

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**H.C., Appellant** )

and )

**DEPARTMENT OF JUSTICE, FEDERAL  
BUREAU OF INVESTIGATION, Detroit, MI,  
Employer** )  
\_\_\_\_\_ )

**Docket No. 12-457  
Issued: October 19, 2012**

*Appearances:*  
*Alan J. Shapiro, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On December 29, 2011 appellant, through his counsel, filed a timely appeal from a November 30, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant sustained an emotional condition in the performance of duty.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On October 11, 2010 appellant, then a 63-year-old language specialist, filed an occupational disease claim attributing anxiety and depression to his employment. He first became aware of his condition and its relationship to his employment on June 25, 2009.

By letter dated December 1, 2010, appellant was advised of the additional medical and factual evidence needed to support his emotional condition claim. OWCP gave him 30 days to provide the requested information.

Appellant submitted a number of e-mails from Michael Garret Boyden, his supervisor, regarding work issues, reports of language test results and Employee Assistance Program (EAP) referral information. The work issues referenced by appellant and Mr. Boyden included requests for temporary duty (TDY) assignments, modifications to his work responsibilities and performance feedback.

On October 3, 2008 Jean M. Younes summarized an operational concerns meeting by Angela M. Bronson regarding appellant. Ms. Bronson requested that another linguist support her instead of appellant. She contended that appellant was in a rush during an October 1, 2008 source interview as he left her alone with the source who had limited English ability. It appeared that appellant was out of control and arguing with the source. Ms. Bronson also noted that during the prior six months she sensed that he encouraged the sources to request money and the instructions did not match up with the agent's request. She expressed concern that appellant was not heeding her instructions despite having brought these concerns to his attention.

In an October 6, 2008 e-mail, Ms. Bronson informed Mr. Younes of appellant's assistance with her operational needs and complimented him on his excellent performance. She stated that he was an asset to the language unit and dismissed his performance. Ms. Bronson stated that it was unclear why Mr. Younes was handling the matter as Eli Sassine was appellant's supervisor.

On April 1, 2009 Mr. Boyden stated that he saw appellant sleeping at his desk on March 30, 2009. He was unable to wake appellant by calling either his desk telephone or cell phone and hoped this would not become a pattern.

In an April 9, 2009 e-mail, Mr. Boyden noted that he understood appellant had been under stress and hospitalized in the past two weeks. He advised appellant regarding EAP and the people available for him to consult. On April 9, 2009 appellant was referred by Mr. Boyden to EAP for counseling.

In a June 23, 2009 e-mail, Mr. Boyden reiterated instructions made during their discussion that day, which included that appellant was "not to remove, borrow, damage or move anything from or on another employee or contractor's desk without their knowledge or consent." He instructed appellant to refrain from making personal calls during work hours as it was disruptive to his coworkers. Mr. Boyden noted that appellant had been warned about this previously. He stated that appellant's disruptive behavior and refusal to follow instructions violated his Performance Improvement Plan (PIP) and Performance Work Plan.

On June 23, 2009 appellant was placed on a PIP due to his unacceptable performance as a language linguist.

On June 2, 2009 Mr. Boyden informed appellant *via* e-mail correspondence that he was not approved to perform off-site work including TDYs. He noted that he was “aware that you attempted to circumvent the management chain” when appellant attempted “to get an approval signature for the Riyadh TDY” from Mr. Younes. Appellant was instructed that any documents required a supervisor’s signature was to be given only to Mr. Boyden and he was to call Mr. Boyden on his cell if he was not in the office.

On June 22, 2009 appellant requested permission from Mr. Boyden to apply for a Laboratory Division Arabic Analyst TDY. Mr. Boyden denied appellant’s request and stated that he would e-mail the person in charge informing them of appellant’s volunteer request.

On June 29, 2009 Mr. Boyden informed appellant that there had been complaints from coworkers regarding his behavior. Appellant was instructed to contact either Mr. Boyden or Mr. Younes if he required something from the language unit area. Mr. Boyden noted that appellant had been spending extensive time away from his desk, which was his primary work area. He provided appellant with a book in which he was to account for his breaks, lunch, time away from his desk and a detailed account of work performed.

In July 9, 2009 e-mail, an Ada M. Holcomb inquired if appellant was still interested in a TDY to Riyadh either that October or March 2010 based on his September 2008 application.

In a February 16, 2010 e-mail, Mr. Boyden responded to appellant’s request to be considered for a HIG/MIT program. He had reservations about recommending appellant for this program based on his request of sick leave on 21 different occasions since January 2009. Mr. Boyden did not believe that appellant was ready for this type of assignment despite no longer being on a PIP.

In a March 19, 2010 e-mail, Mr. Boyden instructed appellant to leave his cell phone at his desk as he found appellant’s personal telephone usage to be excessive and he was spending too much time away from his desk.

On April 5, 2010 Ramsay F. Dass, a treating physician, attributed appellant’s anxiety and nervousness to unfavorable working conditions with his supervisors.

In a July 26, 2010 e-mail, Mr. Boyden instructed appellant to immediately turn in a Chaldean assignment to “Rima” even if it was not completed. He also instructed appellant to return to working on chats.

Appellant responded to Mr. Boyden’s July 26, 2010 e-mail instruction by noting that he had finished the transcription of a microphonic recording. The transcription needed to be reviewed before being considered a final product.

In an August 2, 2010 performance feedback memorandum, Mr. Boyden reported that appellant performed marginally well in organizing, coordinating and planning. Appellant struggled with acquiring, applying and sharing job knowledge despite being in the onboard

Language Specialist job for three years and working multiple years as a contract linguist. Mr. Boyden related that appellant continued to require instruction on using the software and collection systems. He related that appellant struggled with relating to his coworkers. Appellant was found to be performing satisfactory in the areas of maintaining high professional standards, researching and analyzing. With respect to the remaining performance elements, he was found to be a capable communicator and finished his products at or near the time of his coworkers. However, Mr. Boyden related that appellant's work contained spelling, formatting and grammatical errors and the quality of his work was at a lower level than that of his peers.

In disability notes dated October 4 and November 12, 2010, Dr. Mufid Al-Najjar, a treating Board-certified psychiatrist, noted that appellant was being treated for major depression and was disabled from working.

In an October 10, 2010 statement, appellant alleged that over the past year and half he had been subjected to acts of humiliation, reprisal and retaliation. He contended that the reprisal was due to his testimony on behalf of a fired employee and his filing of an Equal Employment Opportunity (EEO) complaint. Appellant also alleged discrimination based on national origin. He alleged that on October 6, 2008 Mr. Younes made serious allegations against him, which were discredited by Ms. Bronson. Appellant had been instructed not to apply for TDY in January and February 2009 by Mr. Younes. He alleged that Mr. Boyden humiliated him in front of the office in 2009 by making inappropriate national origin remarks and referring to him as "You Iraqi." On March 25, 2009 appellant alleged that Mr. Younes threatened him not to provide any beneficial testimony for a fired employee. He alleged that Mr. Boyden unfairly reprimanded him following a diagnosis of severe bronchitis in April 2009 and insulted him by accusing him in an e-mail of sleeping on the job. Appellant alleged that Mr. Boyden refused to speak with him regarding his inability to call in while sleeping in the emergency room. He was referred to EAP on April 9, 2009 in retaliation for testifying on behalf of a fired employee.

Appellant alleged that Mr. Younes and Mr. Boyden came to his cubicle and stared at him during the period April 11 to 29, 2009. On May 20, 2009 he alleged that Mr. Boyden ordered him to work outside the linguist area and instructed him not to talk with anyone. Appellant contended that Mr. Boyden wrongly turned down appellant's requests for TDY. He alleged that a picture of a monkey was posted with his name on a linguist's desk in May and June 2009 and that it was stated that he looked like a monkey. Appellant contended that Mr. Boyden wrongly placed him on a PIP on June 23, 2009 based on false information and that the work restrictions continued even after successfully completing the PIP. He alleged that Mr. Boyden wrongly accused him of stealing items and damaging them in a June 23, 2009 e-mail.

Appellant alleged that he was unable to perform the duties of his job based on the restrictions placed by Mr. Boyden, who humiliated and harassed him in front of his coworkers. On July 29, 2010 Mr. Boyden took a log book and slammed it down hard on his desk after looking through it, which scared appellant. On July 9, 2009 appellant alleged that Mr. Boyden offensively denied his request for TDY. Mr. Boyden also accused appellant of excessively using the telephone. On July 13, 2009 Mr. Younes and Mr. Boyden offered appellant's coworkers the opportunity to work overtime. Appellant alleged that Mr. Boyden came into his work area on August 17 and September 2, 2009 and grabbed his telephone log book and note books. On

September 23, 2009 Mr. Boyden returned work products to appellant as unsatisfactory and he refused appellant's request to dispute the rating. Appellant alleged that Mr. Boyden sent him home on October 16, 2009 when the computers were down at the office and he was working on something else and he was given a negative performance review. He stated that Mr. Boyden accused him of creating a hostile work environment and being a threat to coworkers on November 30, 2009. On December 1, 2009 appellant alleged that Mr. Boyden attempted to terminate his employment following the completion of an EEO investigation. He alleged that Mr. Boyden violated Health Insurance Portability and Accountability Act rules on February 4, 2010 when he attempted to obtain personal information from appellant's physician. Appellant stated that his second EEO complaint was accepted for investigation on April 20, 2010. He alleged that he was denied permission to go on TDYs in May 2010.

Appellant alleged that he was assigned to translate a 67-minute recording involving speakers using three different dialects of Chaldean. He completed the job several days before it was due and asked other linguists for assistance with respect to unintelligibles in translation. Appellant stated that asking other linguists for help with unintelligibles was part of making sure the job was done properly. He alleged that on July 13, 2010 none of the linguists he asked for assistance were willing to help him. Appellant was informed by a Maisa Brikho that Mr. Boyden instructed her not to help him. On July 26, 2010 Mr. Boyden e-mailed appellant instructions to turn in his Chaldean assignment, which was due on August 2, 2010, even if it was not completed. He refused appellant's request for an additional day to review the assignment. On August 2, 2010 appellant alleged that Mr. Boyden approached him with no greeting while he was working and rudely asked why he had used another individual's telephone. He was threatened with being written up for this incident and Mr. Boyden refused to listen to his explanation that he had not used another telephone. Mr. Boyden allegedly threw an envelope on appellant's desk, which contained a memorandum about his performance which was dated August 2, 2010. Appellant alleged that his performance evaluation was late as it was supposed to have been completed by April 2, 2010. He alleged that on August 16, 2010 he received an e-mail to take the Foreign Language Incentive Program (FLIP) test, to which Mr. Boyden found he was not eligible. Appellant contended that taking the FLIP was standard procedure for linguist who had been employed for over a year. He alleged that he was clearly qualified for the FLIP based on the test result he had received from the Language Testing and Assessment Unit. Lastly, appellant disagreed with the performance appraisal by Mr. Boyden.

On October 11, 2010 Dr. Dass first saw appellant on June 25, 2009 for psychiatric and medical problems resulting from unfavorable work conditions. Diagnoses included major depression, anxiety and nervousness. On October 11, 2010 Dr. Dass diagnosed major depressive disorder, high blood pressure, joint pain, hyperlipidemia and diabetes. He opined that appellant was totally disabled due to the diagnosed conditions.

On November 19, 2010 Mr. Boyden denied appellant's allegations that he was subjected to harassment, reprisal, humiliation or a hostile work environment.

On December 21, 2010 OWCP received an October 25, 2010 report from Karen J. Weiner, Ph.D., a licensed clinical psychologist, who provided a history of appellant's employment and medical history and diagnosed major depressive disorder. Dr. Weiner recommended that appellant not work with or ever be in contact with Mr. Boyden.

On March 22, 2011 Dr. Al-Najjar reported that he continued to see appellant for his major depressive disorder and that appellant remained disabled from working.

By decision dated May 24, 2011, OWCP denied appellant's claim on the grounds that he failed to establish a compensable factor of employment.

On June 2, 2011 appellant's counsel requested a telephonic hearing before an OWCP hearing representative. In a January 12, 2011 disability note, Dr. Al-Najjar reiterated that appellant was totally disabled due to his major depressive disorder. On May 13, 2011 Dr. K.C. Joseph, a treating physician, diagnosed major depression and recommended extending appellant's medical leave.

In a May 15, 2011 report, Dr. Dass related that appellant had been under his care since June 4, 2009. Appellant was seen on June 25, 2009 for medical, psychological and psychiatric complaints, which he attributed to hostile and unfavorable work changes. Dr. Dass diagnosed anxiety, depression, high blood pressure and cholesterol and diabetes. He stated that he advised appellant to seek psychiatric and psychological care.

Dr. Dass provided work restrictions and diagnoses of anxiety and depression in form reports for the period October 11, 2010 to May 26, 2011.

On October 3, 2011 appellant submitted medical and factual evidence, which is set forth below.

Appellant submitted a July 24, 2008 performance evaluation, in which he was rated successful. Hector Guerra, appellant's former supervisor, was the rating official. The rating included excellence for maintaining high professional standards and for achieving results.

In an undated statement, a Mark Alakka noted that he had known appellant for many years and was familiar with his contribution to the Chaldean community. He alleged that Mr. Boyden threatened appellant even though he was not under Mr. Boyden's supervision. Mr. Alakka also alleged that he was retaliated against by Mr. Boyden when he "made it clear that [he] felt [appellant] was being targeted and mistreated." He stated that he heard Mr. Boyden make a comment about a gang gathering to a group he was in with appellant.

In a May 19, 2011 e-mail, appellant requested that an investigation be done on Mr. Boyden accusing appellant of sleeping the day before. He also alleged that Mr. Boyden moved his work location without a good reason.

In a May 20, 2009 memorandum, Mr. Boyden informed appellant of a modification to his work responsibilities. Appellant was instructed not to perform any work assignments outside of the office or attend off-site interviews without prior written approval from Mr. Boyden.

In a May 29, 2009 e-mail, Ms. Holcomb asked appellant if he was still interested in an assignment in Riyadh based on his September 2008 application to be assigned for a canvass to Riyadh. Mr. Younes responded to Ms. Holcomb's May 29, 2009 e-mail asking if she needed an answer that day as Mr. Boyden was appellant's supervisor and was off work until June 1, 2009.

In a July 10, 2009 e-mail, a Walter H. Reynolds responded to Mr. Boyden's e-mail summarizing his counseling of appellant including the accuracy of his call log. He inquired how Mr. Boyden got the wrong extension.

In a July 29, 2010 statement, Najah Akkam, a language specialist and coworker, related that Mr. Boyden and Mr. Younes manage the linguist group together. He alleged that individuals of Lebanese origin were given preferential treatment. Mr. Akkam related that appellant was the only individual he had known who was refused a recommendation for a TDY. Lastly, he stated that he had not observed appellant making excessive telephone calls or use any obscenities.

In a September 11, 2010 statement, Afram Sawa, a language specialist and coworker, stated that he had seen Mr. Boyden throw balls and bouncing balls in appellant's vicinity to other linguists. He stated that he has seen many people use their cell phones without repercussions even though appellant was criticized by Mr. Boyden for making too many calls on his cell phone. Mr. Sawa also alleged that he has seen other people sleeping on the job, but only appellant suffered repercussions for this by Mr. Boyden. He stated that appellant has been mistreated by both Mr. Boyden and Mr. Younes. Mr. Sawa also alleged that Mr. Younes favors people of Lebanese descent and did not like appellant.

On January 5, 2011 Nafi Rayes, a contract linguist and coworker, provided a declaration supporting appellant. He stated that Mr. Younes requested that he ask appellant about his case and to tell appellant he was going to lose. Next, Mr. Rayes stated that he was aware that Mr. Boyden and Mr. Younes accused appellant of dressing shabbily. However, he believed that appellant was the best dressed employee in the office. Mr. Rayes stated that he has seen Mr. Boyden go to appellant's office where he bounces a ball and laughs loudly with other individuals. He related that he has seen other linguists sleeping on the job. Mr. Rayes related that appellant had been reassigned to a small work area and that he and other who came to work after appellant had a better work area. He alleged that Mr. Boyden called people of Iraqi origin "terrorists" and referred to appellant as a "crazy guy." Mr. Rayes alleged that while appellant was told to improve his work another linguist had his work edited by his relatives.

On October 5, 2011 OWCP received additional evidence including quality control feedback forms noting a satisfactory rating. Under comments, the December 9, 2009 form noted linguists would review expression errors. An October 2009 form noted that a portion of the work product would be reassigned and the linguist acknowledged that some of it could have been done better. Also submitted were e-mails commending appellant on a good job and with peer review of work.

An oral hearing was held before an OWCP hearing representative on September 28, 2011. Appellant reiterated that Mr. Boyden threatened him over his testimony for a fired employee, made inappropriate comments about his national origin, denied requests for TDYs in 2009 and 2010, placed him on a PIP twice, disciplined him for his work and sleeping at work, referred him to the EAP and behaved inappropriately towards appellant. The inappropriate behavior included staring at appellant, being rude to him, yelling at him, isolating him in a cubicle, saying he looked like a picture of a monkey, ordering him to keep daily work logs, requiring him to ask permission to work, had people spy on him, threatened to fire him, denied him from working overtime, accused him of creating a hostile work environment, not

working well with his coworkers, requiring medical evidence for his leave requests, changed his assignments daily, refused to let him ask for help from coworkers and giving untrue information in his performance evaluation. Appellant testified that Mr. Boyden denied his request for him to be certified in the German language. He related that a pay raise was given with a language certification. Mr. Boyden's refusal to grant appellant's ability to be certified in the German language adversary impacted appellant's pay. Appellant noted that his certification in the Arabic language also affected his pay rate. He testified that he applied to be a supervisor, was recommended by the bureau, but did not get the position. The supervisory position appellant had applied for was given to Mr. Boyden. Appellant described the work he performed under his prior supervisor, Mr. Guerra. He testified that, after Mr. Boyden became his supervisor, his work performance was criticized. Appellant also alleged that Mr. Boyden referred to a meeting of appellant and three Iraqi friends as an Iraqi gang gathering. He alleged that Mr. Boyden made comments about his attire because he did not like the way appellant dressed. Appellant also testified regarding the changes Mr. Boyden made to the work environment and his work duties. He also alleged that Mr. Boyden threw paper balls over his head and bounced balls. Appellant alleged that his location by the copy machine was noisy due to the chatting that went on and noise made by the copy machine. He also alleged that he was instructed not to leave his cubicle without the permission of either Mr. Boyden or Mr. Younes and that he could not get any assistance from the other translators. Appellant stated that it took longer for him to perform his work due to his having to keep a log book. He also testified that he could not take any work home because of security clearance issues. Appellant alleged that when he applied for promotion to a GS-13 Mr. Boyden told him not to waste his time.

By decision dated November 30, 2011, an OWCP hearing representative affirmed the May 24, 2011 denial of appellant's claim.<sup>2</sup>

### **LEGAL PRECEDENT**

To establish a claim that he sustained an emotional condition in the performance of duty, an employee must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.<sup>3</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.<sup>4</sup> There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the

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<sup>2</sup> The Board notes that, following the November 30, 2011 hearing representative's decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. See 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

<sup>3</sup> *V.W.*, 58 ECAB 428 (2007); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>4</sup> *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).



concept or coverage of workers' compensation.<sup>5</sup> Where the disability results from an employee's emotional reaction to his 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 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> 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>

The Board has held that the manner in which a supervisor exercises his or her discretion falls outside the coverage of FECA. This principal recognizes that a supervisor or manager must be allowed to perform their duties and that employee's will, at times, disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.<sup>11</sup> Although the handling of leave requests and attendance matters are generally related to employment, they are administrative matters and not a duty of the employee.<sup>12</sup>

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.<sup>13</sup> Mere perceptions of harassment or discrimination are not compensable under FECA.<sup>14</sup> A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.<sup>15</sup> Unsubstantiated allegations of harassment or discrimination are not

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<sup>5</sup> *A.K.*, 58 ECAB 119 (2006); *David Apgar*, 57 ECAB 137 (2005).

<sup>6</sup> 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>7</sup> *J.F.*, 59 ECAB 331 (2008); *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).

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

<sup>11</sup> *S.M.*, Docket No. 09-2290 (issued July 12, 2010); *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

<sup>12</sup> *C.T.*, Docket No. 08-2160 (issued May 7, 2009); *Jeral R. Gray*, 57 ECAB 611 (2006).

<sup>13</sup> *K.W.*, 59 ECAB 271 (2007); *Robert Breeden*, *supra* note 4.

<sup>14</sup> *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>15</sup> *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, *supra* note 4.

determinative of whether such harassment or discrimination occurred.<sup>16</sup> A claimant must establish a factual basis for his or her allegations of harassment or discrimination with probative and reliable evidence.<sup>17</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>18</sup> If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.<sup>19</sup> 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>20</sup>

### ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. OWCP denied his emotional condition claim on the grounds that he did not establish any compensable work factors. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.

As noted above, a reaction to assigned work duties is a compensable work factor. To the extent that appellant was reacting to the performance of his work duties, this is a compensable work factor. He alleged that having to ask permission to get reference material and noise from the copy machine impacted his ability to get his work done. However, appellant provided no corroborative evidence that permission was required for reference material or the noise level of his work area. Thus, he has not established a compensable factor under *Cutler*.

Appellant made several allegations related to administrative and personnel actions. In *Thomas D. McEuen*,<sup>21</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

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<sup>16</sup> *G.S.*, Docket No. 09-764 (issued December 18, 2009); *Ronald K. Jablanski*, 56 ECAB 616 (2005); *Penelope C. Owens*, 54 ECAB 684 (2003).

<sup>17</sup> *Robert Breeden*; *supra* note 4; *Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>18</sup> *D.L.*, 58 ECAB 217 (2006); *Jeral R. Gray*, *supra* note 12.

<sup>19</sup> *K.W.*, 59 ECAB 271 (2007); *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

<sup>20</sup> *Robert Breeden*, *supra* note 4.

<sup>21</sup> *Supra* note 8.

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>22</sup>

Appellant's contentions regarding poor performance appraisals,<sup>23</sup> relocation of his office,<sup>24</sup> counseling sessions, placement on a PIP, termination of employment,<sup>25</sup> monitoring of work,<sup>26</sup> assignment of work<sup>27</sup> and handling of leave and TDY issues,<sup>28</sup> are administrative matters and not compensable absent a showing of error or abuse on the part of the employing establishment. He contended that Mr. Boyden wrongly denied his request for TDY, reassigned his work, relocated his workstation and did not allow him to take work home. Appellant also argued that Mr. Boyden falsified his performance evaluations and did not allow him to comment on two quality control ratings. He also argued that Mr. Boyden improperly placed him on a PIP and required him to keep a log book. Appellant contended that Mr. Boyden erroneously required him to submit medical evidence to support his leave requests. The Board finds that appellant did not submit any evidence establishing that the employing establishment erred or acted abusively in rating his performance, relocating his office, taking disciplinary actions against him, monitoring his work, assigning his work and handling of his leave and TDY issues. The record does not contain a final decision finding that the employing establishment committed error or abuse in giving appellant poor performance ratings, placing appellant on a PIP, referring him to EAP and handling his leave and TDY reimbursement issues. Thus, appellant has not established a compensable factor with respect to these allegations.

Appellant contended that he was harassed, subjected to retaliation and discriminated against by Mr. Boyden. Actions of a claimant's supervisor which the claimant characterizes as harassment may constitute a compensable factor of employment. However, for harassment to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.<sup>29</sup> An employee's charges that he was harassed or discriminated against, is not determinative of whether or not harassment or discrimination occurred.<sup>30</sup> To establish entitlement to benefits, a claimant must establish a factual basis for the

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<sup>22</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991). *Thomas D. McEuen*, *supra* note 8.

<sup>23</sup> *David C. Lindsey, Jr.*, *supra* note 19.

<sup>24</sup> *Barbara J. Nicholson*, 45 ECAB 803 (1994).

<sup>25</sup> *Robert Breeden*, *supra* note 4.

<sup>26</sup> *Lori A. Facey*, 55 ECAB 217, 224 (2004).

<sup>27</sup> *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

<sup>28</sup> *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997).

<sup>29</sup> *J.C.*, 58 ECAB 594 (2007); *Robert G. Burns*, 57 ECAB 657 (2006); *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

<sup>30</sup> See *Ronald K. Jablanski*, *supra* note 16; *William P. George*, 43 ECAB 1159 (1992).

claim by supporting his or her allegations with probative and reliable evidence.<sup>31</sup> Appellant contended that Mr. Boyden retaliated against him for testifying for an employee who had been fired, discriminated against because of his national origin as an Iraqi and harassed by Mr. Boyden. He submitted witness statements from Mr. Sawa, Mr. Rayes, Mr. Akkam and Mr. Alakka in support of his claim. All the statements from these individuals contend that Mr. Boyden harassed and discriminated against appellant. However, none of the statements contain specific details supporting appellant's allegations of harassment and discrimination, Mr. Akkam stated that appellant was the only individual he knew who had been refused a recommendation for TDY. He also stated that appellant did not make excessive telephone calls or use foul language. Mr. Sawa related seeing Mr. Boyden throw balls and bounce balls in appellant's work area, but does not explain how this constituted harassment. He related seeing other people sleeping, but that only appellant suffered repercussions for sleeping at his desk. Mr. Sawa generally alleged that appellant had been harassed by Mr. Boyden and Mr. Sawa, but provided no specific instances of harassment. Similarly, Mr. Rayes' report is also general and without specific instances of harassment. He related that appellant had been accused of being a poor dresser by Mr. Boyden and Mr. Younes when he believed that appellant was the best dressed employee.

Mr. Rayes also saw Mr. Boyden bouncing balls in appellant's work area. He stated hearing Mr. Boyden call people of Iraqi origin "terrorists," but does not indicate whether this comment was specifically directed at appellant or that he was present when he made the comment. Mr. Alakka stated that Mr. Boyden mistreated and targeted appellant, but provided no dates as to when this occurred or any specifics. He also stated hearing Mr. Boyden refer to a gang when he was in a group with appellant. None of the witness statements provide specific details such as dates and what occurred. The Board finds that appellant has failed to establish that he was subjected to retaliation, harassed and discriminated against by the employing establishment.

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>32</sup> He 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.

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<sup>31</sup> See *G.S.*, Docket No. 09-764 (issued December 18, 2009); *C.S.*, 58 ECAB 137 (2006); *Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>32</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).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 30, 2011 is affirmed.

Issued: October 19, 2012  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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