United States Department of Labor
Employees' Compensation Appeals Board

R.G., Appellant	)	
and	)	**Docket No. 11-67**
	)	**Issued: October 19, 2011**
DEPARTMENT OF AGRICULTURE, NATURAL RESOURCES CONSERVATION SERVICES, Chillicothe, MO, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 12, 2010 appellant filed a timely appeal from an August 5, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his 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 the case.

ISSUE

The issue is whether appellant met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On February 9, 2009 appellant, then a 46-year-old former resource conservation and development (RC&D) coordinator, alleged that his emotional condition was caused by work

[1] 5 U.S.C. §§ 8101-8193.

factors on or about February 14, 2006. He also alleged, in a recurrence claim form, that his emotional condition worsened on June 19, 2008. Appellant alleged that he was subject to unrelenting abuse and torment by his supervisor, Patricia Hufford and second line supervisor, Roger Hansen, a state conservationist. He was terminated on November 21, 2008.

In an undated statement, a February 6, 2008 affidavit, e-mails and several Equal Employment Opportunity (EEO) complaints, appellant alleged his mistreatment. On November 24, 2003 Ms. Hufford snapped at him and publicly scolded him for giving her a physician's statement for knee surgery scheduled for December 2003. After his December 2003 surgery, appellant's work location changed. Ms. Hufford directed him to move his office furnishings, which he claimed reinjured his knee. At the new location, appellant alleged that he was micromanaged, harassed and scrutinized. He noted winning an award for a novel approach to storm water management, but Ms. Hufford did not give proper recognition. In performance reviews, she accused him of being a poor father and equated him to a man in a high profile murder case. Ms. Hufford told appellant that a fish sale that he had arranged to be held on government property was illegal. Before a public forum on March 15, 2005, she slung his power point CD disc across an auditorium in a rage because he did not help her carry equipment. On May 9, 2005 Ms. Hufford accused appellant of not meeting a deadline for submitting monthly schedules. Appellant sent the schedule by priority mail but she scolded him for not faxing it although he claims she previously told him not to fax the schedules. On October 12, 2005 Ms. Hufford told him that his job as an urban conservationist was to be abolished and gave him no option of certain continued employment. Because of his uncertainty about his job, appellant had a mental breakdown from October 18, 2005 through February 14, 2006. He stated that this was the first time he was treated by the Employee Assistance Program (EAP) and a psychiatrist.

Appellant accepted reassignment as a RC&D coordinator in Chillicothe, MO and started work on March 13, 2006. He alleged that he reinjured his knee when moving his office effects. The reassignment caused financial problems as appellant bought a second home. Appellant asserted that the employer erred in not offering him a car for his commute and not offering him a district conservationist job in Daviess/Dekalb County. He felt his coworkers treated him differently. Appellant had no experience as a RC&D coordinator and alleged that his training plan had goals three times higher than other experienced coordinators. On September 21, 2006 his request for travel authorization to the Missouri State RC&D Association meeting was denied but other Missouri RC&D coordinators were allowed to go. Appellant alleged that his work was devalued. On September 27, 2006 his office was listed as the only RC&D office that was severely deficient in personal goal achievement. Appellant alleged that two coworkers were credited with a majority of his accomplishments and Ms. Hufford denied his request to correct the report. In 2007, Ms. Hufford undermined his authority in disputes he had with Tiffany Palmer, a subordinate employee. She also did not approve a program he recommended involving a work release program at a correctional facility. Appellant informed his supervisors in a May 30, 2007 meeting that he needed another knee operation but his request for reinstatement of 265 hours of sick leave was not approved. On April 8, 2008 his request for two hours of administrative leave to vote in Kansas City, where he was registered, was denied. In May 2008, Ms. Hufford asked appellant for documentation of the dates, times and places of his EAP counseling before approving administrative leave. Appellant provided EAP appointment reminder cards but he claims she refused the request. Ms. Hufford threatened him with absent without leave (AWOL) on June 9, 2008 if he did not sign a medical information release with

EAP before June 19, 2008. Appellant felt coerced to sign a blanket medical release without stipulations. This caused a nervous breakdown and he was off work from June 19 to July 28, 2008. When appellant returned to work July 28, 2008, he was put on a 60-day performance improvement plan (PIP), which he felt was a short timeframe for unrealistic tasks such as writing a first rate grant proposal, which he had never done. Ms. Hufford stated that he would receive two or three days of training. Appellant indicated on September 5, 2008 that the director of operations for the National Association of RC&D Council stated his assigned tasks were "unrealistic" and a "set-up for failure." He noted filing four EEO complaints in these matters.

Appellant submitted evidence from 2005 and 2008 from EAP therapists and other medical records. Dr. Chitra Chinnaswamy, a Board-certified psychiatrist, diagnosed major depression and anxiety disorder. On February 25, 2009 Dr. David L. Vlach, a Board-certified psychiatrist, diagnosed recurrent, moderate major depression.

In a September 9, 2009 decision, OWCP denied the claim finding that no compensable work factors were established. Appellant requested a hearing and, on November 2, 2009, an OWCP hearing representative vacated the September 9, 2009 decision and directed OWCP to obtain the employer's responses to appellant's allegations.

On December 2, 2009 OWCP received statements and documentation from the employing establishment. In a November 19, 2009 statement, the employer denied that there was any aggressive snapping or refusal on Ms. Hufford's part in approving appellant's sick leave request on November 24, 2003. The leave request indicated that, it was requested and approved on November 24, 2003, with a notation from Ms. Hufford to provide a statement from his physician. The employing establishment stated that Ms. Hufford advised appellant of the planned move of his duty station in a January 21, 2004 letter and in a January 25, 2004 memorandum. The employing establishment stated that he had no furniture to move as his new office was fully furnished and ready for use. Appellant only had to move his personal effects. As she was an hour away from appellant's new office, Ms. Hufford asked the district conservationist to coordinate his first day and to provide him with items he may be moving. The employing establishment stated that he did not ask for assistance or note any trouble. It noted that he had been released by his surgeon for full-duty work. In a September 25, 2007 letter, Ms. Hufford advised that she was not aware that he had any heavy office items to move or needed assistance and that he did not file a claim for any aggravation of a knee condition in January 2004. The employing establishment indicated that appellant was familiar with the furniture set up and there was no rearranging done by him at his new location. It noted that on January 20, 2006 appellant called the person who handled relocation travel and was told he did not have to lift anything because the moving company would handle such matters.

Ms. Hufford denied appellant's allegations of micromanagement, harassment and scrutiny. She stated that she had two employees with similar names and acknowledged an August 29, 2008 e-mail regarding grant writing training contained a typographical error in the employee's name. Ms. Hufford denied in an August 14, 2008 e-mail equating appellant to a high profile murderer or saying he did not care for his daughter. She denied telling him that the fish sale was illegal but questioned if it was appropriate to hold the sale in the employing establishment parking lot. A higher authority was contacted and confirmed it was not proper to

hold such a sale. Ms. Hufford denied slinging appellant's power point CD on March 15, 2005 based on her appointment schedule for that date. She stated that she would only set up equipment at district conservationist (DC) meetings and there was no such meeting on March 15, 2005. Ms. Hufford noted that appellant would not have been at a DC meeting in 2005 as he was not in DC at that time. She stated that employees were told to send monthly schedules by regular mail but that faxing was not prohibited. Ms. Hufford advised that her office was 72 miles from appellant's new office such that she was unable to regularly observe behaviors of appellant or his coworkers.

With regard to abolishing appellant's position, the employing establishment noted that the position was abolished effective January 1, 2006 due to budget cuts. On October 25, 2005 Ms. Hufford informed him that his position could be abolished in January 2006 or 2007 and discussed employment options. In a November 29, 2005 e-mail, she noted that appellant's current job was to be abolished due to a business decision and that a directed reassignment letter to a GS-12 job would be made in a formal letter. The employing establishment stated that Ms. Hufford had no authority to give a directed reassignment or abolish his job; that authority belonged to Mr. Hansen. In a December 27, 2005 letter, Mr. Hansen abolished the position and offered a directed reassignment. The employing establishment noted that reassignment regulations allowed it extensive flexibility in the process. Appellant's directed reassignment was as a RC&D coordinator in Chillicothe, Missouri. The job was the same grade as his previous job, was permanent and was only 75 miles away and closer than other options. Moving expenses were authorized. The duties were similar to appellant's prior job and his goals were comparable to the other RC&D coordinator. Appellant's training plan was not considered onerous and included concepts to be learned on the job or through online courses.

The employing establishment stated that Ms. Hufford did not fully deny appellant's request to attend the Missouri State RC&D Association meeting. Ms. Hufford's counterpart in Jefferson City declined authorization for the entire two day trip for two RC&D Coordinators from that area. She felt that the meetings agenda offered only a one hour coordinator's meeting that was relevant for RC&D coordinators. On September 12, 2006 Ms. Hufford e-mailed appellant that he could attend a one-hour coordinator meeting on government time and with a government vehicle. The employing establishment noted that Ms. Hufford's job duties required her to assess requests, determine appropriateness and spend money wisely. Furthermore, appellant was behind on a project and a two-day absence for a less than useful meeting would put him further behind. The employing establishment advised that Ms. Hufford was not pleased that Ms. Palmer ignored a directive from appellant but she still gave Ms. Palmer a cash award because she served as timekeeper which was not one of her regular responsibilities. Before giving Ms. Palmer the award, appellant sent Ms. Hufford an e-mail of support. However, he later felt that this undermined his authority. On September 27, 2006 appellant's office was listed as the only RC&D office severely deficient in personal goal achievement. Ms. Hufford did not have the authority to correct or resubmit the performance summary reports. Changes to the report could be made each time the report was updated by the staff and appellant had authorization to enter such information. The final report for the 2006 fiscal year sent October 2, 2006 did not contain any additional reporting by him. On May 30, 2007 appellant requested reinstatement of 265 hours of sick leave so that it could be used in calculating his retirement annuity. This was not approved as there were no provisions for reinstating sick leave that had been properly requested and approved just because the employee wanted to preserve leave for

retirement purposes. The employing establishment stated that Ms. Hufford had approved appellant's use of existing accrued sick leave for requested periods.

Regarding administrative leave for voting, Ms. Hufford advised that the polls in Kansas City were 75 miles from appellant's Chillicothe duty station. She noted that such leave must be sought in advance which he did not do. Although supervisors had discretion to approve a limited amount of excused absence where polls are not open at least three hours either before or after an employee's regular work hours, the Kansas City polls were for three hours after appellant's shift ended and absentee voting was allowed. This was explained to appellant in an April 17, 2008 e-mail, where Ms. Hufford requested documentation for two hours of administrative leave claimed on April 8, 2008. On April 18, 2008 Ms. Hufford denied the request as his Kansas City residence was beyond a normal commuting distance and absentee voting was available. The employing establishment stated that she supported appellant's use of administrative leave for EAP sessions but requested documentation to support the requests. Ms. Hufford approved administrative leave for the first two sessions but, when he did not obtain documentation and only provided "appointment cards," she contacted the EAP director and learned that appellant needed to give a waiver so his staff could provide the requested documentation. Appellant was informed of the EAP director's position and was asked to provide the requested waiver within 10 days. He was advised that if he did not obtain the required documentation, he could change his request to sick leave or it would be recorded as AWOL.

Ms. Hufford stated that the storm water project and appellant's award were reported in the employer's report. She noted in her May 19, 2004 e-mail that she encouraged him to try for a grant and his accomplishments were noted in his performance appraisal. On July 28, 2008 Ms. Hufford gave appellant a PIP. The 60-day period to improve performance was within agency guidelines and approved by national headquarters. The tasks were realistic and designed to help appellant meet "mission results" requirements, a critical performance element. Appellant could request an extension if reasons and a new date were proposed. He requested an extension on September 25, 2008, the date the PIP ended, asserting that he was distracted by three EEO complaints. The employing establishment determined that an extension would not be an effective solution as it was unlikely more time would result in success. It advised that appellant requested and was provided training in several areas, to the extent he complied. Appellant received training in Outlook Publisher and making mailing labels but he did not attend the grant writing training and, in a course for which he was waitlisted, he did not commit and the class filled. The employing establishment stated that the September 5, 2008 comment that his PIP tasks were "unrealistic" and a "set-up for failure," made by the director of operations for the National Association of RC& D Council, was quoted out of context as the director of operations was referring to the two roughly drafted goals from the 2008 annual plan, not to appellant's tasks in his PIP. The goals were in draft form as appellant did not develop the 2008 annual plan.

With regard to the correctional facility work release program, Ms. Hufford did not initially deny or limit appellant's involvement. However, appellant was not sure how to use the women on the work release program as laborers and Ms. Hufford became concerned about liability issues since he and Ms. Palmer would have to supervise prisoners. Ms. Hufford consulted the state administrative officer who disapproved of the plan. The employing establishment indicated that, under appellant's proposal, its employees would have to take a half-

day of training to supervise prisoners and it was not its mission to provide oversight to prisoners. Ms. Hufford determined that the program could not be approved due to liability concerns.

In a February 23, 2010 decision, OWCP denied appellant's claim on the grounds no compensable employment factors were established.

Appellant's attorney requested a telephonic hearing that was held June 8, 2010. Appellant reiterated his contentions including that on November 24, 2003 Ms. Hufford snapped at him when he provided a physician's excuse and that she sent an e-mail referring to a man in a high profile murder case instead of him. He asserted that Ms. Hufford accused him of running an illegal fish sale because it was on employing establishment property. Appellant stated that his predecessor ran the same type of sale for profit. He reiterated that Ms. Hufford threw his power point CD across a room like a "frisbee" but he may have been mistaken about the date being March 15, 2005. Appellant testified that Ms. Hufford e-mailed Ms. Palmer to be careful about his mental illness. Ms. Palmer later threatened to send a letter stating that she was disgruntled to the RC&D Board. Ms. Hufford advised appellant to tell her not to do so and to have her give him the letter for review first. However, Ms. Palmer did not give him the letter and sent it. Afterwards, Ms. Hufford stated that the "no send" order was not given. No action was taken against Ms. Palmer. Appellant testified that he was fired for filing EEO complaints and Ms. Hufford and Mr. Hansen ignored his whistleblower protection rights. He indicated that his merit systems protection suit he filed was settled but he was later "psychologically assaulted by Louis Hendricks." Appellant asserted that the abolishing of his job was illegal as was his termination as he met all of his performance standards.

In an undated letter, the employing establishment reiterated many of its previous responses. In reference to Ms. Palmer, the employing establishment stated that it was not unreasonable for Ms. Hufford to caution Ms. Palmer to be discreet about any employee who was in extended sick leave status as she was the only person, other than appellant, with access to his timesheet. It noted that there was no e-mail stating that Ms. Palmer should be discreet about his "mental illness" and that Ms. Hufford did not intervene, other than to respond to his request for input. Regarding appellant's allegation about options for continued employment, the employing establishment noted that he was not given certain job options before his job was officially abolished and Ms. Hufford had no authority to give him such an assignment. When the job was abolished, he was given a directed reassignment on January 1, 2006. The employing establishment indicated that when Ms. Hufford discussed possibilities with appellant in October 2005, she did not know at that time when his job would be abolished. There was no attempt to bully him. Appellant discussed the possibility of a private sector job and Ms. Hufford provided information about severance pay. When the job as the Chillicothe RC&D coordinator opened, the employing establishment stated that he did not apply for it and Ms. Hufford sent him the November 29, 2005 e-mail which provided three options. As Ms. Hufford did not have the authority to offer the directed reassignment, her e-mail was not an offer. The employing establishment advised that it did not err on offering appellant a job that he wanted in another county as that job was held by a deployed soldier who had a right to the job when he returned. Also, a temporary assignment was made for that position in September 2005. The employing establishment stated that appellant was fired for not meeting his job goals and it described the goals he did not meet.

By decision dated August 5, 2010, an OWCP hearing representative affirmed the prior decision.

LEGAL PRECEDENT

To establish a claim that an emotional condition arose in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.[2]

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 illness has some connection with employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to her regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of FECA. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of her work or her fear and anxiety regarding her ability to carry out her work duties.[3] By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.[4]

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.[5] 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.[6] 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.[7]

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[2] *D.L.*, 58 ECAB 217 (2006).

[3] *Ronald J. Jablanski*, 56 ECAB 616 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[4] *Id.*

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

[6] *See William H. Fortner*, 49 ECAB 324 (1998).

[7] *Ruth S. Johnson*, 46 ECAB 237 (1994).

For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.[8] Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.[9] The primary reason for requiring factual evidence from the claimant in support of her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by OWCP and the Board.[10]

ANALYSIS

Appellant alleged an emotional condition to various actions by his supervisors as well regarding his job and continued employment. The Board notes that he has not attributed his emotional condition to either his regular or specially assigned duties of his jobs held during the relevant period. Therefore, appellant has not alleged a compensable factor under *Cutler*.[11]

Appellant attributed his condition to learning that his job was being abolished and his subsequent reassignment. In this regard, the assignment of a work schedule or tour of duty is recognized as an administrative function of the employing establishment and absent any error or abuse, does not constitute a compensable factor of employment.[12] Appellant alleged that Ms. Hufford did not tell him that he was eligible for a directed reassignment and that she did not give him a directed reassignment. The Board finds that his claim focuses on the administrative process by which the employing establishment assigned his new position. Appellant's emotional reaction arises from his disappointment of not being able to continue in his prior job as an urban resource conservationist and his erroneous view that Ms. Hufford had the authority to reassign him during the October 12, 2005 conversation. The employing establishment indicated that the conversation was informative in nature, as it was not clear at that time when his job would be abolished, that she could not abolish the position or offer a directed assignment. The record shows that the employer provided him information as the process developed and, on December 27, 2005, Mr. Hansen notified appellant that his job was abolished and offered a directed reassignment in Chillicothe, MO, which appellant accepted. The Board finds that the

[8] *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Arthur F. Hougens*, 42 ECAB 455 (1991) and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence established such allegations).

[9] *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

[10] *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

[11] *See supra* note 3.

[12] *See Peggy R. Lee*, 46 ECAB 527 (1995). *See Andrew J. Sheppard*, 53 ECAB 170 (2001) (an employee's frustration and depression resulting from an involuntary transfer are not compensable).

employing establishment acted reasonably in reassigning appellant. Appellant's permanent job was abolished. He was properly notified and given the opportunity to pursue other options. The employing establishment explained that the Chillicothe job was chosen because it was the same grade appellant previously held, was permanent and was closer than the other available options. Appellant's financial complaints are not relevant to the performance of his job duties and are not compensable. While he felt the employing establishment should have provided him a car to commute to Chillicothe, it was his personal decision to reside in two locations. Additionally, the employing establishment authorized moving expenses since it was a permanent position. While appellant expressed disappointment at not being reassigned to other closer jobs, the employing establishment clearly articulated its reasons for why he was not reassigned in those locations. Although appellant may have disliked the administrative action taken by the employing establishment in directing his reassignment, he has not demonstrated error or abuse. Instead, appellant's concerns relate to his frustration at not being able to hold a particular position. Thus, he has failed to establish a compensable work factor.

Appellant also alleged abuse by Ms. Hufford in other administrative matters. He alleged that Ms. Hufford did not correct a performance report to reflect his personal goal achievement; failed to grant or reinstate leave; and erroneously put him on a PIP and wrongfully terminated him. The handling of disciplinary actions and leave requests, assigning work and monitoring performance are administrative functions of a supervisor.[13] The manner in which a supervisor exercises his or her discretion generally falls outside FECA's coverage. This principle recognizes that supervisors must be allowed to perform their duties and at times employees will disagree with their supervisor's actions. Mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor.[14] An employee's dislike of his job duties or the desire for a different position is not a compensable employment factor.[15] .

Appellant alleged that he was erroneously denied leave in matters concerning reinstatement of sick leave; voting in Kansas City; and in the employing establishment's request for documentation to support administrative leave for EAP counseling sessions. The record does not establish employer error or abuse in these matters. The employing establishment explained that there was no provision for reinstating sick leave that had been properly requested and approved because the employee desired to preserve leave for retirement purposes. The employing establishment also articulated that it did not approve appellant's request for two hours of administrative leave to vote in Kansas City as the polls were open three hours after his shift ended, absentee voting was allowed and he did not request leave in advance. Furthermore, the employing establishment's request for documentation to support administrative leave for EAP counseling was reasonable. Ms. Hufford explained that the EAP director informed her that appellant needed to provide a waiver so the requested documentation could be provided. Contrary to appellant's allegation, there is no evidence that she requested medical records.

[13] *Donney T. Drennon-Gala*, 56 ECAB 469, 475 (2005); *Beverly R. Jones,* 55 ECAB 411, 416 (2004); *Charles D. Edwards,* 55 ECAB 258, 270 (2004).

[14] *Linda J. Edwards-Delgado*, 55 ECAB 401, 405 (2004).

[15] *Katherine A. Berg,* 54 ECAB 262 (2002).

Appellant did not provide evidence that the employing establishment erred in requesting documentation to support administrative leave or in offering him an alternative to use sick leave if no documentation was provided. There is no evidence that the employing establishment acted unreasonably in these leave matters.

Appellant asserted that two coworkers were credited with 75 percent of his personal goal achievements and Ms. Hufford denied his request to correct the summary report. Ms. Hufford, however, did not have the authority to correct or resubmit the performance summary reports. Changes to the report could not be immediately changed once submitted and only occurred when it was updated with current information from the staff, which included appellant. While Ms. Hufford informed him that any progress he entered would be captured in the next report, he failed to provide any additional reporting. As noted, the monitoring of performance is an administrative matter.[16] Appellant has not submitted any evidence that the employing establishment erred in this matter and thus has not established a compensable employment factor.

Appellant alleges that the employing establishment erroneously put him on a PIP and wrongfully terminated him. While he alleged that the PIP had a short period (60 days) to accomplish unrealistic tasks, the employing establishment advised that the tasks were not onerous for a simple for a GS-12 level employee and were designed to help him meet the requirements of a critical performance element. The employing establishment provided an opportunity for training and a process for allowing a time extension. It also provided a reasonable explanation for why appellant's request for an extension of time was denied. The employing establishment explained the reasons why the statement from the director of operations for the National Association of RC&D Council, stating that appellant's assigned tasks were "unrealistic" and a "set-up for failure," was presented out of context and not applicable to appellant's PIP. There is no evidence to substantiate that his duties were excessive or unattainable such that the PIP and ensuing termination were in error. There is no other evidence that the employer erred in terminating appellant or that he was fired for filing EEO complaints. Appellant was placed on a PIP and terminated as he was not meeting the goals of his job, including critical elements. There is no evidence that the employing establishment acted unreasonably in these administrative matters.

Appellant further alleged that he was micromanaged, harassed and scrutinized by Ms. Hufford. These allegations included that Ms. Hufford accused him of being a poor father and equated him to a man associated in a high profile murder case; she told him that the fish sale he had arranged to be held on government property was illegal; failed to properly recognize him on his storm water management project; accused him of failing to meet a deadline for submission of an advanced monthly schedule, failed to approve a program that involved a work release program at a correctional facility; undermined his authority with disputes he had with Ms. Palmer; and denied his request to attend the Missouri State RC&D Association meeting. Appellant's allegations of unfair treatment are not supported by the record. As noted, Ms. Hufford either denied that these incidents occurred or the employing establishment explained the circumstances surrounding each of these events and presented evidence supporting Ms. Hufford's decisions. There is no evidence that the employing establishment acted

[16] *Supra* note 13. *See Reco Roncaglione,* 52 ECAB 454 (2001).

unreasonably in these matters. Thus, these matters do not rise to the level of a compensable work factor. To the extent appellant alleges his supervisors performed their administrative duties inappropriately, he has not shown that any of these or other employment actions constituted harassment or mistreatment.

Appellant also alleged that Ms. Hufford publicly scolded him about a physician's statement on November 24, 2003, slung his PowerPoint presentation on a CD disc across the auditorium in a fit of rage, because he did not help her carry equipment and refreshments. The employing establishment contradicted the occurrence and presented evidence to support its position. Appellant has provided no substantiated detail or contemporaneous evidence to establish that the event occurred as alleged. He also alleged that after he returned to work on March 13, 2006, his coworkers looked at him and treated him differently. The employing establishment stated that Ms. Hufford was located in another office 72 miles away and was unable to regularly observe appellant's and his coworker's behaviors. The record contains no specific details by from appellant as to what events occurred between him and his coworkers. Likewise, at his hearing, appellant noted that his merit systems protection suit was settled and that he was "psychologically assaulted by Louis Hendricks" but he provided no further information to support that any finding was made that the employer acted in error or to explain how any actions by Mr. Hendricks rose to the level of a compensable work factor. There is insufficient evidence to show that these matters rise constitute compensable employment factors.

Because appellant failed to establish a compensable work factor, the Board finds that it is unnecessary to address the medical evidence of record.[17]

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

[17] *See John Polito*, 50 ECAB 347 (1999).

ORDER

IT IS HEREBY ORDERED THAT the August 5, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 19, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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