



stress. He stopped work on November 7, 2011 and returned on December 5, 2011. Jerry Kittrell, appellant's supervisor, noted that he was unaware that appellant had a work-related condition, rather, appellant simply stated that he was feeling ill. He noted that the nature of the injury was not the result of traumatic injury.

On December 28, 2011 OWCP asked appellant and the employing establishment to provide additional evidence.

OWCP received a December 21, 2011 statement from Mr. Kittrell, who advised that appellant came to him on November 7, 2011, after working for two hours. Appellant stated that he was feeling ill and wanted to go to the employer's medical unit. Mr. Kittrell asked appellant if he was ill before he came to work and completed a form allowing appellant to proceed to the medical unit. He stated that appellant returned from the medical unit with a "dispensary chit" stating that he was to have no duties pending an evaluation by his private physician. Mr. Kittrell advised that appellant did not report being injured on the job and did not appear to be sick.

Appellant submitted an undated Equal Employment Opportunity (EEO) statement. He alleged that Mr. Kittrell micromanaged him and told him not to speak to any other supervisors about issues in the workplace. In September 2011, appellant was working on a floor board and Mr. Kittrell criticized his performance and told him he did the job wrong. He asserted that on November 4, 2011 a coworker asked him to inspect corrosion on an aircraft which he confirmed and reported to a team crew leader. Appellant alleged that Mr. Kittrell subsequently questioned him for 10 minutes about inspecting the aircraft and then instructed appellant to meet him outside the building. Mr. Kittrell spoke to appellant in a very loud voice, told him he was not a friend and that appellant was paid to listen to him. At the end of the conversation, Mr. Kittrell apologized to him. He generally alleged that he worked in a hostile work environment, was discriminated against because he was a Vietnamese-American, and that Mr. Kittrell threatened employees with termination when they made mistakes.

Appellant submitted reports dated November 7 to December 3, 2011 from Dr. Ton Tran, a Board-certified internist, who diagnosed anxiety, stress, high blood pressure and headaches and noted that appellant was off work until December 5, 2011. In dispensary notes dated November 7 and December 5, 2011, a physician's assistant advised that appellant was treated for an occupational disease and was disabled from work until December 5, 2011. In occupational medicine reports dated November 7 and December 5, 2011, Dr. Juan C. Fals, Board-certified in occupational medicine, noted that appellant reported having a stressful confrontation with his supervisor on November 4, 2011 with anxiety and insomnia. He noted that appellant was off work for two weeks. Appellant reported filing an EEO complaint. Dr. Fals returned appellant to full duty on December 5, 2011.

In a decision dated February 3, 2012, OWCP denied appellant's claim finding that the claimed emotional condition did not arise in the performance of duty. It found that appellant did not establish any compensable work factors.

## LEGAL PRECEDENT

To establish an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he or 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.<sup>2</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,<sup>3</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.<sup>4</sup> When an employee experiences emotional stress in carrying out his or her employment duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.<sup>5</sup> Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.<sup>6</sup> Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.<sup>7</sup> Personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>8</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 frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>9</sup>

## ANALYSIS

Appellant alleged an emotional condition as a result of being micromanaged and criticized by Mr. Kittrell in September 2011. He asserted that on November 4, 2011, after inspecting corrosion on an aircraft, Mr. Kittrell spoke to him in a very loud voice, told him he

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<sup>2</sup> *George H. Clark*, 56 ECAB 162 (2004).

<sup>3</sup> 28 ECAB 125 (1976).

<sup>4</sup> *See Robert W. Johns*, 51 ECAB 137 (1999).

<sup>5</sup> *Lillian Cutler*, *supra* note 3.

<sup>6</sup> *J.F.*, 59 ECAB 331 (2008).

<sup>7</sup> *M.D.*, 59 ECAB 211 (2007).

<sup>8</sup> *Roger Williams*, 52 ECAB 468 (2001).

<sup>9</sup> *See Lillian Cutler*, *supra* note 3.

was not his friend and that appellant was paid to listen to him. Appellant further alleged that he worked in a hostile work environment, was discriminated against because he was a Vietnamese-American, and that Mr. Kittrell threatened employees with termination if they made a mistake. The Board must thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA. Appellant has not attributed his emotional condition to the regular or specially assigned duties of his position as a sheet metal mechanic. Therefore, he has not alleged a compensable factor under *Cutler*.<sup>10</sup>

Appellant made several allegations related to administrative and personnel actions. In *Thomas D. McEwen*,<sup>11</sup> the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under FECA would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>12</sup>

Appellant attributed his stress to allegations that Mr. Kittrell micromanaged him and told him not to speak to other supervisors about workplace issues. He alleged in an EEO statement that in September 2011 he was working on a floor board and Mr. Kittrell criticized him and told him he did the job wrong. Appellant asserted that on November 4, 2011, a coworker asked him to inspect corrosion on an aircraft which he confirmed and reported the corrosion to a team crew leader. He alleged that subsequently Mr. Kittrell spoke to him in a very loud voice, told him he was not his friend and that he paid appellant to listen to him. The Board has found that an employee's complaints concerning the manner in which a supervisor performs his duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, is 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, that employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.<sup>13</sup> The Board notes that the assignment of work is an administrative function<sup>14</sup> and the manner in which a supervisor exercises his or her discretion falls outside the ambit of FECA. Absent evidence of error or abuse, appellant's mere

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<sup>10</sup> See *id.*

<sup>11</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>12</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>13</sup> See *Marguerite J. Toland*, 52 ECAB 294 (2001).

<sup>14</sup> *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

disagreement or dislike of a managerial action is not compensable.<sup>15</sup> The Board finds that appellant has not offered sufficient evidence to establish error or abuse regarding his work assignments. The evidence does not establish that the employing establishment acted unreasonably.<sup>16</sup> Appellant presented no corroborating evidence to support that the employing establishment acted unreasonably in assigning work. Appellant has not established administrative error or abuse in the performance of these actions and therefore they are not compensable under FECA.

Appellant asserted that he worked in a hostile work environment, was discriminated against because he was a Vietnamese-American, and that Mr. Kittrell threatened employees with termination if they made a mistake. To the extent that incidents alleged as constituting harassment or a hostile environment by a supervisor are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.<sup>17</sup> However, for harassment to give rise to a compensable disability under FECA, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under FECA.<sup>18</sup> The factual evidence fails to support appellant's claim for harassment. The record does not support appellant's allegation that he was harassed or worked in a hostile work environment. There is no corroborating evidence to support that the employer treated appellant disparately. Appellant has not established a compensable factor of employment in this regard.

To the extent that appellant alleged that on November 7, 2011 his supervisor, Mr. Kittrell verbally abused and threatened him, the Board has recognized the compensability of verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.<sup>19</sup> The Board finds that the facts of the case does not support any specific incidents of verbal abuse. Appellant provided no corroborating evidence, or witness statements to establish his allegations at a particular time and place.<sup>20</sup> There is no corroborating evidence to support that any verbal interaction with appellant by Mr. Kittrell rises to the level of a compensable employment factor.<sup>21</sup> Mr. Kittrell submitted a December 21, 2011 statement advising that appellant reported feeling ill at work on November 7, 2011 but did not indicate that anything happened at work to cause his illness. Mr. Kittrell did not report any arguments or verbal altercations.

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<sup>15</sup> See *Barbara J. Latham*, 53 ECAB 316 (2002); see also *Peter D. Butt Jr.*, 56 ECAB 117 (2004) (allegations such as improperly assigned work duties, which relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties do not fall within the coverage of FECA).

<sup>16</sup> *D.L.*, 58 ECAB 217 (2006).

<sup>17</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>18</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991). See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

<sup>19</sup> *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>20</sup> See *William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

<sup>21</sup> See *Judy L. Kahn*, 53 ECAB 321 (2002) (the fact that a supervisor was angry and raised her voice does not, by itself, support a finding of verbal abuse).

Consequently, appellant has not established his claim for an emotional condition as he has not attributed his claimed condition to any compensable employment factors.<sup>22</sup>

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 the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 3, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 23, 2012  
Washington, DC

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

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

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

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<sup>22</sup> 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).