United States Department of Labor
Employees' Compensation Appeals Board

L.S., Appellant	)	
and	)	**Docket No. 18-1471**
	)	**Issued: February 26, 2020**
DEPARTMENT OF THE TREASURY, BUREAU OF THE FISCAL SERVICE, Hyattsville, MD, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On July 23, 2018 appellant filed a timely appeal from a June 12, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

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

FACTUAL HISTORY

On March 28, 2017 appellant, then a 52-year-old financial analyst II, filed an occupational disease claim (Form CA-2) alleging that she developed stress and anxiety as a result of being given

[1] 5 U.S.C. § 8101 *et seq.*

an unwarranted, poor evaluation on March 1, 2017. She noted that she first became aware of her condition and realized that it resulted from her federal employment on March 1, 2017. Appellant stopped work on March 2, 2017.

In a claim development letter dated April 21, 2017, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the factual and medical evidence necessary to establish her claim and also provided a questionnaire for completion. In a separate letter also dated April 21, 2017, OWCP requested that the employing establishment provide details related to appellant's claim and whether they concurred with her allegations. Both parties were afforded 30 days to respond.

On April 24, 2017 OWCP received appellant's response to its development letter. In a handwritten statement, appellant explained that the role of the Surety Bond Branch (SBB) was to renew certifications of companies seeking to renew their Treasury certifications. She contended that the 2016 rating season was extremely difficult because more companies had not met the proper qualifications. Appellant also alleged that her supervisor, M.S., had created a hostile working environment in retaliation to a grievance filed against him by four employees who were performing GS-14 work even though they were GS-13 employees. She asserted that her job title was changed to a "financial analyst III" without proper notification or approval. Appellant related that the employees informed management officials, K.I. and P.B., of their working conditions and that M.S. was often intoxicated and acting in an aggressive manner. She alleged that she requested to be reassigned according to SBB's No-Fear in the Workplace and Anti-Harassment policy because M.S. appeared to be under investigation for a weapons charge, but management failed to address the issue.

Appellant also alleged that she was currently working without a performance plan in place. She related that she had raised several issues of concern about the performance plan and its possible negative effect on her performance. Appellant further asserted that despite repeated requests to M.S. for training on workbooks, no training was provided to staff. She contended that she was issued unwarranted performance counseling memorandums, a letter of reprimand, and a "fails expectation" on her latest performance appraisal. Appellant reported that she rebutted every statement in her performance appraisal and requested reconsideration, but M.S. and P.B. refused to grant reconsideration.

Appellant further asserted that harassment was occurring on a regular basis. She reported that she tried to limit her contact with M.S., but he was "seeking [her] out." Appellant asserted that her altercations with M.S. had been so bad that she had reached out to security on several occasions. She alleged that she was forced to attend meetings without her union being allowed to attend. Appellant also described that on July 15, 2016 she submitted a leave slip for "stress from manager," and was called into the office by a management official, K.M. She contended that she was intimidated when instructed to not put "stress from manager" on the leave slips.

Appellant alleged that she was allowed to telework two days a week, but M.S. would not sign her telework agreement. She contended that M.S. also committed time card fraud by not allowing her to input information on her timecard correctly and refusing to change it.

OWCP received several e-mails from M.S. In an August 11, 2015 e-mail, M.S. congratulated appellant because her work performance was outstanding across every element. In an e-mail chain dated April 6 to 13, 2016, appellant informed M.S. that she and another employee were unable to access a specific profile where a number of the answers in the workbook could be found. M.S. responded and requested that appellant send him the pathway to the shared-drive where her documentation templates were saved. He also requested that appellant schedule a meeting with him to discuss her status. Additional e-mails from M.S. dated March 8, April 15, and August 10, 2016 advised the SBB staff that if they wanted additional training to let him know so it could be scheduled.

Several e-mails dated May 18, July 15 to 25, and October 12 to 16, 2016 detail' attempts by M.S. to schedule a meeting and appellant's attempts to find a shop steward who would be available for a meeting. Other e-mails dated July 7 and 20 and November 17, 2016 demonstrate appellant's correspondence with K.M. and P.B., the supervisors of M.S., regarding her problems with the new workbook and alleged threatening behavior by M.S.

Appellant also submitted e-mails from M.S. regarding her performance at work. In a July 26, 2016 e-mail, M.S. notified appellant that he was providing his mid-year evaluation *via* e-mail because he had been unsuccessful in scheduling a mid-year evaluation meeting. In a November 9, 2016 e-mail, he informed appellant that he was enclosing another performance counseling memorandum which demonstrated that her performance was "below expectations." Appellant also provided performance counseling memorandums from M.S. to appellant dated July 14 and November 9, 2016 and a letter of reprimand dated December 1, 2016.

Regarding her performance plan and appraisal, appellant submitted her performance plan, signed on April 13, 2016. She included comments regarding her disagreements or concerns about specific strategic goals and performance standards. Appellant noted that several deadlines were shortened and there was no "learning curve" for the new system and procedures.

In an annual appraisal, which covered a rating period from January 1 to December 31, 2016, appellant was given a final summary rating of "Fails Expectations" by M.S. She also provided a document with her comments noting her disagreement with her rating.

In a December 2, 2016 e-mail, appellant told M.A. that she had filed an Equal Employment Opportunity claim about M.S. for a hostile work environment. She asserted that M.S. was harassing her. Appellant described an incident when M.S. had followed her to the file room and another incident when he came to her desk looking for her after she had not responded to the counseling memorandum. She indicated that she was trying her best to avoid M.S. and communicate only through e-mail.

Appellant submitted a February 17, 2017 e-mail in which she informed M.S. that she had validated her time card, but could not input "telework" on Thursday and Friday because she did not have a formal telework agreement signed. M.S. responded that he had certified her time sheet. Appellant included handwritten notation that this was evidence of time card fraud. She also submitted a printout showing that her request for telework was still pending.

OWCP received additional documents in support of her claim, including a grievance against M.S. that was submitted on July 20, 2015, the employing establishment's anti-harassment policy, and an Informal Complaint Intake form dated November 18, 2016 against M.S.

Appellant also provided a list of case assignments by analyst. She related that the normal case load in the past was approximately 45 companies, but the list of case assignments demonstrated that their entire group had completed more than 45 companies. Appellant also submitted an attachment explaining the change in job elements. She reported that some GS-13 employees were recently informed that as of March 1, 2015 they would be responsible for (and would be evaluated on) performing second level financial analyses, in addition to their usual first level financial analysis. Appellant noted that traditionally second-level financial analyses were performed by GS-14 employees. She reported that for the past two years, each auditor had experienced significant increases in the numbers of companies they were expected to review. Appellant explained that less than 50 companies was considered manageable for the past several years, but that it changed the prior year when the volume of company reviews increased upwards of 60 percent. She alleged that their workload had doubled over a two-year span.

On May 31, 2017 the employing establishment responded to OWCP's development letter. K.D., an employing establishment workers' compensation specialist, controverted appellant's claim. She explained that SBB had recently undergone process changes that had strongly impacted the way that work was performed. K.S. related that auditors were now required to conduct reviews of insurance company financial statements through electronic documentation and follow a standardized Microsoft Excel file. She noted that several of the senior employees, including appellant, vehemently resisted the change. K.S. reported that multiple group training opportunities and one-on-one coaching was provided by the area supervisor. She related that on more than one occasion, work was moved away from appellant and reassigned to another employee in order to balance workload or to complete unfinished work. K.S. indicated that at the time that appellant began her medical leave in March 2017, and for several months prior, there was no staffing shortage in the SBB. She reported that appellant was more than capable of performing the repeated duties as expected, but she had resisted the recent process changes.

OWCP received several medical reports.

In a March 23, 2017 letter, Dr. Linda Whitby, a family practitioner, related that this past year appellant had experienced a considerable amount of stress related to "job pressure." She diagnosed severe stress syndrome, schizoaffective disorder, and situational reactive depression. Dr. Whitby opined that appellant's presenting symptomatology was induced by her current employment situation.

In a March 27, 2017 report, Eunice A. Okoro, a nurse practitioner, noted diagnoses of schizophrenia, generalized anxiety disorder, and depression recurrent and moderate. She reported that "the disease may not have been caused by the employment; however, it could be aggravated by the stress associated with the employment." Ms. Okoro also completed a May 31, 2017 work capacity evaluation form report, which related that she was treating appellant for anxiety and that appellant was unable to work.

In a June 1, 2017 letter, Dr. Walker Lyerly, a Board-certified psychiatrist, indicated that he was treating appellant for major depressive disorder single episode and anxiety disorder. He opined that appellant's current psychiatric conditions were a result of stress in her most recent workplace environment.

On June 1, 2017 OWCP received a June 2, 2017 statement by appellant. Appellant contended that she felt anxiety and fear when she had to physically pass her supervisor or even open an e-mail from him. She further asserted that her new position as a financial analyst III required her to supervise the work of four coworkers who are remotely located in West Virginia. Appellant reported that in 2016, the SBB began to use an all-electronic system for the first time and to use a new "workbook," but she had not received training for these new processes. She further alleged that due to the changes, two of the most experienced staff members retired so there were only three experienced staff members and six fairly new team members. Appellant related that her current work environment had left her feeling overwhelmed, exhausted, and stressed beyond belief. She also submitted a June 1, 2017 complaint of employment discrimination, which reiterated her allegations.

In June 15 and 17, 2017 letters, appellant responded to the employing establishment's May 31, 2017 letter. She explained that the employing establishment's workers' compensation specialist had no firsthand knowledge of her work or work environment. Appellant clarified that her claim was about the "increase of duties and complexity of [her] work and the added workload," along with the hostile work environment and repeated harassment that she had endured. She also contended that work was never moved from her and assigned to another staff person, with the exception of a company that had not met their qualifications. Appellant also clarified that while there were nine staff members in the SBB, two were new contractors and four were fairly new staff members located in West Virginia, which left only three experienced employees.

In an unsigned June 19, 2017 formal declaration statement, appellant indicated that she was interviewed on August 25, 2016 by M.F. and M.J., human resource specialists about the work environment at the Surety Bond Section. She asserted that M.S. was manipulative and used threats to get his employees to do things. Appellant also contended that M.S. was often inebriated at work.

By decision dated October 11, 2017, OWCP denied appellant's emotional condition claim finding that she failed to establish a compensable employment factor. 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 November 15, 2017 appellant requested a hearing before an OWCP hearing representative. The hearing was held on March 28, 2018.

Appellant submitted additional medical evidence. An undated letter by Dr. Benjamin Adewale, noted diagnoses of severe stress syndrome, situational reactive depression, and schizophrenia. In an August 18, 2017 report, Ms. Okoro noted that appellant was under her care for increased anxiety and insomnia.

A revised letter from Dr. Adewale reported diagnoses of severe stress syndrome, situational reactive depression, and schizophrenia. They opined that appellant's symptoms were induced by her job environment.

OWCP also received a June 27, 2016 e-mail from M.S. to appellant informing her that she would reassign certain companies to another staff member.

By decision dated June 12, 2018, an OWCP hearing representative affirmed the October 11, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

To establish an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or contributed to his or her claimed emotional condition; (2) medical evidence establishing that he or she has a diagnosed emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.[5]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.[6] There are situations where an injury or an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.[7] On the other hand, the disability is not covered when it results from such factors as an employee's fear of a reduction-in-force or

[2] 5 U.S.C. § 8101 *et seq.*

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

[4] 20 C.F.R. § 10.115(e); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *see T.O.*, Docket No. 18-1012 (issued October 29, 2018); *see Michael E. Smith*, 50 ECAB 313 (1999).

[5] *See S.K.*, Docket No. 18-1648 (issued March 14, 2019); *M.C.*, Docket No. 14-1456 (issued December 24, 2014); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[6] *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

[7] *L.H.*, Docket No. 18-1217 (issued May 3, 2019); *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

his or her frustration from not being permitted to work in a particular environment or to hold a particular position.[8]

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.[9] However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.[10] In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.[11]

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.[12] Mere perceptions of harassment, retaliation, or discrimination are not compensable under FECA.[13]

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 compensable factors of employment and may not be considered.[14] If an employee does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim. The claim must be supported by probative evidence.[15] If a compensable factor of employment is substantiated, OWCP must base its decision on an analysis of the medical evidence which has been submitted.[16]

ANALYSIS

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

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[8] *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

[9] *See G.R.*, Docket No. 18-0893 (issued November 21, 2018); *Andrew J. Sheppard*, 53 ECAB 170-71 (2001**)**, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

[10] *See O.G.*, Docket No. 18-0359 (issued August 7, 2019); *D.R.*, Docket No. 16-0605 (issued October 17, 2016); *William H. Fortner*, 49 ECAB 324 (1998).

[11] *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Ruth S. Johnson*, 46 ECAB 237 (1994).

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

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

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

[15] *Charles E. McAndrews*, 55 ECAB 711 (2004).

[16] *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

The Board notes that appellant has attributed her emotional condition, in part, to *Cutler*[17] factors. Appellant contended that in 2016 management unilaterally changed her job position to a financial analyst III. She alleged that this position change brought extra work requirements, including supervisory duties, and stringent deadlines with no room for mistakes or adjustments. Appellant asserted that she was required to perform GS-14 work even though she was a GS-13 employee. She reported that she was required to supervise and review work of other employees and perform second level financial analyses. Appellant also alleged that the 2016 rating season was extremely difficult because more companies did not meet proper qualifications and the number of companies that they had to review had doubled in the past two years. She further asserted that because of these changes over the last few years, two of the most experienced senior staff had left, which left only three experienced staff members with six new employees. Appellant related that her current work environment had left her feeling overwhelmed, exhausted, and stressed beyond belief.

Pursuant to *Cutler,* these allegations could constitute compensable employment factors if appellant establishes that her regular job duties or special assignment caused an emotional condition. The Board has held that overwork, when substantiated by sufficient factual information to corroborate appellant's account of events, may be a compensable factor of employment.[18] In support of her claim, appellant submitted her 2016 performance plan with her comments and a list of case assignments by analyst. She related that the normal case load in the past was approximately 45 companies, but the list of case assignments demonstrated that their entire group had completed more than 45 companies. The Board finds that this documentation is insufficient to establish that appellant was overworked. Although the case assignments show that appellant completed more than 45 companies, they do not establish that appellant was overworked. While the evidence of record established that appellant's new position required additional work responsibilities and a new electronic process, it did not show that such new requirements necessitated appellant to be overworked. Appellant did not provide specific dates or times or other details to establish overwork.[19]

Furthermore, the employing establishment has denied that appellant's regularly or specially assigned duties required overtime work. In a May 31, 2017 statement, K.D. an employing establishment workers' compensation specialist, explained that appellant was more than capable of performing the repeated duties as expected and that on more than one occasion work was reassigned to another employee in order to balance the workload. She also denied that there were staffing shortage in the SBB. A June 27, 2016 e-mail from M.S. to appellant also substantiated that work was reassigned from appellant to another staff member. The employing establishment's statement and e-mail from M.S. show that appellant was capable of completing

[17] *Supra* note 7.

[18] *See Bobbie D. Daly,* 53 ECAB 691 (2002); *T.M.,* Docket No. 15-1774 (issued January 20, 2016).

[19] *See Y.J.,* Docket No. 15-1137 (issued October 4, 2016) (the Board noted that a claimant did not provide the requisite detail regarding specific dates and the duties she performed, which allegedly overwhelmed her and caused her stress).

her regularly and specially assigned duties without overtime work and dispute her claim that she was overworked.[20]

Appellant made several other allegations that relate to administrative and personnel actions. As a general rule, administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regularly or specially assigned work duties of the employee and are not covered under FECA.[21] In *Thomas D. McEuen*,[22] the Board has 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 employer and do not bear a direct relation to the work required of an employee. However, the Board has also held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, such action will be considered a compensable employment factor.[23] In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.[24]

Appellant asserted that she felt stress and anxiety due to actions by her supervisor, M.S. She contended that M.S. issued several unwarranted disciplinary actions against her, including a "Fails Expectations" performance appraisal for 2016, performance counseling memorandums on July 14 and November 9, 2016, and a letter of reprimand on December 1, 2016. Appellant noted that she refuted M.S.' appraisal, but management refused to reconsider her performance appraisal. Although the handling of disciplinary actions and evaluations are generally related to the employment, they are administrative functions of the employing establishment, and not duties of the employee.[25] The evidence of record fails to establish that appellant was improperly disciplined or received an improper performance evaluation. To the extent that appellant is complaining about the manner in which a supervisor performs his or her duties as a supervisor or the manner in which a supervisor exercises supervisory discretion, such actions are outside the scope of coverage provided by FECA. As noted, a supervisor or manager in general must be allowed to perform his or her duties and mere disagreement or dislike of a supervisory or management's action will not be actionable, absent evidence of error or abuse.[26] Here, appellant did not submit any evidence establishing that the employing establishment erred in these disciplinary matters.

[20] *See A.L.*, Docket No. 17-0368 (issued June 20, 2018); *Bobbie D. Daly*, *supra* note 18.

[21] *Matilda R. Wyatt*, 52 ECAB 421 (2001).

[22] *Supra* note 9.

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

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

[25] *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).

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

Appellant reported that the disciplinary actions were also unwarranted because she was not properly trained and did not have access to the new system. The Board notes that matters pertaining to training are an administrative function of the employing establishment.[27] Appellant submitted several e-mails dated April 6 to 13, 2016 in which she informed M.S. that she and another employee were unable to access a specific profile. The same e-mail chain, however, also demonstrates that M.S. provided assistance to appellant on how to access the necessary files and workbook. Additional e-mails from M.S. dated March 8, April 15, July 20, and August 10, 2016 further demonstrate that training opportunities were available to the staff. These e-mails, therefore, contradict appellant's claim that she was not properly trained and did not have access to the new electronics system. The evidence of record is insufficient to establish that the employing establishment acted unreasonably with regards to how it trained its employees. The Board finds that appellant has not offered sufficient evidence to establish that the employing establishment acted unreasonably in these matters.

Appellant also contended that M.S committed time card fraud by not allowing her to input information on her timecard correctly and refusing to change it. Appellant submitted a February 17, 2017 e-mail where she informed M.S. that she could not input "telework" on her time sheet because she did not have a formal telework agreement signed. M.S. responded that he had certified her time sheet. The Board finds that this e-mail does not factually substantiate that M.S. committed "time card fraud." Appellant has not submitted evidence to corroborate these allegations of fraudulent acts on the part of management. Personal perceptions and allegations by a claimant alone are insufficient to establish an employment-related condition.[28]

Appellant has identified other incidents of alleged error and abuse in administrative matters on the part of her supervisors, including: changing a leave slip request on July 20, 2016; denial of her request for reassignment to not work under M.S.; being forced to work without a performance plan in place; and not signing her telework agreement. The Board has held that disputes regarding the handling of leave requests and attendance,[29] the assignment of work,[30] and determinations regarding telework,[31] are all administrative functions of the employing establishment and, absent error or abuse, a claimant's disagreement or dislike of such a managerial action is not compensable. Appellant has not submitted the necessary corroborating evidence to establish error or abuse by management in these administrative and personnel matters.[32]

Appellant has not substantiated any error or abuse committed by the employing establishment regarding these administrative actions. The Board finds, therefore, that she has not established a compensable employment factor with respect to administrative or personnel matters.

[27] *R.L.*, Docket No. 17-0883 (issued May 21, 2018).

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

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

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

[31] *T.V.*, Docket No. 16-1519 (issued September 12, 2017).

[32] *R.V.*, Docket No. 18-0268 (issued October 17, 2018).

Appellant also alleged that harassment and discriminatory behavior by management caused her stress and anxiety. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from the employee's performance of his or her regular duties, these could constitute employment factors.[33] However, for harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under FECA.[34] Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations that the harassment occurred with probative and reliable evidence.[35]

Appellant contended that her supervisor, M.S. created a hostile working environment. She reported that M.S. came to work drunk and would act in an aggressive manner. Appellant also asserted that although she tried to limit her contact with M.S., he continued "seeking [her] out." She described one occasion when M.S. followed her into the file room and cornered her. Appellant alleged that M.S. was manipulative and used threats to get his employees to do things. She submitted a November 17, 2016 e-mailed from P.G. where he told her that M.S. was sending her threatening e-mails. Appellant has not, however, provided corroborating evidence to substantiate her assertions of harassment or establish specific incidents of harassment or aggressive behavior on the part of M.S.[36] The Board notes that general allegations of harassment are insufficient to establish a compensable factor of employment.[37] Appellant has not established allegations of harassment with probative and reliable evidence.

Appellant also contended that M.S. retaliated against her because of a grievance filed against M.S. by several employees. She submitted the grievance form that was filed. The Board notes, however, that grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.[38] There is no corroboration of workplace harassment or unfair treatment by appellant's supervisor. The Board finds, therefore, that appellant failed to provide sufficient evidence to substantiate this assertion.

The record does not contain witness statements corroborating appellant's narrative statements regarding the allegedly harassing, bullying, or intimidating behavior. The Board finds, therefore, that there is no evidence substantiating appellant's contention that she was harassed by M.S. She has therefore not met her burden of proof to establish her claim.

[33] *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

[34] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

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

[36] *See William P. George*, 43 ECAB 1159 (1992).

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

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

On appeal appellant reiterated her allegations asserting that she has established her emotional condition claim. As explained above, she has not established her claim for an emotional condition as she has not established any compensable employment factors.[39]

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 June 12, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 26, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[39] 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).