

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

C.B., Appellant

and

U.S. POSTAL SERVICE, NEW TAMPA
STATION, Tampa, FL, Employer

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 10-1743
Issued: June 23, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 21, 2010 appellant filed a timely appeal of the December 28, 2009 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her emotional condition claim. Pursuant to the Federal Employees' Compensation Act (FECA)¹ 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 sustained an emotional condition in the performance of duty.

On appeal, appellant contends that she did not receive any evidence submitted by the employing establishment until after her oral hearing. She contends that OWCP failed to obtain statements from her witnesses to incidents of harassment by the employer. Appellant alleged that it also failed to obtain medical evidence from her attending physicians or consider the medical evidence she submitted in support of her claim.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 13, 2009 appellant, then a 49-year-old customer services manager, filed a traumatic injury claim alleging that on January 29, 2009 she sustained severe insomnia, high blood pressure, migraines, cold sweats, shaking, welts, hives, itching, increased pulse, nightmares, heart and chest pain and anxiety due to harassment at the employing establishment.

In undated narrative statements dated March 25 and April 16, 2009, appellant contended that on January 29, 2009 she was instructed by Michael Botticello, a customer services operation manager, to attend training at Tarpon Springs Post Office for 60 days due to the poor results she received in an audit. She did not want to attend the training because it was located 50 miles away from her current work location and was being conducted by Mr. Botticello's friend who was involved in multiple disciplinary actions she handled as a labor relations specialist. Appellant contended that he discriminated against women in management, noting that he did not send a male manager who returned to the processing unit after a seven-year absence to training. She stated that Mr. Botticello refused to reconsider training and used profane language when he told her to look in the mirror because she was responsible for the audit results.

Appellant contended that Mr. Botticello began harassing her in September 2008. Mr. Botticello dissolved her decisions related to staffing and operations at the step-two grievance level. On January 5, 2009 he settled a grievance filed against appellant by Seina Searle, a clerk and wife of the union vice president, by removing a notation of a discussion she had with Ms. Searle about threatening and intimidating Carla Williams, a modified clerk, regarding her work restrictions. Appellant noted that Mr. Botticello previously worked with Ms. Searle's mother. She also noted that a grievance could not be filed for a discussion. Appellant contended that Mr. Botticello's action went against the employing establishment's no tolerance policy to ensure a safe work environment; his conduct with the union and decisions against her were also destructive to the operations of the employer. In December 2008, Mr. Botticello reprimanded appellant because she left a room without permission during a telecom. He approved her request for leave to undergo eye surgery on December 19, 2008, but yelled at her when he requested medical documentation upon her return to work. Mr. Botticello had previously approved her request for sick leave and withdrew his request after being informed by Tammy Schweiberger, an employing establishment nurse, that additional documentation was not necessary. He frequently criticized appellant for making poor decisions. Appellant reported Mr. Botticello's comments to a postmaster who responded by asking her if she was crazy. She stated that this incident was witnessed by Dee Turner, a supervisor. Mr. Botticello falsely accused appellant of creating a hostile work environment because she did not interact with other managers during a meeting. Appellant stated that two managers disagreed with Mr. Botticello's statement. Mr. Botticello visited her office often and scheduled last minute meetings which prevented her from seeing a "LAP" professional in January 2009. He verbally abused appellant while discussing complaints from customers about poor service. Mr. Botticello twice falsely accused her of talking to a customer who complained about poor customer service. He harassed appellant about the number of clerks on her staff. Mr. Botticello yelled at her when she informed him about having a staff shortage. He harassed appellant about holding labor management meetings and he refused to authorize overtime work. Mr. Botticello told her that she made a bad decision in working for Postmaster Nancy Fryrear because she was her friend. Appellant stated that Robert Young, a customer services manager, Fran O'Donnell, a manager, Teddy Faison, a union

steward, and Ms. Williams witnessed harassment by Mr. Botticello. Her requests for a transfer to a different manager were denied by a postmaster.

Appellant requested additional staff because she could not pick up the heavy mail volume from a vitamin store; however, Mr. Botticello never responded to her request. On January 15, 2009 Mr. Botticello denied her request for leave based on the employer's best interest as a rural count was upcoming and her request for leave from February 2 through 13, 2009 had been approved. Appellant contended that she was sent to training because Hiten Parmar, a supervisor, left first class mail and stamp stock in the postal store lobby overnight. She worked extra hours and on days off because she could not finish her work in eight hours.

A February 13, 2009 medical report from Dr. Marina F. Waisman, a Board-certified psychiatrist, advised that appellant's severe insomnia, increased heart rate, diaphoresis, body tremors, pruritis and anxiety started after a confrontation with her manager. She advised that appellant's conditions were likely caused by work-related stress. Dr. Waisman advised that appellant could not return to work.

In a February 24, 2009 letter, Kenneth Terry, a health and resource management manager, controverted appellant's claim contending, that it involved administrative matters which did not come within the coverage of FECA. He argued that she failed to submit evidence to establish that Mr. Botticello called her improper names or treated female managers poorly.

In an undated narrative statement, Mr. Botticello acknowledged that he discussed a 60-day developmental detail with appellant on January 29, 2009 following an audit that he and Postmaster Fryrear conducted on January 20, 2009. The detail was necessary due to appellant's consecutive audit failures, which revealed delayed first class mail that contributed to poor customer service and poor rural performance in Tampa City, Florida. The mystery shop performance was poor in fiscal year 2009 which contributed to reduced revenue. Customer complaints escalated due to a lack of appropriate follow-through. There was falsified scanning, an inability to effectively manage clerical operations or achieve a budget; an unstable work climate/environment; high grievance activity; an unwillingness to communicate with union leadership or embrace the workplace improvement process which included partnering with the union or accommodating a new business. Mr. Botticello considered placing appellant on a performance improvement plan (PIP), but determined that she would benefit more from the detail. While appellant had insisted that the audit report was inaccurate with regard to the operations score and Mr. Parmar was responsible for the delayed mail, Mr. Botticello asked appellant and Dee Turner, a supervisor, to identify the discrepancies and address any errors in the report which he planned to submit to Operation Program Support. Neither appellant nor Ms. Turner submitted the requested information.

Mr. Botticello denied calling appellant any derogatory names. He stated that the Tarpon Springs Post Office was 31.64 miles one-way from appellant's home and her travel expenses would be reimbursed less the miles she would normally travel from her home to work. Mr. Botticello previously worked as postmaster at the Tarpon Springs Post Office. He regarded Ed Haab, the current postmaster, as a highly skilled manager. Mr. Botticello stated that this detail would improve her performance and personal growth as a manager. Appellant refused to attend the training and advised him that she planned to stop work. Mr. Botticello stated that

Postmaster Fryrear denied appellant's request to be transferred to Tim Dose, a customer services operations manager, due to her personal friendship with Mr. Dose.

Mr. Botticello stated that in December 2008 he handled approximately 14 grievances in accordance with standard procedures for a single management designee and not the local office manager. Appellant should have been aware of this policy as a former labor relations advocate. Mr. Botticello resolved grievances with very little monetary settlement or reduced expense to the employer. Appellant could have avoided the grievances by simply communicating with Don Barron, a union craft director. Her unwillingness to communicate with union leadership was another reason why she would benefit from training. Mr. Botticello did not recall reprimanding appellant for leaving a telecom in December 2008.

Mr. Botticello approved appellant's request for leave from December 22, 2008 through January 2, 2009 to undergo a surgical procedure since he wanted her to be available for a rural count scheduled for March 2009. He requested that she submit additional medical documentation when she returned to work on January 6, 2009 because she failed to do so prior to her surgery. Mr. Botticello's request was made in accordance with the employer leave policy. On January 14, 2009 Tamra Schweiberger, an employing establishment nurse, advised Mr. Botticello that medical documentation previously submitted by appellant was sufficient. As a result, Mr. Botticello did not request any further documentation from appellant and she received pay for her time off work.

Mr. Botticello contended that appellant's unwillingness to meet with union officials or to continue the workplace improvement process contributed to a toxic work environment. During a January 14, 2009 meeting, appellant seemed distracted and did not sit near or talk to the other managers. Since her appointment as a manager, employees had asked for upper management intervention.

Mr. Botticello stated that Ismail Medina, returned to his customer services manager position following a seven-year detail to a dispute resolution team. Ralf Christiano, an acting customer services manager, shadowed Mr. Medina for two weeks. Mr. Botticello stated that appellant was shadowed by Brenda Falleck, an acting customer services manager, for several weeks when she returned to operations in May 2008.

Mr. Botticello stated that appellant did not ask for copies of letters sent to Teresa Link, a human resources manager, and Tim Mealy, a district manager. He held all managers under his supervision equally accountable.

Mr. Botticello's e-mails dated December 1, 2008 through January 13, 2009 denote he scheduled last-minute meetings with appellant and received a complaint about her from a business customer regarding problems with pick-up and delivery of his mail.

In a March 13, 2009 letter, Mr. Botticello stated that appellant's workload may have been challenging at times, but it was not stressful. Meeting report deadlines, overseeing a large rural office and window and box section, and controlling operating costs were essential requirements of her position. To reduce appellant's stress, Mr. Botticello partnered her with several specialists held employee focus groups and conducted service talks. Appellant rejected his offer to attend

communication training. Mr. Botticello stated that there were no supervisory staffing shortages but appellant struggled to meet productivity goals and control work hours.

In a February 19, 2009 narrative statement, Michael Rodriguez, a diversity development specialist, related that appellant was upset about attending communication training. He advised appellant to view the training as a learning opportunity, as it was excellent and benefited those who attended it. Appellant informed Mr. Rodriguez that she was not able to manage her office because she was being micromanaged by Mr. Botticello who resolved grievances at the step-two level without her knowledge. Mr. Rodriguez did not witness any physical distress by appellant during any conversations or meetings with Mr. Botticello.

In a February 23, 2009 narrative statement, Postmaster Fryrear related that she overheard Mr. Botticello's comment to appellant about looking in the mirror. In denying appellant's December 1, 2008 request to transfer to another customer services manager, Postmaster Fryrear encouraged her to communicate more with Mr. Botticello. She did ask appellant if she was crazy. Postmaster Fryrear stated that Mr. Botticello's request for medical documentation was required since appellant had changed her preapproved leave for the Christmas holiday to sick leave. She related that appellant was not asked to do more than any other manager. Expectations were high for appellant given her labor and customer service background. Appellant insisted from the start of her employment that she did not need or want any training as she was capable of learning and working with her supervisors to accomplish her day-to-day work duties. Training was offered to improve her operational and management skills. Appellant rejected Mr. Botticello's offer to attend the training with her and to help resolve problems. She did not like certain people and refused to talk to them. Postmaster Fryrear arranged a meeting with the union and involved parties to stop the endless grievance activity. She noted that no disciplinary or corrective action had been taken against appellant.

By letter dated February 27, 2009, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested additional factual and medical evidence.

In a December 9, 2008 letter, Sally T. Jaime, a rural carrier, stated that a few disgruntled employees filed grievances against managers and supervisors, including appellant, who performed their jobs in a professional manner but were unceremoniously reassigned. Ms. Jaime stated that appellant made it clear from the beginning that she expected everyone to perform at a professional level and according to the employer regulations. She properly addressed employees who failed to perform up to standard.

In an undated letter, Sharon McComons, a rural carrier, advised that Postmaster Fryrear commended appellant's performance as a manager. Appellant had been troubled by long-time resistance to her leadership from a few employees who refused to work as a team to achieve her goals. Ms. McComons stated that continuous negativity and filing of grievances slowed the progress for reaching the goals and created a negative work environment.

In progress notes dated January 30 and February 17, 2009, Dr. Waisman advised that appellant had daily episodes of severe anxiety accompanied by autonomic arousal, heart palpitations, chest pain and cold sweats. She also had elevated blood pressure. Dr. Waisman concluded that appellant should not return to work to avoid further deterioration of her condition.

By letter dated April 6, 2009, OWCP advised appellant that her claim would be adjudicated as an occupational disease claim.

A December 9, 2008 letter signed by employees requested that Postmaster Fryrear address the efforts of other employees to stifle the positive changes and progress made by appellant, who demonstrated exemplary leadership and gained respect to lead their team.

In reports dated March 10 and May 5, 2009, Dr. Waisman advised that appellant's depression and symptoms related to post-traumatic stress major depressive and panic disorders were caused by emotional and verbal abuse from her supervisors.

In a June 11, 2009 decision, OWCP denied appellant's claim, finding that she did not sustain an emotional condition in the performance of duty. Appellant failed to submit sufficient evidence to establish any compensable employment factors.

On June 19, 2009 appellant requested an oral hearing.

In a December 30, 2008 disability certificate, Dr. Jay J. Older, a Board-certified ophthalmologist, advised that appellant could return to work on January 5, 2009 following her December 19, 2008 surgery.

Narrative statements were submitted to the record alleging that appellant was on a constant power trip. She was a dictator who overturned decisions made by her supervisors. Appellant micromanaged employees and subjected them to disparate treatment. She did not perform well as a team member. Appellant responded to employees in a condescending and sarcastic manner. She did not allow them to finish speaking. Appellant did not acknowledge hard work and harassed employees for no reason. Carriers walked out during her second week as a manager because she did not clearly explain the rules for full mailboxes. Clerks were threatened with discipline and she only required that certain employees submit leave slips. She judged employees based on negative opinions of complainers rather than on her own opinion which caused dissension among the employees. Appellant was not knowledgeable about her managerial duties and received credit for work performed by clerks and supervisors.

In a November 16, 2009 letter, Postmaster Haab stated that he previously worked for Mr. Botticello. He respected him as a highly competent manager.

In a November 23, 2009 letter, Mr. Terry stated that Mr. Botticello acted professionally with all employees. He also acted within his capacity in placing appellant on a developmental detail.

In an undated narrative statement, Mr. Botticello related that appellant did not complain about any medical problem prior to January 29, 2009. Appellant was not singled out to attend training and it was not a form of punishment. Mr. Botticello noted that appellant previously worked in an administrative position for many years and was not properly introduced to operations. He noted that other customer service managers had improved their skills through the same training. Mr. Botticello was not aware that appellant worked on Postmaster Haab's removal. He selected the Tarpon Springs Post Office because he worked there as postmaster from 2005 through 2007 and it offered a variety of operations that were appropriate for

appellant's training and was a high performing office that was recognized as the best level 22 post office in the southeast area in 2006. Mr. Botticello stated that Postmaster Haab was a close associate. He related that senior management received anonymous complaint letters and union pleas for intervention when appellant worked as a manager at New Tampa Station. Mr. Botticello did not prevent her attempt to better the workplace. He made every attempt to conduct workplace improvement meetings which appellant resisted. Appellant often challenged customer requests or problems and never attempted to resolve the problems. She ignored the complaint of the owner of the Vitamin Store about not having his mail consistently picked up until an arrangement was reached with Paul Sickmond, small business specialist with the Vitamin Store. Mr. Botticello stated that he did not verbally abuse or yell at appellant. Appellant accused other supervisors of being the problem and failed to take ownership or responsibility for her own actions. Mr. Botticello advised that appellant had retired under the voluntary early retirement program.

In an undated narrative statement, Mr. Barron indicated that 28 grievances were filed against appellant, alleging she was derelict in her duties and responsibilities. Appellant routinely violated the national union agreement. She did not provide any explanation for not allowing two union stewards to conduct grievance activities or have access to the building or pertinent information. Mr. Barron considered appellant's claim that she was not allowed to handle grievances strange as she tried to avoid them. He related that she spoke to him in a derogatory or unprofessional manner with a raised voice. Appellant hung up the telephone on Mr. Barron. He complained to Mr. Botticello about her actions and threatened to file a grievance against her. Appellant refused to meet with him about step one grievances. She also denied union representation to employees during investigative interviews. Mr. Barron stated that Mr. Botticello agreed to hear grievances, which were subsequently resolved or withdrawn as a result of appellant's capricious attitude.

In a December 28, 2009 decision, OWCP's hearing representative affirmed the June 11, 2009 decision. He found that Mr. Botticello's scheduling of meetings at the last minute or spur of the moment constituted a compensable employment factor. The hearing representative found, however, that the medical evidence was insufficient to establish that she sustained an emotional condition due to this administrative work factor.

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 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 his emotional condition.³

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

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

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

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 causally related to factors of her federal employment. OWCP accepted as a compensable factor, the scheduling of meetings at the last minute by Mr. Botticello without regard for her schedule.

Appellant's allegations regarding the assignment of training,¹¹ denial of a requests for a transfer,¹² leave¹³ and overtime,¹⁴ disagreement or dislike of a supervisory or managerial action,¹⁵ an oral reprimand¹⁶ and request for medical documentation¹⁷ are administrative matters and not compensable absent a showing of error or abuse on the part of the employing establishment. Mr. Botticello, appellant's manager, denied her allegations that she was sent to training as a form of punishment and was being treated differently than male managers. He, Mr. Rodriguez and Postmaster Fryrear stated that training would improve appellant's communication and work skills. Mr. Botticello stated that appellant's unit performed poorly in several audits including, his January 20, 2009 audit. He listed his findings which included delayed first class mail and poor rural gap and mystery shop performances which caused customer service complaints, reduced revenue, falsified scanning, ineffective management of clerical operations, high grievance activity, an unwillingness to communicate with union leadership and accommodate a new business, inability to achieve the budget and unstable work environment. Mr. Botticello provided appellant with an opportunity to address the discrepancies and errors she alleged occurred in his audit findings, but she did not respond. He stated that she did receive proper training for her position and training was a better option than placing her on a PIP. Mr. Botticelli indicated that Mr. Smith and Ms. Koffman both improved their work skills after attending training. He denied appellant's allegation that she was treated differently than Mr. Medina with regard to being sent to training, stating that Mr. Medina and appellant were shadowed by Mr. Christiano and Mr. Falleck, respectively, when they returned to work in operations. Mr. Botticello also denied her allegation that her commute to training was longer than her current commute to work. He stated that appellant's commute would be the same and that she would be reimbursed for any travel expenses that exceeded her current commute. Mr. Botticello denied being a friend of Postmaster Haab, who he characterized as a close associate. His former post office offered the best operations for appellant's training as it had been recognized as a top performing office. Mr. Terry stated that Mr. Botticello acted within his duties when he placed appellant on the developmental detail. Mr. Rodriguez noted appellant's complaints about being micromanaged by Mr. Botticello, but advised her that the training was excellent and benefited those who had attended. Postmaster Fryrear stated that Mr. Botticello

¹¹ See *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

¹² *D.L.*, 58 ECAB 217 (2006).

¹³ *T.G.*, 58 ECAB 189 (2006)

¹⁴ *Anne L. Livermore*, 46 ECAB 425 (1995).

¹⁵ See *Marguerite J. Toland*, 52 ECAB 294 (2001).

¹⁶ See *Gregory N. Waite*, 46 ECAB 662 (1995); *Joseph F. McHale*, 45 ECAB 669 (1994).

¹⁷ *James P. Guinan*, 51 ECAB 604, 607 (2000); *John Polito*, 50 ECAB 347, 349 (1999).

offered to attend training with appellant, but she rejected this offer and his other offers of assistance with work. Based on the statements from Mr. Botticello, Mr. Terry, Mr. Rodriguez and Postmaster Fryrear, the Board finds that appellant has failed to establish a compensable employment factor with regard to training. There was no error or abuse on the part of the employing establishment by referring appellant to training to improve her efficiency and managerial skills.

Mr. Botticello stated that appellant's request for a transfer to Mr. Dose was denied because she had a personal relationship with Mr. Dose. Postmaster Fryrear encouraged appellant to communicate more with Mr. Botticello rather than transfer to another manager. The statements from Mr. Botticello and Postmaster Fryrear establish that management did not err or act unreasonably in handling appellant's transfer request. The Board finds that appellant has not established a compensable employment factor.

According to appellant, her request for leave on January 15, 2009 was by Mr. Botticello based on the best interest of the employing establishment as he wanted her to be available for an upcoming rural count and she had already been approved for leave from February 2 through 13, 2009. She did not submit any evidence to establish that his explanation was untrue. The Board finds, therefore, that appellant's own statement establishes no abuse or error by Mr. Botticello. Appellant has failed to establish a compensable factor of her employment.

Regarding his work on step-two grievances filed against appellant, Mr. Botticello stated that he did so in accordance with the employer's policy. He and Mr. Barron stated that numerous complaint letters were submitted and grievances were filed against her when she worked as a manager at another post office. Mr. Botticello noted increased requests for upper management intervention from appellant's current employees. He and Postmaster Fryrear held meetings with appellant and the union to stop or minimize grievance activity. Mr. Barron related that appellant used a derogatory and unprofessional tone of voice with him while discussing her decision to not allow Mr. Botts and Mr. Britt to conduct union activity which violated the national agreement. He further related that she refused to meet with him on other occasions to address grievance matters and denied union representation to an employee. Mr. Britt and Mr. Botticello indicated that the grievances handled by Mr. Botticello were either resolved or withdrawn which avoided any monetary damages for the employing establishment. Although appellant told Mr. Rodriguez that she was being micromanaged by Mr. Botticello, he never witnessed any physical distress by appellant during conversations or meetings with Mr. Botticello. Based on the statements from Mr. Botticello and Mr. Barron, the Board finds that appellant has failed to establish that management erred or acted abusively in monitoring her work.

Regarding appellant's contention that he improperly requested that she submit additional medical documentation in support of her eye surgery, Mr. Botticello explained that his request was made because she failed to submit the necessary documentation prior to her surgery. He stated that after being notified by Ms. Schweiberger that the additional documentation was not necessary, he withdrew his request and paid appellant for her time off work. Postmaster Fryrear stated that appellant was required to submit the supportive medical documentation because she changed her preapproved Christmas holiday leave to sick leave. The Board finds that the statements from Mr. Botticello and Postmaster Fryrear establish that management did not err or

act abusively in requesting additional medical documentation. Appellant has not established a compensable employment factor.

Appellant did not submit any evidence to establish that Mr. Botticello erred or acted abusively in denying her request for overtime and issuing an oral reprimand in December 2008. Mr. Botticello did not recall reprimanding her for leaving the telecom. The Board finds, therefore, that appellant has not established a compensable employment factor in this regard.

Appellant alleged that she was overworked as she was unable to accept the Vitamin Shop as a new customer due to a staff shortage. She also worked extra hours on her days off because she could not complete her work within an eight-hour workday. The Board has held that while overwork may be a compensable factor of employment it must be established on a factual basis to be a compensable employment factor.¹⁸ Appellant did not submit sufficient evidence to substantiate her allegation. Mr. Botticello stated that appellant's workload may have been challenging, but not stressful. He indicated that she was well aware of her work duties when she requested a lateral move into her current position. Mr. Botticello related that he partnered appellant with other employee specialists and held employee focus groups and service talks to reduce her stress. While appellant struggled to meet her productivity goals and to control work hours, there were no staffing shortages. Postmaster Fryrear stated that appellant had not been asked to perform more work than any other manager. She related that expectations for her performance were high based on her labor and customer service background. Based on the statements of Mr. Botticello and Postmaster Fryrear, the Board finds that appellant has failed to establish overwork as a compensable employment factor.

Appellant contended that she was harassed, discriminated against and verbally abused in the above-noted incidents. Actions of a claimant's supervisor or coworker which the claimant characterizes as harassment may constitute a compensable factor of employment. 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.¹⁹ An employee's charges that he or she was harassed or discriminated against, is not determinative of whether or not harassment or discrimination occurred.²⁰ 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.²¹ Appellant contended that Mr. Botticello used profane language towards her when he falsely accused her of being responsible for the poor audit results. She also contended that he yelled at her for talking to a customer who was correct and complaining about a staff shortage. Appellant stated that Mr. Botticello criticized her for deciding to work for Postmaster Fryrear because they were friends and holding labor management meetings. She contended that he falsely accused her of creating a hostile work environment since she did not interact with other

¹⁸ *Sherry L. McFall*, 51 ECAB 436 (2000).

¹⁹ *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

²⁰ *See William P. George*, 43 ECAB 1159 (1992).

²¹ *See Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

managers. Appellant alleged that Mr. Botticello discriminated against female managers. She further alleged that Postmaster Fryrear asked her if she was crazy.

Although appellant asserted that Ms. Turner, Mr. Young, Ms. O'Donnell, Mr. Faison and Ms. Williams witnessed the harassment by Mr. Botticello and Postmaster Fryrear, the record is devoid of any statement from these witnesses corroborating her version of the noted incidents. The statements from Ms. Jaime, Ms. McComons and employees who stated that appellant was a victim of disgruntled employees who wished to stifle the positive changes and progress she made failed to describe any specific incident of harassment or identify any date on which the alleged harassment occurred. Mr. Botticello denied directing profane language and yelling at appellant. He stated that this was not his management style. Mr. Botticello related that he treated appellant with respect and dignity. He stated that her unwillingness to meet with union officials or work with other managers caused a toxic work environment. Mr. Botticello stated under her management, there was poor performance, employee discontent, filing of grievances and excessive customer complaints. He related that she refused to take responsibility for her actions and instead blamed other supervisors. While Postmaster Fryrear stated that she heard Mr. Botticello accuse appellant of being at fault for the poor audit results, this evidence is not sufficient to establish a pattern of verbal abuse or harassment. She even stated that appellant did not like certain people and refused to talk to them. Postmaster Haab stated that he respected Mr. Botticello as a highly competent manager. The employee statements generally indicated that appellant was not a team player, used a condescending and sarcastic tone of voice with employees, did not acknowledge their hard work, harassed and back stabbed them and blamed problems on her supervisors. Based on the statements of record, the Board finds that appellant has not established a factual basis for her allegations that she was harassed, discriminated against or verbally abused. Therefore, she has failed to establish a compensable factor of employment.

OWCP found that appellant sustained a factor of employment, namely, the scheduling of meetings at the last minute by Mr. Botticello without regard for her schedule. Appellant's burden of proof, however, is not discharged by the fact that she has established an employment factor. To establish her claim for an emotional condition, she must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted employment factor.²² The Board finds that, while it is not disputed that appellant may have or have had an emotional condition, the medical evidence does not explain how or why the accepted employment factor caused or contributed to the emotional condition.

Dr. Waisman's medical reports found that appellant had, among other things, anxiety and depression. She advised that the diagnosed conditions and disability were caused by work-related stress which included a confrontation with a supervisor. Dr. Waisman concluded that appellant could not return to work at the employing establishment. She did not provide a rationalized medical opinion addressing how the accepted compensable employment factor, namely, continuous scheduling of meetings at the last minute or spur of the moment by Mr. Botticello without regard for appellant's schedule, caused or aggravated appellant's

²² *William P. George, supra* note 20.

emotional condition.²³ Although Dr. Waisman generally noted appellant's work environment as a contributing factor to her stress, she did not specifically reference the accepted employment factor or explain how such factor caused or contributed to appellant's claimed condition. Instead, she generally indicated that poor treatment at work caused psychiatric problems but she did not explain how any particular accepted employment factor caused or aggravated a diagnosed emotional condition. The Board finds, therefore, that her opinion is insufficient to establish a causal relationship between the accepted compensable employment factor and appellant's emotional condition.²⁴

Similarly, Dr. Older's disability certificate which stated that appellant could return to work on January 5, 2009 following her December 19, 2008 eye surgery is insufficient to establish appellant's burden. He did not attribute her disability to the accepted employment factor.²⁵

The Board finds that appellant has failed to submit rationalized medical evidence establishing that her claimed emotional condition is causally related to the accepted compensable employment factor.

Appellant's contention on appeal that OWCP failed to develop the claim has not been established. OWCP explained to appellant that further information was needed, specifically, that she needed to identify employment factors that caused or contributed to her emotional condition and provide a detailed, narrative medical report from an attending physician that her condition was caused by those specific factors. The factual evidence is insufficient to establish a compensable factor other than the accepted incident of last minute scheduling of meetings by Mr. Botticello. The medical evidence record is found to be insufficient to establish that appellant's emotional condition was caused by the accepted employment factor.

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.

²³ *George H. Clark*, 56 ECAB 162 (2004); *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001); *William P. George*, *supra* note 20 at 1167 (1992) (medical reports not containing rationale on causal relationship are entitled to little probative value).

²⁴ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodham*, 41 ECAB 345, 352 (1989).

²⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the December 28, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 23, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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