

harassment on the part of first and second line supervisors. On the form, the employing establishment indicated that appellant had been performing the same duties since she accepted the position in June 2003.

Appellant submitted a May 1, 2005 note from Dr. C. Bryan Miller, Board-certified in family practice, who stated, "limit work to 40 hours per week due to health reasons."

In a report dated June 15, 2005, Dr. Robert U. Weiss, a specialist in family practice, stated that appellant was experiencing anxiety and depression, secondary to stress at work. He opined that she should refrain from working over 40 hours a week. In a June 23, 2005 report, Dr. Weiss noted that appellant had been under "enormous" stress at work for approximately one year. He stated that her symptoms, which included exhaustion, sleeplessness, palpitations, low energy, change in eating habits, headaches, depressed moods and anxiety, had worsened over the past few months. Dr. Weiss reiterated the diagnoses of anxiety and depression and opined that appellant's condition was due to work-related stress.

The employing establishment controverted appellant's claim and submitted a June 2, 2005 statement to her (received by the Office on July 14, 2005) from JoAnn John, supervisor for IT specialists, responding to her request to be exempted from working overtime. She granted the request and excused her from working overtime for one week but requested additional medical information to support any additional periods. Jim Julian, appellant's division chief stated:

"[Appellant] recently submitted a medical statement from [Dr. Miller] which states, 'limit work [to] 40 [hours per week] due to health reasons.' The medical slip is unclear in its meaning and does not provide enough medical information to base any determination. [Appellant's job as an] IT [s]pecialist on the ISPC [Information Systems Policy and Control] Staff requires [her] to work at least [eight] hours of mandatory overtime each two weeks. If [she is] seeking an exception to this requirement for medical reasons, [her] request must be fully documented before an administrative decision can be made on this issue.... [Appellant is] excused from the mandatory overtime for pay period 11 only, pending receipt and review of any information [she] may present."

Ms. John instructed appellant to submit the following additional medical information to support her request: a history and diagnoses of her medical/psychiatric conditions; a copy of her most recent medical evaluation, including diagnostic procedures; and prognoses of her current conditions, including plans for future treatment and the expected date of full or partial recovery. She also requested a list of restrictions entailed by these conditions, if any and an explanation as to why they are warranted by these conditions; this included an explanation of how requiring her to work eight extra hours over a 10-day period would involve risk to these conditions. Accompanying this letter was a copy of an IT specialists' job description, which indicated that the employee could be required to carry a pager, work overtime or be on-call outside of normal business hours.

By letter dated August 30, 2005, the Office advised appellant that she needed to submit additional information in support of her claim. It asked appellant to describe in detail the employment-related conditions or incidents which she believed contributed to her emotional

condition and to provide specific descriptions of all practices, incidents, etc., which she believed affected her condition. The Office also asked appellant to clarify and further explain whether she was required to work overtime or take work home with her in order to complete her assigned duties and if so, how often and for how long.

In a statement dated October 15, 2005, *appellant* stated:

“I have been under stress within my Federal employment for a long time now. It is hard to pin point an exact date. I can say that I first visited a physician with my concerns on May 31, 2005. At this time the physician stated I was experiencing stress. In an effort to lessen this stress within my Federal employment the physician wrote an excusal from any overtime required. This request was refused by my management/personnel office, and I was then requested to get additional information.... I was experiencing heart palpitations, headaches, fatigue, low energy, a lowered eating habit and anxiety.... Dr. Weiss then diagnosed me as anxious and depressed and prescribed me an antidepressant medication. Dr. Weiss also provided the information requested in the letter dated June 2, 2005 (previously submitted to your office) from my management’s personnel office. Upon submitting this information, I received an additional letter (previously submitted to your office) of rejection for my physicians excusal from the required mandatory overtime due to this illness.

“After receiving the last letter that contained: ‘disciplinary action up to and including termination from federal service,’ [supervisor] JoAnn John continuously made comments around me relating to this. The comments were ‘NFC is firing people now,’ ‘NFC is firing people for anything.’ I felt and my co-workers agreed, these comments were directed at me....”

Appellant stated that one of the factors that caused her emotional condition was the employing establishment’s mandatory overtime requirement, which it had implemented in February 2003. She further stated:

“While acting one week that JoAnn John was out of town, I was required to prepare a statistical weekly report that initiated that very same week. This report was due by 12:00 each Wednesday. At 11:30 I went into Mike Zeringues’ office to inform him by his 12:00 deadline, that a portion of the report was incomplete due to late arrival of stats from another section within the ISPC. When I handed him the report he commented ‘In other words you did nothing then.’

“When given my performance interim on April 28, 2005 by my supervisor JoAnn John, I was told that I would have disciplinary action taken on me if I miss any required overtime. I had fallen one and a half hours short of my required overtime the previous pay period due to illness. In my 26 years of federal service I have never been threatened with such action, have an excellent performance record and feared this record being ruined. The continued fear of being out of work and missing the required overtime due to illness or even worse, an illness on my young son laid stressful on me day to day.”

Appellant related that she was told at this meeting that an audit report run against her keystrokes indicated a low degree of productivity on her part. She subsequently documented the number of access requests she had completed the previous week and brought them to a May 20, 2005 meeting with Ms. John to discuss her work performance again. Appellant denied Ms. John's statement at this meeting that the keystroke audit reflected several hours of nonproductive time, asserting that she was a persistent worker who did not take breaks. When she suggested that she keep a log of time entries for each request she entered in order to confirm the audit report findings and clear up the matter, Ms. John denied this request. However, notwithstanding Ms. John's denial, appellant decided to investigate on her own and ran an audit report against her own keystrokes, which allegedly showed that the audit process did not record every keystroke or action. She also compared her own output to other IT's and allegedly found that she was three times more productive than some of her coworkers during the same time period for which she was reprimanded. Appellant stated:

“I decided to discuss my findings with the Divisions Chief, Jim Julian. I requested a meeting and met with him. At which time I presented all my findings. He stated he would look into the matter and asked if I would leave these reports with him so that he could discuss them with my supervisor JoAnn John and Branch Chief, Mike Zeringue. He stated that he can clearly see I was doing three times more than others and if all the administrators worked as I did we would not have the backlog we have today. Nothing ever became of this meeting I had with Jim Julian. I was so upset over all of this it brought me to tears.”

* * *

“On June 3, 2005 the only manager present was the Division Head, Jim Julian. One of our customers went to Jim in order to have a request processed immediately. Jim came to look for someone to work this request and assigned the task to me. This was a large request, which I worked the entire day attempting to complete. At the time Bobby Borja was acting in JoAnn John's absence.... Since Bobby Borja was the acting, he sent this request to me via email. Late that afternoon JoAnn John called Bobby and stated, ‘whatever you gave [appellant] to work, get it back from her and place it on my desk.’ When Bobby came to me and said this, I was shocked.... I stopped working on the request and wrote an email message to Jim Julian, since he had left for the day, stating the details to what had happened with the request he had assigned to me. Shortly, after doing this, Bobby Borja received another phone call from JoAnn John. He came over to me and said that JoAnn John is on the telephone and she asked him to tell me to open whatever she had sent to me in my email box.... The message from JoAnn John pretty much accused me of helping a customer on my own without having management approval. I responded to her by stating I had followed the rules as they were given to SAAG [Security Access Administration Group] in our desk procedure. I was so upset over this incident I was shaking and crying.”

Lastly, appellant alleged that Ms. John would constantly denigrate her performance by yelling things at her over the petition between their offices. She stated that many of her coworkers commented on how obvious it was that she was singled out and mistreated in this fashion.

In a letter to the Office dated January 12, 2006, Mr. Julian, appellant's division chief, stated:

"Thank you for the opportunity to review [appellant's] statement and provide our comments. As [she] states in her claim, she believes that her stress is largely due to mandatory overtime of eight hours each two-week period. It should be noted that employees may select how the extra time is worked (such as an hour a day for eight days or any other option) and employees have the option of working the required overtime from home. As stated in ... the CA-2 form, [appellant] was aware of the mandatory overtime when she accepted the position on June 1, 2003.

"Mandatory overtime has been required from time to time in the Administration Section of Information Systems Security Office [ISSO] for the last five or more years. Management is forced to impose mandatory overtime when the backlog of security access requests becomes extremely large causing ISSO to not meet the service level agreement with our customers. There are a number of factors that contribute to the size of the backlog [which include]: [i]ncreased number of requests due to additional agencies being payrolled; [i]ncrease in the number of computing platforms; and the fact that access has to be permitted manually on each computing platform, *i.e.*, mainframe, UNIX servers, Oracle servers, Windows servers, Novell servers, etc; [t]emporary loss of productivity due to employee illnesses, necessary training or conducting [s]ecurity [o]fficer training in Washington, D.C., [given that] anytime an employee is out, the employee's productivity is lost.

"In [appellant's] second level supervisor's opinion, there was more of a perception of a conflict than an actual conflict. [She] became very agitated when she thought management was 'checking up' on her. [Appellant] was told numerous times that it is management's responsibility to monitor an employee's activity and that she was not the only one monitored. She viewed this as an attack, which sparked the question "what does she have to hide?" If an employee is performing their job at or above the expected level, they usually want their management to know they are doing a good job.

"ISSO has a service level agreement with our customers to provide access administration within five business days from the receipt of the request. The volume of requests can increase significantly from time to time due to the factors outlined earlier. During times of high volumes and large backlogs, mandatory overtime is sometimes required. This causes some stress; however, this is the way it has been for the last number of years. The employees know it and have adjusted to it. It is [appellant's] second level supervisor's opinion that [she] causes herself stress with her constant concern about management checking up on her.

“Management always encourages employees who state they are having some situation or problem to talk to Workforce Services Staff and to the Employee Assistance Staff. [Appellant] also stated that she had no problem working [eight] hours and being stress free. It was the extra hour of doing the same work that gave her stress. She stated that it was also because she was away from her family. In an effort to accommodate the employees having to work the mandatory overtime, ISSO devised an agreed upon process of letting the employee work overtime from home. This was accomplished by giving the employee an agreed upon amount of work for an agreed upon amount of time. This seemed to be acceptable by most of the employees.”

Mr. Julian noted that appellant was hired as a GS-12 IT specialist, whose primary responsibility is to process access requests; she did not have to monitor access. He stated that the SAAG had been understaffed for the previous three years, which created backlogs. ISSO’s requests to increase their staff were invariably rejected due to lack of funding. Mr. Julian explained that ISSO tried to minimize the effects of being shorthanded by instituting a work from home process. With regard to appellant’s performance while working under these conditions, he stated:

“[Appellant] was very knowledgeable and very good at processing requests. However, the monitoring of employees’ work showed a pattern where [she] would have large gaps in her processing. These gaps usually consisted of an hour in the morning and afternoon with a two-hour gap at lunch. When asked about this, [appellant] stated [that] she was working on other platforms. When management checked the requests that [appellant] was working on, it showed that no access on other platforms was needed. [Appellant] would run monitoring reports on other employees to see what they were doing and try to compare her to them. She was told that running these types of reports was not part of her job function. If [appellant] had concerns, then she should bring these concerns to management and let management resolve them. Also, [she] was encouraged to work with Workforce Services [Staff], which she did. However, Workforce Services [Staff] informed me that though [appellant] may have had some legitimate complaints, it appeared to them that she was also an instigator and caused some of her own problems.

“[Appellant] seemed fixated on the idea that someone was out to get her. She could not seem to grasp that it is management’s responsibility and duty to monitor their employees.

“When [appellant] brought her concerns to management, she was given the opportunity to submit medical documentation supporting her claim of work-related depression and anxiety. Her supervisor waived the mandatory overtime policy for one pay period pending the review of the medical documentation. [Appellant’s] supervisor also extended deadlines, at [her] request, for submitting the information. In two separate letters dated June 2 and 21, 2005, management

advised [appellant] on what constitutes an acceptable medical statement.¹ In our opinion, the medical documentation that [appellant] submitted does not give enough information to support her claim that her anxiety and depression are work related.”

By decision dated February 16, 2006, the Office denied appellant’s claim on the basis that she failed to establish any compensable factor of employment and thus fact of injury was not established.

On September 14, 2006 appellant requested reconsideration. She submitted statements from coworkers Sheila Ratcliffe, Charlene Johnson and her husband, John Kendrick, which were received by the Office on September 18, 2006. Ms. Ratcliffe advised that she had been a coworker and good friend of appellant’s for 19 years. She stated that appellant was a conscientious and dedicated employee and that they always completed their projects in a timely fashion. Ms. Ratcliffe indicated, however, that she became aware that appellant’s situation had changed within the past few years, though she no longer worked directly with her. She stated:

“I could tell [appellant] was getting real stressed with her job. [Appellant’s] supervisor, JoAnn John, called her down numerous times. Sometimes it was even in meetings in front of her coworkers. [Appellant] has always done a fantastic job. I could n[o]t see what the problem was. [Appellant] went to her third level supervisor to see if things could be worked out. During these times we would meet after work for coffee or get something to eat. I tried calming her down and just letting her talk.”

Coworker Ms. Johnson advised that she had witnessed the incident which occurred on June 3, 2005 and noted her agreement with appellant’s description of what happened that day. She stated:

“[Appellant] was the most upset I have ever seen her. She was trembling and in tears. I advised her to request leave, punch out and go home. [Appellant] responded that due to the fact JoAnn John was not in the office sitting in the office next to her and that there was only 35 minutes left to her workday, she would stick it out.

“Because my office was located directly across from [appellant’s], I [ha]ve observed several personal attacks made on [her] by Ms. John, [who] would call [appellant] down or bash her work by way of screaming things to her from office to office over petitions. These attacks grew more frequent to a near daily occurrence. At times, these attacks had me feeling very uncomfortable within my work environment.

¹ The employing establishment also submitted copies of e-mails between appellant and management’s employee relations specialist, dated June 10 and 13, 2005, in which management responded to appellant’s query regarding the regulatory authority for requesting medical information to support overtime excusal. In its June 13, 2005 e-mail, management’s employee relations specialist advised appellant that 5 C.F.R. § 339 stipulated that management was required to obtain medical documentation from the employee detailing why she could not work overtime or accommodate their working conditions.

“[Appellant] was a very knowledgeable and dedicated employee. She was always eager to assist me when I needed help within our work assignments and has taught me a lot.”

Appellant’s husband, Mr. Kendrick, indicated in his statement that the period appellant referenced in her claim was the most stressful of their relationship. He related that she would come home from work daily in “a foul mood” which often led to fits of crying when he asked her what was wrong. In addition, Mr. Kendrick stated that appellant experienced sleeplessness, anxiety and depression which her physician considered work related. He stated that appellant requested a departmental transfer and subsequently asked to be excused from mandatory overtime.

By decision dated August 15, 2007, the Office denied appellant’s request for modification of the February 16, 2006 decision.

By letter dated November 6, 2007, appellant requested reconsideration. In her letter, she reiterated contentions she presented in previous statements and rebutted some of the factual statements made by management in response to her allegations. Appellant denied Mr. Julian’s statement that she was aware of the mandatory overtime requirements when she accepted the position in June 2003. She stated that no one with management discussed the demands of mandatory overtime that came with this position and that therefore she was not afforded the opportunity to decline the position based on this factor. Appellant asserted that, contrary to Mr. Julian’s statement that mandatory overtime was required from “time to time,” management mandated bi-weekly overtime for two consecutive years, almost without interruption. She also rejected Mr. Julian’s assertion that there was merely “a perception” of conflict at her worksite, reiterating her contention that Ms. John harassed her on several occasions. Appellant stated that Ms. John’s harassment, derogatory comments and discriminatory treatment were known to coworkers and management.² She dismissed Mr. Julian’s statement that her second line supervisor, Mr. Zeringue, corroborated Ms. John’s denial of inappropriate conduct toward her, alleging that she was never present or involved with any discussions of her situation.³ Appellant also rejected management’s suggestion to work some of the mandatory overtime at home because it was too time-consuming and because she felt that there was nothing to gain from it. She also stated that she felt uncomfortable carrying home paper documents containing sensitive data. Finally, appellant alleged that, by requiring her to submit medical documentation, the employing establishment violated its own overtime policy, which states that “the justification for excusing employees from overtime should not be limited to medical reasons” and that “[e]very effort should be made to avoid scheduling employees for overtime when it may involve a hardship on employees’ health or family welfare.”

² According to appellant, Ms. John threatened her by stating, “I am going to run reports and see exactly what you are doing!” She stated that she was not concerned because this would have confirmed exactly how much work she was doing, which might have put an end to her harassment.

³ Appellant stated that Ms. John was subsequently removed from her management position. However, she provided no proof of this assertion nor did appellant indicate the reason for Ms. John’s alleged removal.

By decision dated January 31, 2008, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT -- ISSUE 1

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.⁴ There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.⁵

The first issue to be addressed is whether appellant has established factors of employment that contributed to her alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁶ On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.⁷

ANALYSIS -- ISSUE 1

The Board finds that the evidence of record does not establish that the administrative and personnel actions taken by management in this case were in error and are therefore not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.⁸ Appellant has not presented sufficient evidence that the employing establishment acted unreasonably or committed error with regard to the incidents of alleged unreasonable actions involving personnel matters on the part of the employing establishment.

Appellant alleged that she sustained stress in the performance of her duties as an IT specialist due to management's mandatory overtime policy. The Board has held that overwork

⁴ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

⁵ See *Ruth C. Borden*, 43 ECAB 146 (1991).

⁶ *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *Id.*

⁸ See *Alfred Arts*, 45 ECAB 530, 543-44 (1994).

may be a compensable factor of employment.⁹ However, the employing establishment advised that the mandatory overtime policy had been in place when appellant accepted her position in June 2003 and her IT specialist job description stated that overtime work could be required. Appellant indicated that in her October 15, 2005 statement that she was aware that management had instituted its mandatory overtime requirement in February 2003. Management stated that it had been forced to impose mandatory overtime whenever the backlog of security access requests became excessive to the extent that ISSO could not meet the service level agreement with its customers. It stated that, while the mandatory overtime requirement caused some stress, most of its employees were aware of the need for it and had adjusted to it. The employing establishment advised that it had implemented a program, accepted by most employees, which allowed them to work overtime from home to help them satisfy their overtime requirements. Appellant, however, stated that she was not comfortable working at home and refused to do so. She also alleged that management wrongfully denied her requests to be excused from the mandatory overtime requirement. However, the record indicates that Ms. John tried to accommodate appellant's purported difficulties working overtime by granting her request to be excused from such duty for one week while requesting additional medical information to support any additional periods of excusal, in accordance with administrative policy. While appellant did submit a summary note from Dr. Miller indicating that she should not work more than 40 hours per week, management determined that this did not constitute medical evidence sufficient to demonstrate that she should not work overtime for extended periods. Lastly, she alleged that Ms. John caused her stress by threatening her with disciplinary action during her April 28, 2005 interim performance evaluation because she did not accumulate the minimum number of overtime hours for that pay period. Appellant, however, has not submitted evidence indicating that the employing establishment erred or acted abusively in implementing its overtime policy. Thus, these disciplinary matters are not compensable factors of employment.

The Board has held that emotional reactions to situations in which an employee is trying to meet her position requirements are compensable.¹⁰ However, appellant has submitted insufficient evidence to establish that the employing establishment acted unreasonably or committed error with regard to setting guidelines and monitoring her performance. She failed to show that management improperly reprimanded her for filing an incomplete weekly statistical report, that Ms. John acted improperly in terminating her project in June 2005 or that the audit report commissioned by the employing establishment constituted agency error, as she alleged. In addition, appellant admittedly disobeyed management's explicit instructions when she initiated her own audit report. She failed to demonstrate that management was exceeding its administrative responsibilities or that it engaged in improper conduct in discharging its supervisory responsibilities and the incidents cited above are not compensable absent evidence of agency error or abuse.

As part of the managerial function, a supervisor must assign work. Appellant did not submit any evidence to substantiate that any of her work assignments were in error or were abusive.

⁹ *Sandra F. Powell*, 45 ECAB 877 (1994); *William P. George*, 43 ECAB 1159 (1992); *Georgia F. Kennedy*, 35 ECAB 1151 (1984).

¹⁰ See *Lillian Cutler*, *supra* note 6.

Regarding appellant's allegation that she developed stress due to the uncertainty of her job duties and her insecurity about maintaining her position, the Board has previously held that a claimant's job insecurity is not a compensable factor of employment under the Act.¹¹ A reaction to such factors did not constitute an injury arising within the performance of duty; such personnel matters were not compensable factors of employment in the absence of agency error or abuse. Appellant has failed to establish error or abuse with regard to her allegation that the employing establishment acted improperly in issuing her letters of warning and discussing possible disciplinary actions with her. While she became agitated because management was checking up on her, Mr. Julian informed her that it was management's responsibility to monitor an employee's activity and that she was not the only one monitored. Appellant's complaints that she was treated unfairly by management were rebutted by Ms. John and Mr. Julian, who stated that the monitoring of her work showed a pattern of large gaps in her processing. They also noted, as stated above, that appellant ran monitoring reports on other employees without authorization to see what they were doing and tried to compare herself to them. Management tried to accommodate her concerns by referring her to counseling at Workforce Services, which concluded that while appellant may have had some legitimate complaints, it appeared to them that she was also an instigator and caused some of her own problems. Disciplinary matters consisting of counseling sessions, discussions or letters of warning for conduct pertain to actions taken in an administrative capacity and are not compensable as factors of employment. Thus, these actions on the part of management did not constitute factors of employment.

The Board finds that appellant has failed to submit sufficient evidence to establish her allegations that her supervisor engaged in a pattern of harassment, intimidation or discrimination. Appellant alleged that Ms. John was hostile and uncooperative and spoke to her in a condescending, offensive manner on numerous occasions, but did not provide sufficient evidence to establish that she was harassed or treated in a discriminatory manner.¹² Mere perceptions of harassment or discrimination are not compensable; a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.¹³

Mr. Julian and Ms. John denied appellant's allegations that she was unfairly singled out or treated in a discriminatory manner. Appellant alleged that they gave her unreasonable restrictions and expectations that they did not impose on other employees, but failed to submit documentation to prove these allegations. Ms. John and Mr. Julian noted that appellant was a competent employee but stated that they counseled her about her performance because she failed to meet certain deadlines and goals and behaved in an insubordinate manner by running her own audit report comparing her performance with that of other employees. They indicated that these were constructive measures, part of their managerial functions, taken to apprise appellant of the importance of following procedure and meeting deadlines. Appellant alleged that her supervisor made statements and engaged in actions which she believed constituted harassment and

¹¹ See *Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

¹² 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).

¹³ *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

discrimination, but she provided no corroborating evidence or witness statements to establish that the statements actually were made or that the actions actually occurred.¹⁴

The Office reviewed all of appellant's allegations of harassment, abuse and mistreatment and found that they were not substantiated or corroborated. To that end, the Board finds that the Office properly found that the episodes of harassment cited by appellant did not factually occur as alleged by her, as she failed to provide any corroborating evidence for her allegations. As such, appellant's allegations constitute mere perceptions or generally stated assertions of dissatisfaction with a certain superior at work which do not support her claim for an emotional disability.¹⁵ For this reason, the Office properly determined that these incidents constituted mere perceptions of appellant and were not factually established. Appellant has not submitted evidence sufficient to establish that management engaged in a pattern of harassment toward her or created a hostile workplace environment.

The Board finds that appellant has not established a compensable work factor. For this reason, the medical evidence will not be considered.¹⁶ The Board finds that the Office properly denied compensation for an alleged emotional condition in its February 16, 2006 and August 15, 2007 decisions.

LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.¹⁷ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹⁸

ANALYSIS -- ISSUE 2

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously

¹⁴ The Board finds that the September 18, 2007 statements from appellant's husband and her coworkers, Ms. Radcliffe and Ms. Johnson, fail to establish harassment on the part of Ms. John. While the statement from Ms. Johnson indicates that she witnessed harassment and heard derogatory comments made by Ms. John to appellant, it does not provide sufficient evidence of specific incidents to be considered compensable. The Board also rejects appellant's assertion that derogatory statements allegedly made by Ms. John and Mr. Zeringue were compensable. Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act. *Harriet J. Landry*, 47 ECAB 543, 547 (1996). Appellant has not shown how such isolated comments would rise to the level of verbal abuse or otherwise fall within the coverage of the Act. See *Alfred Arts*, *supra* note 8.

¹⁵ See *Debbie J. Hobbs*, *supra* note 4.

¹⁶ See *Margaret S. Krzycki*, *supra* note 13.

¹⁷ 20 C.F.R. § 10.606(b)(1); see generally 5 U.S.C. § 8128(a).

¹⁸ *Howard A. Williams*, 45 ECAB 853 (1994).

considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. She made certain assertions regarding her prior awareness of mandatory overtime requirements and the amount of overtime she would be required to work when she accepted her position in June 2003. Appellant reiterated that Ms. John made derogatory comments and engaged in a pattern of harassment and discrimination toward her, conduct with which she alleged that her second line supervisor Mr. Zeringues was not familiar and reiterated her discomfort with management's suggestion to perform some overtime hours at home. These contentions, however, were previously considered and rejected by the Office in previous decisions and are therefore cumulative and repetitive. Lastly, appellant has failed to show that management violated its own overtime policy by requiring her to submit medical documentation to support her request to be excused from working overtime.¹⁹ Her reconsideration request failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty. The Board finds that the Office properly refused to reopen appellant's case for reconsideration on the merits of her claim under 5 U.S.C. § 8128(a).

¹⁹ Appellant submitted a copy of NFC overtime policy which stated, as she contended, that justification for excusing overtime should not be limited to medical reasons and that every effort should be made to avoid scheduling employees for overtime when it involved a hardship to the employee's health or family welfare. However, the policy also indicated that "upon presentation of a reasonable justification *acceptable to the person authorized to approve overtime*, employees *may* be excused from overtime." In other words, the stated policy indicates that the decision to excuse employees from performing overtime is discretionary. Appellant has failed to show that the employing establishment abused its discretion in denying her request for additional exemptions.

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2008 and August 15, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 5, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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