United States Department of Labor
Employees' Compensation Appeals Board

A.F., Appellant	)	
and	)	**Docket No. 24-0952**
	)	**Issued: December 13, 2024**
DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, JEFFERSON NATIONAL EXPANSION MEMORIAL, St. Louis, MO, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On September 30, 2024 appellant filed a timely appeal from an August 15, 2024 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish an emotional/stress-related condition in the performance of duty, as alleged.

[1] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

This case has previously been before the Board.[2] The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On February 20, 2020 appellant, then a 53-year-old maintenance mechanic, filed an occupational disease claim (Form CA-2) alleging that he sustained a cerebral vascular accident (CVA) and transient ischemic attack (TIA) due to factors of his federal employment, including harassment and discrimination. He explained that he eventually had to take two and a half months of leave from work due to stress, which he alleged caused him to suffer a stroke while at work on February 13, 2020. Appellant noted that he first became aware of his condition on February 13, 2020 and realized its relation to his federal employment on February 14, 2020. On the reverse side of the claim form, the employing establishment noted that "all findings have come back unsubstantiated." Appellant stopped work on February 13, 2020.

In a development letter dated March 10, 2020, OWCP informed appellant of the deficiencies of his claim. It advised him of the factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded 30 days to respond.

In a March 16, 2020 response, appellant alleged a hostile environment at the employing establishment. He asserted that, on September 10, 2018, a coworker referred to Muslims as "rag heads," and on September 17, 2018 two coworkers referred to appellant as "other" or "boy." On September 20, 2018, coworkers prevented appellant from correctly completing his training. Appellant reported the failure of coworkers to demonstrate procedures for him to his supervisor on October 9 and November 13, 2018. On November 16, 2018, a coworker informed him that he needed to "return to the railroad," as he was not wanted at the employing establishment. Another coworker yelled at and threatened appellant on December 10, 2018.

Appellant alleged that he was harassed and belittled by coworkers, that he had experienced verbal abuse, and that the stress of his work situation had caused complications with his post-traumatic stress disorder (PTSD). On February 20, 2019, he felt that every job was a test, and that his peers were angry with him, refused to speak to him, and there was heavy tension in his department. On March 4, 2019, M.W., park superintendent, informed appellant that a hostile environment claim was filed against him on February 13, 2019, which he felt allowed individuals to make false accusations against him. On that date, an acting supervisor informed him that appellant was charged in an Equal Employment Opportunity (EEO) complaint. On March 13, 2019, appellant filed a discrimination complaint. He used leave due to stress from March through May 2019.

In a May 21, 2019 statement, appellant alleged that his supervisor K.L., was ignoring him and separating him from his coworkers, and that he was trying to push him into becoming angry He also asserted that his coworkers were attempting to gather information to use against him.

[2] Docket No. 23-0277 (issued August 4, 2023); Docket No. 20-1635 (issued June 9, 2022).

Appellant further alleged retaliation by his supervisor, K.L., and his coworkers in a statement dated June 25, 2019. He asserted that K.L. transferred him against his will, that his coworkers ignored him, that K.L. changed his work assignments without a valid work-related rationale, that he was improperly disciplined, that his performance appraisal did not reflect his work performance, that coworkers engaged in verbal or physical abuse, and that he was threatened with invalid reports. Appellant further alleged that B.M. informed him that he did not like him.

In a statement dated July 21, 2019, appellant reported that he sustained an injury on July 5, 2019 when B.M. refused to work with him to help to complete an assigned task. He attempted the task alone and fell off of a ladder on to a work bench, and then the floor.

Appellant completed a statement dated September 6, 2019 alleging that his coworkers were not communicating with him due to his EEOC complaint. He noted that during a meeting on September 4, 2019, as he was apologizing, a coworker, M.H., asserted that he was taking advantage of his veteran's disability, and that he would never talk or work with him. Another coworker, P.D. refused to talk or work with appellant on advice of counsel. Following the meeting, appellant was stressed and angry.

In a September 24, 2019 statement, appellant alleged that he and a coworker, B.M., had a disagreement while working and had argued about whether there was lead paint at the base of a pump. He asked a question after the end of the argument, and B.M. threw a sharp five-inch scraper at him. Appellant chastised him for throwing tools, but felt scared, intimidated, and threatened by B.M. He reported these events to his supervisors. Appellant alleged that he was experiencing anger, harassment, intimidation, and threatening behavior from his coworkers. He further alleged that B.M. informed him that everyone in the department hated him, and that coworkers indicated that they refused to work with him.

On January 31, 2020, appellant alleged that he was subjected to a verbal assault on January 31, 2020 and that an Occupational Safety and Health Association (OSHA) violation had occurred as he did not receive both pre-job briefings and then on site job briefings on January 27 and 31, 2020. He asserted that B.M. verbally abused him by yelling and belittling him. Appellant retorted that he was not his supervisor and B.M. became louder and used profanity with anger in his voice. He noted that on September 24, 2019 B.M. had thrown a tool at him and informed him that everyone in the department hated him. Appellant had requested a move from his department in October 2019, with no action taken on his request. He alleged systemic racism, harassment, intimidation, and threatening/disruptive behavior. Appellant asserted that his work environment was unsafe.

In a February 3, 2020 statement, appellant alleged OSHA violations when a coworker jumped from the tram when the system was energized. He reported this to his supervisor.

Appellant provided a February 10, 2020 statement regarding the events of September 6, and 24, 2019, recounting that on September 6, 2019 his coworkers had explained that they were not going to work with him, and that they had not. He asserted that his coworkers talked about his disability, did not like him, and did not want to work with him. Appellant believed that they

were waiting for him to make a mistake. He further alleged that his supervisor had supported his coworkers, which created an unprofessional and hostile environment.

On March 1, 2020, appellant filed an administrative grievance regarding a written reprimand and asserted that he had not yelled at a coworker. He alleged that the written reprimand was harassment and retaliation and that he had experienced extreme stress at the employing establishment.

In a March 9, 2020 statement, appellant described a series of work incidents. On February 14, 2019, he was informed that a coworker was filing a hostile work environment claim against him, which he alleged included false allegations. Appellant did not work on February 19, 2019 and reported to a supervisor that he was experiencing a hostile work environment. On February 20, 2019, his coworkers refused to speak with him, there was heavy tension in the department, and he believed they were angry with him. On March 7, 2019, appellant informed a coworker that he was not angry with him, but that coworker informed him that he did not want to talk with him. He alleged that, due to stress, on February 13, 2020, he felt ill while on duty and developed symptoms of a light stroke.

On March 11, 2020 Dr. John Scally, a Board-certified cardiologist, indicated that appellant was under his care for TIA, sleep apnea, and hyperlipidemia. He recommended that he keep his stress levels and physical demand low with respect to his job. Dr. Scally noted that appellant's current job duties required physical demands and were high stress. He recommended that appellant take on a position that was less physically demanding and less stressful.

In a March 12, 2020 note, Dr. Perris J. Monrow, a Board-certified psychologist, recounted appellant's treatment beginning June 2018 due to severe PTSD, which he developed during his time serving active duty in the United States Army from 1985 to 1990. He opined that appellant had been suffering from severe work-related stress since 2019, and that the recent stroke he suffered was more likely than not caused by his work-related stress, further aggravating his PTSD.

On March 16, 2020, appellant responded to OWCP's questionnaire and asserted that the instances that led to his condition amounted to EEOC and OSHA violations, as well as instances of physical and verbal assault.

By decision dated August 31, 2020, OWCP denied appellant's claim, finding that he had not established a compensable factor of employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Appellant appealed OWCP's August 31, 2020 decision to the Board. In a June 9, 2022 decision, the Board set aside OWCP's decision and found that the case was not in posture for a decision as OWCP had failed to request that the employing establishment respond to appellant's allegations and provide relevant evidence regarding his allegations of harassment, discrimination, verbal abuse and hostile work environment. The Board remanded the case for further development, to be followed by a *de novo* decision.

OWCP subsequently received additional evidence. C.B., the employing establishment safety officer, provided a safety statement regarding appellant's July 5, 2019 fall and asserted

that he did not allege an injury, that the ladder was undamaged and stable, and suggested that the area should be cleaned for better ladder placement to avoid awkward positioning.

In a June 13, 2022 development letter, OWCP requested that the employing establishment provide statements and copies of any additional documents, video evidence, and all investigations regarding appellant's allegations. It afforded 30 days for a response.

On June 23, 2022, the employing establishment filed a November 2, 2020 motion for summary judgment before the EEOC asserting that appellant had not established the EEOC's legal standard of a hostile work environment. This document referenced testimony from B.M., multiple witnesses to the February 13, 2019 verbal argument between appellant, M.H., and P.D., and the actions of appellant's supervisor K.L.

By *de novo* decision dated August 25, 2022, OWCP denied appellant's occupational disease claim, finding that he had not established a compensable factor of employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Appellant appealed OWCP's August 25, 2022 decision to the Board. In an August 4, 2023 decision, the Board set aside OWCP's decision and found that the case was not in posture for a decision as the employing establishment had not sufficiently responded to OWCP's request for additional information. The Board remanded the case for further development, to be followed by a *de novo* decision.

In an October 19, 2023 development letter, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations and description of aspects of his job considered stressful. It afforded the employing establishment 30 days to respond.

In a December 5, 2023 response, the employing establishment disagreed with appellant's allegations, asserting that, outside the normal work requirements, there were no stressful work conditions as employees worked as a team to minimize opportunities for stressful working conditions and reduce potential safety risks. It explained that vacancies were filled in a timely manner to avoid extended lapses, and that in the case of absences, the supervisor filled the gaps.

In a February 15, 2019 statement, appellant repeated his allegations regarding racist statements and the failure of his coworkers to provide him with training. He again alleged that his coworkers harassed, verbally abused, and belittled him, resulting in complications with his diagnosed PTSD.

In a May 8, 2019 memorandum for the record, K.L. addressed concerns regarding the procedure for completion of appellant's Family and Medical Leave Act (FMLA) forms. Appellant related that he did not have to give it to him, that he had taken care of it, as someone had instructed him that K.L. was not authorized to see it. K.L. informed him that as his supervisor he wanted to ensure that the forms were appropriately completed. He said, "[Appellant] let me use the term 'metaphorically speaking' here is a shovel, what you do with it is up to you…. I just want to know if I can trust your word when I ask you if a job was complete."

On July 16, 2019, K.L. signed a record of counseling discussion, indicating that on July 5, 2019, he had received a call from B.M. relating that appellant had fallen from a ladder while clearing the louvers for the generators. He and C.B., the safety inspector, found infractions that contributed to the fall, including that the ladder was facing the wrong direction such that appellant had to reach away from the ladder to reach the louvers, that items should have been moved to make it easier to reach the louvers, that he should have asked for help and had someone holding the ladder, and that he used water to rise off the louvers and did not lock out and tag the power from the breaker to the louver actuators.

On September 27, 2019, Officer C.K. related that on September 25, 2019 he responded to appellant's report of an incident where a coworker threw a scraper at him. B.M. denied throwing the scraper at appellant, instead throwing the scraper on the ground between them. Appellant related that he did not believe any physical harm was eminent as a result of this incident.

K.L. completed an undated statement describing events from January 15 through 31, 2020. On January 29, 2020 he had several conversations with appellant regarding his assigned tasks. K.L. noted that appellant was assigned to the cleaning crew and had been working with them all morning, but determined at 12:50 p.m. that he was going to formally report his coworkers for not informing him of the next assignment. Appellant indicated that he had asked his coworkers for this information and K.L. then instructed him regarding the next task. On January 31, 2020, appellant requested to file a verbal harassment complaint, but then informed him that he was calling law enforcement because he did not trust K.L.

Appellant completed a January 29, 2020 statement alleging retaliation. He related that he and his coworkers were to work together as a team to complete tasks safely. Appellant alleged that everything was all about how to get even with him with vengeance. He asserted that his coworkers retaliated against him by failing to communicate job briefings or to respond to the job assignments. Appellant noted that he had requested to move from his department, but that the move was not initiated, and his safety concerns were growing.

In a January 31, 2020 statement, M.H., a coworker, related that appellant, B.M., and he were assigned to clean capsules. When he arrived at the jobsite, appellant was sitting and drinking coffee. M.H. and B.M. began work. B.M. asked appellant if he was going to do something. He replied that he was not his boss. After further exchanges, B.M. asked "why don't you grab a rag and do your f**king job?"

B.M. also completed a January 31, 2020 statement and alleged that, after receiving his duty assignment, he reported to the jobsite and found appellant drinking coffee. He asked him when he was going to grab a rag and start cleaning. Appellant replied that he was not his boss and that he could not talk to him that way. B.M. agreed that he was not the boss, but that they were told to clean. He retorted, "If you would just do your f**king jog there wouldn't be a problem."

On January 31, 2020, Officer T.L., a federal law enforcement officer, related that appellant wanted to file a complaint. K.L. then informed him that there were verbal altercations between appellant and two coworkers, R.S. and B.M.

R.S. completed a statement regarding the events of January 31, 2020 and related that appellant asked a question which he could not hear. In response to his question, "what?" appellant began to yell loudly. R.S. thought it unusual that he was yelling and believed that he was angry.

On January 31, 2020 J.N. related that someone asked if R.S. were deaf and hard of hearing in a forceful yell. He completed an additional statement on February 6, 2020 describing appellant.

K.L. completed a February 10, 2020 statement and asserted that on September 6, 2019 there was a staff meeting at appellant's request. He explained that there was no procedure for both a pre-job briefing and a job briefing on the worksite. K.L. reported that all employees received the same training.

In a February 11, 2020 statement, B.M. described the events of January 31, 2020, noting that when he arrived at the worksite, appellant was sitting and drinking coffee. He began to clean and appellant continued to sit and drink his coffee. B.M. asked, "[Appellant] are you going to grab a f**king rag?" Appellant jumped up and yelled that he could not speak to him that way. He then explained that if he would just "do his f**king job," then there would not be a problem. B.M. made these comments because three coworkers were assigned the task and were all paid to do the job and not sit. He denied that these comments were discriminatory.

In a February 18, 2020 e-mail, D.R., an employee and labor relations specialist, recommended ending appellant's claim of harassment based on the events of September 24, 2019, January 31, 2020, and the lack of communication with coworkers. He found that there were no witnesses to the September 24, 2019 throwing of the scraper and that there was not enough evidence to prove that the event occurred as alleged or that it was due to discrimination or retaliation. D.R. further found that on January 31, 2020 B.M. behaved inappropriately, but denied that his behavior was based on race or prior protected activity. Instead, he made the comment because appellant was sitting and drinking coffee rather than working, such that there was no evidence of discrimination or retaliation. Regarding the alleged lack of communication to include a pre-job briefing prior to arriving at the job site and then another job briefing occurring at the work site, K.L., denied that this had ever been employing establishment practice. D.R. concluded that there was no evidence of harassment based on race or retaliation.

In a note dated February 19, 2020, an unidentified person related that appellant was not required to apply for additional FMLA as he had three hours on file. He was informed that he would be charged with five hours of absent without leave (AWOL) for February 18, 2020 as he failed to follow procedures. Appellant then reported the February 14, 2020 injury.

A February 27, 2020 written reprimand documented that appellant had exhibited inappropriate conduct, was AWOL, and failed to follow proper leave request procedures. Specifically, he was reprimanded for yelling at R.S. on January 31, 2020 to ask if he were deaf, for abruptly hanging up the telephone while speaking with K.L., for failing to report for duty as scheduled on February 18, 2020, and failing to follow proper leave request procedures on that date.

J.C., chief of facility management, was interviewed on March 3, 2020 and related that he was appellant's supervisor. He was aware that appellant had received a letter of reprimand, but did not instructed K.L. to issue the reprimand. In an interview of even dated, K.L. related that he had supervised appellant since July 2018 and that he issued a reprimand due to his failure to follow leave request procedures and due to yelling at R.S. in front of visitors. He denied issuing the reprimand due his prior complaints.

On March 11, 2020, F.M., deputy superintendent, related that he did not directly supervise appellant, but that he was within his supervisory chain. He denied any substantial contact with him but was aware that he had received a letter of reprimand.

In a March 16, 2020 interview, M.W., superintendent, related that he was not appellant's direct supervisor and had only conversed with him in an employee group setting. He asserted that he was aware that appellant had received a letter of reprimand, but had not instructed K.L. to issue this letter and had no involvement with the decision to issue a reprimand. M.W. denied that K.L. issued the letter of reprimand in retaliation for previous EEO complaints.

In an undated interview, M.T., a coworker, related his difficult relationship with appellant and lack of trust in him. He mentioned without detail incidents on February 14 and June 20, 2019 between appellant and coworkers. M.T. denied hearing any racist remarks addressed to appellant.

B.M., a coworker, completed an undated interview and asserted that appellant did not allow him to finish any sentences, that he did not work well with a team, and that he did not listen and was therefore unable to perform his job properly. He denied using the racial slur "rag head." B.M. admitted to yelling at appellant in December when he continued to interrupt while he was training him about how to check cars on the tram as they were in the danger zone. He asked him, "Are you going to shut the hell up so I can explain to you how to do this?" B.M. noted that appellant had not previously performed the task and that there were live power rails about two feet above their heads with 240 volts which was deadly. He denied threatening him.

In an undated interview, C.B., a coworker, related his cordial relationship with appellant and appellant's difficulties at work. He denied personal knowledge of the events of June 20, 2019 and hearing racially insensitive comments directed toward appellant.

Coworker, V.R., participated in an undated interview and related that he had a good relationship with appellant. He reported that he was unaware of significant events involving him on February 14 and June 20, 2019. V.R. denied hearing racist remarks made about appellant.

In an undated interview, R.S., a coworker, related that he had good communication with appellant, that he provided him with training, and that he had not called nor heard him referred to as "boy."

Appellant's coworker, M.S., participated in an undated interview and asserted that there was unspecified racial insensitivity within the workplace. He denied hearing racial slurs.

P.D., a coworker, completed an undated interview and related that he no longer spoke to appellant on the advice of his attorney as appellant had filed an EEOC complaint against him.

He denied providing training to appellant as he informed him he was not interested. P.D. explained that appellant was absent from work, returned on February 14, 2019, and that he had inquired about his health. Later than day, while in the breakroom appellant asserted that things had to change, that he was going to document everything, and that he was to be trained like everyone else. He said, "They can't help but treat me like this. They have been conditioned to do so their whole lives. They just can't help themselves." P.D. was shocked and offended. M.H. denied that it was his responsibility to teach him. R.S. instructed appellant not to continue in this manner and directed him to speak with K.L. P.D. did not feel safe working with appellant as he did not complete his assigned tasks. On June 20, 2019, while P.D. and B.M. were in the breakroom, appellant entered and said, "Good morning" to B.M. and then to him. He did not acknowledge him despite repeated greetings from appellant. P.D. informed appellant that he was not speaking based on the advice of counsel. He then accused him of being unprofessional, which he denied. B.M. informed appellant that P.D. did not have to speak to him, that no one liked him because he interrupted. Appellant did not let B.M. finish, and then K.L. directed them to "knock it off."

M.H., a coworker, completed an undated interview and related that appellant would not listen and complete tasks as trained. He further noted that he communicated with him, answered his questions, and was cordial. M.H. offered that he did not trust appellant as he reported to the supervisor. He recounted the events of February 14, 2019, as appellant asserting that he had not greeted him and that he was not dealing with these issues anymore. When M.H. responded that he did not know what appellant was referencing, he responded, "you do not understand that these guys have all been conditioned." M.H. then walked out of the room.

In an undated interview, S.L., a coworker, described a friendly relationship with appellant who described his frustrations with coworkers.

In an undated interview, K.F., a coworker, related that he communicated normally with appellant. He provided him with training. K.F. denied hearing racist remarks.

J.C., appellant's supervisor, in an undated interview, denied hearing the epithet "rag-head" from an employee. He related forwarding appellant's complaints to human resources. J.C. reported that on June 20, 2019 two employees were talking, appellant came in the area and greeted them and then repeated himself in a louder tone as neither responded.

In an undated interview, K.L., appellant's first-line supervisor, described the events of February 14, 2019. He related that appellant approached M.H. and PD and informed them that they would not mistreat him by failing to train him. On May 8, 2019 appellant filled out his application for leave share, but instead of returning it to K.L, he gave it to another official. K.L. then told him about "the shovel" suggesting that he could dig himself in deeper and that he needed to be honest. On May 9, 2019, appellant had a panic attack at work. On June 20, 2019, K.L. related that appellant repeated "good afternoon" increasing loud tones. P.D responded with "Hello, but we were talking." B.M. retorted that he did not have to respond to appellant as they were talking. K.L. instructed them to "Knock the crap off." Appellant began a conversation with B.M. again with increasing volume, and he again requested that they "knock it off." He denied hearing racist remarks directed toward appellant. K.L. asserted that he had received the same training as other mechanics.

On January 20, 2021, the Merit System Protection Board (MSPB) issued an initial decision dismissing appellant's December 9, 2020 claim.

In a June 11, 2021 notice, the employing establishment proposed to remove appellant from his position based on his inability to perform the duties of his position. On July 8, 2021 the employing establishment removed appellant from his position effective July 12, 2021 as his medical condition affected his ability to perform the essential functions of his position for the foreseeable future.

By decision dated August 15, 2024, OWCP denied appellant's claim finding that he had failed to establish a compensable factor of employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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.[4] 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.[5]

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.[6]

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*,[7] the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.[8] There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the

[3] *Supra* note 1.

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

[5] 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).

[6] *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).

[7] 28 ECAB 125 (1976).

[8] 5 U.S.C. § § 8101-8193.

concept or coverage of workers' compensation.[9] 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.[10]

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.[11] Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.[12] Aclaimant must support his or her allegations with probative and reliable evidence.

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.[13] Mere perceptions of harassment are not compensable under FECA.[14] Aclaimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.[15] Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.[16]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an emotional/stress-related condition in the performance of duty, as alleged.

Appellant has not attributed his emotional condition to the performance of his regular or specially assigned duties under *Cutler*.[17] Rather he has alleged that he sustained an emotional

[9] *G.R.*, Docket No. 18-0893 (issued November 21, 2018). *Robert W. Johns*, 51 ECAB 136 (1999).

[10] *Supra* note 1.

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

[12] *Kim Nguyen*, 53 ECAB 127 (2001). *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon*., 42 ECAB 566 (1991).

[13] *S.B.*, Docket No. 18-1113 (issued February 21, 2019).

[14] *Id*.

[15] *See S.G.*, Docket No. 22-0495 (issued November 4, 2022); *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, 57 ECAB 622 (2006).

[16] *S.G., id.*; *T.Y.*, Docket No. 19-0654 (issued November 5, 2019); *G.S.*, Docket No. 09-0764 (issued December 18, 2009); *Ronald K. Jablonski*, 56 ECAB 616 (2005); *Penelope C. Owens*, 54 ECAB 684 (2003).

[17] *Supra* note 7.

condition as a result of actions by his managers/supervisor and harassment and discrimination. OWCP denied appellant's emotional condition claim on the grounds that he 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.[18]

Appellant asserted that the employing establishment mishandled his request for transfer to another division, his training, his work instructions, his leave requests, transferred him against his will, changed his work assignments without a valid work-related rationale, issued improper discipline, and that his performance appraisal did not reflect his work performance. The Board has held that 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.[19] The Board finds no evidence to establish that management's handling of his transfers, change of work assignments, discipline, or his performance appraisal were arbitrary or unfair, such that they constituted error or abuse. Furthermore, although appellant expressed dissatisfaction with the actions of several superiors, the Board has held that mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor.[20] The Board thus finds that he has not shown error or abuse by the employing establishment in the above-noted matter. Consequently, appellant has not established a compensable employment factor with respect to administrative or personnel matters.[21]

Regarding appellant's allegations of harassment and discrimination by his supervisor and coworkers, the Board finds that his allegations are insufficient to constitute compensable employment factors.[22] While he alleged that B.M. threw a five-inch scraper at him, B.M. related that he threw the scraper on the ground between them, and there was no evidence to the contrary. Appellant did not submit witness statements or other corroborative evidence demonstrating that his version of this event occurred as alleged.[23] He further alleged that B.M. cursed at him on January 31, 2020. This allegation was substantiated by M.H. and B.M. However, appellant has not shown that this isolated remark of a coworker rose to the level of verbal harassment compensable under FECA. Appellant also alleged that B.M. used a racial epithet in the workplace. However, this allegation was uncorroborated as B.M. denied using the epithet and appellant did not submit witness statements to substantiate that it occurred. The Board therefore finds that appellant has not established a compensable factor of employment with regard to harassment and discrimination.

[18] *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *Dennis J. Balogh*, 52 ECAB 232 (2001).

[19] *E.F.*, Docket No. 24-0727 (issued October 25, 2024); *T.L.*, Docket No. 18-0100 (issued June 20, 2019); *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, *supra* note 12.

[20] *M.E.*, Docket No. 21-1340 (issued February 1, 2023); *T.C.*, Docket No. 16-0755 (issued December 13, 2016).

[21] *Id.*

[22] *E.F.*, *supra* note 19. *See generally T.G.*, Docket No. 19-1668 (issued December 7, 2020).

[23] *E.F.*, *id.*; *B.S.*, Docket No. 19-0378 (issued July 10, 2019);

Accordingly, the Board finds that appellant has not established a compensable employment factor under FECA. Thus, appellant has not met his burden of proof to establish an emotional/stress-related condition in the performance of duty.[24]

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

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish an emotional/stress-related condition in the performance of duty, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the August 15, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 13, 2024
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

[24] *See E.M.*, Docket No. 19-0156 (issued May 23, 2019); *D.C.*, Docket No. 18-0082 (issued July 12, 2018); *L.S.*, Docket No. 16-0769 (issued July 11, 2016); *D.D.*, 57 ECAB 734 (2006).