

move faster casing mail because she was too slow. She also alleged that he called her a “f---ing woman.” Appellant first received medical care on July 29, 2009. Appellant notified her supervisor and stopped work on July 30, 2009. The employing establishment controverted the claim.

In a July 27, 2009 prescription note, Dr. Domingo Mendez Caban, a treating physician, reported that appellant was treated for acute stress anxiety from crying and anxiousness due to problems at work. He diagnosed acute stress anxiety secondary to her job. In a July 30, 2009 prescription note, Dr. Caban diagnosed acute stress anxiety secondary to appellant’s job.

A United States Post Service (USPS) investigation report of the July 29, 2009 incident found that appellant alleged that Postmaster Duran harassed her while she was casing mail and subsequently held her hostage at the employing establishment, causing her to become stressed and nervous. Interviews were conducted with appellant, Postmaster Duran and other USPS employees, which established that she became upset after he critiqued her work on July 29, 2009. Appellant wanted to leave and Postmaster Duran called 911 stating that she was in no condition to drive. She then called the police alleging that she was being held hostage. The police and ambulance arrived on the scene and after investigating the matter, the police found that there was no criminal activity. Following the incident, appellant filed a claim for a protective order against Postmaster Duran. She stated that he stalked, intimidated and bothered her while she was working, calling her slow and a “f---ing woman.” Appellant stated that Postmaster Duran’s tone of voice and aggressiveness made her nervous and she feared that he would seek revenge and assault her at home. On August 17, 2009 a court hearing was held and the order was dismissed. Appellant returned to work on August 20, 2009.

In an August 24, 2009 report, Joanne Duncon, a USPS Special Agent, reported that an investigation was held surrounding appellant’s claim of job-related stress. Through numerous interviews and information gathered, Agent Duncon reported that appellant did react in a stressful manner after being told by her postmaster to perform her duties. Though appellant experienced stress, the employing establishment determined that her stress was not caused by her work conditions, but rather appeared to be self-induced as she reacted to her postmaster’s instructions and displeasure with her work performance on July 29, 2009. Agent Duncon further noted that appellant’s protective order against Postmaster Duran was dismissed. Along with her report, she attached numerous documents including, *inter alia*, witness statements describing the incident, the July 30, 2009 police report, the protective order and physicians’ notes.

A July 29, 2009 police complaint noted that appellant alleged that she was suffering from a nervous crisis due to pressures at her job because she felt harassed by her supervisor. Paramedics arrived on the scene.

In a narrative statement dated August 6, 2009, Postmaster Duran, appellant’s supervisor and postmaster at the employing establishment, controverted the claim stating that on July 29, 2009 appellant began casing mail at 8:00 a.m. which had to be finished by 11:00 a.m. At around 10:40 a.m., he approached appellant and informed her that she had been casing mail for 2 hours and 40 minutes and was nowhere near finished. Postmaster Duran further stated that he would monitor her the next time she was casing mail to identify any deficiencies she may have to improve her productivity. He stated that, at 11:00 a.m., appellant approached him and slammed

a tray of mail on the table yelling and crying. Appellant informed him that she was nervous because he was harassing her, wanted to go home and asked for a (Form CA-1). Postmaster Duran informed her that he could not allow her to leave in her condition and called 911 to get her medical attention. Appellant locked herself in the bathroom, came out and began yelling at Victor Loperena, a fellow coworker, because he was trying to calm her down. Postmaster Duran asked Coworkers Ricardo Morales and Antonia Perez to try to prevent her from leaving in her condition. He stated that no one tried to physically stop her from leaving. Appellant sat in a chair on her cell phone and called the police alleging that she was being held hostage in the post office against her will. The police arrived at approximately 11:15 a.m., investigated the situation and decided that there was no criminal activity in progress. The ambulance arrived at approximately 11:30 a.m. but appellant refused to go with them and had her husband take her home. Postmaster Duran noted that she filed a protective order against him. He stated that he was not an aggressive person and did not even know where appellant lived. Postmaster Duran further stated that he speaks in the same tone of voice to all of his employees. He noted that he was carrying out his responsibilities as a postmaster when he pointed out appellant's deficiencies in her work to improve productivity. Due to the request for a protective order, appellant was temporarily assigned to a different post office closer to her residence.

In an August 6, 2009 statement, Pablo Mendez, a USPS employee, stated that Postmaster Duran was an honorable person and efficient in his work.

In an August 6, 2009 statement, Antonia Perez, a USPS custodian, reported that on July 29, 2009 appellant requested a CA-1 form from Postmaster Duran because she was feeling nervous. Postmaster Duran then informed appellant that he could not let her leave in her condition because he would be liable if anything happened to her on the road. He called 911 so that she could be taken to the hospital.

In an August 6, 2009 narrative statement, Mr. Loperena, a USPS mail processing clerk, stated that on July 29, 2009 appellant stated that she was leaving because she was nervous and stressed, punching out her time card. Postmaster Duran informed her that she could not leave in her condition and called 911 to get her an ambulance. Mr. Loperena stated that Postmaster Duran treated his employees the same and did not scream at them. He further stated that appellant was strong willed and a good worker.

An August 13, 2009 memorandum of interview with appellant noted that she was working at the employing establishment since 2003. Her duties included casing mail and magazines. Appellant stated that she had previously filed an Equal Employment Opportunity (EEO) complaint against Postmaster Duran on July 20, 2009 and had been having problems with him for approximately three months. She stated that on July 29, 2009 she was casing mail when he told her to hurry up and that she was too slow. Appellant stated that Postmaster Duran called her a "damn woman" and "f---ing woman." At that point she became very nervous and wanted to leave. Appellant alleged that Postmaster Duran would not let her leave, stating that she was sick and called her an ambulance. She stated that she was afraid of him so she called the police for help. Appellant received medical attention when the paramedics arrived and left afterwards with her husband. She then subsequently filed for a protective order against Postmaster Duran.

In an August 13, 2009 narrative statement, Julio Salas, a USPS city carrier, stated that, a few minutes past 8:00 a.m. on July 20, 2009, approximately a week and a half before the July 29, 2009 incident, he was outside organizing packages on the bus and appellant was standing in his vicinity. Postmaster Duran asked appellant to punch in since it was a few minutes past 8:00 a.m. to which she replied she was waiting for her five minute grace period. He replied that he was short on personnel and that he needed her. They both walked inside.

In an August 13, 2009 statement, Jamie Cortes Colon, a USPS highway contractor, stated that Postmaster Duran was strict, responsible, honorable, honest with his work and was concerned with the well-being of his employees.

In an August 13, 2009 statement, Joseamid Lorenzo Hernandez, a USPS highway contractor, stated that he was not present during the incident. He stated that Postmaster Duran was strict with his work and was always honest with his proposals in order to provide better service.

In an August 13, 2009 statement, Andres Bosque, a USPS highway contractor, reported that he was a mail carrier for 38 years at the Moca Post Office and worked under the supervision of Postmaster Duran. He did not witness the July 29, 2009 incident but stated that he never had a problem with Postmaster Duran and believed that he was doing a good job for the post office.

In an August 13, 2009 narrative statement, Leonardo Cortes, a USPS highway contractor, stated that Postmaster Duran's role was to ensure that all of the work was performed adequately which required him to reprimand the employees if the work was not being done properly. He stated that he felt comfortable working with Postmaster Duran and had previously been scolded by him for the sole purpose of getting his work done properly.

In an August 13, 2009 statement, Emilio Perez, a USPS highway contractor, stated that he never had any issues with Postmaster Duran. He stated that Postmaster Duran was strict and the times he had corrected his work, he had done so discreetly, calmly and in a professional manner.

In an August 17, 2009 statement, Ricardo Morales Lopez, a USPS sales associate, stated that on July 29, 2009 appellant approached Postmaster Duran and informed him that she could not work in this environment, was not feeling well and was leaving due to illness. Postmaster Duran informed her that she could not leave in her condition and told her that he was calling an ambulance. The paramedics and police arrived a short while later. Mr. Lopez stated that at no point did he witness Postmaster Duran physically try to restrain appellant. He stated that he thought appellant might have been able to drive in her condition. Mr. Lopez further stated that he had no issues with Postmaster Duran but did not always agree with his methods.

In the August 17, 2009 request for a protective order, appellant alleged that Postmaster Duran did not allow her to leave the workplace and blocked the door, causing her to call the police. She further stated that he harassed, intimidated and bothered her while she was working and used a loud aggressive tone, calling her a "damn woman" and "f---ing woman." Appellant became nervous and feared that Postmaster Duran would seek revenge or assault her at her home. The court found no probable cause for the allegations and dismissed the order.

An August 7, 2009 disability certificate from Dr. Jesus Nieves, a Board-certified urologist, reported that appellant was under his care and incapacitated from August 8 to 18, 2009 and could not return to work.

By letter dated September 2, 2009, OWCP informed appellant that the evidence of record was insufficient to support her claim. It requested that she provide additional factual and medical evidence within 30 days. By letter dated October 22, 2009, OWCP requested additional factual information from the employing establishment.

In support of her claim, appellant submitted numerous documents including, *inter alia*, the July 29, 2009 police report and emergency room notes, grievance appeal forms, a psychiatric report and an October 30, 2008 statement from USPS employee, Antonio Sorrentine, who alleged that Postmaster Duran would scream at him and bully him in the workplace.

In an October 6, 2009 psychiatric report, Dr. Nieves stated that appellant sought treatment on July 31, 2009 due to anxiousness, trouble sleeping, poor appetite, sadness and crying episodes. Appellant reported that she was having problems at work because her supervisor would harass, scold and call her names. Dr. Nieves diagnosed major depressive disorder, single episode severe without psychotic features. He opined that appellant's work incidents were the cause of the development of her disorder because other problems such as marriage, family, home, economic, social, legal and health, were not present as elicited by her history.

In a November 24, 2009 e-mail, Postmaster Duran stated that the agency was controverting the claims because they were false and appellant was never harassed or placed in stressful situations. He noted that she had the same responsibilities as her coworkers to get postal operations done. Postmaster Duran stated that, prior to the July 29, 2009 incident, appellant had Family and Medical Leave Act approved and was often absent from work due to illness.

By decision dated January 28, 2010, OWCP denied appellant's claim finding that the evidence had not established that Postmaster Duran was verbally abusive or harassed her. It further noted that his comments about monitoring her the next time she was casing mail was not a compensable factor of employment.

On February 22, 2010 appellant requested an oral hearing before the Branch of Hearings and Review. In support of her claim, she submitted a number of documents previously submitted. Appellant also submitted a September 15, 2009 USPS mediation settlement agreement form which was signed by herself as well as Postmaster Duran. The agreement stated that Postmaster Duran apologized to her if his style of supervision was perceived by her in a way that caused any type of distress. Appellant accepted the apology. Postmaster Duran was transferred to another station and she returned to work at the employing establishment on September 19, 2009.

At the June 16, 2010 telephone hearing, appellant repeated the allegations previously made and testified that the harassment by Postmaster Duran had been escalating for about six months prior to the July 29, 2009 incident. She stated that on that date she had a nervous

breakdown because he was harassing her, calling her names and yelling at her. Appellant further stated that, earlier that morning, Postmaster Duran pulled a chair close to her and stared at her as an intimidation tactic which made her very nervous.

By decision dated August 25, 2010, OWCP's hearing representative affirmed the January 28, 2010 decision for failing to establish any compensable factors of employment.

LEGAL PRECEDENT

To establish that an emotional condition was sustained in the performance of duty appellant must submit factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.² If an employee does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.³ 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.⁴

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of FECA.⁵ On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of FECA.⁶

Administrative and personnel matters, although generally related to the employees' employment, are administrative functions of the employer rather than regular or specially assigned work duties of the employee and are not covered under FECA.⁷ Workers' compensation does not cover an emotional reaction to an administrative or personnel action unless the evidence shows error or abuse on the part of the employing establishment.⁸ As a rule,

² See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

³ See *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁴ *Id.*

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Id.*

⁷ *Charles D. Edwards*, 55 ECAB 258 (2004).

⁸ *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon*, 42 ECAB 566, 572-73 (1991).

however, a claimant's allegations alone are insufficient to establish a factual basis for an emotional condition claim.⁹

For harassment or discrimination to give rise to compensable disability, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. 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.¹⁰ Factual evidence substantiating allegations of harassment must be submitted, which in turn may be fully examined and evaluated by OWCP and the Board.¹¹

The Board has recognized the compensability of verbal altercations or abuse when sufficiently detailed by the claimant and supported by the record. This does not imply, however, that every statement uttered in the workplace will give rise to compensability.¹²

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish that she sustained a stress-related condition in the performance of duty causally related to factors of her federal employment.

Appellant did not attribute her emotional condition to her regular or specially assigned duties under *Cutler*.¹³ Rather, she attributed her condition to her interaction with her supervisor on July 29, 2009. Appellant's primary allegation was that she suffered a nervous breakdown and chest angina when her supervisor allegedly yelled at her, harassed her and called her names for casing mail too slowly.

Generally, complaints about the manner in which a supervisor performs his duties or the manner in which a supervisor exercises his discretion fall, as a rule, outside the scope of coverage provided by FECA. This principle recognizes that a supervisor or manager in general must be allowed to perform his duties and employees will, at times, dislike the actions taken.

⁹ See *Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

¹⁰ *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).

¹¹ *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

¹² See *David C. Lindsey*, 56 ECAB 263 (2005). The mere fact that a supervisor or employee may raise his or her voice during the course of an argument does not warrant a finding of verbal abuse. *Joe M. Hagedwood*, 56 ECAB 479 (2005).

¹³ See *supra* at note 4.

Mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent evidence of error or abuse.¹⁴

To support such a claim, appellant must establish a factual basis by providing probative and reliable evidence that the employer's conduct towards her on July 29, 2009 was erroneous or abusive.¹⁵ She has submitted no such evidence and the Board finds that she did not establish a compensable factor of employment in this regard. The record establishes that, on the morning of July 29, 2009, Postmaster Duran informed appellant that she was casing mail too slowly and that he would monitor her next time to identify any deficiencies. The evidence of record and witness statements indicate that she became upset and suffered a nervous attack after speaking with him and wanted to leave work. An employee's reaction to supervisory instruction is not covered under FECA, unless there is evidence that the employing establishment acted unreasonably.¹⁶ Because appellant has not presented sufficient evidence that her supervisor acted unreasonably or that the employing establishment engaged in error or abuse, she has failed to identify a compensable work factor.

Appellant alleged that Postmaster Duran harassed her and called her a "f---ing woman" for casing mail too slowly. The Board has held that not every ostensibly abusive or threatening statement uttered in the workplace will give rise to coverage under FECA.¹⁷ Postmaster Duran denied making these statements and harassing appellant. While the witness statements noted that appellant and Supervisor Duran spoke prior to her panic attack, none of the witness statements provide any detail as to what the discussion entailed. There is no description of what was stated during her conversation with Supervisor Duran when casing mail. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.¹⁸ The only evidence appellant submitted which addressed verbal abuse or harassment by the Postmaster was an October 30, 2008 statement from Coworker Sorrentine, who alleged that the Postmaster would scream at him and bully him in the workplace. This evidence is, however, of limited probative value as it is generalized in nature and does not address the July 29, 2009 incident in question. The mere fact that a supervisor or employee may raise his or her voice during the course of an argument does not warrant a finding of verbal abuse.¹⁹ Absent such evidence, the Board cannot find a factual basis for error or abuse on the part of Postmaster Duran on July 29, 2009.

When appellant became emotional and wanted to leave work early, Postmaster Duran informed her that she was in no condition to leave and called 911 for an ambulance. She then called the police alleging that she was being held hostage. The Postmaster explained that

¹⁴ *C.Y.*, Docket No. 11-668 (issued December 16, 2011).

¹⁵ See *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

¹⁶ See *Alfred Arts*, 45 ECAB 530 (1994).

¹⁷ *K.D.*, Docket No. 11-841 (issued September 29, 2011); *Fred Faber*, 52 ECAB 107, 109 (2000).

¹⁸ *Supra* at note 8.

¹⁹ *Joe M. Hagewood*, 56 ECAB 479 (2005).

appellant was not in no condition to drive herself home, so he called for medical assistance, for her own safety. An emotional reaction to an administrative or personnel action is not compensable unless the evidence establishes error or abuse on the part of the employing establishment.²⁰ The record establishes that when the police arrived at the employing establishment on January 29, 2009 they determined that no criminal activity had taken place. Witness statements also note that appellant was never physically restrained and that Postmaster Duran stated that he was calling an ambulance because she was in no condition to leave by herself. Thus, there is no evidence that Postmaster Duran acted inappropriately.

Appellant has not demonstrated that Postmaster Duran was verbally abusive towards her on the morning of July 29, 2009 to establish a compensable injury. Her allegations that he harassed her are unsubstantiated. Mere perceptions of harassment are not compensable under FECA.²¹ The witness statements of record do not support a finding of verbal abuse and the mere fact that appellant filed an EEO complaint and grievance does not establish error or abuse on the part of her employer.²² Furthermore, Postmaster Duran's apology in the settlement agreement does not support an admission of fault or that he acted wrongfully.²³

Appellant submitted no evidence corroborating her accusations. The Board has held that mere allegations, in the absence of factual corroboration, are insufficient to meet a claimant's burden of proof.²⁴ Appellant's perceptions must be construed to be self-generated. While appellant's physician referred to the exchange with Postmaster Duran on July 29, 2009 his depiction relies on her representations. Moreover, it is unnecessary to address the medical evidence of record as appellant has failed to establish a compensable factor of employment.²⁵ As appellant failed to provide evidence to establish a compensable factor of employment, her claim was properly denied.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition on July 29, 2009 causally related to factors of her federal employment.

²⁰ *Supra* note 8.

²¹ *See Cyndia D. Harrill*, 55 ECAB 399

²² Grievances and EEO complaints do not establish that workplace harassment or unfair treatment occurred. *Charles D. Edwards*, 55 ECAB 258, 266 (2004).

²³ Absent an admission of fault, a settlement agreement does not establish error or abuse on the part of the employing establishment. *Kim Nguyen*, 53 ECAB 127, 128 (2001).

²⁴ *Bonnie Goodman*, 50 ECAB 139 (1998).

²⁵ *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated August 25, 2010 is affirmed.

Issued: August 15, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board