



stress and anxiety caused by an unbearable work situation. She stated that there was no support system, resources were limited and goals were unattainable which made her anxious and affected her ability to concentrate.

In a narrative statement dated January 27, 2011, appellant contended that in November 2010, the employing establishment became understaffed and overburdened as a result of downsizing. This involved the loss of 14 letter carrier positions and 12 delivery routes. Problems arose regarding overtime, penalty overtime usage and attendance within the letter carrier craft. Appellant had to call other offices within her district to find carriers to cover the vacancies. Management pressured her to work with the given resources. Appellant's manager gave her no guidance. Appellant was chastised and interrogated for making decisions on her own. She dealt with pressure from letter carriers and the union, which vigorously objected to long work hours, intense scrutiny and discipline for lack of performance. The telephone never stopped ringing as the area manager questioned every move or an irate customer complained about late, inaccurate or non-delivery of mail by a new letter carrier. Although appellant did what she could to help resolve their issues, most of the customers became belligerent, condescending and verbally abusive. She contended that this went on from November 2010 to January 5, 2011. Appellant worked 8 to 12 hours a day, five to six days a week. She had trouble sleeping and was very irritable which affected her ability to concentrate. It took appellant much longer to finish tasks and she was jittery all the time. On January 5, 2011 she was interrogated by her manager about every decision she made the previous day regarding overtime. They disagreed about how the office was being managed. Appellant became very anxious, jittery and on the verge of tears. She felt nauseous and told her manager that she was going home. When appellant got to her car she hyperventilated and became dizzy. She sought medical treatment that day.

Medical records dated January 5 through April 8, 2011 addressed appellant's stress, anxiety and depression and disability for work.

By letter dated March 11, 2011, the employing establishment controverted the claim, contending that appellant did not establish that she sustained an emotional condition while in the performance of duty. Appellant's allegations were vague and failed to specifically identify the cause of her stress and explain how it was work related. The medical documentation confirmed that she had stress, but failed to specifically identify the source of her condition. The employing establishment contended that appellant's self-generated reaction to her regular-work duties did not constitute a compensable injury.

By letter dated April 15, 2011, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she submit factual and medical evidence. OWCP also requested that the employing establishment submit any medical evidence regarding treatment appellant received at its medical facility.

Medical reports dated April 19, May 25 and July 20, 2011 addressed appellant's emotional condition, the causal relationship between her condition and employment and her work capacity.

On April 19, 2011 appellant stated that, prior to January 5, 2011, she took medication for depression. In a March 5, 2011 e-mail, she noted that she was reassigned from her job at the employing establishment on the previous day. Appellant was advised by Kathy Barsotti, an employee, that her work schedule would be from 6:00 a.m. to 2:30 p.m., Monday, Tuesday, Friday and Saturday and 10:00 a.m. to 6:30 p.m., Wednesday. Her nonscheduled workdays were Sunday and Thursday. Appellant did not believe that the new position was comparable to her most recent position or a prior assignment at the Somerville Post Office. Her nonscheduled days interfered with a second job. Appellant stated that her new position was in an unfamiliar environment that would be detrimental to her work-related anxiety and stress conditions. She believed that she was being punished for filing an Equal Employment Opportunity (EEO) complaint and stress claim.

In an April 17, 2011 letter, Deborah Keefe, an employee, stated that on January 5, 2011 she saw appellant crying and leaving the employing establishment. In an April 19, 2011 letter, Matthew Imbergamo, an employee, stated that on January 5, 2011 he also saw appellant in tears as she left the employing establishment. He witnessed an argument between her and Michael O. King, a customer services manager. An April 19, 2011 narrative statement, signed by several employees, related that they witnessed, experienced and were subjected to stressful conditions at the employing establishment from November 10, 2010 to January 5, 2011. They also witnessed or were subjected to forced overtime. They observed carriers from other stations cover work that could not be covered by employees from their station.

Articles submitted to the record discussed the employing establishment's budget cuts which included the elimination of carrier routes and resulted in the delay of mail delivery.

Appellant filed an EEO complaint against the employing establishment alleging harassment and discrimination based on sex and age regarding the January 5, 2011 incident. In an April 5, 2011 letter, the employing establishment advised her that it had finished processing her discrimination claim. It noted appellant's contentions of being subjected to a hostile work environment from November 2010 to January 5, 2011 which resulted in a constructive suspension, no pay for sick leave used from January 6 to 12, 2011 and a delay in the processing of her Form CA-2 which she submitted to her supervisor on February 3, 2011, but it was not submitted to the employing establishment's health and resource management office until March 11, 2011. The employing establishment concluded that there was no resolution to her counseling request. Appellant was advised about the options available to pursue her claim.

In an April 19, 2011 narrative statement, Michael Cotrone, a supervisor, noted that on January 5, 2011 he spoke to appellant as she was leaving the building. Appellant was obviously troubled and emotional. She was crying and told Mr. Cotrone that she would speak to him later.

By letter dated May 15, 2011, OWCP requested that the employing establishment respond further to appellant's allegations.

In a May 26, 2011 letter, a union president, whose signature is illegible, stated that following a meeting with Postmaster Jim Holland, appellant's absence without leave (AWOL) status during the week of January 6, 2011 while she was on medical leave was changed to paid

status. Her request for reassignment to an administrative position was denied on the grounds that a reduction-in-force (RIF) process was taking place in administrative offices.

On July 18, 2011 Mr. King acknowledged that 12 carrier routes and 3 mail handler positions were eliminated due to the implementation of a new mail sortation system. He contended that appellant's statement that some of these routes were overburdened was incorrect. At the time appellant left work, a majority of concerns were related to letter carriers' performance and not overburdened routes. Three routes were overburdened and the necessary assistance was provided to complete daily assignments. There were no aspects of appellant's job that were any more stressful than his other supervisory jobs. She simply refused to work with management regarding this issue. Appellant worked far less hours than others and did not want certain responsibilities. She left work for other supervisors. Appellant's behavior was instrumental in increasing the stress for management staff. Prior to leaving work, there were no accommodations to reduce her workload as she had not identified any stress-related illness. There were no staff shortages in the management staff. The only detrimental work factors involved addressing employees' performance. Appellant avoided this work and generally left it for other supervisors and Mr. King despite several attempts to get her to do otherwise. She was competent to perform her required duties, which included addressing the performance of letter carriers. No additional duties were added. Mr. King stated that on the morning appellant left work, he had a discussion with her about authorizing overtime in the Time and Attendance Collection System (TACS). She had authorized overtime in excess of the authorized overtime for letter carriers. When Mr. King questioned appellant about her actions, she responded that she would leave it for him. After he told that it was her job, appellant stated that she was going home and left.

In an August 8, 2011 decision, OWCP denied appellant's claim, finding that the evidence did not establish that the claimed incidents occurred as alleged.

On September 5, 2011 appellant requested an oral hearing before an OWCP hearing representative.

In statements dated September 5, 2011, appellant contended that accompanying payroll records established that the carrier craft and not the management staff was understaffed from January 1 to August 27, 2011. Nine additional transitional employees were added to the Brookline Post Office three weeks after she left. At least six of these employees were retained. The shortage did not allow assistance to be provided to overburdened routes. Appellant contended that accompanying overtime reports for the carrier craft showed the need for available carriers to work long hours to make up for the shortages and the number of hours worked by each supervisor during this time period. She stated that her overtime work was consistent with the hours worked by other supervisors. Appellant related that, if her work performance was inferior or she refused to perform her job, then she would have been disciplined by Mr. King. She contended that his directive on January 5, 2011 to perform her job was false, intimidating and an abuse of his position.

Medical reports dated August 15, 16 and 17, 2011 addressed appellant's work-related stress and ability to return to work.

In a February 22, 2012 decision, an OWCP hearing representative set aside the August 8, 2011 decision. The case was remanded to OWCP to obtain evidence from the employing establishment regarding appellant's allegations of overwork and explaining how she did not perform her work duties.

By letter dated March 5, 2012, OWCP requested that the employing establishment review additional evidence and respond to the issues raised in the hearing representative's February 22, 2012 decision.

In a March 21, 2012 letter, Mr. King stated that there were problems with mail delivery which required the use of overtime and assistance from three or four transitional employees from other offices. These problems were not the result of overburdened routes as claimed by appellant; rather, they resulted from performance issues of employees at the employing establishment who resisted changes in their routes and work methods. It was appellant's responsibility to address these performance issues. Mr. King further stated that the employing establishment had a large operation that required staffing changes to replace individuals who were not working due to long-term absences. The assignment of replacement employees was a standard operating procedure that was performed as necessary. Mr. King stated that appellant's claim of working approximately 7 to 10 additional hours a week was correct. During this time, appellant distributed necessary overtime work to employees who volunteered for the assignment. She gave the paperwork to another supervisor to distribute overtime work to employees who were required or forced to work overtime. Appellant should have also addressed her employees' use of unauthorized overtime and taken corrective action if necessary, but other supervisors had to address these performance issues. Mr. King related that he was questioned by his manager, William Downes, about why appellant had authorized two hours of overtime work for an employee, on January 4, 2011, to perform a one-hour assignment. He questioned her about this situation and she responded that he should perform the duty. Mr. King noted that it was appellant's responsibility to assign overtime.

The employing establishment submitted several letters of warning dated November 30 to December 31, 2010 due to appellant's failure to perform her duties in a satisfactory manner and to follow instructions on intermittent dates from November 20 to December 21, 2010. It also submitted letters dated December 10, 2010 to January 13, 2011 which addressed her suspension for 7 or 14 days due to her failure to perform her duties in a satisfactory manner on intermittent dates from December 9, 2010 to January 11, 2011. In a January 20, 2011 memorandum, the employing establishment put appellant on emergency placement in off-duty status without pay, effective January 20, 2011 until otherwise advised. It determined that on January 18, 2011 she may have been injurious to herself or others while on her route. On February 1, 2011 appellant was removed for failure to perform her duties in a satisfactory manner on January 18, 2011. On that date, she flagged down Officer Heavey and informed him that she was being followed and harassed by two unknown men. Officer Heavey confronted the two men who were identified as Joe Kozlowsky, a supervisor, and Joe Sokolski, a manager. At a pre-disciplinary interview held on January 20, 2011, appellant acknowledged that her actions were inappropriate.

In an August 20, 2012 decision, OWCP denied appellant's claim, finding that she did not establish any compensable employment factors.

By letter dated September 17, 2012, appellant requested reconsideration. She contended that accompanying carrier schedules from November 15 to December 18, 2010 at the employing establishment and TACS reports established that the carrier craft was understaffed and that employees were borrowed from other offices on a daily basis. Appellant contended that Mr. King never assigned her the task of disciplining carriers as she was too busy handling schedules and overtime work. She noted that there was a very short window of opportunity in the morning to interact with carriers as they were only in the office for a short time. Appellant contended that Mr. King did not submit any evidence to support his contention. She noted that he was an advocate of discipline and questioned why he did not address her failure to discipline carriers through the proper procedure.

In a November 16, 2012 decision, OWCP denied modification of the August 20, 2012 decision, finding that appellant did not sustain an emotional condition related to factors of employment within the performance of duty.

### **LEGAL PRECEDENT**

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by factors of his or her federal employment.<sup>2</sup> To establish that he or she sustained an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her 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. 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>4</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>5</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

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<sup>2</sup>*Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>3</sup>*See Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>4</sup>5 U.S.C. §§ 8101-8193; *Penelope C. Owens*, 54 ECAB 684 (2003); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup>*Gregorio E. Conde*, 52 ECAB 410 (2001).

assigned work duties of the employee and are not covered under FECA<sup>6</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>7</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>8</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>9</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>10</sup>

### ANALYSIS

Appellant alleged that she sustained an emotional condition due to several incidents at the employing establishment. Primarily, she alleged overwork as the employing establishment was understaffed from November 2010 to January 5, 2011. As noted, when disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.<sup>11</sup> Appellant stated that downsizing resulted in the loss of 14 letter carrier positions and 12 delivery routes. She further stated that carriers from other post offices had to cover the work caused by the vacancies. Appellant related that her manager did not provide any guidance for handling this situation. She stated that on January 5, 2011 she was harassed and discriminated against by Mr. King who interrogated her about her decision to authorize overtime for an employee on the previous day. Appellant filed an EEO complaint regarding his actions. She related that customers became belligerent, condescending and verbally abusive towards her regarding poor mail delivery service. Appellant worked 8 to 12 hours a day, 5 to 6 days a week. Following the January 5, 2011 incident, she left work and went home. Appellant filed a grievance alleging that the employing establishment erred in failing to pay her and in placing her on AWOL status while she was on medical leave during the week of January 6, 2011. Her initial request to be reassigned to an administrative position was denied by

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<sup>6</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>7</sup>See *William H. Fortner*, 49 ECAB 324 (1998).

<sup>8</sup>*Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>9</sup>*Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>10</sup>*Id.*

<sup>11</sup>See *supra* note 4.

the employing establishment. Appellant stated that her subsequent reassignment to a new position was punishment for filing an EEO complaint as it was not comparable to her prior position and it interfered with her second job work schedule, was located in an unfamiliar environment and would be detrimental to her emotional conditions. She stated that there was a delay in the processing of her Form CA-2.

The Board has held that overwork, when substantiated by sufficient factual information to corroborate appellant's account of events, may be a compensable factor of employment.<sup>12</sup> The record; however, does not substantiate appellant's contentions that she was overworked or worked in an understaffed environment. The employees, who signed the April 19, 2011 statement, generally related that they witnessed, experienced and were subjected to stressful work conditions from November 10, 2010 to January 5, 2011 as they were forced to work overtime and carriers from other stations performed work that they could not complete. None of the employees identified specific instances of appellant being overworked. Mr. King stated that although the new mail sortation system resulted in the elimination of 12 carrier routes and 3 mail handler positions, assistance was provided to the 3 overburdened routes to complete daily assignments. He denied appellant's allegation that problems with mail delivery required overtime work due to overburdened routes. Mr. King stated that assistance from three or four transitional employees from other post offices resulted from employee performance issues at the employing establishment. He noted that staffing changes were required to replace employees who long-term absences from work. Mr. King stated that appellant refused to address these issues, as well as, issues related to employees' use of unauthorized overtime and to take disciplinary action against them. He related that she left these duties for other supervisors to perform. Mr. King noted that there was no staff shortage in the management staff. He related that appellant's job was no more stressful than his and the other supervisors' jobs. Mr. King noted that, although she worked 7 to 10 additional hours a week, she worked far fewer than other supervisors. He stated that when he questioned appellant on January 5, 2011 about her prior authorization of overtime for a carrier, she responded by telling him to assume the authorization task and left work. Mr. King related that this task was her responsibility. The Board finds that the evidence is insufficient to establish overwork allegations as Mr. King explained the coverage of the staffing shortage and advised that appellant had fewer work hours and responsibilities than other supervisors. Thus, appellant has not established a compensable employment factor.

Appellant contended that, if her work performance was poor, then she would have been disciplined by Mr. King. The record establishes that she did in fact receive letters of warning and suspensions dated November 30, 2010 through January 11, 2011 due to her failure to follow instructions and to perform her duties in a satisfactory manner. On February 1, 2011 appellant's employment was terminated due to her failure to perform her duties in a satisfactory manner on January 18, 2011 when she flagged down Office Heavey to complain about being harassed by her Mr. Kozlowsky, a supervisor, and Mr. Sokolski, a manager. The Board has characterized disciplinary actions as administrative matters of the employing establishment, which are only covered under FECA when a showing of error or abuse is made.<sup>13</sup> Appellant has not submitted

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<sup>12</sup>*Bobbie D. Daly*, 53 ECAB 691 (2002).

<sup>13</sup>*Jeral R. Gray*, 57 ECAB 611 (2006).



any probative evidence establishing error or abuse regarding these matters. She admitted during a January 20, 2011 predisciplinary interview that her actions on January 18, 2011 were inappropriate. The Board finds that appellant has not established a compensable employment factor.

Appellant's contentions regarding placement on AWOL status,<sup>14</sup> filing of a grievance for being charged AWOL,<sup>15</sup> denial of her request for reassignment and subsequent transfer<sup>16</sup> and processing of a compensation claim<sup>17</sup> are administrative matters. She did not establish error or abuse in the handling of these matters. The mere fact that personnel actions were later modified or rescinded does not, in and of itself, establish error or abuse.<sup>18</sup> While appellant's AWOL status was changed to paid status, the record does not contain a final decision finding that the employing establishment committed error or abuse in charging her AWOL. The employing establishment explained that her request for reassignment was denied because its administrative offices were undergoing a RIF. Appellant did not submit any evidence establishing that the employing establishment reassigned her to a new position as punishment for filing an EEO complaint. The Board finds that she has not established a compensable employment factor with regard to the above-noted administrative and personnel matters.

To the extent that incidents alleged as constituting harassment or discrimination by a supervisor are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors. 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>19</sup> An employee's charges that he or she was harassed or discriminated against, is not determinative of whether or not harassment or discrimination occurred.<sup>20</sup> To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>21</sup> The Board finds that the factual evidence fails to support appellant's claim for harassment and discrimination by Mr. King. Ms. Keefe, Mr. Imbergamo and Mr. Cotrone generally stated that they observed appellant crying on January 5, 2011 as she was leaving the employing establishment. Mr. Imbergamo also generally stated that he witnessed the argument between appellant and Mr. King. However, none of these individuals specifically stated why appellant was crying and leaving the employing establishment, and what Mr. King said to her. The Board finds, therefore

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<sup>14</sup>*T.G.*, 58 ECAB 189 (2006).

<sup>15</sup>*Michael A. Salvato*, 53 ECAB 666, 668 (2002).

<sup>16</sup>*Ernest J. Malagrida*, 51 ECAB 287 (2000).

<sup>17</sup>*D.P.*, Docket No. 10-1755 (issued March 24, 2011); *David C. Lindsey, Jr.*, 56 ECAB 268 (2005).

<sup>18</sup>*Dennis J. Balogh*, *supra* note 9.

<sup>19</sup>*Lorraine E. Schroeder*, 44 ECAB 323 (1992).

<sup>20</sup>*See William P. George*, 43 ECAB 1159 (1992).

<sup>21</sup>*See Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

that appellant has not met her burden of proof to establish harassment or discrimination by the employing establishment. Additionally, appellant filed an EEO complaint in connection with Mr. King's actions, which constitutes an administrative or personnel matter, but the record does not contain a final decision showing error or abuse on his part.<sup>22</sup> The Board finds that she did not establish a compensable employment factor with respect to this administrative or personnel matter.

Since appellant has not substantiated a compensable factor of employment as the cause of her emotional condition, the Board will not address the medical evidence.<sup>23</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 appellant has failed to establish that she sustained an emotional condition in the performance of duty.

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<sup>22</sup>*Michael A. Salvato, supra* note 15.

<sup>23</sup>*Karen K. Levene, 54 ECAB 671 (2003).*

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 16 and August 20, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 21, 2013  
Washington, DC

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

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

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