

FACTUAL HISTORY

On October 28, 2008 appellant, then a 40-year-old contract specialist, filed an occupational disease claim alleging that on May 1, 2007 she first became aware of her stress-related anxiety and depression and realized that her conditions were caused by a hostile work environment. She contended that management retaliated against her for refusing to cover up contract fraud and for filing complaints with the Equal Employment Opportunity Commission (EEOC). Appellant stated that a physician diagnosed anxiety and depression due to her work environment.

Appellant submitted narrative statements contending that her emotional condition was caused by several work incidents. In mid-2005, she was assigned as a contracting officer to the Ranges and Planning Program by Kenneth Goddard, a supervisor, who wanted her to fix the programs' problems caused by Mark Fleming, the program manager. Appellant contended that Mr. Fleming challenged her decisions on a daily basis. Mr. Fleming became very angry and often belligerent towards her when she challenged him and his program managers on matters that she considered to be illegal or fraudulent. An audit of the program was conducted after appellant reported her concerns to her superiors, the office of counsel and an internal audit team. The audit confirmed the lack of supervisory action taken against Mr. Fleming. The auditors advised appellant that John Matthews, a deputy manager, stated that she caused problems and that he previously had trouble with her. They were allegedly pressured by Commander, Colonel McCallister to change their report.

Appellant became a scapegoat of the audit and Mr. Goddard suddenly transferred her overnight on May 30, 2007 without documentation or reason to Sharon Butler, an African-American supervisor, to prevent her from filing Equal Employment Opportunity (EEO) complaints against him, Mr. Fleming, Mr. Matthews and Col. McCallister, who were Caucasian males. Mr. Goddard placed her in a hostile work environment. Appellant contended that Margaret Simmons, an employing establishment attorney, was also responsible for her May 2007 reassignment. She contended that Ms. Butler portrayed her as incompetent at the urging of Mr. Goddard, Mr. Fleming, Mr. Matthews, Col. McCallister and J.R. Richardson, chief of contracting, although Ms. Butler often consulted with appellant on many contractual matters. Ms. Butler stripped appellant of her supervisory position in late 2005, reduced her to menial roles, assumed her contracting officer duties, physically threatened her and continually humiliated her by overturning her decisions in front of subordinate employees. She assigned lower-grade employees as acting chief in her absence instead of appellant who was the only supervisory employee on her staff. Appellant had to request leave from these employees. Ms. Butler's hostile and unprofessional treatment caused John Cominotto, a contract specialist, to become progressively disrespectful and insubordinate towards appellant. On May 31, 2007 Mr. Cominotto informed Ms. Butler that he was upset by appellant's unavailability as appellant kept her office door closed and remained on the telephone when he entered her office. Ms. Butler rejected appellant's explanation as to why her office door was closed and stated that appellant had an open door policy. She interrupted appellant as she spoke and not Mr. Cominotto, who became angry and loud when appellant later asked him why he did not initially discuss his concerns about her unavailability.

On June 1, 2007 appellant questioned why David Broyles, a program manager, forwarded his e-mail to her inquiring about the receipt of contract proposals to his supervisory chain of command. She stated that he signed the packages so he should have known the receipt date.

On June 4, 2007 Mr. Cominotto did not include appellant in a discussion he had about a contract with Ms. Butler. He sought approval of his request for leave to attend a military deployment physical examination from Ms. Butler rather than appellant. Ms. Butler did not invite appellant to a meeting attended by her own team regarding the program she managed.

On June 5, 11 and 15, 2007 Ms. Butler spoke to appellant in a stern manner about her work performance. On June 11, 2007 she presented an employee training plan as a new idea while management did not support appellant's prior recommendation for such training. On June 12, 2007 Ms. Butler refused to provide appellant with documents related to her own program. On June 14 and 15, 2007 she provided short notice to appellant about scheduled meetings. During a June 15, 2007 meeting, Ms. Butler discussed the contract review process to be followed by appellant before Ms. Butler's signature was required. On June 25, 2007 she was disappointed by appellant's failure to timely submit a contract as instructed and her issuance of a letter of counseling to Mr. Cominotto on June 20, 2007. Ms. Butler allegedly glared at appellant in response to her explanation for the delay. On June 26, 2007 she requested that appellant provide details about a meeting she had with program managers. On June 27, 2007 Ms. Butler provided appellant with short notice about a meeting. She was unable to attend the meeting due to prior commitments. Ms. Butler requested notification about appellant's team meetings effective immediately so that she could attend the meetings. No other branch chief/contracting officer was required to provide such notification. Appellant was baffled by Ms. Butler's comment that she did not like her attitude. Ms. Butler sternly instructed appellant to put her pen down and stop taking notes during a meeting. She accused appellant of not responding to her e-mails or telephone calls, noting that other supervisors were immediately available to attend meetings upon her request. Ms. Butler advised Mr. Richardson about appellant's failure to complete a work stop order in a timely manner as she instructed. On June 28, 2007 she designated Wanda Cross, a nonsupervisory employee, rather than appellant as acting supervisor in her absence. On July 9, 2007 Ms. Butler rescheduled a 1:00 p.m. meeting with appellant for 1:20 p.m. She questioned her late arrival at the meeting, but did not question the late arrival of Yolanda Brown, a senior level contract specialist on appellant's team.

On June 19, 2007 Mr. Fleming yelled at appellant about a contract award matter.

On July 6, 2007 Tonju Butler, a contracting officer, replaced appellant on the Ranges and Planning Program due to a reorganization. On July 9, 2007 Mr. Richardson advised her that she was being reassigned to a preaward team because she had the expertise to work on incoming "AE" contracts. Lisa Parker, an employee, had been in "AE" contracts for several years prior to appellant's arrival at the employing establishment, yet she remained with her team.

On July 10, 2007 Ms. Butler replaced appellant with Art Dohrman, a project manager, to providing a briefing on the status of contracts. She later instructed appellant to perform the contract specialist functions on a contract package while she signed it as the contracting officer since Ms. Cross was on leave. Rich Gingras, a contractor, informed appellant that he had been instructed not to include her on his e-mail meeting notification list.

On July 11, 2007 appellant worked overtime to complete her assignments before taking a medical leave of absence from work.

Appellant filed an EEO complaint alleging discrimination and harassment by management. An October 17, 2007 settlement agreement placed her into a small business chief position and restored her sick leave. Ms. Butler, however, rated appellant's performance in her previous position. After 15 years of receiving excellent performance ratings and awards, Ms. Butler gave appellant a low rating. Appellant contended that the rating was unfair since Ms. Butler was named in her prior EEO complaint. The rating and Ms. Butler's comments did not reflect the contributions appellant made to the organization during the rating period or provide any substantive documentation to justify and support the rating. Ms. Butler's comments derailed appellant's ability to successfully exceed the rating objectives. She violated the Privacy Act by advising William Hill, an employing establishment attorney, about her intention to give appellant a poor rating.

As small business chief, appellant contended that employees disrespected her without consequence. Col. McCallister did not respond to her e-mails. Appellant was constantly summoned to the executive office and ordered to change the way she ran her office although her predecessor was not subjected to the same rules. She had to comply with any concerns raised against her even though she had documented proof to support her position. Appellant was not allowed to fill a long-standing student position that was previously available to her predecessors. The position was given to a fully staffed office although she worked alone. Appellant did not have anyone to answer her telephone or greet visitors when she was away from her desk.

Delores Foster, an employee, and appellant coordinated a successful forum held on December 14, 2007, but only Ms. Foster received a performance award. Prior to the forum, appellant advised Mr. Lloyd about a family member's death. Mr. Lloyd did not tell her not to attend the out-of-town funeral, but stated that it would be in the best interest of her career to attend the forum. He related to appellant that he was on her side while others were watching her.

After Ms. Foster retired in January 2008, appellant was the only employee in her small business office until Patricia James, an employee, started work on May 12, 2008. Appellant did not receive any recognition for running the office alone for five months or undergoing a successful audit. She was not invited to meetings held by Mr. Richardson, Lisle Lennon and Cindi Tolle, chief of contracting, in January and February 2008 and on June 6, 2008.

On January 23, 2008 Brittany Prater Olsen, an employee, accused appellant of speaking to her in a harsh manner. Appellant denied the allegation and stated that Sue Barber, a security officer, would corroborate her statement. She contended that Ms. Prater Olsen should have been counseled by her supervisor, Andrea Takash.

Appellant did not receive condolences from any one in her chain of command when her grandmother died in February 2008. Mr. Lloyd reviewed the obituary and asked her whether her grandmother knew whether her family had good slave masters. Appellant did not respond and left his office. On March 20, 2008 Mr. Lloyd initially denied her request to participate in an out-of-town conference, but later granted her request based on Ms. Tolle's suggestion. Appellant returned early from the conference to complete a report on which she worked overtime. She was

humiliated by Mr. Lloyd's comment to a prospective employee, Gregg Gullede, during an interview. Mr. Lloyd stated that appellant and Mr. Gullede would be at the bottom of the totem pole in the office. Ms. Takash also alleged that Mr. Lloyd made a comment about her hair. She responded "oh my God John" and tried to laugh off his comment. Mr. Lloyd responded that he was joking. Appellant contended that employees did not wish to talk to her because they did not want to be treated in this same manner by management. In November 2007, she was talking to an employee when the employee's supervisor approached them. The employee repeatedly stated, "I'm dead, I'm dead" in fear of being seen talking to appellant. On April 2, 2008 Mr. Lloyd requested that she take him off her telephone voicemail message because he no longer wished to be a person of contact when she was out of the office. He became upset with appellant when he received a letter from an attorney regarding an investigation of a contract on which she was the contracting officer. Mr. Lloyd stated that she should have talked to him about the matter first. In meetings held on June 26 and July 21, 2008, he, Ed Snow and Ms. James, employees, disregarded appellant's position on the use of "DD2579s" for task orders and modifications. Appellant contended that Mr. Lloyd had administrative employees keep tabs on her whereabouts.

Appellant initially did not receive any information distributed by Mr. Matthews or Martha Cook, his assistant, regarding a February 2008 conference until she persisted. She only received approximately one week notice about being a presenter at the conference.

On March 27, 2008 appellant's personnel folder which had been missing since October 2007 was found in disarray. She was concerned about the personal identifying information contained in the folder, but was made to feel like she had blown the incident out of proportion.

On July 2, 2008 Mike Murphy, a program manager, sent an e-mail containing his unfavorable response to appellant for forwarding information to him *via* e-mail to everyone on the e-mail list. Appellant contended that no one in her chain of command intervened on her behalf as she requested regarding Mr. Murphy's actions.

On July 22, 2008 appellant received an inappropriate e-mail from Donna Ragucci, Ms. Tolle's employee, concerning the late processing of a contract. On July 23, 2008 Lieutenant Colonel David E. Bailey, a deputy commander, talked to Ms. Tolle about this incident as requested by appellant. He reported to appellant that Ms. Tolle had talked to Ms. Ragucci. Appellant believed that Ms. Ragucci should have been reprimanded for her action.

By e-mail dated June 19, 2007, Kim O'Donnell, a former employing establishment certified public accountant auditor, provided appellant with a copy of the audit report on the Ranges and Planning Program. She stated that, since the commander was not willing to fully disclose the report to the Federal Bureau of Investigations (FBI), she had an ethical duty to disclose waste and abuse within the government by giving the report to her.

Lt. Col. Bailey provided statements in which he related that he did not tolerate a hostile environment or harassment in the workplace. The changes in appellant's work environment since May 2007 were due to a normal shift in personnel and her EEO settlement agreement. They were not made to directly impact her level of stress. The EEO settlement agreement was based on intangible benefits to the employing establishment and not because appellant's

complaint was meritorious. Lt. Col. Bailey contended that the employing establishment did not engage in any unlawful discrimination or subject her to a hostile work environment before or after the settlement agreement. Appellant's request for extended sick leave commencing August 22, 2008 was granted. Her request for an additional two months of sick leave was denied until Lt. Col. Bailey could review new guidelines. Appellant's subsequent request for sick leave from March 6 through May 4, 2009 was denied, but he granted leave through March 12, 2009. Lt. Col. Bailey stated that her position as small business deputy was critical and her absence from work negatively impacted the employing establishment. He advised appellant about possible disciplinary action if she did not return to work including, termination of employment. Lt. Col. Bailey stated that he was not aware of the specific cause of her stress as his own observation of her work performance and environment did not reveal any causes. Appellant's duties as a small business deputy were generally considered to be less stressful than her former duties as a contracting officer. She received informal training from the small business office headquarters in Washington, DC Appellant also received peer contact information and introductions to individuals with similar responsibilities in other geographic locations. Lt. Col. Bailey advised that she was generally able to perform the duties of her positions. He noted the July 22, 2008 incident involving Ms. Tolle and Ms. Prater Olsen. Lt. Col. Bailey also stated that on July 22, 2008 appellant disagreed with his decision not to use "DD2579s" and the minutes taken by Betty Neff, a center quality representative. On July 24, 2008 he obtained clarification regarding the use of "DD2579s" and advised her that his interpretation was correct. On July 30, 2008 the minutes were republished based on appellant's recommendations. Lt. Col. Bailey stated that the contracting office did not accuse the small business unit of delaying the processing of contracts. He stated that the small business unit should provide processing times to allow contracting officers to adequately plan the processing of contract actions through the unit. This was an objective method used to determine whether appellant held a contracting action too long. Lt. Col. Bailey noted her strong reluctance and delay in establishing timelines. He stated that appellant was not responsible for any undue delays in contract processing and no one had accused her of such action.

In a July 17, 2007 statement, Ryan A. Black, an employing establishment assistant counsel, denied appellant's allegation that he recommended her reassignment from Mr. Goddard to Ms. Butler. He stated that she had not been injured in a term or condition of her employment. Appellant was not treated in a hostile manner. She was simply assigned a different supervisor.

In a July 27, 2007 statement, Mr. Richardson stated that appellant was reassigned from the Ranges and Planning team on May 30, 2007 because there was a backlog of work for several months. He attempted to put the program back on track and help her become successful in her career. Mr. Richardson stated that appellant did not get support from her team members, Mr. Goddard, Mr. Fleming or legal counsel. Appellant did not trust her supervisor because Mr. Goddard refused to take any action due to his relationship with Mr. Fleming. Mr. Richardson received many complaints from customers over the past two years concerning appellant's service. Appellant was very slow in processing contracts. Employees including, Mr. Cominotto, left her team. In 2004, Mr. Richardson asked Ms. Butler to become appellant's mentor because appellant struggled with the transition to her new position. He also mentored appellant. Mr. Richardson stated that the results of the audit of the Ranges and Planning Program were unknown. The relationship between appellant and Mr. Goddard was so bad that a change would be good. Mr. Richardson stated that she had been a stellar employee until the past

year when her productivity fell off substantially. Appellant's performance was being monitored by Mr. Goddard and Ms. Butler, which resulted in a disturbing discovery that appellant failed to follow Mr. Richardson's instruction to de-obligate money and return it to a customer. Mr. Richardson and other management personnel fully supported her, but emphasized that she must perform her job and complete her work in a timely manner.

In an undated and unsigned statement² and an August 31, 2007 statement, Ms. Butler related that appellant and the Ranges and Planning Program were reassigned to her on May 30, 2007. Appellant's job duties/role and responsibilities did not change as a result of the reassignment. Ms. Butler did not refer Ms. Simmons to appellant. She could not recall any meeting with appellant that had an unsatisfactory or unsuccessful outcome. There were concerns about deadlines appellant missed. Appellant's team's workload was monitored to ensure that actions were executed by deadlines stipulated by customers. Ms. Butler stated that she did not point a pen at appellant's face. She tapped the table with her index finger. Ms. Butler did not provide appellant with short notice to complete an impossible task as she requested information from appellant about a contract that appellant was intimately involved with as the contracting officer. She designated appellant as acting chief during her absence on June 18 through 29, 2007. When Ms. Butler returned to work on June 26, 2007, appellant advised her that she could not get her work done due to all the meetings she had to attend. Because she realized that appellant had to complete her supervisory duties she designated Ms. Cross as acting chief and Mr. Goddard as contracting officer during her absence on June 28 and 29, 2007. Appellant never requested any contract status information from Ms. Butler that was necessary for the performance of her work duties.

In a July 23, 2007 statement, Mr. Goddard related that, under his supervision, the Ranges and Planning Program had problems and the solution was to place the employees and program under Ms. Butler's supervision for 60 days. He discussed these job changes with appellant. Mr. Goddard did not refer Ms. Simmons to meet with her. He did not know the two met. Mr. Goddard provided feedback to appellant regarding her work performance when she asked for it or when he thought it would be helpful to her. He did not monitor her work any more than the other employees.

In a July 23, 2007 statement, Mr. Matthews related that he did not recall stating on May 25, 2007 that appellant and her performance had been a problem in the past. He had no role in the ongoing audit. Mr. Matthews did not recommend appellant's May 30, 2007 reassignment. He did not know that she had been reassigned to a different supervisor until he received her EEO complaint.

In an undated statement, Ms. Simmons related that she was advised about appellant's May 30, 2007 reassignment after it had taken place. She only recommended removal of appellant and Mr. Fleming from the Ranges and Planning Program after an audit investigation was ordered by Col. McCallister to ensure full disclosure to the investigating officer. The removal was the best way to protect appellant and Mr. Fleming so that they would not have to worry about ongoing work. Ms. Simmons suggested the removal as a temporary measure to

² The Board notes that it appears that the undated and unsigned statement is from Ms. Butler based on the contents of the statement.

ensure fairness. She was disappointed with appellant's failure to coordinate with her office on the disciplinary action appellant took against one of her own employees.

Medical records dated July 11, 2007 through May 27, 2009, advised that appellant's acute stress and major depression disorders and disability for work from August 18 through December 22, 2008 were causally related to her employment.

In a June 24, 2009 decision, OWCP denied appellant's claim, finding that she did not sustain an emotional condition in the performance of duty as she failed to establish a compensable factor of her employment.

By letter dated July 24, 2009, appellant, through her attorney, requested a telephone hearing.

A July 30, 2009 report addressed appellant's emotional conditions and disability for work.

Following an October 19, 2009 telephone hearing, appellant submitted an August 27, 2009 EEOC decision which found that the employing establishment inappropriately dismissed her harassment and discrimination complaint. The complaint was remanded to the employing establishment for further processing.

In a November 1, 2009 letter, the employing establishment stated that appellant was being removed from employment effective November 6, 2009 as she had not performed her work duties since August 18, 2008 and a firm return to work date had not been established.

In a December 9, 2009 affidavit, Dorothy Lewis, a secretary, stated that appellant had little prior knowledge about the day-to-day operations of the small business office. Appellant was left in an impossible situation without a knowledgeable employee when Ms. Foster retired. Ms. Lewis had to telephone appellant about scheduled meetings because appellant was intentionally left off the distribution list advising office heads about the meetings. She stated that appellant's whereabouts at work were monitored by employees. When appellant went to her supervisor's office, the work environment became strained. Ms. Lewis feared being seen talking to appellant unless it clearly involved work-related issues. She stated that Lt. Col. Bailey had a negative reaction when he reviewed a facsimile addressing appellant's medical condition. Lt. Col. Bailey stated that appellant's medical issues were a ploy and he was not happy about her situation. A meeting between appellant and him became so loud that Ms. Lewis got up from her desk and closed the office door. It was obvious to Ms. Lewis that appellant was being blackballed. Appellant appeared to be under a great deal of pressure and was being set up to fail.

In a January 7, 2010 decision, an Office hearing representative affirmed the June 24, 2009 decision, finding that the evidence failed to establish a compensable factor of appellant's employment.

LEGAL PRECEDENT

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.³ 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.⁴

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 employment factors.⁵ This burden includes the submission of a detailed description of the employment factors or conditions, which the employee believes caused or adversely affected the condition or conditions, for which compensation is claimed.⁶

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.⁷ 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.⁸

ANALYSIS

Appellant alleged that she sustained an emotional condition due to several incidents at the employing establishment. The Board must determine whether the alleged incidents are compensable under the terms of FECA.

Appellant made several allegations related to administrative or personnel matters. These allegations are unrelated to her regular or specially assigned work duties and do not generally fall within the coverage of FECA.⁹ The Board has held, however, that an administrative or personnel

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

⁴ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁵ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁶ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁷ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁸ *Id.*

⁹ An employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. *Sandra Davis*, 50 ECAB 450 (1999).

action may be considered an employment factor where the evidence discloses error or abuse. In determining whether the employing establishment erred or acted abusively, the Board has examined whether management acted reasonably.¹⁰

Appellant's contentions regarding reassignment to the Ranges and Planning Program, Ms. Butler, the small business office and preaward team,¹¹ assignment of work,¹² inadequate training,¹³ an investigation of the Ranges and Planning Program,¹⁴ poor performance appraisal,¹⁵ filing of EEO grievances alleging discrimination and harassment,¹⁶ denial of a performance award¹⁷ and request for sick leave,¹⁸ monitoring of work¹⁹ and disciplinary actions including removal from employment²⁰ are administrative matters and not compensable absent a showing of error or abuse on the part of the employing establishment. She contended that she became a scapegoat of the Ranges and Planning Program audit and was abruptly reassigned to Ms. Butler. Appellant further contended that her other above-noted reassignments were unjustified. However, the statements from Mr. Goddard, Mr. Richardson, Mr. Black, Ms. Butler and even appellant indicated that appellant was viewed by management as capable of fixing problems in the Ranges and Planning Program, there was no change in her job duties when she was assigned to Ms. Butler, management sought to ensure appellant's career success in making the reassignments and provided mentors in her new positions and appellant had the expertise to handle the contracts to become a member of the preaward team. According to Mr. Goddard, appellant and the Ranges and Planning Program were reassigned to Ms. Butler on May 30, 2007 because the program experienced problems under his supervision. He stated that he discussed the job changes with her. Mr. Richardson stated that appellant was reassigned to the preaward team because she possessed the expertise to handle incoming contracts. Mr. Mathews and Ms. Simmons denied responsibility for appellant's May 30, 2007 reassignment. Ms. Simmons stated that she only recommended appellant's temporary removal from the Ranges and Planning Program during the audit of the program to ensure full disclosure to the investigating officer.

Regarding the assignment of work, appellant contended that Ms. Butler instructed her to follow a new contract review process, designated Ms. Cross as acting chief, replaced her with

¹⁰ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹¹ See *Lori A. Facey*, 55 ECAB 217 (2004).

¹² See *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

¹³ *Brian H. Derrick*, 51 ECAB 417 (2000).

¹⁴ *Ernest St. Pierre*, 51 ECAB 623 (2000).

¹⁵ *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

¹⁶ *Michael A. Salvato*, 53 ECB 666, 668 (2002).

¹⁷ See *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997); *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

¹⁸ *John Polito*, 50 ECAB 347, 348 (1999).

¹⁹ *Supra* note 11 at 224.

²⁰ *Charles D. Edwards*, 55 ECAB 258, 266 (2004).

Mr. Dohrman as the person who provided the contract status briefing, required appellant and no other branch chief or contracting officer to provide notification about team meetings, instructed her to put a pen down and stop taking notes, removed her from a supervisory position in late 2005, assigned her menial roles, assumed her contracting officer duties and provided short notice about scheduled meetings and work assignments. She contended that Mr. Lloyd instructed her to remove him from her telephone voicemail message because he no longer wanted to be a person of contact when she was not available. Ms. Butler stated that Ms. Cross was designated as acting chief in her absence instead of appellant because appellant complained that she was unable to complete her work when she previously served as acting chief because she had to attend meetings. Appellant did not submit any evidence establishing error or abuse by Ms. Butler or Mr. Lloyd in handling these administrative and personnel matters. Further, based on Ms. Butler's statement, the Board finds that appellant has not established a compensable employment factor.

Appellant generally contended that she did not receive adequate training at work. Ms. Lewis stated that appellant did not have any training to perform her small business work duties. However, Lt. Col. Bailey stated that appellant received informal training from the small business office headquarters in Washington, DC. He also stated that she received peer contact information and introductions to individuals with similar responsibilities in other geographic locations. Lt. Col. Bailey related that appellant was generally able to perform the duties of her small business deputy. He considered these duties to be less stressful than her previous contracting officer duties. Mr. Richardson stated that both he and Ms. Butler mentored appellant in her new position. The Board finds that, based on the statements of Lt. Col. Bailey and Mr. Richardson, appellant has not established a compensable employment factor.

Regarding the Ranges and Planning Program audit, the Board notes that the investigation was initiated by appellant and not the employing establishment. While Ms. O'Donnell gave appellant a copy of the final report because the commander was not willing to fully disclose its findings of government waste and fraud to the FBI, the record does not contain any evidence to support her contention.

Appellant contended that the poor performance rating she received from Ms. Butler was not justified and that Ms. Butler violated the Privacy Act by sharing her rating with Mr. Hill. Apart from her allegations, there is no evidence to establish that Ms. Butler rendered an unjustified rating or violated the Privacy Act. Appellant also did not submit any evidence to corroborate her allegation that Mr. Lloyd erred or committed abuse in suggesting the addition of a subjective factor to her performance standards. Further, there is no evidence establishing that management acted unreasonably in only giving Ms. Foster a performance award. The Board finds, therefore, that appellant has not established a compensable employment factor.

Regarding appellant's removal from employment on November 6, 2009, the employing establishment stated that she had not performed her work duties since August 18, 2008 and a firm return to work date had not been established. The Board finds that the employing establishment did not act unreasonably in terminating her employment. Appellant has not established a compensable employment factor.

Appellant filed EEO complaints against the employing establishment alleging harassment and discrimination. An October 17, 2007 EEO settlement agreement placed her in her small business chief position. The agreement specifically provided that it did not constitute an admission of any legal violation on the part of the employing establishment. Consequently, appellant's EEO settlement agreement is not sufficient to establish a compensable factor of her employment. The August 27, 2009 EEOC decision found that the employing establishment inappropriately dismissed her harassment and discrimination complaint and remanded the complaint to the employing establishment for further processing. This is not sufficient to establish a compensable employment factor as the decision addressed a procedural matter and did not make any findings that managers or coemployees had harassed or discriminated against appellant.

Regarding the denial of appellant's sick leave, Ms. Lewis stated that Lt. Col. Bailey expressed his displeasure with appellant's medical issues and belief that her medical condition was a ploy. However, Ms. Lewis did not provide any specific details and dates regarding this incident. Lt. Col. Bailey explained that he could grant appellant's request for an additional two months of sick leave until he reviewed new guidelines. He denied her sick leave request for March 6 through May 4, 2009 and only granted leave from March 6 through 12, 2009 explaining that her small business deputy position was a critical position and her absence from work would negatively impact the employing establishment. According to appellant, Mr. Lloyd did not deny her request to attend a family funeral. Rather, Mr. Lloyd expressed concern for her career and suggested that she attend the December 14, 2007 forum instead. Based on Lt. Col. Bailey's statement and appellant's own statement, the Board finds that she has not established a compensable employment factor.

Regarding the monitoring of appellant's work, Mr. Goddard stated that it was not monitored any more than other employees' work. Mr. Richardson stated that Mr. Goddard and Ms. Butler monitored appellant's work performance because she was no longer a stellar employee. He noted that appellant's productivity had fallen off substantially for at least one year. Mr. Richardson related that monitoring her work revealed her failure to follow his instructions to return money to a customer. Ms. Butler explained that appellant's team's work performance was monitored to ensure that deadlines established by customers were met. In light of the statements of Mr. Goddard, Mr. Richardson and Ms. Butler, the Board finds that management did not act unreasonably in the above-noted administrative and personnel matter. Appellant has failed to establish a compensable employment factor.

Appellant alleged that she was overworked as she was the sole employee in the small business office. She stated that management denied her request to fill a long-standing student position and instead gave the position to a fully staffed office. Appellant further stated that she had no one to answer her telephone or greet visitors when she was away from her desk. She had to work overtime to complete her work before taking a medical leave of absence and to complete a report that required her early return from a conference. 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.²¹ Appellant did not submit any evidence to substantiate her allegation. The Board finds that she has not established a compensable employment factor.

Appellant contended that she was harassed, discriminated against and physically and verbally abused at the employing establishment in the above-noted incidents, as well as, other incidents involving supervisors and coworkers. Actions of a claimant's supervisor or coworker which the claimant characterizes as harassment may constitute a compensable factor of employment. 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.²² An employee's charges that he or she was harassed or discriminated against, is not determinative of whether or not harassment or discrimination occurred.²³ 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.²⁴ Appellant contended that Mr. Fleming challenged her decisions, became angry and belligerent towards her when she challenged his decisions and yelled at her. She further contended that Mr. Matthews identified her as a troublemaker. Appellant contended that Mr. Fleming, Mr. Matthews, Col. McCallister and Mr. Richardson urged Ms. Butler to portray her as incompetent. She alleged that Ms. Butler glared threateningly when she explained her late arrival to a meeting. Appellant further alleged that Ms. Butler physically threatened her, continually humiliated her by overturning her decisions in front of subordinate employees, used a stern and incriminating tone of voice while discussing her work performance, took credit for a training plan that she originally suggested and showed disappointment when she issued a letter of warning to Mr. Cominotto. She also alleged that Mr. Lloyd made derogatory and humiliating comments about her family history, hair and lowly status in the office. Appellant stated that her coworkers stayed away from her due to this type of treatment by management. She related that Mr. Lloyd had administrative employees keep tabs on her whereabouts. Mr. Lloyd became upset with appellant because she should have talked to him first about an investigation of her contract before his receipt of a letter from an attorney regarding the matter. Appellant contended that Mr. Lloyd, Mr. Snow and Ms. James disregarded her position about the use of "DD2579s" during the June 26 and July 21, 2008 meetings and errors in the minutes of these meetings prepared by Ms. Neff. She contended that Mr. Cominotto became angry and spoke loudly when she asked why he did not discuss her unavailability with her before discussing this matter with Ms. Butler. Appellant stated that she consulted with Ms. Butler instead of her regarding work and leave matters. She contended that Mr. Broyles and Mr. Murphy forwarded e-mails they sent to her to their supervisory chain of command and others on the e-mail list. Appellant also contended that Mr. Gingras left her off his e-mail notification list, she was not invited to meetings held by Mr. Richardson, Mr. Lennon and Ms. Tolle, and Mr. Matthews and Ms. Cook were slow to provide her with information about a conference she planned to attend and short notice that she was a presenter at the conference. Col. McCallister did not respond to her

²¹ *Sherry L. McFall*, 51 ECAB 436 (2000).

²² *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

²³ *See William P. George*, 43 ECAB 1159 (1992).

²⁴ *See Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

e-mails. Appellant stated that Ms. Prater Olsen falsely accused her of using a harsh tone of voice and Ms. Ragucci sent her an inappropriate e-mail. She contended that management did not take her missing personnel folder seriously when it was found in disarray.

Although appellant asserted that auditors related Mr. Matthews' comment to her, Ms. Takash witnessed Mr. Lloyd's derogatory comments and Ms. Barber witnessed her conversation with Ms. Prater Olsen, the record is devoid of any statement from these witnesses or any other witness corroborating her version of the incidents. While Ms. Lewis noted incidents involving the manner in which appellant was treated by management, including Lt. Col. Bailey, she failed to provide any specific details and dates of these incidents. Mr. Matthews did not recall stating that appellant was a problem employee. Ms. Butler denied pointing a pen in appellant's face. She stated that she tapped the table with her index finger. Ms. Butler also denied providing appellant with short notice to complete a work assignment. Rather, she asked appellant to provide information about a contract that she was intimately involved with as the contracting officer. Based on the statements from Mr. Matthews and Ms. Butler, the Board finds that appellant has not established a factual basis for her allegations that she was harassed, discriminated against and physically and verbally abused by the employing establishment. Therefore, appellant has failed to establish a compensable factor of employment.²⁵

On appeal, appellant contended that her emotional condition was caused by overwork and inadequate training. As stated above, the evidence of record is insufficient to establish that her allegations constitute compensable employment factors.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an emotional condition in the performance of duty.

²⁵ As appellant has not substantiated a compensable factor of employment as the cause of her emotional condition, the medical evidence regarding her emotional condition need not be addressed. *Karen K. Levene*, 54 ECAB 671 (2003).

ORDER

IT IS HEREBY ORDERED THAT the January 7, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 25, 2011
Washington, DC

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

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

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