United States Department of Labor
Employees' Compensation Appeals Board

J.R., Appellant	)	
and	)	**Docket No. 11-334**
	)	**Issued: October 26, 2011**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Kansas City, MO, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 23, 2010 appellant filed a timely appeal from a September 20, 2010 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 the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On September 16, 2009 appellant, then a 49-year-old collections representative, filed a traumatic injury claim for a July 17, 2009 stress-related condition. She alleged an anxiety attack

[1] 5 U.S.C. § 8101 *et seq.*

caused by harassment and stress by her manager and a team leader as well as depression from a previous grievance. No evidence was submitted with the claim. On September 21, 2009 OWCP advised appellant that the evidence submitted was insufficient and requested that she specify if she was claiming an occupational disease or traumatic injury and provide additional factual and medical evidence.

In an October 13, 2009 statement, appellant attributed her condition to incidents occurring in 2009. On February 12, 2009 Daphne Donlow, the in-charge manager, wrote her up for threatening another employee but did not ask if she made the threat. She screamed that she could see the union. Appellant filed a grievance, which was settled on June 23, 2009. Management did not respond to her version of events except for the grievance response. She alleged harassment and retaliation during the grievance process, which contributed to a hostile work environment. In March 2009, appellant requested a meeting with Patty Carmen, the acting operations manager, to discuss interactions with manager Kim Ward but appellant was not included in a meeting with Ms. Carmen and Owen Smith, a union president. She alleged that Ms. Ward told her that she was seen standing at a coworker's desk for 15 minutes at the end of the day. Appellant sent an explanatory e-mail to Ms. Ward but received no response while the coworker and others who did the same were not disciplined. Ms. Donlow separately alleged that appellant was visiting during work hours but did not address the other coworker. In April 2009, she wrote her up for inventory work taking too long. When appellant left Ms. Donlow's office, the acting lead, Terressa Cooper, went into Ms. Donlow's office where they both loudly laughed. Ms. Donlow and Ms. Cooper were aware that appellant had not performed inventory work due to surgery that kept her off work from September to November 2008 and on "read time" in December 2008.

In January 2009, appellant requested refresher courses but management did not respond. She alleged that Ms. Donlow left her sticky notes with sarcastic remarks such as, "I bet you thought you were in trouble again." Appellant notified the union about the harassment and Deandre Jones, a union official, asked Ms. Donlow to have a union official present when appellant was called into her office. Ms. Donlow ignored the request. Appellant alleged that she was singled out when she was called into the manager's office for talking to other employees and was never asked if she was on break or discussing work. She could not ask questions in team meetings without receiving a smart response or rolling of the eyes. Ms. Donlow and Ms. Ward advised appellant's team not to sit by her in team meetings or speak with her. Appellant over heard Ms. Donlow tell Kim Britton, a coworker, that she needed to stay away from her but Ms. Britton stated that she would not be told who she could associate with. Ms. Britton would not provide a statement as she feared retaliation. She felt threatened by Ms. Ward who had approached her on several occasions and accused her of talking about her. Appellant reported her treatment to the union, EEO officer and Ms. Ward's manager. She stated that Ms. Ward would not utilize her career learning path (CLP). Ms. Ward returned appellant's CLP to her four times and she sent it to the approving official to get her paperwork on file. Appellant was not allowed to fill in as lead, "perform manager approval," or be an on the job instructor for new hires, although she qualified.

On July 17, 2009 appellant had an anxiety attack. Upon returning to work, she gave Ms. Ward a medical note allowing her to work in a different department. Ms. Ward came to appellant's desk, in the presence of others, and loudly asked if her doctor was requesting a team

or a department change. Appellant found this embarrassing. While she was in the union office, Ms. Ward yelled and screamed over the telephone saying, "I want to know why she lied to me over and over again." Ms. Ward indicated that appellant had told her that she was going to the EEO office but appellant was not there when she called. The union president advised Ms. Ward that appellant stopped by the union office to get representation and was going to her meeting at the EEO office. Ms. Ward later summoned appellant and asked her why she did not tell her that she was going to the union first. On August 6, 2009 appellant's doctor took her off work for 30 days. On September 17, 2009 EEO officer Larry Kennedy contacted Ms. Ward and advised that appellant's doctor asked that she be taken off the telephones due to her anxiety attack. Appellant asserted that Ms. Ward ignored this. She stated that once Derrick Davis, her department manager was notified, she was provided light-duty work.

Copies of materials related to the grievance regarding the February 12, 2009 incident were submitted. Appellant stated that she would spray an air cleaner if anyone was coughing but denied asking the coworker to fight if she did not like it. A June 22, 2009 settlement made no finding on management error. The settlement noted that the counseling on a critical job element would be removed and the counseling memorandum of February 12, 2009 would be reworded to omit a sentence pertaining to appellant's challenge to fight. The memorandum would remain in appellant's file for six months.

Appellant submitted materials pertaining to her attempt to speak with management with e-mails from her to management and management responses. In a July 7, 2009 response to Ms. Ward's e-mail inquiring how appellant spent her last 20 minutes of work on July 2, 2009, she advised that she was performing work duties. In a July 17, 2009 e-mail, Ms. Donlow informed appellant about not signing off her telephone on July 16, 2009. Appellant submitted statements about Ms. Ward's behavior at meetings and medical records.

In an August 7, 2009 report, Dr. Washington Muro, a Board-certified internist, and Dr. Douglas Greenens, a psychiatrist, diagnosed post-traumatic stress disorder; major depression and anxiety due to work-related stress arising on or about July 20, 2009. Appellant was noted to be totally disabled from July 20 until August 20, 2009.

On October 27, 2009 the employing establishment submitted responses by Ms. Donlow and Ms. Ward regarding incidents up to July 16, 2009. Ms. Donlow denied screaming at appellant on February 12, 2009. She allowed appellant to meet with the union at which written statements from appellant and other employees were exchanged. Ms. Donlow and Ms. Ward indicated that all responses regarding the February 12, 2009 incident were sent to the union steward handling appellant's case and that the union should have informed her of the various responses. Ms. Donlow noted responding to appellant's e-mails when necessary. Both Ms. Donlow and Ms. Ward denied harassing or retaliating against appellant and advised that it was their job as managers to address appellant's behavior and performance as needed. Regarding the meeting between Ms. Carmen and Mr. Smith, they noted that appellant's representative, Mr. Smith, should have informed her of the meeting. Ms. Ward acknowledged meeting with appellant to discuss why she was not at her desk for the last 20 minutes of her shift on March 12, 2009. Appellant had been observed by management standing at a coworker's desk and talking during the last 15 minutes of her shift and was informed of expectations for employees at the end of a shift. Both appellant and the coworker were counseled. Appellant

sent an e-mail about the incident but did not request a response. On March 18, 2008 Ms. Donlow noted meeting with appellant about the last 20 minutes of her shift on March 12, 2009. Appellant stated that she was trying to locate some missing jewelry. Ms. Donlow explained to appellant that she needed to attend to her work during the last minutes of the workday. Ms. Donlow also spoke to appellant about the e-mail Ms. Carmen replied to, in which appellant asked for a meeting. She explained that appellant could not just walk into Ms. Carmen's office without checking with administration. She also suggested appellant take Skill-Soft classes at home. After the meeting, Ms. Donlow allowed appellant to check out and see if the jewelry found was hers.

Ms. Donlow noted meeting with appellant about inventory work performed April 16, 2009, but denied that Ms. Cooper entered her office when appellant left. She stated that appellant was on medical leave from August 22 through November 4, 2008 and read appropriate updates and did inventory after returning to work. Appellant started calls on December 1, 2008 and inventoried on certain dates from December 2008 to March 2009. She had performed the same job since June 26, 2006 and her inventory review was not until April 16, 2009. Ms. Donlow trained the team on March 12, 2009 and provided other training on occasion. Ms. Cooper did the training during team meetings and they both kept the team informed of changes. Ms. Donlow provided appellant with a written outline of how to assist with questions and procedures. She confirmed leaving sticky notes on appellant's desk when she needed to see her, but denied any sarcastic remarks. When coming to Ms. Donlow's office, appellant would say "what" in a nasty tone, which was reflected in the three-month progress review and discussed with appellant about workplace interaction. When she summoned appellant about an interview, Ms. Donlow noted asking appellant why she always thought she was in trouble when she was called. She stated that appellant stated that she was about to go home and did not want any bad news. Ms. Donlow denied that Ms. Jones ever stated that a union official had to be present for write-ups. She informed appellant that the union contract did not require a union official when management spoke to an employee. Ms. Donlow and Ms. Ward denied advising employees on appellant's team not to sit by her or speak with her. She stated that appellant asked questions at team meetings and sometimes challenged her inappropriately or talked and passed notes back and forth with Ms. Britton. Ms. Donlow denied advising Ms. Britton to avoid appellant. She explained that appellant overheard her discussion with Ms. Britton about Ms. Britton's attitude. Ms. Ward denied approaching appellant's employees inappropriately and denied asking whether appellant had talked about her. When she called appellant to her office, it was to discuss work-related matters. Ms. Ward stated that she returned appellant's CLP once so appellant could add additional information, and a second time to correct target dates. She asked that appellant return it to her before she went on medical leave but it was not returned until January 2009, when appellant was on a six-month detail. Ms. Ward stated that appellant was used as an on the job instructor and worked with new hires as needed, which Ms. Donlow verified. Ms. Donlow stated that appellant was given the necessary information if she wanted to be trained as a lead but she did not attend the all employee meetings for pursuing advancement.

Regarding a doctor's note requesting that appellant be moved to a different department, Ms. Ward stated that on July 27, 2009 she informed appellant that she needed to discuss the request and appellant replied "what about it." She explained that clarification was needed from the physician as to whether she should move to another department. Ms. Ward explained where appellant could be moved but appellant replied that her doctor had advised her that his note was

sufficient. She denied raising her voice and stated that no additional medical information was provided. When Mr. Kennedy contacted her on September 17, 2009, Ms. Ward informed him that she was no longer appellant's manager. She denied ever being advised to take appellant off the telephones.

Ms. Donlow stated that in a July 16, 2009 team meeting, appellant became disruptive when she brought up personal issues about a work error she made. Later that day, Ms. Cooper informed Ms. Donlow that appellant sought to put an item regarding the error under her door but was told to place it in an inbox to avoid a tripping hazard. Appellant put the item under Ms. Donlow's door anyway. When appellant later came into her office screaming, Ms. Donlow noted going over the information three times with appellant and then told her that she did not want to argue anymore. On July 17, 2009 she placed a note on appellant's desk because she did not sign off the telephones when she left on July 16, 2009. Ms. Donlow stated that appellant came into Ms. Ward's office and noted having chest pains. A nurse was called. Ms. Ward stated that appellant did not ask to go to the union office. After appellant left, she received a call from the EEO office asking if she was coming to the EEO meeting. Ms. Ward went to appellant's desk and was informed that appellant went to the union office. She noted calling the union office asking to speak to appellant but the union president put her on speaker phone. Ms. Ward denied yelling during the conversation. She stated that, as appellant's manager, she needed to know her whereabouts and appellant just needed to ask to go to the union office. Ms. Donlow stated that her desk was near Ms. Ward's doorway and there was no loud conversation. Ms. Ward denied any pattern of harassment or abuse. She reiterated that addressing an employee's performance and conduct was part of her job.

In a November 2, 2009 decision, OWCP denied appellant's traumatic injury claim for events of July 17, 2009.

On November 16, 2009 appellant requested an oral hearing and asserted that her information was not considered. On May 25, 2010 OWCP's hearing representative found the case not in posture for hearing and vacated the November 2, 2009 decision. The hearing representative found appellant's claim was for an occupational disease caused by the events and circumstances described from February to August 2009. The case was remanded to OWCP for further development.

In a September 8, 2010 statement, the employer disagreed with appellant's allegations. Ms. Carmen stated that on March 16, 2009 appellant had pushed her way into her office when her door was propped closed but not locked. Appellant left when Ms. Carmen told her that she was on the telephone. Ms. Carmen denied yelling at appellant. Ms. Ward stated when she called appellant into her office on February 12, 2009, she asked appellant what happened and appellant denied making a statement about fighting. Appellant then requested to go to the union office, which was granted. Ms. Ward indicated that appellant's job duties did not change after her medical leave from September to November 2008. Appellant was given time to read all procedure updates and her manager and team lead were available for questions.

By decision dated September 20, 2010, OWCP denied appellant's claim. It found no compensable work factors.

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 her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.[2] 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.[3]

Appellant 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.[4] This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.[5]

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.[6] 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.[7]

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.[8] However, the Board has held that, where the evidence establishes error or abuse on the part of the employing

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[2] 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

[3] *Gregorio E. Conde*, 52 ECAB 410 (2001).

[4] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[5] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[6] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[7] *Id.*

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

establishment in what would otherwise be an administrative matter, coverage will be afforded.[9] 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.[10]

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[11] However, for harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under FECA.[12]

ANALYSIS

Appellant alleged an emotional condition as a result of harassment and discrimination on the part of her managers. OWCP denied her emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must review whether the alleged incidents are established as compensable factors under FECA. The Board notes that appellant's allegations do not pertain to her regular or specially assigned duties under *Cutler*.[13] Rather, she alleged error and abuse in administrative matters and harassment and discrimination on the part of her managers, Ms. Donlow and Ms. Ward.

Appellant alleged that the employing establishment committed error and abuse with respect to various administrative and personnel matters. This included the handling of the February 12, 2009 write-up for threatening another employee and the April 16, 2009 discipline for inadequate inventory work, her discussions with and monitoring by management, and her lack of training. These matters are administrative as they relate to discipline, investigating and monitoring an employee's activities and training.[14] 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

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

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

[11] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[12] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[13] *See supra* note 2.

[14] *See V.W.*, 58 ECAB 428 (2007) (the handling of disciplinary actions and the monitoring of work activities are generally related to the employment but are administrative functions of the employer and not duties of the employee); *James E. Norris*, 52 ECAB 93 (2000) (training of employees is an administrative matter); *C.F.*, Docket No. 08-1102 (issued October 10, 2008) (investigations and reactions to disciplinary matters are administrative in nature and not compensable unless it is established that management erred or acted abusively).

be compensable absent error or abuse on the part of the supervisor.[15] An employee's dislike of her job duties or the desire for a different position is not a compensable factor of employment.[16]

With respect to the February 12, 2009 write-up for threatening another employee, appellant alleged Ms. Donlow yelled at her, that she was never asked if she made the threatening statement, and management never responded to her side of the story. Ms. Donlow denied yelling at appellant. The record indicates appellant filed a grievance in this matter and, during a meeting with Ms. Donlow, appellant and a union official, statements from appellant as well as employees in the team were exchanged concerning the incident. Numerous e-mails of record reflect management followed the appropriate lines of communication with regards to the grievance process and appellant received responses to her e-mails from management. While appellant did not attend a meeting between Ms. Carmen and the union, it was the union's responsibility, as appellant's representative, to advise her of the meeting and whether she should attend. The grievance she filed was settled June 22, 2009 but it did not make a finding that management erred in its administrative action. Appellant presented no corroborating evidence to support that the employing establishment acted unreasonably. Thus, she has not established a compensable factor regarding her allegations.

With respect to the April 16, 2009 discipline for inadequate inventory work, the evidence reflects appellant was on medical leave from August 22 through November 4, 2008 and, when she returned to work, she was on read time and did inventory. Starting December 2008, appellant resumed call duty and worked inventory. There is no evidence that her April 16, 2009 inventory review was in error or abusive. Appellant had been performing the same job since June 26, 2006 and management explained how accorded her adequate time to catch-up on all the changes before starting inventory. Ms. Donlow denied appellant's assertion that, after the write-up, she and Ms. Cooper laughed about the matter. The record has no evidence otherwise supporting this or that the write-up was unreasonable in view of appellant's performance. Accordingly, no error or abuse has been shown in these allegations.

Appellant alleged unfair treatment with regards to discussions with and monitoring by management. This pertained to discussions about her whereabouts, her work and work attitude, and being told she needed to arrange an appointment with Ms. Carmen and that she should not slip documents under office doors. Appellant alleged whenever she was unfairly summoned by management to discuss her whereabouts when other employee were not summoned. The evidence reflects the employing establishment monitored all employees regarding schedules and all employees who were not on task were addressed when appropriate. The record indicates that when management talked to appellant about where she was during the last 20 minutes of her shift on March 12, 2008, this issue was also addressed with the other employee. Management also later discussed with appellant her whereabouts at the end of her shift when she went to sought to locate lost jewelry. Ms. Donlow explained to appellant that she needed to attend to her work during the last 20 minutes of the workday but, after this talk, she allowed appellant to see if the jewelry found was hers. There was no further evidence of error or abuse. Additionally there is no evidence that appellant was the only employee restricted from walking into Ms. Carmen's

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

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

office unannounced. The employer provided a reasonable explanation that documents were not to be slipped under Ms. Donlow's door for safety reasons. This transpired after appellant brought up an error she was charged with during a team meeting on July 16, 2009. There is no evidence to establish that management erred in these administrative matters.

Appellant also claimed Ms. Donlow unfairly monitored her by leaving sticky notes on her desk to come see her. She also claimed she was embarrassed over Ms. Ward's discussion pertaining to her doctor's note for a reasonable accommodation. The evidence reflects Ms. Donlow and Ms. Ward explained that they left sticky notes on appellant's desk as a means to communicate with her regarding work matters if appellant was on the telephone or away from her desk. Ms. Donlow denied making sarcastic remarks to appellant in their discussion but rather advised that appellant often made sarcastic remarks. She admitted to asking appellant why she always thought she was in trouble when she was summoned but explained that she sought appellant on that date to inform her that she had been selected for an interview for which Ms. Donlow helped appellant to prepare. Ms. Ward also denied acting inappropriately in her meetings with appellant. She noted how she explained to appellant on July 17, 2009 why her doctor's note needed clarification and advised that she did not raise her voice. Appellant has submitted no evidence corroborating her allegation that Ms. Donlow or Ms Ward acted unreasonably in these matters. Thus, she has not established a compensable employment factor.

Appellant alleged she was not properly trained, denied the appropriate training and management did not utilize her CLP. The evidence reflects that during team meetings, the teams were trained on several issues and were updated on a regular basis regarding changes. Ms. Donlow further outlined in writing how she would assist appellant regarding questions and review case processing procedures. The record indicates that appellant's working skills were utilized as she served as OJI and worked with new hire teams when needed. Management also provided her with training information. While Ms. Ward had returned appellant's CLP to her on two occasions she explained that she did this so that it could be improved and corrected. The record also indicates that appellant did not promptly return her CLP to Ms. Ward as requested. Thus, there is no evidence that appellant was not trained or denied appropriate training or did not utilize her work skills. Appellant has not submitted sufficient evidence to show the employer committed error or abuse in these matters and she has not established a compensable work factor.

Appellant also alleged that her supervisors created a hostile work environment and performed their duties inappropriately. As noted, for harassment and discrimination to give rise to compensable disability, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable. A claimant must substantiate allegations of harassment and discrimination with probative and reliable evidence.[17] Appellant alleged that she could not comfortably ask questions in team meeting as she would receive inappropriate responses or rolling of the eyes from coworkers. She also alleged that Ms. Ward inappropriately called the union office after she was given permission to go to the EEO office; that she ignored appellant's physician's order to provide her with a reasonable accommodation; that Ms. Ward would address her with attitude and say she was talking about her; that Ms. Donlow told the employees on her team as well as her coworker, Ms. Britton, to

[17] *Robert Breeden*, 57 ECAB 622 (2006).

stay away from appellant. Ms. Ward and Ms. Donlow denied treating appellant inappropriately in meetings and noted that appellant sometimes was inattentive or disruptive at meetings. They also emphasized that it was part of their jobs as managers to be aware of the whereabouts and activities of their employees. Ms. Donlow stated that she never told Ms. Britton to stay away from appellant and explained that it was likely that appellant overheard her talking to Ms. Britton about Ms. Britton's situation. Appellant did not submit sufficient factual evidence supporting her allegations that she was treated disparately or unfairly in these matters..

To the extent appellant is alleging that she was verbally abused, the Board has generally held that being spoken to in a raised or harsh voice does not of itself constitute verbal abuse or harassment.[18] In the instances she described above, the Board notes that the fact that a supervisor may have questioned her in a raised tone of voice is insufficient, by itself, to warrant a finding that her actions amounted to verbal abuse as she did not show how a possible loud or raised voice in allowing appellant to sign out and see the union or inquiring where appellant was when she was expected to be at a certain place, would rise to the level of verbal abuse or otherwise fall within the coverage of FECA.[19] Additionally, appellant presented no corroborating evidence of any yelling by Ms. Donlow on February 12, 2009. Also, Ms. Donlow, who sat outside of Ms. Ward's doorway on July 16, 2009, denied that Ms. Ward raised her voice in the conversation between Ms. Ward and the union concerning appellant's whereabouts.[20] Ms. Carmen also denied yelling at appellant. There is no specific evidence of any other particular occasions in which management was verbally abusive with appellant. Therefore, appellant has not established that any of her conversations with management rose to the level of compensable verbal abuse.

Consequently, appellant has not established her claim for an emotional condition as she has not attributed her claimed condition to any compensable employment factors.[21]

CONCLUSION

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

[18] *T.G.*, 58 ECAB 189 (2006).

[19] *See Peter D. Butt, Jr.*, 56 ECAB 117 (2004).

[20] *See David C. Lindsey, Jr.*, 56 ECAB 263 (2005) (the mere fact that the employee's supervisor raised his voice during the course of the conversation with appellant and both appellant and the supervisor spoke in tones that allowed others to overhear their conversation was insufficient to find that his actions amounted to verbal abuse).

[21] As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the September 20, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 26, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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