



generally attributed her condition to having to do “too many minutes” and the pressure of having to get the minutes “done in a short turn around time,” which resulted in errors and the need to be counseled. Appellant alleged that her supervisor, Dr. Kanan Chatterjee, screamed at her with regard to the minutes at the Professional Standards Board (PSB) meeting and in his office a few weeks later. The employing establishment noted that appellant had been placed on a performance improvement plan for failure to perform her duties. Appellant stopped work on October 22, 2009 and did not return.

In a November 6, 2009 letter, OWCP requested additional factual and medical information from appellant, including a comprehensive medical report in which her doctor explained how the incidents in her federal employment caused or contributed to her condition. No additional information was received from appellant.

In a December 8, 2009 decision, OWCP denied the claim, finding that the factual evidence submitted was insufficient to establish the alleged events and there was no medical evidence relating her condition to the claimed events.

In a June 29, 2010 letter, appellant requested reconsideration. She had been on medical leave since February 2010. Appellant alleged that she had done the minutes of numerous Boards and that she had less than one day turnaround time, without being allowed compensatory time or overtime. She stated that Dr. Chatterjee degraded her at the PSB meeting in April 2009 and again in his office in May 2009 concerning the minutes. Appellant went to the Employee Assistance Program (EAP) for stress as she was crying and could not sleep. She stated that she tried to keep Dr. Chatterjee informed about the licenses, but he told her a carbon copy to “Ydonna” would suffice; but he later asked why he was not being informed about the licenses.

Appellant submitted copies of e-mails to Bruce Triplett dated June 27, 2008 and July 30, 2009 and to Dr. Chatterjee dated July 25 and August 11, 2008. She also submitted progress notes from various providers with the employing establishment’s health unit dated June 18, 2009 through March 5, 2010.<sup>2</sup> In the June 27, 2008 e-mail to Mr. Triplett, appellant alleged being harassed and retaliated against because she was the only one at the medical center that did not receive a proficiency award or award money. She noted that she sent numerous e-mails to and met with Dr. Chatterjee regarding the award money, but had yet to hear anything. Appellant noted that she was stressed because proper procedures were not being followed with regard to providers. In the July 30, 2009 e-mail, she complained about having to redo the minutes to the modification of privileges after they were signed off and not informed about the attendance portion of the minutes as it was a team process. Appellant addressed Dr. Chatterjee’s behavior with regards to the minutes, alleging that it constituted harassment and cruel punishment. She also alleged that Dr. Chatterjee had shown favoritism to her counterpart. Appellant questioned why she was treated differently and put on a performance improvement plan if everyone worked on a team.

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<sup>2</sup> In a June 18, 2009 report, Dr. Kevin F. Smythe, a licensed psychologist, diagnosed psychological stress; in July 30, August 11 and October 28, 2009 reports, Tolia Y. Virgin, a licensed clinical social worker, noted depressive symptoms due to job factors; in a December 2, 2009 report, Dr. Eric J. Lespes, a psychiatrist, provided a mental status evaluation and in March 1 and 5, 2010 reports, Dr. Lynda Freedman, a psychiatrist, noted a past history of major depression/single episode/post-traumatic stress disorder.

In the July 25, 2008 e-mail to Dr. Chatterjee, appellant questioned why her request for compensatory time that day was denied. She put in the request on July 1, 2008 and asked to be shown in the regulations where it stated a reason compensatory time was necessary. In an August 11, 2008 e-mail, appellant complained about not having enough hours in the day to complete her tasks and that she stayed late from two to three days a week to complete her tasks. She noted that she had never requested compensatory time before and it was stressful trying to solve a problem and not get any solution.

In an August 12, 2010 letter, the employing establishment controverted appellant's claim. It noted that her duties included attending and providing minutes for the PSB. The employing establishment stated that appellant was given verbal counseling on June 11, 2009 and written counseling on July 24, 2009 regarding the accuracy of her records and timeliness. Appellant was placed on a performance improvement plan on October 15, 2009 but it had not been completed due to her absence from work. A copy of the October 15, 2009 performance improvement plan and July 24, 2009 written counseling was provided together with a copy of appellant's June 11, 2009 job description.

By decision dated August 18, 2010, OWCP denied modification of its December 8, 2009 decision, finding that no compensable employment factors were established.

### **LEGAL PRECEDENT**

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

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to her regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of FECA. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of her work or her fear and anxiety regarding her ability to carry out her work duties.<sup>4</sup> By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results

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<sup>3</sup> *D.L.*, 58 ECAB 217 (2006).

<sup>4</sup> *Ronald J. Jablanski*, 56 ECAB 616 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

from an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.<sup>5</sup>

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.<sup>9</sup> Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.<sup>10</sup> The primary reason for requiring factual evidence from the claimant in support of her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by OWCP and the Board.<sup>11</sup>

### ANALYSIS

Appellant generally alleged that her emotional condition was caused by the pressure to transcribe minutes to numerous Board meetings and making corrections or additions after the transcription. She alleged that she stayed late on an average of two to three days a week to complete her tasks. The employing establishment noted that appellant's duties were to attend and provide minutes for the PSB. The Board has held that emotional reactions to situations in

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<sup>5</sup> See *Lillian Cutler*, *supra* note 4.

<sup>6</sup> See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>7</sup> See *William H. Fortner*, 49 ECAB 324 (1998).

<sup>8</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>9</sup> *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Arthur F. Hougens*, 42 ECAB 455 (1991) and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence established such allegations).

<sup>10</sup> *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

<sup>11</sup> *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

which an employee is trying to meet her position requirements can be compensable.<sup>12</sup> The Board has reviewed the record, however, and notes that her claim is premised on an October 15, 2009 performance plan and some prior performance counseling sessions. As to her work duties, appellant did not specifically identify how performance of her regular or specifically assigned duties caused her condition. She provided no specifics as to time, dates or specific Board assignments as giving use to her condition but alleged generally that transcribing too many minutes in a months time. Appellant has not established a compensable employment factor under *Cutler*.

With regard to appellant's allegations that management erroneously denied her request for compensatory time, disciplined her unfairly, erroneously assessed her job performance and did not provide work instructions in a team manner, the Board finds that these allegations relate to administrative or personnel matters unrelated to her regular or specially assigned work duties and do not fall within coverage of FECA absent evidence showing error or abuse on the part of her employing establishment.<sup>13</sup> Although generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>14</sup> Appellant has not submitted evidence that the employing establishment erred in matters involving leave reports, assessment of performance, the assignment of work or disciplinary actions and thus has not established a compensable employment factor.

Appellant alleged disparate treatment as to the nonreceipt of a proficiency award, the way changes to the minutes were handled and the fact she did not get adequate assistance. She did not submit adequate evidence to show that the employing establishment acted erroneously in these administrative matters. Thus, these matters do not rise to the level of a compensable work factor.

Appellant alleged that her supervisor, Dr. Chatterjee, yelled at her and degraded her at a PSB meeting in April 2009 and in his office in May 2009. The Board has recognized the compensability of verbal altercations or abuse when sufficiently detailed by the claimant and supported by the record. This does not imply, however, that every statement uttered in the workplace will give rise to compensability.<sup>15</sup> However, appellant did not submit sufficient evidence to establish her allegations as to time, place, what was said or of any witnesses to any

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<sup>12</sup> See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

<sup>13</sup> *Jeral R. Gray*, 57 ECAB 611 (2006) (the assignment of work, the handling of leave requests and disciplinary actions are administrative functions of a supervisor and not compensable absent a showing of error or abuse on the part of the employing establishment); *Sherry L. McFall*, 51 ECAB 436, 439 (2000) (the assessment of an employee's performance is an administrative matter).

<sup>14</sup> *Id.*

<sup>15</sup> See *David C. Lindsey*, 56 ECAB 263 (2005). The mere fact that a supervisor or employee may raise his or her voice during the course of an argument does not warrant a finding of verbal abuse. *Joe M. Hagewood*, 56 ECAB 479 (2005).

specific incident.<sup>16</sup> As such, appellant's allegations constitute generally stated assertions of dissatisfaction with a certain superior at work which do not establish her allegations.<sup>17</sup>

Appellant also asserted that Dr. Chatterjee harassed and discriminated against her with regard to the transcription of and changes to the Board's minutes and in treating her differently from her counterpart. Harassment and discrimination by supervisors and coworkers, if established as occurring and arising from the performance of work duties, can constitute a compensable work factor.<sup>18</sup> A claimant, however, must substantiate allegations of harassment and discrimination with probative and reliable evidence.<sup>19</sup> Appellant did not submit any factual evidence in support of her allegations and thus has not established a compensable work factor.

Appellant has not identified any specific duty or duties, or any factors reasonably incidental to her employment, which caused her disability. Thus, she has not established a compensable factor of employment in this case.<sup>20</sup>

On appeal, appellant argued that OWCP's decision is contrary to fact and law. However, as noted, she has not established any compensable employment factors.

### **CONCLUSION**

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

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<sup>16</sup> See *Joel Parker, Sr.*, 43 ECAB 220 (1991) (the Board held that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

<sup>17</sup> See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

<sup>18</sup> *Doretha M. Belnavis*, 57 ECAB 311 (2006).

<sup>19</sup> *Robert Breeden*, 57 ECAB 622 (2006).

<sup>20</sup> As the Board has found no compensable factors, it will not review the medical evidence. *Marlon Vera*, 54 ECAB 834, 839 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 18, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 22, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board