United States Department of Labor
Employees' Compensation Appeals Board

A.B., Appellant	)	
	)	**Docket No. 18-0635**
and	)	**Issued: August 14, 2020**
	)	
DEPARTMENT OF DEFENSE, DEFENSE CONTRACT MANAGEMENT AGENCY, Smyrna, GA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 1, 2018 appellant filed a timely appeal from an August 9, 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 this case.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the issuance of the August 9, 2017 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

ISSUE

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

FACTUAL HISTORY

On May 15, 2015 appellant, then a 54-year-old contract termination specialist, filed an occupational disease claim (Form CA-2) alleging that she developed symptoms of nausea, headaches, light-headedness, and major depression causally related to factors of her federal employment. She noted that she first became aware of her claimed conditions on January 5, 2014 and their relationship to her federal employment on June 1, 2014. On the reverse side of the claim form, J.L., appellant's supervisor, challenged the claim. He noted that a return-to-work letter was issued to her on May 11, 2015 and that she had not returned.

Appellant subsequently submitted a May 11, 2015 statement in which she attributed her claimed emotional conditions to the "foul and pungent body odor" and appearance of a coworker. She claimed that in May 2014, during J.L.'s first visit to her worksite, he noticed that coworker's poor hygiene. J.L. remarked that this was an unacceptable situation, and appellant informed him that she had an *ad hoc* telework schedule to avoid being around the coworker. In September 2013 appellant's former supervisor, K.A., had approved her request for a four-day-per-week telework schedule. K.A. had a conversation with the coworker about his poor hygiene and his condition immediately improved. During the improvement period appellant converted to a three-day-per-week telework schedule. However, as the problem worsened K.A. granted her request for an *ad hoc* telework day on a weekly basis, usually on Wednesdays. J.L. told her that she could continue her *ad hoc* telework schedule and that he would speak to him about his hygiene. He also offered appellant the option of relocating or sharing a desk with R.I., a coworker, but she declined his offer. J.L. denied her request for a four-day-per-week telework as a reasonable accommodation. Appellant claimed that J.L. thereafter became hostile towards her with no sympathy or concern for her health even after he had promised to handle the situation. J.L. later informed her that he would no longer approve more than three days of telework. Appellant became ill in the office and requested leave. She noted that J.L. never requested that she submit supportive medical documentation. Appellant contended that he did not notify her about filing OWCP forms, available compensation or leave under the Family and Medical Leave Act (FMLA) and he did not complete the necessary forms. She filed an Equal Employment Opportunity (EEO) complaint alleging an unhealthy work environment. Appellant noted that J.L. denied her requests for reasonable accommodation in May, July, and September 2014, and January 2015. In September 2014 J.L. was instructed to relocate her desk away from her peers, to utilize R.I.'s desk when she was absent from work, or move to the desk of another coworker, S.C., in the next aisle to avoid exposure to the coworker. Appellant refused to move because he had not been asked to relocate to another work area. In October 2014 U.B., an employee, informed her that she had instructed the coworker how to perform his daily hygiene routine and wash his clothes, to refrain from wearing untidy clothes to work, and where to buy his clothes. He later had at least five or six relapses during that month. J.L. continued to deny appellant's request for a reasonable accommodation. She stopped working in the office and requested leave on Wednesdays and Fridays. Mediation between appellant and V.H., a manager, was held from January 9 to 15, 2015, regarding the denial of her requests for a reasonable accommodation and other related matters, but

V.H. called an impasse. Also, in January 2015, J.L. denied appellant's requests for an *ad hoc* telework schedule. He also denied her requests for annual leave until she submitted a physician's slip. Appellant filed a FMLA request.

Appellant also attributed her emotional conditions to several other work factors. She claimed that the EEO process was poorly managed as her husband was not allowed to participate in the mediation process held from January 9 to 16, 2015. Appellant contended that she was treated differently and discriminated against based on her sex, race, and disability in the above-noted incidents. She claimed that while her request for a four-day telework schedule was denied, other employees were currently worked on this same schedule. Additionally, appellant noted that the coworker was never relocated and she believed that her relocation was not a proper solution because he could walk down the aisle to talk to his peers.

OWCP thereafter received additional medical evidence and a copy of appellant's May 20, 2015 request for a reasonable accommodation.

In a development letter dated May 26, 2015, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor and an explanation of appellant's work activities. It afforded both parties 30 days to submit the necessary evidence.

In a June 3, 2015 statement, J.L. recounted that on June 17, 2014 appellant approached him and complained about the coworker's poor hygiene. He immediately offered to move her to an empty cubicle which was located in a different aisle than the coworker while management investigated the issue. Appellant rejected the offer and requested an *ad hoc* telework schedule. J.L. noted that she was already approved for regular telework three days per week. He granted appellant's request for an additional *ad hoc* telework day until January 2015. J.L. addressed the issue directly with the coworker and management continued to explore possible accommodations/ solutions. Additionally, he offered appellant a workspace on a different floor in the building as a reasonable accommodation, but she rejected the offer. Meanwhile, employees informed management that the coworker's personal hygiene had tremendously improved. On November 6, 2014 J.L. provided this update to appellant and warned her that he would not continue to grant her an *ad hoc* telework schedule because her complaint had been resolved. He noted that, although she had barely physically reported to the office for months at that point, she insisted that the coworker's situation could not have possibly improved. J.L. granted appellant's request for leave on the days she was to report to work in the office through January 2015 because justification for *ad hoc* telework no longer existed. He claimed that he was never notified that she had a medical condition that might require special accommodation. In January 2015 appellant notified J.L. about her request for leave under FMLA. He was first notified about her medical condition in February 2015 after she had already begun her FMLA leave. J.L. indicated that appellant had not teleworked or reported for duty since January 23, 2015. Appellant's FMLA leave was approved and 480 hours were exhausted in April 2015. J.L. issued a letter directing appellant to return to work on May 13, 2015, but she did not return. Instead, one week later, appellant submitted new

medical documentation concerning her diagnosis and requested a reasonable accommodation to be relocated to the first floor in the building.

OWCP received additional medical evidence.

In an undated statement, appellant continued to claim that her requests for a four-day-per-week telework schedule and a one-day-per week *ad hoc* telework schedule were denied. She noted the amount of leave she used from May 2014 to December 2014.

E-mails dated November 22 and 24 and December 8 and 10, 2014, from S.H., appellant's coworker; an undated witness statement by R.I., a coworker; and a December 1, 2014 witness statement from a concerned employee corroborated appellant's account of the coworker's personal hygiene.

Witness statements from appellant's husband described her symptoms and what he believed to be was unfair treatment by the employing establishment following her exposure to the coworker's poor hygiene.

Additional medical evidence was also received.

In a July 9, 2015 letter, J.L. responded to OWCP's May 26, 2015 development letter. He reiterated his account of appellant's exposure to the coworker's body odor, the approval of her telework requests, and when he became aware of her resulting medical condition. J.L. described her work duties as a terminating contracting officer and submitted an official copy of the position description. He noted that the termination group in which appellant was assigned had not been fully staffed to effectively carry out its mission due to budget constraints and employees' retirement. J.L. related, however, that the workload was fairly distributed and constantly reassessed. He contended that appellant never raised any concerns about her workload. Appellant achieved a fully successful performance rating in 2014. She had some performance issues towards the end of 2014 related to issues with contractors and business partners. Appellant also displayed unprofessional behavior in some of her communications with J.L. over management's handling of her complaint pertaining to the coworker.

In an August 12, 2015 statement, appellant responded to J.L.'s July 9, 2015 statement. She claimed that he required her to become sick before she could request an *ad hoc* telework schedule. Appellant asserted that she did not receive a return-to-work letter and that she was not released to return to work and was not medically able to return to work until June 29, 2015. She referenced accompanying documents that indicated that she was forced to use annual/sick/credit hours every Wednesday and Friday to mitigate her exposure to the odor in the office and becoming ill. Appellant contended that her workload averaged about 25 to 30 dockets any given month. Her position required substantial hours of overtime that were also considered to be credit hours. Appellant performed at least 15 to 20 hours of overtime/credit hours, although employees were only allowed to work 6 hours of overtime/credit per pay period. She notified J.L. and Director P.S. that she was concerned about her reduced work schedule since she took off work on Wednesdays and Fridays. Appellant noted that even on the days she was on leave from May 2014 to October 2014, she worked because she did not want to disappoint her customers. Eventually, she stopped work on her days off due to stress and the denial of her requests for a reasonable

accommodation. Although J.L. approved her request for an *ad hoc* telework schedule, he would later inconsistently approve or disapprove her request. Appellant indicated that he did not provide reasonable accommodation until 13 months later from May 2014 to June 2015. She contended that she had no performance problems while adapting to a reduced work schedule.

In an undated statement, appellant responded to J.L.'s June 3, 2015 letter. She contended that while he granted her *ad hoc* telework on Wednesdays and Fridays, she had to first come into the office and subject herself to the coworker's body odor and become sick before he did so.

Appellant submitted e-mails dated August 1, 2014 to July 29, 2015 between herself, J.L., and S.P., and other correspondence and documents regarding her requests for an *ad hoc* telework schedule, leave, and workers' compensation.

Appellant also submitted additional medical evidence.

By decision dated August 31, 2015, OWCP accepted that appellant was subjected to an unhealthy work environment due to her coworker's poor hygiene, but denied her claim for an emotional condition, finding that she had not established that it "arose during the course of employment and within the scope of compensable work factors as defined by FECA."

OWCP subsequently received additional medical evidence.

On April 20, 2016 appellant requested reconsideration regarding the August 31, 2015 decision.

Appellant submitted numerous time and leave records. She also continued to submit medical evidence.

In a May 26, 2016 letter, J.L. responded to appellant's request for reconsideration contending that her claim should be denied. He asserted that on the rare occasions he did not approve her *ad hoc* telework requests, she requested leave for the days she was scheduled to work in the office. J.L. again noted that he granted appellant's request for 480 hours of FMLA leave in April 2015. On April 30, 2015 he issued a return-to-work order to her because her FMLA leave had expired on April 21, 2015. On May 20, 2015 appellant submitted a request for a reasonable accommodation for, among other things, a five-day-a-week telework schedule and a relocation to the first floor in the building. J.L. immediately contacted G.C., disability program manager, and appellant's request for workspace on the first floor in the building was immediately made ready and available to her. On June 5, 2015 he approved her reasonable accommodation request for a four-day-per-week telework schedule along with one day in the office, on the first floor, on Fridays. On June 17, 2015 J.L. modified his approval of appellant's request for reasonable accommodation and approved a five-day-per-week medical telework schedule beginning June 29 through September 30, 2015 based on his review of a letter from appellant's physician. He noted that, when she returned to work on June 29, 2015, there was a meaningful change in the manner and tone she communicated with him. Appellant's e-mails were obviously inflammatory and contained disrespectful language and an unprofessional tone. Her response to work matters slowed considerably. In September 2015 appellant was issued a one-day suspension for misconduct. On September 24, 2015 she notified Director P.S. that she would be unable to return to work in the office even one day per week because she had a relapse of her depression and her somatic therapy

had been suspended. J.L. again granted appellant a five-day-per-week medical telework schedule through December 31, 2015. He twice directed her to provide updated medical documentation addressing her work capacity, but she did not submit the requested information. J.L. related that it could not be determined whether appellant had, in fact, undergone specific therapy previously recommended by her physician. Also, her medical providers were not consistent. As a result, on January 8, 2016 J.L. issued a return-to-work notice to appellant. Appellant requested leave for the week of January 1 through 15, 2016. Following her absence from work, she was again suspended through the end of January 2016 due to additional acts of misconduct. On February 1, 2016 appellant notified Director P.S. of another purported relapse of her depression due to continued stress/anxiety and a hostile work environment. She again invoked FLMA leave, requested a reasonable accommodation, and filed a workers' compensation claim. On April 23, 2016 appellant's second FMLA leave expired and she still had not submitted the requested medical documentation. Accordingly, J.L. issued another return-to-work letter to her, but she did not comply. He noted that appellant had been absent without leave since May 2, 2016 and was subject to disciplinary action, including removal from federal service. J.L. related that she offered no explanation for her continued failure to provide medical documentation regarding her absence from work.

In a June 27, 2016 letter, appellant responded to J.L.'s May 26, 2016 letter. She asserted that J.L. lied and erred in failing to remedy the situation involving the coworker. Appellant claimed that he did not grant her a three-day-per-week telework schedule because time and attendance records from January 2014 through May 2014 clearly indicated that she was already on this schedule. She also claimed that he did not grant her an *ad hoc* telework schedule. Appellant contended that J.L. did not provide her with a reasonable accommodation work schedule until November 2014.

Appellant submitted additional medical evidence.

An undated statement from the coworker indicated that he was counseled by J.L. and K.A. regarding his poor hygiene and appearance.

Witness statements from Director P.S., K.A., and other coworkers corroborated the coworker's poor hygiene and unkempt physical appearance.

Appellant submitted numerous e-mails dated September 5, 2013 to February 16, 2016 regarding her request for a reasonable accommodation for a telework schedule and leave.

Appellant also submitted a union agreement indicating that employees had a right to decline to perform an assigned task in an unsafe work area and the employing establishment's reasonable accommodation procedures.

An undated declaration by G.C., disability program manager, indicated that appellant requested a reasonable accommodation because she could not work in the office due to her physical and mental limitations. He noted that she could perform her work duties at home.

OWCP, by decision dated August 31, 2016, denied modification of its August 31, 2015 decision, finding that appellant had not established a compensable factor of her federal

employment. It determined that the evidence of record was insufficient to demonstrate error or abuse on the part of the employing establishment with respect to several administrative matters.

On June 14, 2017 appellant requested reconsideration and submitted additional evidence. In an accompanying letter dated May 30, 2017, she contended that the employing establishment failed to provide reasonable accommodation for her disability under the Americans with Disabilities Act Amendments Act of 2008 (ADAAA).[3]

Appellant submitted Merit Systems Protection Board (MSPB) decisions dated May 1, 2017. An MSPB administrative judge reversed appellant's 14-day suspension from work for the period May 30 through July 22, 2016 and her removal from her contract termination position, effective July 22, 2016. He found that the employing establishment erred in rejecting her medical documentation as administratively unacceptable and that her request for a five-day-per-week telework schedule would not have unduly burdened its operations. The administrative judge explained that it violated the ADAAA by failing to accommodate appellant, a qualified disabled employee, due to her major depression and other psychosomatic conditions which substantially limited her brain function, with a five-day-per-week telework schedule. He further explained that the employing establishment suspended her without providing due process. In the suspension decision, the administrative judge noted that appellant was constructively suspended during the period May 30 through July 22, 2016. In the removal decision, he found that she failed to establish that she was removed from her position as reprisal for her prior EEO activity. The administrative judge ordered the employing establishment to retroactively restore her to her prior position, effective July 22, 2016, with back pay and interest.

Appellant submitted additional medical evidence.

In a July 18, 2017 letter, J.L. responded to appellant's request for reconsideration. He contended that her reconsideration request did not meet OWCP's requirements and that the May 1, 2017 MSPB decision was not relevant to OWCP's determination as it was issued long after her claimed issues and removal.

By decision dated August 9, 2017, OWCP denied modification of the August 31, 2016 decision.

LEGAL PRECEDENT

To establish an emotional condition causally related to factors of a claimant's federal employment, he or she must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to the condition; (2) rationalized medical evidence establishing an emotional condition or psychiatric disorder; and (3) rationalized medical

[3] 29 C.F.R. Part 1630; 42 U.S.C. § 12101 *et seq*.; Pub.L. 110-325.

opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.[4]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to a claimant's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.[5] However, disability is not compensable when it results from factors such as an employee's fear of a reduction-in-force, or frustration from not being permitted to work in a particular environment, or to hold a particular position.[6]

To the extent that disputes and incidents alleged as constituting harassment by coworkers are established as occurring and arising from a claimant's performance of his or her regular duties, these could constitute employment factors.[7] 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.[8] Additionally, verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.[9]

An employee's emotional reaction to administrative or personnel matters generally falls outside of FECA's scope.[10] Although related to the employment, administrative and personnel matters are functions of the employer rather than the regular or specially assigned duties of the employee.[11] However, to the extent the evidence demonstrates that the employing establishment

[4] *See S.K.*, Docket No. 18-1648 (issued March 14, 2019); *C.M.*, Docket No. 17-1076 (issued November 14, 2018); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[5] *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[6] *Cutler*, *id.*

[7] *See B.S.*, Docket No. 19-0378 (issued July 10, 2019); *M.R.*, Docket No. 18-0304 (issued November 13, 2018); *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[8] *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[9] *Y.B.*, Docket No. 16-0193 (issued July 23, 2018); *Marguerite J. Toland*, 52 ECAB 294 (2001).

[10] *G.R.*, Docket No. 18-0893 (issued November 21, 2018); *Andrew J. Sheppard*, 53 ECAB 170, 171 (2001); *Matilda R. Wyatt*, 52 ECAB 421, 423 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991).

[11] *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005); *McEuen, id.*

either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.[12]

Perceptions and feelings, alone, are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his or her allegations with probative and reliable evidence.[13] 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.[14]

ANALYSIS

The Board finds that this case is not in posture for decision.

As to appellant's allegations that she was improperly terminated from her position effective July 22, 2016 and improperly suspended from work for 14 days from May 30 through July 22, 2016, the Board finds that appellant has established error and abuse by the employing establishment in the handling of these administrative/personnel matters.

Specifically, appellant contended that her supervisor, J.L., continually denied her requests for a reasonable accommodation consisting of a five-day-per-week *ad hoc* telework schedule due to her physical and emotional conditions resulting from her exposure to a coworker who had poor personal hygiene. She further contends that she was improperly suspended for 14 days from May 30 through July 22, 2016 and removed from employment effective July 22, 2016. The Board finds that the May 1, 2017 MSPB decisions establish that the employing establishment committed error in suspending and removing appellant. The decisions reversed the suspension and removal, and ordered the employing establishment to restore appellant's position and pay. The decisions were based on the finding that the employing establishment constructively suspended and removed appellant without providing the procedural protections to which she was entitled. The employing establishment conceded that appellant had been constructively suspended for 14 days. The Board finds that the MSPB decisions are sufficient to establish that the constructive suspension between May 30 and July 22, 2016 and removal effective July 22, 2016, due to management's failure to provide proper procedural protections, constitutes a compensable factor of employment.[15]

Appellant has also attributed her emotional condition to overwork based upon her regular and specially assigned job duties under *Cutler*.[16] The Board has held that overwork is a compensable factor of employment if appellant submits sufficient evidence to substantiate this

[12] *Id.*

[13] *G.R., supra* note 10; *Roger Williams*, 52 ECAB 468 (2001).

[14] *See C.M., supra* note 4; *Norma L. Blank*, 43 ECAB 384, 389-90 (1992). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

[15] *C.M., supra* note 4; *R.V.*, Docket Nos. 07-818 and 07-2285 (issued September 25, 2008).

[16] *Supra* note 4.

allegation.[17] Appellant noted that she handled an average of approximately 25 to 30 dockets per month. She was required to work a substantial number of hours of overtime/credit time, at least 15 to 20 hours while employees were only allowed 6 hours per pay period. Appellant became concerned about performing her work duties with a reduced work schedule as she was off work on Wednesday and Friday to avoid being exposed to the coworker's poor hygiene and remain healthy. She noted, nonetheless, that she continued to work until she stopped due to stress and the denial of her request for a reasonable accommodation. The Board finds that appellant has submitted no evidence supporting her allegation of overwork. While J.L. acknowledged that appellant's termination group had been unable to carry out its mission due to budget constraints and a staff shortage, he noted that the workload was fairly distributed and constantly reassessed. Moreover, he related that she never raised any concerns about her workload. Additionally, J.L. indicated that appellant received a fully successful performance rating in 2014. He further indicated that her only performance issues were related to stale negotiations with contractors and business partners and unprofessional behavior she directed towards him regarding her complaint of the coworker's poor hygiene. It is appellant's burden to submit the requisite factual evidence supporting her allegation that she was overworked, which she failed to provide.[18] Thus, the Board finds that she has not established overwork as a compensable factor of employment.

Appellant made other allegations that relate to administrative and personnel actions, which are not compensable absent a showing of error or abuse on the part of the employing establishment.[19] She filed an EEO complaint regarding the denial of her requests for a reasonable accommodation and other related matters. Appellant asserted that her husband was not allowed to participate in the EEO mediation session held from January 9 to 16, 2015 regarding her complaint. She also asserted that V.H., management's representative, declared an impasse in the mediation. The Board finds that the filing of grievances and EEOC complaints[20] and a mediation session[21] are administrative or personnel matters which, 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 is not covered under FECA.[22] Appellant has not submitted corroborating evidence of error or abuse in these administrative matter, and thus, has not established a compensable employment.[23]

[17] *D.T.*, Docket No. 19-1270 (issued February 4, 2020); *W.F.*, Docket No. 18-1526 (issued November 26, 2019); *J.E.*, Docket No. 17-1799 (issued March 7, 2018); *Bobbie D. Daly*, 53 ECAB 691 (2002).

[18] *D.T., id.*; *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

[19] *See A.C.*, Docket No. 18-0507 (issued November 26, 2018); *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).

[20] *W.F.*, Docket No. 18-1526; *B.O.*, Docket No. 17-1986 (issued January 18, 2019); *James E. Norris*, 52 ECAB 93 (2000).

[21] *M.Z.*, Docket No. 13-0023 (issued April 15, 2013).

[22] *T.L.*, Docket No. 18-0100 (issued June 20, 2019); *Matilda R. Wyatt*, 52 ECAB 421 (2001); *McEuen*, *supra* note 10.

[23] *R.B.*, Docket No. 19-0343 (issued February 14, 2020); *R.V.*, Docket No. 18-0268 (issued October 17, 2018).

Appellant contended that she was treated differently and discriminated against based on her sex, race, and disability in the claimed incidents at work. For harassment or discrimination to give rise to a compensable disability under FECA, there must be probative and reliable evidence that harassment or discrimination did in fact occur.[24] Mere perceptions of harassment, retaliation, or discrimination are not compensable under FECA.[25] Appellant claimed that her coworkers currently had a four-day telework schedule while her request for the same schedule was denied. Additionally, she claimed that she was offered relocation to avoid being exposed to the coworker's poor hygiene, but he was never relocated to a different workspace. Appellant has not submitted any corroborative evidence to establish a factual basis for her allegations. The Board notes that both J.L., K.A., appellant's former supervisor, and U.B., an employee, had conversations with the coworker about his poor hygiene and his condition improved. The employee acknowledged that J.L. and K.A. spoke to him about his hygiene. Based on the evidence of record, the Board finds that appellant has not established, with corroborating evidence, that she was discriminated against by the employing establishment.

As noted above, the Board finds that appellant has established a compensable employment factor with regard to her claim of being improperly suspended and removed from the employing establishment during the period May 30 through July 22, 2016. Accordingly, OWCP must analyze the medical evidence to determine whether she sustained an emotional condition as a result of this compensable employment factor. The case will therefore be remanded to OWCP. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

[24] *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *Marlon Vera*, 54 ECAB 834 (2003).

[25] *Id.*; *see also Kim Nguyen*, 53 ECAB 127 (2001).

ORDER

IT IS HEREBY ORDERED THAT the August 9, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 14, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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