

**United States Department of Labor
Employees' Compensation Appeals Board**

D.D., Appellant

and

**U.S. POSTAL SERVICE, CARROLLWOOD
POST OFFICE, Tampa, FL, Employer**

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**Docket No. 12-1739
Issued: September 16, 2013**

Appearances:
Lenin V. Perez, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 9, 2012 appellant, through her attorney, filed a timely appeal from a June 18, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her emotional condition claim. Pursuant to the Federal Employees' Compensation Act¹ (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 established that she sustained an emotional condition in the performance of duty.

On appeal, appellant contends that the employing establishment erred in issuing a letter of warning for her failure to follow instructions. She never disobeyed her supervisors. A decision issued by the Equal Employment Opportunity Commission (EEOC) reduced the letter of warning to a discussion, which appellant contended was never held, and awarded her monetary compensation.

¹ 5 U.S.C. § 8101 *et seq.*

On appeal, by way of a Memorandum of Justification of OWCP Decision, the Director contends that appellant failed to establish that she sustained an emotional condition causally related to a compensable factor of her federal employment. Appellant did not establish error or abuse by the employing establishment with respect to the handling of administrative matters, including issuance of a letter of warning and an investigation of workplace violence and resultant emergency suspension. She also failed to establish a factual basis for her allegations that she was harassed and discriminated against by a supervisor and coworker and that she was treated disparately by the supervisor regarding an offer of overtime work.

FACTUAL HISTORY

On March 24, 2011 appellant, then a 55-year-old letter carrier, filed a traumatic injury claim alleging that on March 22, 2011 she sustained depression and anxiety due to harassment, a hostile work environment and misconduct by her supervisors and managers. She stopped work on the date of injury and returned to full-duty work on April 23, 2011. In a March 24, 2011 narrative statement, appellant contended that on March 22, 2011 Delores Seuwin, a manager and Laura Achamabeault, a clerk supervisor, came out to her route and placed her off work due to a threat assessment involving physical contact she had with an employee. She was also asked to sign a letter of warning dated March 15, 2011 regarding a March 2, 2011 incident. Appellant contended that after a March 12, 2011 investigation of the March 2, 2011 incident she was not given an opportunity to present evidence or an explanation. She claimed that on March 2, 2011 she cased mail with a purple tag on it to ensure timely delivery as instructed by her supervisor.

Appellant submitted an authorization for examination and/or treatment (Form CA-16) dated March 24, 2011 and a March 28, 2011 duty status report from a physician who advised that she had depression and anxiety and resulting total disability causally related to the March 22, 2011 incident.

By letter dated March 31, 2011, the employing establishment controverted appellant's claim, contending that her emotional reaction to a March 12, 2011 meeting with management regarding the March 2, 2011 incident and the March 22, 2011 incident constituted administrative or personnel matters which were not compensable under FECA.

By letter dated April 6, 2011, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested factual and medical evidence.

In a narrative statement, Rodney A. Johnson, an employee, related that on March 12, 2011 he was casing mail on appellant's route when she aggressively grabbed mail from his hands. Appellant pushed the right side of her body, including her right arm, shoulder and elbow into his abdomen. She then slammed the mail onto a case and angrily told Mr. Johnson to "get out of here." During a March 25, 2011 investigative interview, Mr. Johnson stated that appellant gestured with her thumb when she told him to get out. He felt threatened by her and reported this incident to a shop steward. Mr. Johnson stated that appellant was a threat to everyone on the floor.

In a March 14, 2011 letter, Daphne McClellan, a customer service supervisor, stated that she interviewed appellant as part of an investigation concerning her failure to follow instructions.

Brian Obst, a union steward, was present during the interview. Ms. McClellan stated that on numerous previous occasions she had advised appellant about her responsibility to provide a professional estimate in the morning. Appellant failed to do so on more than one occasion and Ms. McClellan recommended the issuance of a letter of warning for her failure to follow instructions. In an April 8, 2011 statement, Ms. McClellan related that proper procedures were followed with regards to the March 22, 2011 incident. She noted the employing establishment's zero tolerance policy and its assessment team's investigation of the March 12, 2011 incident which concluded that body contact occurred. Ms. McClellan stated that appellant was given union assistance as soon as possible and during questioning related to the above-noted incidents.

In a March 22, 2011 memorandum, Ralf Christiano, a customer service manager and member of the threat assessment team, indicated that he interviewed several employees including, appellant regarding the March 12, 2011 incident. Mr. Johnson stated that appellant grabbed mail from him like a running back and pushed him aside. Brad Perez, an employee, stated that he saw her grab flats from Mr. Johnson's left arm. Appellant forearmed Mr. Johnson in the chest, pushing him a step back. She then slammed the flats onto a case. Mr. Obst stated that appellant was not in a good mood following her investigative interview. He saw her stumble over a bucket at her case and heard her say get out and that she was back. Appellant contended that she was not aggressive and made no contact with Mr. Johnson. She just grabbed flats from his arm. Sophie Bezdek, an employee, stated that she was loading her parcel tub when she saw appellant step over flat tubs. She heard appellant say get out. Ms. McClellan related that she did not see anything and no one reported any physical contact. Nicky Johnson, a clerk, stated that Mr. Johnson was casing mail when he was approached by appellant. She observed appellant take mail from Mr. Johnson hand. Mr. Johnson stumbled back into a case. Mr. Christiano determined that physical contact occurred. The ferocity or degree of contact was undeterminable as there was no physical evidence left to identify damage to the person or objects. Mr. Christiano concluded that the scope of the actions leading up to and the physicality of the incident warranted a Priority 2 rating.

Responses to fact finding questions posed by the employing establishment's investigation of the March 12, 2011 incident were given by employees and appellant. On March 24, 2011 Ms. Bezdek stated that she did not see appellant make any contact with Mr. Johnson. On March 24, 2011 Nicki Irvin, an employee, related that she saw appellant leaving the area of the managers' offices looking visibly upset. As appellant approached her route she saw Mr. Johnson casing mail. She took mail out of his hands and he suddenly fell back. Appellant then stated "get out of here" and threw the mail down onto a case. On March 29, 2011 she stated that no other body part came in contact with Mr. Johnson when she took flats off his arms. Appellant did not tell him to get out of here. She apologized to Mr. Johnson because he stepped backward and she thought she had startled him. Appellant used poor judgment in taking the flats off his arm. She asked Mr. Obst to tell Mr. Perez to stop spreading lies about her. Mr. Obst responded by yelling that appellant should be worried about performing her work and job security. Appellant claimed that in 28 years as a postal employee she had never put her hands on anyone in a violent or threatening manner.

In an April 4, 2011 narrative statement, Ms. Seuwin related that procedures were properly followed in the issuance of the letter of warning and removal of appellant off the clock under emergency placement on March 22, 2011. Appellant was familiar with this procedure because

she had previously received a letter of warning. Ms. Seuwin stated that appellant had filed a grievance regarding the employing establishment's actions. She also stated that employees were trained about policies concerning discipline and violence when they first entered the employing establishment.

A March 15, 2011 letter of warning stated that on March 2, 2011 appellant demonstrated improper conduct as she failed to follow instructions. She took the purple mail despite being specifically instructed not to do so. Appellant failed to provide a satisfactory explanation for her action during a March 12, 2011 investigative interview. On April 2, 2011 she filed a grievance regarding the letter of warning. Other documents from the employing establishment addressed a priority risk scale used by its threat assessment team and its zero tolerance policy for workplace violence. In e-mails dated March 24 and 29, 2011, the employing establishment agreed with the threat assessment team's determination.

Appellant refused to sign the March 15, 2011 letter of warning and Ms. Achamabeault never advised her that she had a right to union representation. She was humiliated and degraded when her badge was taken from her and she was ordered to leave the premises after receiving the letter of warning.

Appellant contended that she was unable to answer questions during the March 12, 2011 investigative interview because of the amount of time that had elapsed since the March 2, 2011 incident and her notes were at home. During the interview, Mr. Obst raised his voice at her. He stated that he was talking loudly because he did not think appellant understood what he was saying. After this meeting, appellant returned to her case where she saw Mr. Johnson casing mail. She said "hey" and took the mail from his arms.

Appellant alleged that on March 11, 2011 Ms. McClellan allowed Ms. Bezdek to work off the clock despite Mr. Obst's directive that employees should not work off the clock under any circumstance.

On March 19, 2011 Ms. Seuwin advised appellant not to return to work until March 22, 2011 following her leave under the Family and Medical Leave Act from March 14 to 19, 2011 due to stress and depression because on March 14, 2011 Mr. Johnson had accused her of physical contact. Following the March 22, 2011 incident, Ms. McClellan was given a detail assignment at another station on April 21, 2011. She returned to her regular workstation on April 23, 2011. Appellant claimed that carriers who were unhappy about Ms. McClellan's absence whispered about her. Mr. Perez and Ms. Bezdek were visibly upset about appellant's return to work. On April 25, 2011 Ms. Bezdek complained to Alan Peacock, a union president, that appellant was casing mail too loudly. On April 30, 2011 David Bradley, a carrier, asked to see Mr. Obst to express his displeasure about Ms. McClellan's detail assignment.

Medical records dated April 5, 2007 to April 21, 2011 addressed appellant's emotional conditions and the causal relationship between these conditions and her employment.

In a May 16, 2011 decision, OWCP denied appellant's claim. It found that the factual evidence was insufficient to establish a compensable factor of employment. OWCP further

found that since appellant did not establish a compensable employment factor, it was not necessary to review the medical evidence of record.

On May 25, 2011 appellant requested a telephone hearing with an OWCP hearing representative.

Medical evidence dated March 30 through October 18, 2011 addressed the causal relationship between appellant's emotional conditions and her employment. This evidence also addressed her work capacity.

In a December 2, 2011 decision, OWCP's hearing representative treated the traumatic injury claim as an occupational disease claim as appellant alleged that her emotional condition was caused by events that occurred over the course of several months. He affirmed the May 16, 2011 denial of the claim, finding that she did not establish a compensable factor of employment. The hearing representative further found that since appellant did not establish a compensable employment factor, it was not necessary to review the medical evidence of record.

On March 20, 2012 appellant, through her representative, requested reconsideration.

A March 13, 2012 EEOC settlement agreement stated that it should not be construed as an admission of the violation of any statute, rule, regulation or legal obligation by any official, employee or agent of the employing establishment. The employing establishment agreed to pay appellant \$1,000.00 in settlement of her claim. It also agreed to expunge from her files the March 15, 2011 letter of warning which was reduced to an official discussion and March 22, 2011 letter which addressed her emergency placement in an off-duty status.

Medical records dated February 24, 2011 to March 6, 2012 addressed appellant's emotional conditions and causal relationship.

In a June 18, 2012 decision, OWCP denied modification of the December 2, 2011 decision, finding that appellant did not sustain an emotional condition related to factors of employment within the performance of duty. Because appellant did not establish any compensable factors of employment, it was not necessary to address the medical evidence.

LEGAL PRECEDENT

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.² To establish that he or she sustained an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that he or she has an emotional or psychiatric

² *Pamela R. Rice*, 38 ECAB 838 (1987).

disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.³

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. 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.⁴ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁵

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.⁶ 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.⁷ 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.⁸

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 factors of employment and may not be considered.⁹ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. 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.¹⁰

³ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Gregorio E. Conde*, 52 ECAB 410 (2001).

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

⁷ See *William H. Fortner*, 49 ECAB 324 (1998).

⁸ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁹ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁰ *Id.*

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. OWCP denied her emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA. The Board notes that appellant's allegations do not pertain to her regular or specially assigned duties under *Cutler*.¹¹ Rather, appellant has alleged error and abuse in administrative matters and harassment and discrimination on the part of her managers and coworkers.

Appellant contended that Ms. Seuwin, Ms. Achamabeault, Mr. Obst, Mr. Perez, Ms. McClellan, Mr. Berroth and Ms. Bezdek created a hostile work environment by subjecting her to harassment and verbal abuse. She alleged that on March 22, 2011 Ms. Seuwin and Ms. Achamabeault improperly removed her from her route as she did not have any threatening or violent physical contact or engage in a verbal altercation with Mr. Johnson on March 12, 2011. Appellant stated that she took flats off his arm and apologized to him. She apologized because she thought she startled him. Appellant alleged that on March 22, 2011 Ms. Seuwin and Ms. Achamabeault improperly issued the March 15, 2011 letter of warning as she followed her supervisor's instructions regarding the casing of mail with a purple tag. She claimed that she was not given an opportunity to present evidence or an explanation regarding this incident. Appellant refused to sign the letter of warning and contended that Ms. Achamabeault never advised her that she had a right to union representation. She alleged that Mr. Obst yelled at her in response to her request that he ask Mr. Perez to stop spreading lies about her. Appellant claimed that he told her to worry about her work performance and job security. Mr. Obst also raised his voice at her during the March 12, 2011 investigative interview because she could not answer questions regarding the March 2, 2011 incident. Appellant stated that too much time had elapsed since this incident and her notes about it were at home. She claimed that on March 10, 2011 Mr. Obst ignored her request that he talk to Ms. McClellan about the favoritism she showed employees when assigning overtime work due to her reputation as a good supervisor. Appellant claimed that Mr. Perez did not speak to her and Ms. Starbell and whispered, conspired and laughed behind their backs. She alleged that he mocked her request for an apology from Ms. Bezdek who on September 25, 2010 wrongly accused her of taking the annual leave calendar and crossing out carriers' names on it. Appellant alleged that Ms. McClellan was vindictive due to her removal from the station on several occasions as a result of her actions towards appellant by making inappropriate physical contact. On July 26, 2010 Mr. Gaskins did not agree with her characterization of Ms. McClellan's actions as vindictive, rather he stated that they were malicious. He refused to ask appellant to stop. On November 4, 2010 Mr. Gaskins advised her that the legal department believed that Ms. McClellan's behavior was inappropriate rather than harassment. Appellant was offered \$500.00 and five days of administrative leave to settle her claim. She contended that on October 1, 2010 carriers talked about her while questioning Ms. McClellan's removal and on November 10, 2010 they acted arrogantly towards her when Ms. McClellan returned to work on that date. Appellant further claimed that Ms. McClellan and Ms. Achamabeault double teamed her when she tried to provide a

¹¹ *Lillian Cutler, supra* note 4.

professional estimate at her case. She contended that Mr. Berroth dismissed her concern about this incident. Appellant also contended that on January 11, 2011 Ms. McClellan dismissed her request to stay out of her “personal bubble” as stupid. She contended that on March 11, 2011 Ms. McClellan allowed Ms. Bezdek to work off the clock even though employees were instructed by Mr. Obst not to do so under any circumstance. Appellant alleged that on October 6, 2010 Mr. Gaskins told her that employees were still talking about her and Ms. Starbell. On September 24, 2010 Mr. Jordan stated, in response to her request for a letter removing Ms. McClellan as her supervisor and administrative leave, that he could provide only the former. On April 25, 2011 Ms. Bezdek complained to Mr. Peacock about appellant casing mail too loudly. On April 30, 2011 Mr. Bradley wanted to talk to Mr. Obst to express his displeasure about Ms. McClellan’s detail assignment. Appellant filed an EEOC grievance regarding the March 22, 2011 incident and March 15, 2011 letter of warning. She informed Mr. Jordan and Mr. Good about the June 19, 2010 incident.

Appellant’s contentions regarding the disciplinary actions,¹² filing of an EEOC grievance,¹³ a right to union representation,¹⁴ an investigation¹⁵ and assignment of work duties¹⁶ are administrative matters and not compensable absent a showing of error or abuse on the part of the employing establishment. Although she has alleged error or abuse by her supervisors, she did not submit any probative evidence establishing error or abuse regarding the above-noted administrative matters. Regarding the March 12, 2011 incident, Mr. Johnson’s statements as detailed by Mr. Christiano’s March 22, 2011 investigation indicated that appellant had physical contact with him when she aggressively grabbed mail from his hands and pushed him with her body. He also stated that there was a verbal altercation as appellant told him to get out of the work area. Mr. Johnson was threatened by her actions and reported the incident to a shop steward. Appellant denied any threatening or violent physical contact and a verbal altercation, but she acknowledged that she took the flats of mail off Mr. Johnson’s arms and apologized to him for her action. The statements of Mr. Perez, Ms. Johnson and Ms. Irvin indicate that they observed physical contact as described by Mr. Johnson. Ms. Irvin, Mr. Obst and Ms. Bezdek also heard appellant say “get out of here.” Mr. Christiano’s investigation determined that physical contact occurred which he rated as Priority 2. Ms. McClellan and Ms. Seuwin stated that proper procedures were followed in issuance of the March 15, 2011 letter of warning for the March 2, 2011 incident and placement of appellant on emergency placement status as a result of the March 12, 2011 incident. Ms. McClellan explained that the letter was issued because appellant failed on numerous occasions to provide a professional estimate in the morning as instructed. Ms. Seuwin noted the investigative finding that appellant’s actions on March 12, 2011 warranted a Priority 2 threat assessment. She and Ms. McClellan noted the employing establishment’s zero tolerance policy for workplace violence. Ms. Seuwin stated that employees

¹² 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).

¹³ *Michael A. Salvato*, 53 ECAB 666, 668 (2002).

¹⁴ *Wanda G. Bailey*, 45 ECAB 835 (1994).

¹⁵ *J.F.*, 59 ECAB 331 (2008); *Jimmy B. Copeland*, 43 ECAB 339 (1991).

¹⁶ *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

were trained on this policy, as well as, the discipline policy when they first started work at the employing establishment. Ms. McClellan stated that appellant was provided union assistance regarding issuance of the letter of warning and emergency off-duty placement. Although the employing establishment reduced the letter of warning to a discussion and expunged it and the March 22, 2011 letter regarding the emergency placement from her files based on a March 13, 2012 EEOC settlement agreement, the Board has held that the mere fact that personnel actions are later modified or rescinded does not, in and of itself, establish error or abuse on the part of the employing establishment.¹⁷ Further, the employing establishment's settlement payment of \$1,000.00 to appellant does not establish error or abuse as the agreement specifically stated that it should not be construed as an admission of the violation of any statute, rule, regulation or legal obligation by any official, employee or agent of the employing establishment. While Mr. Gornick offered her \$500.00 and five days of administrative leave to settle her harassment claim based on the legal department's finding that Ms. McClellan's behavior was inappropriate and not harassment, there is no decision finding error or abuse on the part of the employing establishment. It is unclear as to the specific nature of appellant's EEOC grievance referenced by the December 10, 2010 EEOC settlement agreement in which the employing establishment agreed to give her 10 days of administrative leave and investigate a statement made by Mr. Perez, however, it contained no admission of error, fault or legal violation on the part of the employing establishment. The Board finds that appellant has failed to establish a compensable employment factor with regard to the above-noted administrative and personnel matters.

To the extent that incidents alleged as constituting harassment by a supervisor or coworker are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors. However, for harassment to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.¹⁸ An employee's charges that he or she was harassed or discriminated against, is not determinative of whether or not harassment or discrimination occurred.¹⁹ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.²⁰ The Board finds that the factual evidence fails to support appellant's claim for harassment. Appellant submitted statements from Ms. Starbell which mainly noted her own problems of harassment by the employing establishment. Ms. Starbell related that Ms. Bezdek accused appellant of removing the leave calendar from supervisors' desks. She noted, however, that Ms. Bezdek later apologized to appellant. Appellant acknowledged her apology. Ms. Starbell's statement that Mr. Perez made a mockery of Ms. Bezdek's apology is of a general nature and, therefore, is insufficient to establish harassment on the part of the employing establishment. She did not provide any specific details about Mr. Perez's actions. Similarly, Ms. Starbell's statements that she and appellant were subjected to a hostile work environment after Ms. McClellan was

¹⁷ *Paul L. Stewart*, 54 ECAB 824 (2003).

¹⁸ *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

¹⁹ *See William P. George*, 43 ECAB 1159 (1992).

²⁰ *See Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

removed from their station on September 10, 2010, that Mr. Perez did not show any fear of appellant as they sat in the break room on March 22, 2011, that she overheard him make a derogatory remark about appellant on April 27, 2011 and that he told Ms. Nolan that appellant had filed a sexual harassment claim against Ms. McClellan for calling her “hon” are of a general nature and, therefore, are insufficient to establish harassment on the part of the employing establishment. Mr. Boles initially agreed to provide a witness statement regarding the June 19, 2010 kissing incident, but later refused to do so. Appellant acknowledged that Ms. McClellan denied her allegations of physical contact. As the factual evidence does not support her allegation that she was harassed by the employing establishment, she has not established a compensable factor of employment with respect to these allegations.

Regarding appellant’s allegation that she was verbally abused by Mr. Obst during the March 12, 2011 investigative interview, the Board has generally held that being spoken to in a raised or harsh voice does not of itself constitute verbal abuse or harassment.²¹ Appellant did not submit any evidence such as, witness statements to corroborate her allegation of verbal abuse. She noted Mr. Obst’s explanation that he talked loudly to her during the investigative interview because he did not think that she understood what he was saying. The Board finds that appellant has not met her burden of proof to establish verbal abuse.

Since appellant has not substantiated a compensable factor of employment as the cause of her emotional condition, the Board will not address the medical evidence.²²

On appeal, appellant contended that the employing establishment erred in issuing a letter of warning for her failure to follow instructions as an EEOC decision reduced the letter of warning to a discussion and provided a monetary award. As found above, EEOC decision did not determine that the employing establishment committed error or abuse in handling this administrative matter. The Board finds, therefore, that appellant has not established a compensable employment factor under FECA.

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 failed to establish that she sustained an emotional condition in the performance of duty.

²¹ *T.G.*, 58 ECAB 189 (2006).

²² *Karen K. Levene*, 54 ECAB 671 (2003).

ORDER

IT IS HEREBY ORDERED THAT the June 18, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 16, 2013
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board