United States Department of Labor
Employees' Compensation Appeals Board

B.O., Appellant	)	
and	)	**Docket No. 17-1986**
	)	**Issued: January 18, 2019**
DEPARTMENT OF VETERANS AFFAIRS, SAN FRANCISO VETERANS MEDICAL CENTER, San Francisco, CA, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 22, 2017 appellant filed a timely appeal from a March 28, 2017 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 to consider the merits of the case.[2]

ISSUE

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

[1] 5 U.S.C. § 8101 *et seq.*

[2] Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from March 28, 2017, the date of OWCP's last decision, was September 23, 2017. Since using September 25, 2017, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is September 22, 2017, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

FACTUAL HISTORY

On October 5, 2016 appellant, then a 31-year-old dispatcher assistant, filed an occupational disease claim (Form CA-2) alleging that she developed mental and emotional stress as a result of workplace harassment from management. She became aware of her condition on June 25, 2016 and its relation to her federal employment on June 30, 2016. Appellant resigned from her employment on January 29, 2017.

By development letter dated October 13, 2016, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her of the type of evidence needed, including a narrative medical report from her psychiatrist or clinical psychologist, and requested that she complete a questionnaire describing her allegations of harassment. OWCP afforded her 30 days to submit the requested evidence. It also requested that the employing establishment comment on the accuracy of all statements.

Appellant submitted her Equal Employment Opportunity (EEO) complaint dated June 25, 2016 and alleged that she was subject to retaliatory actions after she became a union steward, that a forged document was uploaded into her personnel file, that she was ordered into leave without pay (LWOP) status without management providing documented allegations of wrong doing, that she was reassigned from her job and issued a new work shift resulting in lower pay and no overtime, and she was denied a written list of new job duties.

In an undated response to the development questionnaire, appellant indicated that from November 2014 to December 2015 she was the subject of bullying and habitually denied equal overtime work opportunities. She reported that on June 11, 2016, while working as dispatcher, she received a call from the employing establishment's police in the Palo Alto office, who reported a third-party staff member with suicidal ideation hiding under his desk. Appellant indicated that his exact location was unknown. She advised Officer F. of the situation for possible dispatch and advised that the subject had no weapons. Appellant reported broadcasting the dispatch and Officer L.B. began issuing command statements and questions while she stood in the hallway outside dispatch causing a disturbance during an imminent dispatch situation. She asked Officer L.B. to stop and she proceeded to close the door when Officer L.B. placed her foot in the doorway and fully entered the dispatch area and continued to be an impediment to an emergency response. Appellant indicated that Officer L.B. was limiting her ability to move in a confined area, and causing an impediment and interruption to emergency response procedures. She indicated that she dispatched the only other officer on duty to remove Officer L.B. from the dispatch area because she was an armed police officer causing a disturbance. Appellant noted briefly documenting the incident in the police logs. On June 17, 2016 she reported to work and L.L., appellant's first line supervisor, yelled at her and told her she was reassigned to administrative duties.

Appellant was treated by Dr. Nelson Wong, a Board-certified emergency room physician, on July 2, 2016, who noted that appellant was excused from work from July 2 to 6, 2016. In a July 6, 2016 report, Dr. Nha-Ai Nguyen-Duc, a Board-certified internist, treated appellant and advised that she would be off work from July 6 to 20, 2016. Similarly, on October 25, 2016, Dr. Ramotse Sanders, a Board-certified psychiatrist, indicated that based on her clinical presentation she required a leave of absence for a period of 120 days applied retroactively to the date of onset of her symptoms of June 25, 2016. Appellant was treated in the employing

establishment medical unit from July 5 to October 6, 2016 for depression, anxiety, sleep disturbance, and stress in coping with a difficult work environment.

In an e-mail dated July 6, 2016, L.L. indicated that a Weingarten investigation was initiated with Officer L.B. and appellant regarding an altercation which occurred during a potentially volatile situation involving the immediate safety of an employee. He noted that appellant was not placed on administrative duties pending the investigation, rather, she was placed on administrative duties pending dispatch retraining. L.L. further indicated that she would be retrained on radio procedures, Department of Justice and dispatch procedures. In a memorandum dated June 17, 2016, L.L. provided appellant a 14-day notification for dispatcher retraining starting July 5, 2016. He noted that she would be temporarily reassigned. L.L. advised that this was not a disciplinary action and would last approximately 30 days.

On July 28, 2016 L.L. responded to appellant's grievance noting that appellant was properly placed on administrative duties until training could be scheduled. He advised that there was no evidence that she was publicly humiliated or that the agency favored one bargaining unit employee over another. L.L. indicated that appellant was scheduled for additional training as a police dispatcher. Officer L.B. Appellant was informed at her mid-year evaluation that her supervisor had concerns about her log entries and her failure to conduct code drills as required. L.L. hoped that additional training would relieve the stress appellant had claimed.

In an August 11, 2016 memorandum, appellant requested reassignment to the Emergency Management Department or another facility within 25 miles of her residence due to the adverse actions taken against her by management. She asserted that the current department was not a safe place for her to continue to work.

In a letter dated November 2, 2016, L.L. informed appellant that she had been in LWOP status since October 24, 2016. He indicated that she provided documentation supporting her absence from work retroactively for 120 days beginning June 25, 2016. L.L. advised that appellant had not reported to work and had not contacted him, therefore she was in LWOP status.

In an undated statement received on November 16, 2016, appellant alleged that in early 2016 she witnessed extreme nepotism, gross abuse of department management's authority, and department funds which caused unprecedented and habitual cycles of losing personnel and searching for new candidates. She indicated that there was a lack of upward mobility in her station as employees could not advance past a GS-6 position, overtime and training opportunities were unfairly and sporadically distributed for dispatch personnel, and overtime officer positions were assigned multiple additional duties without receiving additional pay. Appellant indicated that M.K., a police lieutenant, improperly distributed overtime. She indicated that in March 2016 she became a union representative and requested to attend union training and subsequently became the target of harassment and reprisals. Appellant asserted that after returning from the union training on June 1, 2016 there was a newly scheduled staff meeting in which she presented a series of questions relating to misallotment of the police budget and overtime. She alleged that on June 2, 2016 she had an unannounced and impromptu mid-term appraisal and informed her supervisor of a falsely reported document uploaded into her personnel file which stated that she refused to sign her appraisal. Appellant reported being placed on LWOP on June 16, 2016 based on an incident that occurred on June 11, 2016 in which an unsubstantiated complaint was filed for an interruption to emergency response that was

logged in the police journal. She attended an investigational meeting and was immediately reassigned to a series of menial tasks. Appellant alleged that her supervisor, L.L., ordered her in a loud and embarrassing manner to remove her things from the dispatch area and relocate to a position called "administrative duties." She alleged that L.L. had directed her to clean out the office across the hall. Appellant indicated that for the next week she was not permitted to work as a GS - 0086 dispatcher, but could only perform menial tasks.

In response to an OWCP questionnaire dated November 20, 2016 appellant indicated that she had no stress outside her employment except economic and familial issues as a result of the June 11, 2016 incident. Appellant reported no prior mental or emotional conditions and indicated this was the first time in her life she sought counseling. She reported being treated in the emergency room in June 2016.

In an undated statement received on November 22, 2016, Officer L.B. indicated that on June 11, 2016 she heard the dispatch telephone ring and appellant call for Officer F. informing him that a staff member at the San Bruno clinic was having a psychotic break and was hiding under his desk. She indicated that no announcements were made over the radio of the incident. Officer L.B. noted that appellant seemed to be having difficulty in dispatch and was not passing on any information so she asked if there were weapons involved. She indicated that appellant removed the telephone from her ear and said "don't do that" then attempted to close the door while she was standing in the hallway at the entrance of the dispatch office. Officer L.B. noted putting her foot in the door so she could hear what was happening and relay information to the other officers. She indicated that she knew appellant was upset and had difficulty managing dispatch and requested a second dispatcher. Appellant confirmed that the staff member did not have weapons, but she did not dispatch that information until minutes later. Officer L.B. indicated that appellant looked at her angrily and told her to leave the dispatch area. She reported wanting to hear what was happening during the emergency situation. It was at this time appellant contacted the corporal to have Officer L.B. removed from police dispatch. The corporal arrived within seconds and appellant indicated that Officer L.B. was constantly interrupting her and micromanaging dispatch. Officer L.B. advised that she was present to hear what was transpiring in the emergency situation. Appellant expressed her incapability to perform the tasks or to multitask, she did not relay information to all officers, and she did not document accurate accounts of pertinent journal information.

Appellant submitted several training certificates from 2014 to 2016, a performance evaluation dated April 2, 2015 and June 2, 2016 in which L.L. rated her at fully successful or better, a verification of military experienced and training, three shift change requests from January 11 to February 29, 2016, an overtime log from March 2016, and standard operating procedures for the police dispatch center. Appellant submitted a statement from M.V., a police officer and former coworker who noted that appellant was punctual and had a tenacious work ethic with exceptional communication skills. M.V. indicated that appellant trained new dispatchers and was able to handle stressful situations. A statement from J.S., an electronics technician and coworker, indicated that appellant worked long hours, had a positive attitude, and was a qualified dispatcher. A statement from an electronics technician, G.A. dated October 25, 2015, noted that appellant had in-depth knowledge of the safety and operating procedures and would be qualified to be in a leadership position.

Appellant was treated by Dr. Saunders on December 8, 2016, for a medical condition. He noted that she would take a leave of absence from June 25, 2016 to January 25, 2017.

In a January 29, 2017 statement appellant resigned from her position.

On February 2, 2017 OWCP asked the employing establishment to comment on the statements provided by appellant.

In response to appellant's allegations, the employing establishment submitted a statement from L.L. dated February 14, 2017 who indicated that appellant was never an instructor or assigned to train employee's in the employing establishment. L.L. noted that from 2014 to 2015 multiple officers worked official overtime as dispatchers because there was a shortage of dispatchers, but there were never any employee rights violation for equal overtime work opportunities or preferred dispatchers. He denied any allegation of waste of departmental funding. L.L. disputed appellant's claim that her name was crossed off an overtime log record with the intention to deny or prevent pay for overtime. He advised that this incident was investigated and involved a mistake made through review of the overtime log by three officers and was corrected with a telephone call and an apology. L.L. further noted that there was no history of union representatives being terminated from employment and no instances of retaliation against union representatives. He disputed appellant's assertion that police department personnel were afraid of the reckless, retaliatory, and harassing actions of the Deputy Chief of Police noting that a recent inspection by the employing establishment's Office of Security and Law Enforcement and the command staff received high praise from the inspection team for excellent management. L.L. further indicated that at no point did he pre-sign appellant's appraisal form. With regard to the April 2015 mid-term appraisal, appellant was not satisfied with what was written in her appraisal and refused to sign the document. The employing establishment noted "refused to sign" in the signature column. L.L. disputed appellant's allegations that overtime was "gifted" by M.K. and advised that no prearrangement was ever made for overtime. He advised that M.K. did not have the authority to authorize overtime since that was not the responsibility or within the scope of the supervisor's role. L.L. further disputed appellant's statement that overtime sign-up sheets were generated and pre-signed by officers or required a pre-authorized signature. He asserted that the June 17, 2016 investigatory meeting was held in the police common area, secured on both ends by locked doors, and was agreed upon by the union president. The investigation findings noted appellant's actions on June 11, 2016 in removing an officer from the dispatch area were inappropriate, but no punitive action would be taken. Rather, based on union guidance, Officer L.B. and appellant were offered alternative dispute resolution training to increase their ability to communicate and work together. Officer L.B. attended the training, but appellant did not. The employing establishment further determined that appellant would be retrained in making journal entries due to the inappropriate nature of the journal entries that day.

L.L. denied yelling at appellant that she was reassigned to administrative duties on June 17, 2016. Appellant refused to speak without union representation so L.L. handed her an official 14-day notice for dispatcher retraining. L.L. noted that appellant had a 14-day temporary change in working conditions (shift assignment) and she was instructed to perform administrative tasks. He noted that he did not raise his voice during the conversation. L.L. disagreed with appellant that the assignment of administrative duties was demeaning and menial. He advised that all tasks assigned to appellant by the employing establishment were within

management's rights to assign work, they were not unrealistic assignments, and did not fall outside the scope of her abilities. Appellant asserted nepotism on the part of the human resources specialist who hired a dispatcher and promoted him to a GS-6. L.L. noted that appellant declined the GS-6 dispatcher job on three prior occasions. He denied that the employing establishment broke federal labor laws, illegally reassigned her, harassed her, left her in a hostile work environment, and bullied her. L.L. advised that these incidents were investigated by the union, labor relations, the EEO office, and the Office of Security and Law Enforcement and determined to be unfounded. L.L. asserted that there were no aspects of appellant's job that were deemed stressful. He advised that there were no extra demands made of the claimant by the employing establishment. L.L. indicated that appellant was generally able to perform the required duties with minor performance problems.

On March 13, 2017 appellant disputed L.L.'s statements. She submitted several messages from Facebook and text messages.

By decision dated March 28, 2017, OWCP denied appellant's claim for an emotional condition as the evidence did not support that the events occurred in the performance of duty, as alleged.

LEGAL PRECEDENT

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

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,[4] the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.[5] When an employee experiences emotional stress in carrying out his or her employment duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.[6] Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[7] Where the claimant

[3] *George H. Clark*, 56 ECAB 162 (2004).

[4] 28 ECAB 125 (1976).

[5] *See Robert W. Johns*, 51 ECAB 137 (1999).

[6] *Supra* note 4.

[7] *J.F.*, 59 ECAB 331 (2008).

alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.[8] Personal perceptions alone are insufficient to establish an employment-related emotional condition.[9] 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.[10]

ANALYSIS

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

Appellant alleged that she sustained an emotional condition as a result of events occurring on June 11, 2016. OWCP denied appellant's emotional condition claim because 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 the terms of FECA.

The Board finds that appellant's allegations do not pertain to her regular or specially assigned duties under *Lillian Cutler*.[11] Rather, she has alleged that she was harassed and singled out unfairly by management.

Appellant made several allegations related to administrative and personnel actions. In *Thomas D. McEuen*,[12] 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 relation to the work required of the employee. The Board noted, however, that coverage under FECA would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the 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.[13]

Appellant alleged that the employing establishment improperly changed her employment status following a June 11, 2016 emergency dispatch incident when she directed one officer to remove another officer from the dispatch area. She asserted that on June 16, 2016 she was informed not to report for duty, but was directed by L.L., her supervisor, to appear the next day

[8] *M.D.*, 59 ECAB 211 (2007).

[9] *Roger Williams*, 52 ECAB 468 (2001).

[10] *See supra* note 4.

[11] *See supra* note 4.

[12] *See* 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[13] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

for an investigative meeting to discuss the incident with Officer L.B. during the emergency on June 11, 2016. The evidence does not establish that the employing establishment acted unreasonably. On July 6, 2016 L.L. indicated that an investigation was initiated with both bargaining unit employees regarding an altercation which occurred during a potentially volatile situation involving the immediate safety of an employee. L.L. explained that appellant's actions in removing Officer L.B. from the dispatch area by another officer were inappropriate, but no punitive action would be taken. The evidence supports that Officer L.B. had reason to know exactly what was transpiring and did not conduct herself in an unreasonable manner in an emergency situation. L.L. indicated that based on union guidance, Officer L.B. and appellant were offered alternative dispute resolution training to increase their ability to communicate and work together, the officer attended, but appellant did not. The employing establishment determined that appellant would be retrained in making journal entries due to the inappropriate nature of the journal entries listed that day. L.L. noted that appellant had a 14-day temporary change in working conditions (shift assignment) when she was instructed to perform administrative tasks. The employing establishment has either denied appellant's allegations or explained the reasons for its actions in these administrative matters. Appellant did not provide any independent or probative evidence to establish that the employing establishment erred or was abusive in the handling of her work status in light of the emergency situation and, hence, there is no compensable factor of employment due to these particular allegations. The Board notes that the assignment of work is an administrative function[14] and not a work factor and is not compensable absent a showing of error or abuse. The manner in which a supervisor exercises his or her discretion falls outside the ambit of FECA. Absent evidence of error or abuse, appellant's mere disagreement or dislike of a managerial action is not compensable.[15] The Board finds that appellant has not offered sufficient evidence to establish error or abuse regarding her work assignments. The evidence does not establish that the employing establishment acted unreasonably.

Appellant also alleges that L.L. improperly assigned her to administrative duties following the June 11, 2016 incident and she was not permitted to perform her dispatcher duties. The Board notes that the assignment of work is an administrative function[16] and not a work factor and is not compensable absent a showing of error or abuse. As noted above, the manner in which a supervisor exercises his or her discretion falls outside the scope of FECA. Absent evidence of error or abuse, appellant's mere disagreement or dislike of a managerial action is not compensable.[17] The Board finds that appellant has not offered sufficient evidence to establish error or abuse regarding her work assignments. The evidence does not establish that the employing establishment acted unreasonably. L.L. provided appellant with a 14-day notice for dispatcher retraining. He noted that she had a 14-day temporary change in working conditions (shift assignment) and she was instructed to perform administrative tasks. L.L. noted that

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

[15] *See Barbara J. Latham*, 53 ECAB 316 (2002); *see also Peter D. Butt Jr.*, 56 ECAB 117 (2004) (allegations such as improperly assigned work duties, which relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties do not fall within the coverage of FECA); *L.S.*, 58 ECAB 249 (2006) (the fact that management changed an employee's work schedule does not bring the claim within the scope of workers' compensation, the employee must submit proof that management changed her schedule in error).

[16] *Donney T. Drennon-Gala*, *supra* note 14.

[17] *See Barbara J. Latham*, *supra* note 15.

appellant was not placed on administrative duties pending the investigation, rather, she was placed on administrative duties pending dispatch retraining. He further indicated that appellant would be retrained on radio procedures, Department of Justice procedures, and dispatch procedures. L.L. advised that this was not a disciplinary action and would last approximately 30 days. The employing establishment has either denied appellant's allegations or explained the reasons for its actions in these administrative matters. Appellant did not provide any independent or probative evidence to establish that the employing establishment erred or was abusive in the handling of her work assignments.

Appellant alleged that management assigned her demeaning and menial tasks following the June 11, 2016 incident. The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under FECA.[18] Appellant's supervisor L.L. advised that all tasks assigned by the employing establishment to appellant were within managements rights to assign work, they were not unrealistic assignments, and they did not fall outside the scope of her abilities. No other independent evidence was presented to establish the employing establishment was found in or acted unreasonably.

Appellant alleged that she was improperly denied reassignment on August 11, 2016 and repeatedly denied a shift change. The Board has 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 her regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.[19] The employing establishment has explained the reasons for its actions in these administrative matters. Appellant failed to submit any independent evidence to establish that the employing establishment was found in error in its selection procedures. Therefore, she has not established a compensable factor of employment in this regard.

Appellant alleged that M.K. improperly distributed overtime denying equal overtime work opportunities to employees. She further asserted that she was improperly placed on leave without pay status on June 16, 2016 following the incident of June 11, 2016. The Board notes that the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[20] The Board finds that the employing establishment acted reasonably in this administrative matter. L.L. indicated that there were never any employee rights violation for equal overtime work opportunities. He disputed appellant's assertion that overtime sign-up sheets were pre-signed and that overtime was gifted by M.K. Rather, M.K. did not have the authority to authorize overtime since that was not the responsibility or within the scope of the supervisor's role. Appellant has not shown that the employing establishment erred or acted abusively in this matter. She has presented no corroborating evidence to support that the employing establishment erred or acted abusively in this matter. The factual evidence does not substantiate that the

[18] *Michael Thomas Plante*, 44 ECAB 510 (1993); *Effie O. Morris*, 44 ECAB 470 (1993).

[19] *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

[20] *See Judy Kahn*, 53 ECAB 321 (2002).

employing establishment was unreasonable. Appellant did not provide any outside evidence to substantiate this assertion and the employing establishment denied this allegation.

Appellant alleged that in March 2016 after she became a union representative she became the target of harassment and reprisals. However, the record does not substantiate these allegations. The Board has adhered to the general principle that union activities are personal in nature and are not considered to be within an employee's course of employment or performance of duty.[21] The Board has generally held that matters pertaining to union activities are not deemed to be employment factors.[22] L.L. advised that there was no history of union representatives being terminated from employment and no instances of retaliation against union representatives. There is no evidence supporting that appellant was targeted because she was a union representative or that the employing establishment acted unreasonably in this regard.

Appellant alleged that on June 2, 2016 she had an unannounced and impromptu mid-term appraisal and a falsely reported document was uploaded into her personnel file which stated that she refused to sign her appraisal. This relates to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and does not fall within the coverage of FECA.[23] Although the handling of disciplinary actions, evaluations and leave requests, the assignment of work duties, and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[24] However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has to examine whether the employing establishment acted reasonably.[25] The Board finds that the evidence of record is insufficient to establish that the employing establishment erred or acted abusively in this matter. L.L. denied appellant's assertions. With regard to the April 2015 mid-term appraisal, appellant was not satisfied with what was written in her appraisal and refused to sign the document and the evaluating manager noted "refused to sign" in the signature column. The employing establishment contended that management acted reasonably in the administration of the personnel matters. Although appellant has made allegations that the employing establishment erred and acted abusively in these administrative and personnel matters, appellant has not provided evidence to substantiate such actions were in error, abusive, or unreasonable in nature. The Board has held that, where the evidence demonstrates that the employing establishment has neither erred nor acted abusively, coverage under FECA will not be afforded.[26] Appellant has not established a compensable factor pertaining to the alleged forged performance evaluation.

[21] *See Larry D. Passalacqua*, 32 ECAB 1859, 1862 (1981).

[22] *See George A. Ross*, 43 ECAB 346 (1991).

[23] *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).

[24] *Id.*

[25] *See Richard J. Dube*, *supra* note 13.

[26] *Michael Thomas Plante*, *supra* note 18.

Appellant also noted filing an EEO claim for harassment and discrimination. The Board has held, however, that grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.[27] None of the information submitted establishes improper action by the employing establishment. Thus, the evidence regarding the EEO matter does not establish a compensable employment factor under FECA.

Appellant alleged that the employing establishment's actions concerning the identified incidents were in retaliation, harassment, or punitive. To the extent that incidents alleged as constituting harassment or a hostile environment by a manager are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[28] However, for harassment to give rise to a compensable disability under FECA, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under FECA.[29] The evidence fails to support appellant's claim for harassment as a cause for her emotional condition. L.L. advised that the incidents were investigated by the union, labor relations, EEO office, and the Office of Security and Law Enforcement and determined to be unfounded and without merit. L.L. asserted that there were no aspects of appellant's job that were deemed stressful. He asserted that he did not assign appellant administrative duties after the June 11, 2016 incident as a form of harassment. Rather, L.L. advised that appellant was not placed on administrative duties pending the investigation, rather, she was placed on administrative duties pending dispatch retraining. General allegations of harassment are not sufficient[30] and in this case appellant has not submitted sufficient evidence to establish disparate treatment by her supervisor.[31] Although appellant alleged that her supervisor harassed and engaged in actions which she believed constituted harassment, she provided no corroborating evidence to establish her allegations.[32] The Board finds that there is no evidence presented to substantiate appellant's allegations that any of the employing establishment's actions concerning the identified incidents were in retaliation, harassment, or punitive. Appellant has not established a compensable work factor with respect to the claimed harassment.

Consequently, appellant has not established her claim for an emotional condition as she has not attributed her claimed condition to any compensable employment factors.[33]

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

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

[29] *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).

[30] *See Paul Trotman-Hall*, 45 ECAB 229 (1993).

[31] *See Joel Parker, Sr.*, *supra* note 29.

[32] *See William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

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

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 18, 2019
Washington, DC

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

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

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