

FACTUAL HISTORY

On May 16, 2011 appellant, then a 42-year-old manual clerk, filed a traumatic injury claim alleging that on May 11, 2011 she had both an emotional condition (stress reaction) and a traumatic injury (head injury) as a result of circumstances at work. She stopped work on May 12, 2011.²

In medical reports dated May 13 and 18, 2011, Dr. Gribbin obtained a history that appellant recently had a syncopal episode at work. She related that she had been asked by her supervisor to perform a certain job. Appellant's request for permission to leave work was denied, and she became upset, lost consciousness and fell to the floor hitting her head against the concrete ground. She was transported to an emergency room by ambulance, but was not hospitalized. Dr. Gribbin noted appellant's complaints of exacerbated neck pain, headaches, pain in her bilateral upper extremities, feet and lower back. She had a history of cervical and lumbar conditions. Dr. Gribbin listed findings on physical and neurological examination, and recommended an electromyogram and nerve conduction velocity (EMG/NCV) study to rule out cervical radiculopathy and a cervical and brain magnetic resonance imaging (MRI) scan to rule out exacerbation of cervical spine and central nervous system pathology in view of her fall and head trauma. She also recommended psychological counseling for depression. In a May 27, 2011 report, Dr. Gribbin advised that the EMG/NCV study demonstrated right mild carpal tunnel syndrome and right C7 radiculopathy.

By letter dated May 31, 2011, OWCP requested that appellant submit factual and medical evidence.

Appellant related, in a May 16, 2011 narrative statement, that at approximately 3:00 a.m. on May 12, 2011 she was working in the manual section pitching letters when Dawn J. Jacox, an acting supervisor, directed her to move her ergonomic chair to the other side of the manual section to pitch 160 manual letters. Due to a prior work-related back and neck injury, she was unable to move the heavy chair. Appellant asked Ms. Jacox to move the chair. Ms. Jacox asked who had originally moved it and appellant responded that a coworker had. She then instructed appellant to ask that same coworker to move the chair again. Appellant stated that it was not her coworkers' responsibility to move her chair. Ms. Jacox initially turned away without a response. She then again demanded that appellant move the chair and refused to listen to appellant's reasons for why she was afraid to do so. Ms. Jacox denied appellant's request for union representation and declined to further discuss the situation. Appellant became extremely upset and felt dizzy. Ms. Jacox then denied appellant's request to go home and see a doctor. She directed appellant to instead sit down and pitch mail. Appellant next remembered waking up on the floor and experiencing head, neck and back pain. She believes she had passed out and fallen from her chair. Appellant was taken to a hospital emergency room for treatment. She contended that she had been previously harassed by Ms. Jacox on a daily basis.

² In a May 31, 2011 continuation of pay (COP) report, a nurse indicated that appellant's COP case was closed as she had not returned to work. The nurse indicated that she stopped work on May 12, 2011 due to pain in her neck, low back and head, and depression and stress. Appellant was receiving physical therapy as ordered by Dr. Dorota M. Gribbin, an attending Board-certified physiatrist. The nurse stated that if her claim was accepted, then she should be referred to a field nurse to follow-up on her treatment plan and progress.

In a May 12, 2011 narrative statement, Coworkers Robin Kokowski, Greogrit K. Ghuman, Mike Yanick, Bob Seitz and Helen Qual related that appellant and Ms. Jacox were arguing at 3:00 a.m. on May 12, 2011. They stated that Ms. Jacox declined appellant's request to move her chair to another work area, but earlier Ms. Jacox had moved a chair for another employee. Appellant told Ms. Jacox that she was not feeling well. Ms. Jacox denied appellant's request for union representation and her request to go home. She and appellant continued to argue. At 3:10 a.m. appellant sat down and at 3:20 a.m. she passed out and fell out of the chair onto the floor. Yvette Jackson, a distribution operations manager, instructed Ms. Jacox to call 911. Appellant opened her eyes, but did not know who or where she was at that time. Rich Hogan, a supervisor of distribution operations, picked her up and put her in a wheelchair to wait for an ambulance. Ms. Jacox instructed the employees to sweep mail and step over appellant.

Janice Spencer-Champion, an employee, related in a May 12, 2011 letter, that at approximately 3:00 a.m. she observed Ms. Jacox calmly discuss moving a chair with appellant while appellant talked excitedly during this discussion. Ms. Spencer-Champion stated that Ms. Jacox wanted appellant to move the chair to prevent a safety hazard for employees who were sweeping mail. Appellant sat down and Ms. Jacox calmly asked her to move. She started to rant and argue in a loud voice. Ms. Jacox asked for her card. Appellant appeared to be unconscious as she slumped back into her chair.

Ms. Jacox related in a May 12, 2011 narrative statement that, at approximately 3:10 a.m., appellant allegedly passed out while sitting in a chair in the manual letter operation. She slowly slid from her chair onto the floor. There was no impact when appellant fell onto the floor. Ms. Jackson and Richard Hogan, a supervisor, awakened her. Appellant was transported in a wheelchair out of the area and later transported by emergency personnel to a hospital at 3:20 a.m.

Ms. Jackson stated in an e-mail dated May 12, 2011, that at 3:10 a.m. appellant fainted while working in manual letters. She had no visible injury and was transported to a hospital for treatment. Appellant was released on the same date.

In a June 16, 2011 letter, Ms. Jackson described appellant's manual clerk work duties, and that she had been accommodated for a prior injury requiring her to have a chair with a back on it.³ Appellant had an argument with an acting supervisor who asked her to move the chair or have an employee move it. She was granted permission to see a union representative. Appellant continued to be loud and argumentative. The acting supervisor granted her request to go home and asked for her badge. Although appellant stated that she did not feel well, she never went home. She continued to rant and rave loudly and the supervisor calmly responded to her. While sitting in her chair, appellant turned her head and suddenly began to slide from her seat onto the floor. She did not strike the floor. Ms. Jackson contended that appellant's anxiety and stress were not work related, but rather self-inflicted.

Anne Mazzara, a supervisor, stated in a May 17, 2011 e-mail that on May 12, 2011 she advised appellant to calm down. Appellant informed Ms. Mazzara about Ms. Jacox's refusal to

³ A January 20, 2010 Equal Employment Opportunity (EEO) mediation agreement regarding appellant's prior employment-related injury stated that the employing establishment would provide her with an ergonomic chair on a daily basis upon arrival for her begin tour of duty.

move her chair and ordered her to ask another employee to move it. She remembered waking up on the floor. Appellant was stressed but Ms. Mazzara denied her request for COP as an occupational disease claim was not eligible for COP. Ms. Mazzara instructed her to provide documentation. On May 16, 2011 Mr. Kokowski gave Ms. Mazzara a copy of a note from appellant's physician which stated that appellant had a headache and stress.

Dr. Gribbin, in referral slips dated May 6 and 13, 2011, advised that appellant had post-traumatic stress disorder and suicidal ideation. In a June 13, 2011 attending physician's report, she diagnosed traumatic brain injury and indicated with an affirmative mark that it was caused or aggravated by the May 11, 2011 incident. Dr. Gribbin found appellant totally disabled from May 18 through July 27, 2011.

In a May 12, 2011 report, Dr. William J. McGroarty, a Board-certified radiologist, advised that a computerized tomography (CT) scan of appellant's brain was normal. There was no evidence of intracranial trauma.

Reports dated May 13 and 16 and June 2, 2011 contained illegible signatures and stated that appellant had anxiety and another illegible diagnosis. She was off work as of June 2, 2011.

Dr. Harry H. Lin, a Board-certified internist, advised in a May 13, 2011 prescription note that appellant was suffering from a severe headache and anxiety due to work-related stress and required one week off work.

In a May 31, 2011 report, appellant's physical therapist addressed the treatment of appellant's lumbar and cervical conditions.

By decision dated July 7, 2011, OWCP denied appellant's claim, finding that the medical evidence was insufficient to establish that she sustained an emotional condition causally related to a compensable employment factor. It accepted that the incidents occurred on May 11, 2011 as alleged, but found that they did not occur in the performance of duty.

By letter dated July 29, 2011, William D. Coleman, appellant's union representative, requested reconsideration on appellant's behalf. In a June 30, 2011 letter, he contended that appellant had sustained a work-related head injury when she fell from her chair as confirmed by hospital discharge instructions. He alleged that appellant had a fainting spell or an episodic syncope and had hit her head on the floor, as supported by numerous witness statements. She also had an acute stress anxiety reaction, as supported by witness statements from her coworkers, who related that she was verbally assaulted by her immediate supervisor.

In an July 14, 2011 report, Dr. Hailing Zhang, a Board-certified psychiatrist, advised that appellant had adjustment disorder with anxiety and depression. He ruled out major depression.

In an August 8, 2011 nonmerit decision, OWCP denied appellant's request for reconsideration, finding that the evidence submitted was either duplicative or irrelevant and, thus, insufficient to warrant reopening her case for further review of the merits.

In an August 25, 2011 report, Dr. Zhang released appellant to return to work on September 1, 2011.

By letter dated October 28, 2011, appellant's attorney requested reconsideration on her behalf. In support of the request for reconsideration, appellant's attorney submitted a copy of a EEO settlement agreement which resolved an EEO claim filed against the employing establishment on May 23, 2011. That EEO claim alleged that the employing establishment discriminated against appellant based on her sex, race, age and physical disability when it disregarded a January 20, 2010 EEO settlement requiring that it provide appellant an ergonomic chair and retaliated against her for her prior EEO activity. Appellant contended that she experienced daily harassment by Ms. Jacox since May 11, 2011, noting the incident when she passed out and fell to the ground. A June 28, 2011 EEO settlement agreement resolving appellant's claim provided:

“In the event that [appellant] is instructed by [S]upervisor Anne Mazzara or acting [S]upervisor Dawn Jacox, to move from one operation to another operation in the Trenton Processing & Distribution Center ('P&DC'), it will be the responsibility of [S]upervisor Mazzara or acting [S]upervisor Jacox to either move [appellant's] ergonomic chair, provide [appellant] with an ergonomic chair at the new operation, or have the ergonomic chair moved to the new operation by an employee other than the [appellant]. Neither [S]upervisor Mazzara nor acting [S]upervisor Jacox will instruct [appellant] to find an employee to move her chair. In the event that [S]upervisor Mazzara or [A]cting [S]upervisor Jacox instructs [appellant] to find an employee to move her ergonomic chair or move the chair herself, [appellant] agrees to remind them of this Agreement. It will only be considered a breach of this paragraph if, after [appellant] reminds [S]upervisor Mazzara or [A]cting [S]upervisor Jacox of this Agreement and, after reviewing the Agreement, they refuse to comply with it.”

By decision dated February 1, 2012, OWCP denied modification of the July 7, 2011 merit decision, finding that appellant had not established an emotional condition or a head injury causally related to a compensable factor of employment. The evidence failed to establish either a physical injury or that she was harassed by her supervisor.

On April 12, 2012 appellant's attorney again requested reconsideration submitted a May 23, 2011 statement from Union Representative Tracey Dougherty prepared on behalf concerned employees.⁴ The letter contended that Tour 3 employees were treated differently than Tour 1 employees. Although the two tours had the same job description, the duties of Tour 1 had been minimized and given to Tour 3. Tour 3 employees had to sweep the heaviest mail while Tour 1 employees were at lunch. Tour 1 employees were told not to sweep if they returned from lunch before Tour 3 employees finished the sweep. Tour 3 employees were held to a 10-minute break while Tour 1 employees were allowed a 20-minute break. The use of cellphones by casuals in Tour 1 was ignored. After the supervisor of Tour 3 left, Ms. Jacox constantly watched the Tour 3 employees. On April 18, 2011 a Tour 3 manager of distribution operations refused to hear the Tour 3 employees' complaints of misuse of authority and display of unfair tactics and suggested that they contact the EEO office. During a May 18, 2011 meeting, approximately one

⁴ In addition to Tracey Dougherty, the May 23, 2011 statement was also signed by appellant, and three other employees whose signatures are illegible.

week after the events of appellant's collapse, Ms. Mazzara, Roger Danbury, a Tour 3 manager of distribution operations, Ms. Jackson and Ms. Jacox held a meeting with the Tour 1 and Tour 3 employees, allowing the Tour 3 employees to voice their complaints. However, the managers and supervisors allegedly ignored the complaints of Tour 3 employees as trivial as Ms. Jacox excused her actions. On May 19, 2011, following the meeting, Ms. Jacox sought to intimidate Tour 3 employees by watching them work until they left the floor.

By decision dated December 18, 2012, OWCP denied modification of the February 1, 2012 decision. It found that the evidence failed to establish that appellant sustained an emotional condition or head injury due to a compensable employment factor.

LEGAL PRECEDENT -- ISSUE 1

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.⁵ To establish that 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 she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her 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. 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 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.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 FECA⁹ 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

⁵ *Pamela R. Rice*, 38 ECAB 838 (1987).

⁶ *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

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

⁸ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁹ *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 556 (1991).

¹⁰ *See William H. Fortner*, 49 ECAB 324 (1998).

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

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.¹² 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.¹³

ANALYSIS -- ISSUE 1

The Board finds that appellant has failed to establish a compensable factor of her employment. Appellant alleged that on May 11, 2011 Ms. Jacox, an acting supervisor, instructed her to work in a different work area and work outside of her physical restrictions by requiring her to move her ergonomic chair to that other area. She further alleged that Ms. Jacox declined her request to move the chair to the new work area, and rudely and sarcastically suggested that she ask an employee who had originally moved her chair to move it again. Appellant stated that Ms. Jacox also directed her to sit down and pitch mail. She tried to explain to Ms. Jacox that she could not move the chair due to fear of aggravating her prior work-related back injury. Mr. Kokowski, Mr. Ghuman, Mr. Yanick, Mr. Seitz, Ms. Qual, Ms. Spencer-Champion and Ms. Jackson related that Ms. Jacox declined appellant's request to move her chair from one work area to another. Ms. Jackson stated that Ms. Jacox instructed appellant to ask another employee to move her chair. Ms. Mazzara related that she was informed by appellant about Ms. Jacox's refusal to move her chair and directive to ask an employee to move it.

On May 23, 2011 appellant filed an EEO claim for discrimination and retaliation, which alleged daily harassment by Ms. Jacox and disregard for a prior EEO settlement that required an ergonomic chair as a reasonable accommodation for a prior on-the-job injury. The June 28, 2011 EEO settlement agreement acknowledged appellant's work restrictions and need for an ergonomic chair. The agreement stated that, if Ms. Mazzara or Ms. Jacox asked appellant to move from one operation to another, it was their responsibility to move her chair, provide a similar chair in the new work area or instruct another employee to move her chair to the new operation. The agreement would be breached if either Ms. Mazzara or Ms. Jacox failed to comply with this agreement after being reminded of it by appellant.

¹¹ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹² *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹³ *Id.*

The Board has held that being required to work beyond one's physical restrictions may constitute a compensable employment factor if substantiated.¹⁴ However, the Board finds that the evidence in this case is insufficient to establish that appellant was asked to work outside of her physical restrictions. The January 20, 2010 EEO mediation agreement regarding appellant's prior employment-related injury required the employing establishment to provide her with an ergonomic chair/stool on a daily basis upon arrival for her tour of duty as a reasonable accommodation for her prior employment-related injury. Appellant was provided an ergonomic chair in accordance with that mediation agreement. There is no evidence of record, contemporaneous to the May 11, 2011 incident, showing that appellant was restricted from moving the chair from one operation to another. The employing establishment and appellant did not reach agreement on whether or how the chair was to be moved until the June 28, 2011 EEO settlement was reached. This was subsequent to the May 11, 2011 incident that gave rise to appellant's traumatic injury claim. Appellant has, therefore, failed to establish that Ms. Jacox's request that she move her chair, was requiring her to work outside of her physical restrictions. Appellant has not established a compensable employment factor under *Cutler*.

Appellant also alleged that on May 11, 2011 Ms. Jacox denied her requests for union representation, COP and permission to go home and seek medical evaluation by a physician. Regarding her allegation of harassment by Ms. Jacox, she contended that she and other employees in Tour 3 were treated differently by Ms. Jacox than the employees under her supervision in Tour 1. Appellant asserted that Tour 3 employees were required to sweep the heaviest mail, closely watched and allowed a 10-minute break while Tour 1 employees did not have to sweep if they returned early from lunch, and were allowed a 20-minute break and use of their cellphones. She further asserted that during meetings held on April 18 and May 18, 2011, complaints of misuse of authority and display of unfair tactics by management from Tour 3 employees were disregarded as trivial by Ms. Mazzaro, Mr. Danbury, Ms. Jackson and Ms. Jacox. Appellant stated that Ms. Jacox provided excuses and stretched the truth regarding her actions. She contended that on May 19, 2011 Ms. Jacox intimidated Tour 3 employees by watching them work until they left the floor.

Appellant's allegations relate primarily to administrative and personnel actions taken by management. In *McEuen*,¹⁵ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employer is not covered under FECA unless there is evidence of administrative error or abuse. Generally, such actions pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. Absent evidence of error or abuse, the emotional condition is not employment generated. To determine whether error or abuse has occurred, the Board must examine whether the employer acted reasonably.¹⁶

¹⁴ *S.H.*, Docket No. 10-1086 (issued January 24, 2011).

¹⁵ *See supra* note 9.

¹⁶ *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

Appellant's contentions regarding the denial of her requests for union representation,¹⁷ handling of attendance matters and pay issues,¹⁸ and assignment and monitoring of work¹⁹ are administrative functions that do not fall under the coverage of FECA absent a showing of error or abuse. Although appellant has alleged error or abuse by Ms. Jacox, she did not submit any probative evidence establishing error or abuse regarding the above-noted administrative matters. Ms. Jackson stated that Ms. Jacox granted appellant's requests for union representation and permission to go home, but appellant decided not to go home. Ms. Mazzara stated that Ms. Jacox denied appellant's request for COP because there was insufficient documentation. 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 and verbal abuse by a supervisor 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.²⁰ An employee's charges that he or she was harassed or discriminated against, is not determinative of whether or not harassment or discrimination occurred.²¹ 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.²² The Board notes that appellant's allegations of harassment and verbal abuse by the employing establishment primarily involve the above-noted administrative matters. Appellant contended that she was harassed by Ms. Jacox who treated her differently than the employees under her supervision in Tour 1 with regard to the assignment and monitoring of her work and break requirement. As stated, the assignment and monitoring of work²³ and handling of attendance matters²⁴ relate to administrative matters and appellant has not demonstrated error or abuse in these instances. Regarding appellant's allegation of verbal abuse by Ms. Jacox, Mr. Kokowski, Mr. Ghuman, Mr. Yanick, G. Ghuman, Mr. Seitz and Ms. Qual stated that appellant and Ms. Jacox argued about the transfer of her chair. However, Ms. Spencer-Champion stated that she observed Ms. Jacox calmly ask appellant to move her chair to avoid a safety hazard for employees who were sweeping mail. She and Ms. Jackson stated that appellant ranted and raved loudly during this discussion. Ms. Jackson also stated that Ms. Jacox granted appellant's request for union representation and permission to go home even though appellant did not go home. In light of the

¹⁷ *Wanda G. Bailey*, 45 ECAB 835 (1994).

¹⁸ *See Judy Kahn*, 53 ECAB 321 (2002); *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997).

¹⁹ *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

²⁰ *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

²¹ *See William P. George*, 43 ECAB 1159 (1992).

²² *See Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

²³ *Donney T. Drennon-Gala*, *supra* note 20.

²⁴ *See cases cited*, *supra* note 19.

foregoing, the Board finds that the factual evidence fails to support appellant's claim for harassment and verbal abuse.²⁵

On appeal, appellant's attorney contended that the evidence established an emotional condition causally related to a compensable factor of her employment as she was asked to work beyond her physical restriction. As explained above, appellant failed to establish a compensable employment factor.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA²⁶ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence²⁷ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.²⁸

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.²⁹ There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.³⁰ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.³¹

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence providing a diagnosis or opinion as to causal relationship.³² The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.³³ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the

²⁵ Where appellant has not established a compensable employment factor, it is not necessary to consider the medical evidence.

²⁶ 5 U.S.C. §§ 8101-8193.

²⁷ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

²⁸ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

²⁹ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

³⁰ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

³¹ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

³² *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

³³ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

care of analysis manifested and the medical rationale expressed in support of the physician's opinion.³⁴

ANALYSIS -- ISSUE 2

The Board finds that the medical evidence of record is insufficient to establish that her physical condition was caused or aggravated by the established work factor.

There is no evidence in the record which indicates that appellant's head hit the floor, nor is there evidence that she struck an object as she fell to the floor. Where a personal nonoccupational pathology causes an employee to collapse and to suffer injury upon striking the immediate supporting surface and there is no intervention or contribution by any hazard or special condition of the employment, the injury is not a personal injury while in the performance of duty within the contemplation of FECA as it does not arise out of a risk connected with the employment.³⁵

The Board finds that the newly submitted evidence again fails to establish that a medical condition arose during the course of appellant's federal employment and within the scope of compensable work factors. Appellant did not meet her burden of proof.

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 failed to establish that she sustained an emotional condition or physical injury while in the performance of duty and within the scope of compensable work factors.

³⁴ *James Mack*, 43 ECAB 321 (1991).

³⁵ *Robert J. Choate*, 39 ECAB 103 (1988)

ORDER

IT IS HEREBY ORDERED THAT the December 18, 2012 decision of the Office of Workers' Compensation Programs is affirmed.³⁶

Issued: September 22, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

³⁶ Richard J. Daschbach, Chief Judge, who participated in the preparation of the decision, was no longer a member of the Board after May 16, 2014.