

employment. She attributed her condition to an employee being extremely hostile toward her which caused her to be traumatized and suffer chest pains on November 21, 2010. Appellant stopped work on November 21, 2010 and returned to work on December 6, 2010.

In a December 7, 2010 letter, OWCP requested additional factual and medical information in support of appellant's claim. Appellant submitted several medical reports and diagnostic testing from a hospital. A November 21, 2010 emergency department visit note and report of consultation indicated that appellant had chest pain while at work after a confrontation with a coworker. A diagnosis of chest pain was provided.

In a December 30, 2010 statement, appellant reported that she was harassed by Pat Satori, a coworker, for about three years. She stated that Mr. Satori told another employee, Virginia Reese, that she smelled badly and Ms. Reese related the information to a manager, Vanessa Dumont. Appellant was called to Ms. Dumont's office and asked if she was alright and whether she was sleeping in her car. She stated that she was humiliated and embarrassed and cried on and off the remainder of her shift in front of coworkers. Appellant used two days of sick leave because of this incident. She alleged that Mr. Satori sent her an e-mail that said she "smelled worse than barnyard animals." Appellant was so humiliated and disturbed by the e-mail that she deleted it. She believed that Mr. Satori shared this comment with other employees. Appellant claimed that Jacqueline Whitaker, operations manager, met with her to discuss the odor problem and that Ms. Whitaker sent her home because she smelled. She was humiliated and emotionally distressed. Later, a supervisor, Glen Horton, brought in a container of oxi clean and left it on a work counter for everyone to see. Appellant stated that Mr. Satori commented that when she was relieved from her position by Nancy Castellano that it smelled much better. She noted working in close proximity with people for extended periods of time and that it is impossible for her to stay away from her coworkers for an extended period. Appellant stated that she became obsessed with how she smelled and had anxiety to the point that she could not sleep and had gastrointestinal problems.

Appellant stated that, while she was on duty as the Controller-In-Charge, she called Mr. Satori's home on the evening of May 20, 2009 to find out if he was working the mid shift and spoke to his wife. When Mr. Satori arrived at work, appellant alleged that he yelled at her and threatened that she better not ever call him at home again. This caused her distress and she felt threatened.

Appellant filed a written statement claiming a hostile work environment, but was not sure if anything was done. She indicated that the harassment continued. Appellant feared that Mr. Satori might kill her and told several coworkers and management this; however, management did nothing to help with this. Mr. Satori allegedly spread rumors that she was "in bed with management" and, when she learned of this rumor, she was unable to work and called Employee Assistance Programs. This incident later turned into an e-mail issue by management. Appellant noted being upset knowing that she had to work with Mr. Satori and called in sick due to fear. She indicated that the harassment caused several medical conditions, including severe anxiety, migraine headaches, severe chest pains and gastrointestinal illness. On the night appellant went to the hospital, she was on duty assigned as the Controller-In-Charge. She alleged that she was in a precarious position as she had to page Mr. Satori to return to duty to relieve another employee. When Mr. Satori returned, he acted very hostile toward appellant and

told her to “get the f*ck out of his face.” Appellant went to the hospital with severe chest pain that was due to stress. She indicated that management did nothing to relieve the situation, although several interviews were conducted.

Several reports of investigations from the employing establishment along with supporting documentation were submitted. This included a June 8, 2009 interview of appellant by a manager regarding the allegation of inappropriate behavior on May 21, 2009 when appellant called Mr. Satori at home and his comments when he came into work. A November 23, 2010 memorandum concerned the investigation and recommendations regarding appellant not getting e-mails from Mr. Satori about union matters because she “was in bed with management and specifically with Craig Smith.” The investigation found appellant’s allegation of a hostile work environment was not supported and that the incident involved e-mail communications by and between union members dealing with internal union matters. It was confirmed that a statement to the effect “she’s in bed with management” was made but concluded the statement itself represented a different meaning to appellant than to management or Mr. Satori. It could not be confirmed that Manager Smith’s name was used in the conversation. Debriefings as well as monitoring the interactions between appellant and Mr. Satori were recommended.

In a December 29, 2010 statement, Ira D. Solomon, a coworker, stated that on November 20, 2010 Mr. Satori made statements accusing appellant of being a mediocre controller and that she would rarely reach out to assist a pilot. He defended appellant’s ability as a controller and stated there was no basis for Mr. Satori’s allegations. Also submitted was a June 11, 2010 Expectations for Employees sheet from the employing establishment and a Standards of Conduct Annual Briefing.

In a May 3, 2011 attending physician’s report, Robert B. Iadeluca, Ph.D., a licensed clinical psychologist, indicated that appellant’s post-traumatic stress disorder was due to constant harassment by a coworker.

In May 2 and 4, 2011 letters, the employing establishment controverted appellant’s claim. It indicated that the first recorded incident involving appellant and Mr. Satori occurred on May 21, 2009, and was investigated and resolved. The employing establishment stated that there were several investigations into appellant’s allegations regarding Mr. Satori, noting there were five Accountability Board reports, one Equal Employment Opportunity complaint and two OWCP claims. It noted that a meeting between appellant and Mr. Satori occurred on April 20, 2011. With regard to appellant’s individual allegations, the employing establishment indicated that it had a statement from Ms. Dumont that stated Ms. Reese approached her for assistance regarding an odor problem with appellant. Ms. Dumont met with appellant and discussed the issue; however, she denied asking appellant whether she slept in a car. The employing establishment denied any knowledge of Ms. Reese telling appellant that she smelled. It denied any knowledge of any e-mail correspondence from Mr. Satori regarding appellant smelling like a barnyard animal. The employing establishment also denied any knowledge or reports from management or employees concerning appellant’s claim that Mr. Satori would shoot and kill her.

By decision dated May 25, 2011, OWCP denied appellant’s claim on the grounds that no compensable work factor had been established.

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

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

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).

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 that she sustained an emotional condition as a result of a number of incidents and conditions at work. OWCP denied her emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA. The Board notes that appellant's allegations do not pertain to her regular or specially assigned duties under *Cutler*.¹¹ Rather, appellant has alleged harassing treatment by a coworker and error and abuse by supervisors with respect to administrative matters.

Appellant contended that her coworker, Mr. Satori, told another coworker that she smelled badly, which resulted in a meeting with a member of management, Ms. Dumont. The record reflects that a coworker, Ms. Reese, approached Ms. Dumont regarding an odor problem with appellant and Ms. Dumont met with appellant to discuss this. The Board has held that mere disagreement or dislike of a supervisory or of a managerial action will not be compensable absent error or abuse.¹² While appellant may not have liked discussing an odor problem with Ms. Dumont, there is no evidence that there was any error or abuse on the part of the supervisor in following up on a complaint regarding appellant or in taking any necessary action to address the situation. Thus, this is not a compensable factor of employment. Further, a claimant's own feeling or perception that a form of criticism is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under FECA absent evidence that the interaction was, in fact, erroneous or abusive. As noted, appellant presented no evidence that the interaction was, in fact, erroneous or abusive. Thus, appellant has not established that this rises to the level of a compensable factor of employment.

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 *Lillian Cutler*, *supra* note 3.

¹² *D.L.*, 58 ECAB 217 (2006).

Appellant alleged that the employing establishment failed to investigate or take appropriate action regarding Mr. Satori's conduct and comments. Although investigations and the monitoring of activities at work and the handling of disciplinary actions are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.¹³ However, the Board has found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁴ The Board finds that appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse in these matters. The employing establishment investigated and acted upon several incidents involving appellant and Mr. Satori. This included the May 21, 2009 incident when appellant called Mr. Satori at home and his comments when he came to work and appellant's claim about Mr. Satori spreading rumors about her being "in bed with management." While the investigations established in part that some of the events occurred as alleged, appellant provided no evidence to substantiate her allegation of error or abuse on the part of the employing establishment in the manner in which the investigation was conducted.¹⁵ Thus, she has not established a compensable factor of employment.

Regarding allegations of harassment, appellant alleged that Ms. Dumont asked her if she had been sleeping in her car; that Mr. Satori began harassing her three years prior; that Mr. Satori sent her an e-mail that she smelled worse than barnyard animals and that he shared this comment with other employees; that Mr. Satori made a comment that the workplace smelled better when she was relieved from her position; that Mr. Satori acted very hostile towards her and made inappropriate comments to her on May 20, 2009 and November 21, 2010; and that management has not taken appropriate action regarding her fear of Mr. Satori harming her. Vague or general allegations of perceived harassment, abuse or difficulty arising in the employment are insufficient to give rise to compensability under FECA.¹⁶ A claimant must substantiate allegations of harassment and discrimination with probative and reliable evidence.¹⁷

There is no evidence to support appellant's allegations that Ms. Dumont asked appellant whether she slept in a car, that Ms. Reese told appellant that she smelled, or that Mr. Satori commented or sent her an e-mail about her odor or that he shared this comment with coworkers. Appellant also provided no evidence to show that there was a credible basis of her fear that Mr. Satori would harm her. As noted, perceptions of harassment alone are not compensable. As

¹³ See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹⁴ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁵ The employer advised that the matter regarding appellant being "in bed" with management involved an internal union matter. With respect to whether union activities are related to employment, the general rule is that union activities are personal in nature and are not considered to be within the course of employment. *Jimmy E. Norred*, 36 ECAB 726 (1985); *Larry D. Passalacqua*, 32 ECAB 1859 (1981).

¹⁶ *R.P.*, Docket No. 08-1064 (issued November 26, 2008).

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

she did not submit any evidence in support of the above allegations, appellant has not established a compensable work factor.

Appellant did not otherwise submit any evidence supporting that the alleged harassment or hostile comments were made. None of the witness statements indicate an awareness of such incidents, and the employing establishment denied that they occurred. The record supports that the employing establishment investigated appellant's allegations of a hostile work environment and found it was not supported with regards to appellant's allegation about not getting e-mails from Mr. Satori about union matters and the comment that she "was in bed with management." Accordingly, appellant has not submitted sufficient evidence to support her claims of harassment or that these incidents occurred as alleged.

Regarding appellant's allegation that she was verbally abused and felt threatened by Mr. Satori, 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 Mr. Satori may have raised his voice to appellant on several occasions or used profanity is insufficient, by itself, to warrant a finding that his actions amounted to verbal abuse as she did not show how such a response would rise to the level of verbal abuse or otherwise fall within the coverage of FECA.¹⁹ Although Mr. Solomon advised that Mr. Satori stated that appellant was a mediocre controller, there is insufficient evidence to show how such a statement constitutes compensable verbal abuse. There is no indication that appellant was present when the statement was made, where it was made or any indication as to the context in which the conversation occurred.

Consequently, appellant has not established her claim for an emotional condition as she has not established any compensable employment factors.²⁰

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has 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 *Peter D. Butt, Jr.*, 56 ECAB 117 (2004).

²⁰ 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 May 25, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 2, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board