



claim, appellant related that the employing establishment detailed her to a supervisory position for more than seven years. The supervisor who actually held the position, Mitchell Oakes, worked at another duty station. In 2009, Mr. Oakes returned and the employing establishment took away appellant's detail and higher salary. He again left for another workstation but she did not return to the supervisory detail. Appellant asserted that she continued to perform the same supervisory duties but without the extra pay. She identified her stress-related conditions as chest pain, insomnia, headaches, depression, high blood pressure and blurred vision.<sup>2</sup>

On January 12, 2010 Paulette Gabriel, a supervisor, related that on that date appellant refused to let her enter an office, repeatedly used profanity and threatened her with violence.

In a statement dated January 13, 2010, appellant asserted that Ms. Gabriel asked to speak with Supervisor Vickie Schnuerer. She told Ms. Gabriel that Ms. Schnuerer was not in her office. Ms. Gabriel tried to push open the door to the office, used profane language and insulted appellant's deceased mother.

On January 19, 2010 Ms. Schnuerer indicated that appellant did not perform the duties of a clerk stenographer but instead performed complementary duties that were not at a higher level but were designed to "keep [her] partially gainfully employed." She also noted that appellant was off work without leave from December 28 to 31, 2009 and refused to provide documentation.

On January 25, 2010 OWCP determined that appellant's claim should be adjudicated as an occupational disease. It requested that she submit additional supporting factual and medical evidence.

On February 8, 2010 Ms. Schnuerer related that appellant performed office assistance and that posting job openings was consistent with the duties of a clerk/stenographer.<sup>3</sup> She related that appellant had not supervised employees as part of her higher detail. Due to financial considerations all unauthorized details had ended. Ms. Schnuerer asserted that handling job bids was not work reserved only to supervisors and that a clerk handled job postings in the plant department. She maintained that appellant failed to follow Ms. Gabriel's instructions and used profanity toward Ms. Gabriel. Ms. Schnuerer believed that appellant filed her claim in response to being asked to produce medical documentation for her unscheduled absences.

On February 10, 2010 Ms. Gabriel denied using profanity toward appellant.

By decision dated February 25, 2010, OWCP found that appellant failed to establish an emotional condition in the performance of duty. It determined that she had not established any compensable factors of employment.

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<sup>2</sup> Appellant also submitted medical evidence in support of her claim.

<sup>3</sup> Ms. Schnuerer related that the position of clerk/stenographer did not exist any more in the employing establishment but was still held by incumbents.

In an e-mail message dated September 11, 2009, Ms. Schnuerer related that she would use appellant to help Mr. Oakes transition to taking over complement issues.<sup>4</sup> In a September 25, 2009 e-mail message, appellant informed Ms. Schnuerer and Gerry Woodard that after Mr. Oakes returned she continued to perform supervisory duties but was no longer receiving the proper higher pay. In an October 2, 2009 e-mail, appellant related that she believed that she would return to her detail after Mr. Oakes left for another workstation.

On February 8, 2010 appellant filed an Equal Employment Opportunity (EEO) complaint alleging discrimination. She related that she was assigned supervisory tasks even though she had returned to a position as a clerk.

In a statement dated February 19, 2010, appellant asserted that the employing establishment had wrongfully fired her twice before. She had previously filed a claim for a stress-related condition in 1996 and had an accepted service-related claim for depression. Appellant again related that she was assigned supervisory tasks without the proper pay and that her pay was stopped two weeks retroactively. She maintained that she experienced a hostile work environment and retaliation because she had previously filed EEO claims and refused to work as a supervisor while in a clerk's position. The employing establishment denied appellant's request for other details and failed to promote her. Appellant also alleged that she had deadlines and occasionally worked overtime. She stated, "Working under the daily duress of being consistently required through directives to perform supervisory work while paid as a clerk, constant arguing and threatening of retaliation for not [being] willing to do supervisory work as a clerk stenographer, are major contributing exacerbating factors of my illness."

In an undated statement received February 26, 2010, Ted Patterson, a union president, confirmed that appellant posted clerk positions both in her supervisory detail and when she returned to her clerk's position. He noted that when her detail ended she complained that she continued to perform supervisory tasks.

In an undated statement, Lauren Moore, a retired time and attendance clerk, related that, while detailed to a position as acting supervisor in mid-July 2009 or early August 2009, she received a telephone call from Steve Swartz, a manager. She stated, "Mr. Swartz provided that he wanted to have the [h]igh [l]evel authorization for [appellant], who was detailed in the position of Supervisor, Customer Service Support, cancelled effective immediately and additionally he wanted to have the high level authorization removed retroactively for the prior pay week and the current pay week." Ms. Moore cancelled the higher pay for appellant "retroactively as per his directive."

On March 4, 2010 appellant requested reconsideration. She noted that Mr. Swartz retroactively removed her pay by two weeks in a "malicious act." Appellant asserted that 1723 forms confirmed that she posted job vacancies and that the union verified that supervisory duties included posting job vacancies. She noted that copies of her pay stubs showed her decreased pay.

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<sup>4</sup> In an undated statement, Eugene Bart, a retired employee, related that Ms. Gabriel should not have supervisory authority in her position. Lloyd Doucett, a union representative, related that appellant posted job openings even when she returned to work as a clerk.

By letter dated April 5, 2010, Ms. Schnuerer related that a detail to a higher level could stop at any time without notice and that Mr. Swartz' action in canceling her detail was not malicious. She asserted that appellant did not act as a supervisor but instead performed "tasks that were convenient and required in the absence of the person who maintained the position." Ms. Schnuerer indicated that posting jobs, maintaining list of seniority and bidding procedures were not supervisory tasks. She further stated, "At no time since I have been in this position has [appellant] been deprived of any pay owed to her from August 2008 through December 2009."

By decision dated June 4, 2010, OWCP denied modification of its February 25, 2010 decision. Appellant appealed to the Board. In an order dated May 12, 2011, the Board set aside the February 25 and June 4, 2010 decisions and remanded the case for OWCP to make adequate findings of fact and conclusions of law.<sup>5</sup>

In a decision dated August 19, 2011, OWCP denied appellant's emotional condition claim. It found that she had not submitted sufficient evidence to establish compensable work factors.

On appeal, appellant argues that OWCP accepted false statements as factual and failed to consider the medical evidence.

### **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.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup>

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<sup>5</sup> Docket No. 10-1797 (issued May 12, 2011).

<sup>6</sup> 5 U.S.C. § 8101 *et seq.*; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>7</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>8</sup> *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>9</sup> *See William H. Fortner*, 49 ECAB 324 (1998).

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.<sup>10</sup>

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. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.<sup>11</sup> A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.<sup>12</sup> The issue is whether the claimant has submitted sufficient evidence under FECA to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>13</sup> The primary reason for requiring factual evidence from the claimant in support of his or 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.<sup>14</sup>

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.<sup>15</sup> 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.<sup>16</sup>

### ANALYSIS

Appellant filed a traumatic injury claim; however, as she attributed her condition to work factors occurring over the course of more than one workday or work shift, OWCP properly

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<sup>10</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>11</sup> *See Michael Ewanichak*, 48 ECAB 364 (1997).

<sup>12</sup> *See Charles D. Edwards*, 55 ECAB 258 (2004); *Parley A. Clement*, 48 ECAB 302 (1997).

<sup>13</sup> *See James E. Norris*, 52 ECAB 93 (2000).

<sup>14</sup> *Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>15</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>16</sup> *Id.*

adjudicated the claim as an occupational disease.<sup>17</sup> She alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. OWCP denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.

Appellant has not alleged that she developed an emotional condition due to the performance of her regular or specially assigned duties or out of a specific requirement imposed by her employment. She indicated that she had deadlines and occasionally worked overtime. Appellant did not, however, attribute her stress-related condition to deadlines, overtime or the performance of other regular or specially assigned work duties under *Cutler*. Instead, she maintained that the employing establishment erroneously took away her detail to a supervisory position in July 2009. Appellant further contended that she continued to perform supervisory duties without the proper pay after she was moved to a clerk's position. She submitted evidence that she posted job openings both in her supervisory detail and after she returned to a clerk/stenographer position.

It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.<sup>18</sup> Administrative or personnel matters will be considered to be employment factors only where the evidence discloses error or abuse on the part of the employing establishment.<sup>19</sup> On April 5, 2010 Ms. Schnuerer asserted that higher level details could end at any time and without notice. She maintained that appellant's duties such as posting jobs and maintaining seniority lists were not supervisory duties. Appellant has not submitted any evidence establishing error by the employing establishment in ending her supervisory detail in July 2009. She further has not corroborated her allegation that she continued to perform supervisory duties in her position as a clerk or that posting jobs was a supervisory action. Consequently, appellant has not established a compensable work factor.

Appellant additionally maintained that Mr. Swartz took away her higher level pay retroactively. She submitted a statement from Ms. Moore, who asserted that Mr. Swartz related that he wanted appellant's high level detailed cancelled immediately and that "he wanted to have the high level authorization removed retroactively for the prior pay week and the current pay week." While Ms. Schnuerer advised that appellant had received proper pay at all times from August 2008 through December 2009, she did not directly address Ms. Moore's assertion that Mr. Swartz retroactively reduced her pay or explain whether appellant remained detailed to a supervisory position prior to the date that her pay was retroactively reduced. The Board finds that the case must be remanded for OWCP to obtain further information from the employing

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<sup>17</sup> A traumatic injury is defined as a "condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift." 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift." 20 C.F.R. § 10.5(q).

<sup>18</sup> See *K.W.*, 59 ECAB 271 (2007); *Pamela D. Casey*, 57 ECAB 260 (2005).

<sup>19</sup> See *M.D.*, 59 ECAB 211 (2007); *Jeral R. Gray*, 57 ECAB 611 (2006).

establishment. On remand, OWCP should request that the employer address whether appellant's higher level pay was removed prior to the ending of her supervisory detail.

Regarding appellant's allegation that the employing establishment failed to promote her and denied her details, matters involving promotions and transfers are administrative or personnel matters of the employing establishment and, as discussed above, are covered only when erroneous or abusive.<sup>20</sup> Appellant has not submitted evidence to show that the employing establishment committed error or abuse with respect to these matters.

Appellant further maintained that Ms. Gabriel verbally abused her on January 12, 2010. She related that Ms. Gabriel insulted her deceased mother and used profanity. Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the evidence of record, may constitute factors of employment.<sup>21</sup> In a statement dated February 10, 2010, Ms. Gabriel denied using profanity or insulting language. She indicated that appellant used vulgar language towards her and threatened her with violence. As appellant has not submitted any evidence corroborating her allegation of verbal abuse by Ms. Gabriel, she has not established a compensable work factor.

Appellant alleged that the employing establishment created a hostile work environment and retaliated against her for filing EEO claims. If disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from the employee's performance of her regular duties, these could constitute employment factors.<sup>22</sup> The evidence, however, must establish that the incidents of harassment or discrimination occurred as alleged to give rise to a compensable disability under FECA.<sup>23</sup> Appellant did not submit any factual evidence in support of her allegations and thus has not established a compensable work factor.

As previously discussed, the Board finds that the case should be remanded for OWCP to determine whether the employing establishment retroactively removed appellant's higher level pay prior to removing her from her higher level detail. After such further development as deemed necessary, it should issue an appropriate decision.

### **CONCLUSION**

The Board finds that the case is not in posture for decision.

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<sup>20</sup> See *Hasty P. Forman*, 54 ECAB 427 (2003); *Ernest J. Malagrida*, 51 ECAB 287 (2000).

<sup>21</sup> *Marguerite Toland*, 52 ECAB 294 (2001).

<sup>22</sup> *Janice I. Moore*, 53 ECAB 777 (2002).

<sup>23</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 19, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 16, 2012  
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