

stress and anxiety in the performance of duty. She stopped work that day. On the claim form Ilene Kravitz, appellant's supervisor, noted that appellant had a verbal confrontation with another employee due to nonstop noise from a running photocopier next to her cubicle. She noted that appellant experienced a traumatic injury resulting in severe headaches, stress and anxiety.

In an undated statement, appellant indicated that on September 27, 2012 she was sitting at her desk answering customer calls while a coworker was continuously using a copy machine next to her cubicle. It affected her ability to hear and respond to customer telephone calls. Appellant was disturbed by the noise and informed her supervisor who instructed the employee to use another photocopier. The coworker stopped using the photocopier, but came back a few minutes later and started running the machine again. Appellant asked the coworker how much longer she would run the photocopy machine. The coworker responded a "short time" and shrugged. Appellant inquired how long was a short time and the coworker responded "maybe about another 10 minutes." She felt bullied, harassed and intimidated by the coworker and became physically ill, nervous and shaky. Appellant stated that the nonstop noise of the machine gave her a headache. She noted that she could not stay in a hostile work environment and sought treatment from a physician and was diagnosed with high blood pressure.

On October 11, 2012 OWCP asked appellant and the employing establishment to provide additional evidence.

Appellant submitted an undated narrative statement and reiterated the events of September 27, 2012. She noted that her coworker stated that she was "using both copiers for a very big job" and it would take "a long while." The coworker stopped copying but returned 10 minutes later to continue use of the machine and stated, "This will be a short one." At this point the coworker demeanor had changed and she was hostile. Appellant was treated by her physician and was diagnosed with high blood pressure and stress-induced hypertension. She asserted that her coworker's actions were a violation of her supervisors request and created a hostile work environment. Appellant noted that she was subject to further harassment and retaliation for reporting her concerns to her supervisor.

Appellant submitted a prescription note from Dr. Mary Ann Curiba, a Board-certified internist, dated September 27, 2012. Dr. Curiba advised that appellant's blood pressure was high. In an October 9, 2012 attending physician's report, she diagnosed stress. Dr. Curiba noted a history that appellant had an altercation with another employee which upset her. Appellant also submitted notes from a nurse practitioner dated October 3 and 17, 2012. The nurse practitioner stated that appellant was treated and unable to return to work until further notice. On October 23, 2012 the nurse practitioner noted treating appellant on October 2, 2012 for stress-induced hypertension and that appellant should be excused from work until further notice.

Appellant was treated by Dr. Susan Simon, a Board-certified internist, on October 10, 2012. Dr. Simon noted that appellant had elevated blood pressure, was grieving over the death of her husband and experienced anxiety and stress in the workplace. She diagnosed hypertension and anxiety and noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. In a work capacity evaluation dated October 16, 2012, Dr. Simon noted that appellant was not able to work eight hours a day as she had anxiety and stress at work and was grieving over the recent death of her husband.

In a decision dated November 13, 2012, OWCP denied appellant's claim. It found that the claimed emotional condition did not occur in the performance of duty as appellant did not establish any compensable work factors.

On February 12, 2013 appellant requested reconsideration. In an undated statement, she indicated that the offending coworker had a history of bullying other employees and management. Prior to the September 27, 2012 incident, she had never been diagnosed with hypertension. She contended that the coworker's verbal statements and body language were meant to intimidate and harass her. Appellant returned to work but was fearful of retaliation by the coworker. She submitted a report from a nurse practitioner dated November 7, 2012, who treated her for stress-induced hypertension that was exacerbated by stress at work. The nurse practitioner noted that appellant was previously normotensive and could return to work on November 5, 2012.

In a decision dated April 30, 2013, OWCP denied modification of the November 13, 2012 decision.

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.²

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*,³ 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.⁴ 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.⁵ Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.⁶ Where the claimant

² *George H. Clark*, 56 ECAB 162 (2004).

³ 28 ECAB 125 (1976).

⁴ *See Robert W. Johns*, 51 ECAB 137 (1999).

⁵ *Supra* note 3.

⁶ *J.F.*, 59 ECAB 331 (2008).

alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.⁷ Personal perceptions alone are insufficient to establish an employment-related emotional condition.⁸ 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.⁹

ANALYSIS

Appellant alleged an emotional condition as a result of being bullied, harassed and intimidated by a coworker. She alleged that a coworker was using a copy machine next to her cubicle and she was disturbed by the noise which affected her ability to hear and respond to customer telephone calls. Appellant asked her coworker when she would be finished and the coworker stated a "short time" and shrugged and appellant disliked her attitude and felt bullied. 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 her emotional condition to performing her regular or specially assigned duties of her position as a teleservice representative. Instead, as noted below, she has characterized the incident as harassment. Therefore, appellant has not alleged a compensable factor under *Cutler*.¹⁰

Appellant asserted that she was harassed and bullied by the coworker and worked in a hostile work environment. She noted that the coworker was using a copy machine next to her cubicle and she was disturbed by the noise. Appellant informed her supervisor who instructed the coworker to use another photocopier. The coworker briefly stopped but returned and continued to use the machine. Appellant noted asking the coworker how much longer she would run the photocopy machine and she respond that it would be a "short time" and shrugged. She indicated that she asked how long this would be and the coworker responded maybe 10 minutes. 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 her regular duties, these could constitute employment factors.¹¹ 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.¹²

The factual evidence fails to support appellant's claim for harassment. The record does not support appellant's allegation that she was harassed or worked in a hostile work

⁷ *M.D.*, 59 ECAB 211 (2007).

⁸ *Roger Williams*, 52 ECAB 468 (2001).

⁹ *See supra* note 3.

¹⁰ *See supra* note 3.

¹¹ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹² *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).

environment. Appellant's supervisor noted on the Form CA-1 that appellant had a verbal confrontation with another employee due to nonstop noise from a running photocopier next to her cubicle. However, the Board notes that this statement by itself, does not establish workplace harassment. The Board notes that there is no other evidence corroborating appellant's charges that the coworker was harassing her. Thus, appellant has not established a compensable employment factor under FECA with respect to the claimed harassment. She has not established a compensable factor of employment in this regard.

To the extent that appellant alleged that on September 27, 2012 her coworker verbally abused her, 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.¹³ 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 her allegations.¹⁴ There is no corroborating evidence to support that any verbal interaction with appellant and her coworker rises to the level of a compensable employment factor.¹⁵ On the CA-1 form, appellant's supervisor noted that appellant had a verbal confrontation with another employee due to nonstop noise from a running photocopier next to her cubicle. Appellant stated that after asking the coworker how much longer she would run the photocopy machine and she stated that it will be a "short time" and shrugged. In another statement, she noted that her coworker stated that she was "using both copiers for a very big job" and it would take "a long while" and "this will be a short one." However, these verbal interactions with appellant and her coworker do not rise to the level of verbal abuse and a compensable employment factor. Consequently, she has not established her claim for an emotional condition as she has not attributed her claimed condition to any compensable employment factors.¹⁶

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.

¹³ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁴ *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).

¹⁵ *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).

¹⁶ 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 April 30, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 19, 2013
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