sent to a housing area without being processed through the U.S. Postal Service system. A May 24, 2011 letter noted that during roll call on May 23, 2011 appellant failed to properly respond to an officer’s question regarding his work assignment. A May 26, 2011 letter stated that on May 24, 2011 appellant failed to inform an officer about a make-up date for a training class, causing the officer to miss the class. A January 24, 2013 letter maintained that appellant, on December 28, 2012, failed to listen to a sentry. He also demonstrated a lack of knowledge of his

supervisory duties as he was not aware of policies related to a search of a vehicle that attempted to enter an installation without a state inspection sticker. A June 10, 2015 letter maintained that on June 10, 2010 appellant failed to provide notification about the spill of an unknown substance from a Canadian ship at sea.

A position description submitted to OWCP discussed the duties of a supervisory police officer.

By decision dated December 17, 2015, OWCP denied appellant's claim for an emotional condition. It found that he had not established any compensable employment factors. OWCP also found that the evidence of record did not contain a medical diagnosis in connection with the claimed incidents. It noted that a physician assistant was not considered a physician under FECA. Thus, OWCP concluded, that appellant had not sustained an injury as defined under FECA.

On September 7, 2016 appellant requested reconsideration. In an undated statement, he reiterated his prior contentions regarding changes to his shift and leave usage, being called derogatory names by Major J., the February 8, 2015 incident, the April 20, 2015 reprimand letter, his June 30, 2015 conversation with Lieutenant F., and denial of his request to wear the captain rank. He asserted that his coworkers, Captain M.F., Captain N.F., Lieutenant B.F., and Officer E.T. could verify his claims. Appellant attributed his emotional condition to an additional action of Major J., the denial of his request to use leave in February 2012. He noted that his request was made two months prior to February 2012 and that Major J. denied the request one day before the desired leave date. In October 2015, Captain H. informed appellant that his allegations would be investigated. Captain S. informed appellant in March 2016 that a command investigation was conducted and that appropriate actions had been taken.

Appellant submitted medical reports dated July 13, 2015 to August 18, 2016 which diagnosed, among other things, adjustment disorder with depressed mood, stress and adjustment reaction, persistent depressive disorder, dysthymic, and a mild single episode of major depressive disorder.

In an undated statement, Patrolman M.B. related that he did not hear Major J. call appellant out of his name. He felt, however, that Major J. disrespected appellant professionally on many levels and in front of junior patrol officers. Patrolman M.B. noted that appellant had complained to him and other watch commanders about Major J.'s actions. He felt that Major J. singled out appellant when there was a watch commander rotation at the east campus. Patrolman M.B. maintained that Major J. always made appellant stay on the west campus to run the watch section. Major J. never called back other watch commanders who were on rotation at the east campus. Patrolman M.B. indicated that another watch commander would be recognized for the work appellant performed. He witnessed the statements made by Officer M. regarding appellant's failure to follow employing establishment procedures during the December 2014 incident. Patrolman M.B. noted that Officer M. told him that Major J. came to his post to discuss what happened during roll call. Officer M. also told him that he had refused to leave his post to talk to appellant.

MA1 C., in a January 12, 2016 statement, noted that on or about December 10, 2014 he and appellant served as assistant watch commander and evening shift watch commander,

respectively, during a call for service at base housing regarding suicidal ideations. He indicated that the situation was resolved without mishap. MA1 C. related that during the evening shift on or about December 11, 2014 appellant briefed the shift about the outcome of the December 10, 2014 incident. Officer M. expressed his concerns about the unparalleled actions taken by appellant during the incident and reported to his assigned post at the end of roll call. MA1 C. stated that he was instructed by appellant to bring Officer M. to him and that Officer M. refused to come along.

In an October 27, 2016 statement, appellant claimed that Major J.'s statements were not true. He contended that no PIP had been created to address employees' complaints against him. Appellant asserted that being called derogatory names in front of his peers and employees by Major J. seriously undermined his position as a supervisor. He restated his allegations that Major J. demanded to be called major or sir and that Major J. refused to be loyal to him during the interview in which Patrolman M.B. served as a steward.

By decision dated December 2, 2016, OWCP modified the December 17, 2015 decision from a denial based on one of the five basic elements for FECA to a denial based on another element. It found that he had established fact of injury, but he had not established that he sustained a compensable factor of employment. OWCP concluded its finding that the claim remained denied because performance of duty had not been established.

On February 27, 2017 appellant requested reconsideration.

In a January 9, 2016 statement, Patrolman M.B. reiterated the same information he provided in his undated statement regarding Major J.'s actions directed toward appellant.

Appellant submitted an undated list of employees, including Patrolman M.B. and MA1 C., who had telephone conversations regarding his claim of a hostile work environment.

In a May 25, 2017 decision, OWCP denied modification of its December 2, 2016 decision. It reviewed the additional evidence submitted and found that appellant had not established that he sustained an emotional condition in the performance of duty.

### **LEGAL PRECEDENT**

A claimant has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by factors of his or her federal employment.<sup>2</sup> To establish 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 the emotional condition.<sup>3</sup>

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<sup>2</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>3</sup> *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

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 regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>4</sup> On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>5</sup>

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.<sup>6</sup> Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.<sup>7</sup> A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>8</sup>

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. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>9</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>10</sup> If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a

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<sup>4</sup> *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>6</sup> *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>7</sup> *Kim Nguyen*, 53 ECAB 127 (2001). See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>8</sup> *Roger Williams*, 52 ECAB 468 (2001).

<sup>9</sup> *Alice M. Washington*, 46 ECAB 382 (1994); *E.C.*, Docket No. 15-1743 (issued September 8, 2016).

<sup>10</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.<sup>11</sup>

### ANALYSIS

The Board finds that appellant has not established an emotional condition in the performance of duty.

Appellant alleged that he sustained an emotional condition as a result of several employment incidents and factors. OWCP denied the emotional condition claim finding that he had not established any compensable employment factors. The Board must initially review whether these alleged incidents and conditions of employment are compensable employment factors under the terms of FECA. The Board notes that appellant's allegations do not pertain to his regular or specially assigned duties under *Cutler*.<sup>12</sup> Rather, appellant has alleged error and abuse in administrative matters and harassment on the part of his subordinate and supervisor.

In *Thomas D. McEuen*,<sup>13</sup> the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA as such matters pertain to procedures and requirements of the employing establishment and do not bear a direct relationship to the work required of the employee. The Board noted, however, that coverage under FECA would attach if the facts surrounding the administrative or personnel action established error or abuse by employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated, and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>14</sup>

Appellant has attributed his emotional condition to actions of the employing establishment, including low performance appraisal ratings, changes to his work shift and leave usage, denial of his requests for leave and to wear the Captain rank, issuance of the April 20, 2015 letter of reprimand, and an inadequate investigation of his complaints against Major J. The Board has long held that disputes regarding assessment of work performance,<sup>15</sup> leave,<sup>16</sup> the assignment of work,<sup>17</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> *See supra* note 4.

<sup>13</sup> *Supra* note 7.

<sup>14</sup> *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>15</sup> *F.A.*, Docket No. 17-0315 (issued July 11, 2017); *Elizabeth W. Esnil*, 46 ECAB 606 (1995).

<sup>16</sup> *E.M.*, Docket No. 16-1695 (issued July 27, 2017); *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995).

<sup>17</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *Beverly R. Jones*, 55 ECAB 411, 416 (2004).



disciplinary matters,<sup>18</sup> and investigations<sup>19</sup> are administrative or personnel matters and can only be considered compensable work factors if there is probative evidence of error or abuse.<sup>20</sup>

Appellant claimed that Captain L.P., Captain N.F., Lieutenant B.F., and Officer E.T. could verify his claims that the employing establishment improperly gave him low performance ratings, issued the April 20, 2015 reprimand letter, and denied his request to wear the rank of captain. However, he did not provide any statements from those witnesses. In a statement dated December 11, 2015, Major J., appellant's supervisor, provided several responses to appellant's allegations. Regarding appellant's work shift and job position changes, Major J. noted that employees could not challenge performance awards, reward recommendation scores, career stage determinations, or the substance of their job objectives. He explained that appellant was reassigned from the night shift to the day shift due to repeatedly having issues on the night shift. Major J. further explained that he was reassigned from a watch commander position to an assistant position due to complaints from his subordinates. Regarding appellant's request to wear the captain rank, he related that wearing a rank insignia was a management decision for an employee who transferred from United States Army, Fort Story. The record does not indicate that he was a Fort Story employee who transferred to the employing establishment. Rather, he merely worked as the employing establishment's liaison at Fort Story. Regarding disciplinary actions taken against appellant, Major J. explained that appellant received verbal and written counseling due to his poor performance as a supervisor. He noted that appellant failed to provide notice to union officials during interviews and allowed them to control meetings and intimidate management. Major J. submitted letters of reprimand dated April 5, 2011 to June 10, 2015. The April 5, 2011 letter of reprimand was issued after appellant failed to notify the chain of command or an agency about mail that was sent to a housing area without being processed in the U.S. Postal Service system on April 2, 2011. The May 24, 2011 reprimand letter was issued because he failed to properly respond to an officer's question regarding his work assignment during roll call on May 23, 2011. A letter of reprimand was issued on May 26, 2011 after appellant failed to inform an officer on May 24, 2011 about a make-up date for a training class, causing the officer to miss the class. Another letter of reprimand was issued on January 24, 2013 after he failed to listen to a sentry and to be aware of policies related to a search of a vehicle attempting to enter the installation without a state inspection sticker on December 28, 2012. Major J. explained that the April 20, 2015 reprimand letter was issued because appellant failed to timely act following a serious incident. He maintained that his behavior remained disturbing. Major J. noted that appellant was afforded an opportunity to exercise his rights to address the April 20, 2015 reprimand letter through the employing establishment's administrative grievance process. A letter of reprimand was issued on June 10, 2015 after appellant failed to provide notification regarding the spill of an unknown substance from a Canadian ship at sea on June 10, 2010. In light of Major J.'s statements and the evidence he submitted, the Board finds that management did not commit error or abuse in the handling of the above-noted administrative matters. Therefore, appellant has failed to establish a compensable employment factor.

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<sup>18</sup> *C.T.*, Docket No. 08-2160 (issued May 7, 2009).

<sup>19</sup> *F.M.*, Docket No. 16-1504 (issued June 26, 2017); *G.S.*, Docket No. 09-0764 (issued December 18, 2009).

<sup>20</sup> *Charles D. Edwards*, 55 ECAB 258 (2004).

Appellant has also attributed his emotional condition to the actions of Officer M. He alleged that Officer M. was grossly insubordinate during roll call on December 11, 2014 as he accused him of not being on the scene, failing to follow procedures, and not knowing what to do in response to a suicide attempt that took place at work on December 10, 2014. Officer M. also failed to leave his post and return to the precinct to discuss his comment with Major J. as directed by appellant. The witness statements of Patrolman M.B. and MA1 C. substantiated appellant's allegations that Officer M. had stated that appellant failed to properly follow procedures related to the December 10, 2014 incident and that Officer M. refused to leave his post to discuss this incident with Major J. These statements, however, do not provide any evidentiary support that Officer M.'s comments regarding appellant's response to the December 10, 2014 incident and his refusal to leave his post constituted gross insubordination.<sup>21</sup> The Board notes that, it apparently was not necessary that Officer M. leave his post as Patrolman M.B. reported that Officer M. told him that Major J. came to his post to discuss what occurred during roll call. In addition, while appellant requested that disciplinary action be taken against Officer M., the record does not indicate that such action took place. The Board finds, therefore, that there is insufficient evidence corroborating appellant's charges that Officer M. was grossly insubordinate. Appellant has not established a compensable work factor with respect to his claims against Officer M.

Appellant further attributed his emotional condition to a hostile work environment through the actions of Major J. He claimed that Major J. requested that employees address him major or sir. Appellant alleged that Major J. instructed him to segregate civilian employees from military members and to tell civilian watch commanders not to give military members supervisory tasks, but did not support him and refused to be loyal to him when he implemented these recommendations as Major J. made it appear that he was acting on his own behalf rather than following his recommendations. He asserted that Major J.'s actions resulted in military members complaining about him to the chain of command and commanding officer. Appellant contended that Major J. failed to adequately address his concern about Officer M., who as a union representative, threatened to have him fired due to conducting an invalid investigative interview of Officer E., and failing to provide Officer E. with a Kalkine warning. He maintained that Major J. responded that Officer M.'s statements were just words.

In his December 11, 2015 statement, Major J. denied appellant's allegation that he requested or demanded to be called major or sir. He noted that these titles were simply a matter of professionalism and admired respect. Major J. expected his staff to be professional, respectful, and polite to one another while performing their daily assigned duties. He contended that appellant's personal stressors and financial problems contributed to his work stress. Based on Major J.'s statements, the Board finds that appellant has not established a compensable employment factor due to a hostile work environment through the actions of Major J.

Regarding appellant's allegations of following Major J.'s instructions and his lack of support for doing so, the Board finds that although the assignment of work duties<sup>22</sup> and the

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<sup>21</sup> See generally *R.K.*, Docket No. 08-0144 (issued June 3, 2008).

<sup>22</sup> *Supra* note 17.

provision of support for supervisors and the handling of concerns raised by supervisors<sup>23</sup> are generally related to the employment, they are administrative functions of the employer and not duties of the employee. The Board recognizes that a supervisor or manager must be allowed to perform his or her duties and that, in performing such duties, employees will at times dislike actions taken.<sup>24</sup> Appellant provided no probative evidence to support that his supervisor committed error or acted unreasonably in exercising his supervisory authority with respect to these administrative matters. Thus, he has not established a compensable factor of employment.

Appellant asserted that Major J. became upset with appellant and called him derogatory names in front of his peers and subordinates. He maintained that Major J.'s actions seriously undermined his position as a supervisor. Appellant claimed that he was unable to discuss this matter with Major J. due to fear of retaliation. To the extent that these incidents are alleged as constituting harassment or a hostile environment by a manager are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.<sup>25</sup> However, for harassment to give rise to a compensable disability under FECA, there must be evidence that harassment did in fact occur. A claimant must establish a factual basis for his or her allegations that discrimination occurred with probative and reliable evidence.<sup>26</sup> Mere perceptions of harassment are not compensable under FECA.<sup>27</sup> In an undated statement, Patrolman M.B. related that although he did not hear Major J. call appellant out of his name, Major J. disrespected appellant on many levels and in front of junior patrol officers and singled appellant out by not allowing him to rotate from the west campus to the east campus. He contended that Major J. never recalled other watch commanders from the east campus to the west campus. The Board finds, however, that Patrolman M.B.'s statement is insufficient to establish harassment as it is vague and general. He did not specifically identify incidents wherein Major J. disrespected appellant. Moreover, Patrolman M.B.'s statement with respect to appellant being singled out and not allowed to rotate from the west campus to the east campus does not indicate that this action was taken for a negative reason.<sup>28</sup> The Board finds, therefore, that appellant has not established a compensable employment factor with regard to his allegation of harassment.

As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record.<sup>29</sup>

On appeal appellant contends that he was in the performance of duty when his immediate supervisor always challenged his decisions. As previously explained, appellant did not submit

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<sup>23</sup> *J.M.*, *supra* note 17.

<sup>24</sup> *See M.M.*, Docket No. 06-0998 (issued August 28, 2006); *Michael A. Deas*, 53 ECAB 208 (2001).

<sup>25</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>26</sup> *G.S.*, *supra* note 17.

<sup>27</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991). *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).

<sup>28</sup> *Christine Moore*, Docket No. 00-0784 (issued March 12, 2001).

<sup>29</sup> *A.K.*, 58 ECAB 119 (2006).

evidence to establish his allegation of harassment as factual. For the foregoing reasons, appellant has not established any compensable employment factors under FECA and, therefore, has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

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 his burden of proof to establish an emotional condition in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 25, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 14, 2018  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board