



## **FACTUAL HISTORY**

On November 1, 2011 appellant, then a 45-year-old human resources compensation specialist, filed a traumatic injury claim alleging that on October 31, 2011 Deborah Hollins, a supervisory regional wage specialist, hollered and yelled at her for making the civil rights section think that she was not given her time to work on her case. She also alleged that she was exposed to terrifying, traumatic and stressful events at work. Appellant contended that she was subjected to harassment, retaliation, abuse and mistreatment which resulted in traumatic anxiety, stress and chronic migraines with nausea. She listed names of employees who witnessed the October 31, 2011 incident.

On the claim form, Ms. Hollins contended that appellant was not injured in the performance of duty at the time of injury. She also contended that her allegations of hollering and yelling were untrue.

By letter dated November 8, 2011, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested additional factual and medical evidence. OWCP also requested that the employing establishment respond to appellant's allegations.

Appellant submitted e-mails dated September 21 through December 8, 2011 which allegedly documented harassment, abuse and subjection to a hostile work environment by Ms. Hollins and Betty R. Campbell, a manager. In a September 21, 2011 e-mail, she contended that Ms. Hollins and Ms. Campbell threatened her to not contact employing establishment executives. Ms. Hollins refused to help appellant retrieve four years of her work that was lost on her computer. She also changed contract information that was documented by appellant and assigned her the same work that was performed by senior analysts. In e-mails dated October 31 and November 14, 2011, appellant and Yolanda Hargraves, a program analyst, addressed the absence of medical documentation regarding her claim which appellant contended had been submitted. In a November 18, 2011 e-mail to Ms. Hargraves, appellant alleged that during the October 31, 2011 meeting she became afraid of Ms. Hollins as she yelled and screamed at her about her request for reasonable official time to review 2,000 pages of a civil rights investigative report regarding an Equal Employment Opportunity (EEO) complaint she had filed against the employing establishment. Ms. Hollins told her not to talk to any another analyst about anything. She instructed appellant to work on contracts that she had previously worked on. Appellant stated that two employees witnessed Ms. Hollins yelling and screaming at her. She requested that Ms. Hargraves forward her request to stop Ms. Hollins from contacting her and her family at home to the proper officials. In a December 5, 2011 e-mail, Ms. Hollins denied appellant's request for continuation of pay (COP) as her disability was not caused by a traumatic injury. In an e-mail dated December 8, 2011, appellant alleged that she was unable to retrieve the required documentation related to her workers' compensation claim and EEO complaint because Ms. Hollins had denied her access to the employing establishment and threatened her with disciplinary action.

In a November 9, 2011 medical report, Dr. Raj S. Shiwach, a Board-certified psychiatrist, advised that appellant had recurrent severe major depressive disorder and post-traumatic stress disorder which were exacerbated by a recent conflict with her supervisor. Commencing November 11, 2011 she could not return to work for six to eight weeks. In a November 28, 2011

report, Dr. Ronnie D. Shade, a Board-certified orthopedic surgeon, advised that appellant was totally incapacitated and unable to work due to stress. He requested that she be excused from work from November 28 to December 28, 2011.

In a November 15, 2011 memorandum, Ms. Hollins stated that the employing establishment did not concur with appellant's allegations. She noted that appellant was currently on a Performance Improvement Plan (PIP) due to failing performance of her human resources specialist wage analyst duties. The PIP involved a weekly meeting with Ms. Hollins, appellant and Donnette Holder, a regional director of operations, to review appellant's performance and other issues. Ms. Holder attended the meetings to ease appellant's discomfort towards Ms. Hollins and to serve as an impartial witness to their discussions. Ms. Hollins stated that during the October 31, 2011 meeting they discussed appellant's continued incorrect completion of her timesheets. She was advised that while she was under the PIP she had a fixed work schedule. Appellant repeatedly entered the hours she worked as if she were on a flexible schedule. She was advised to stop claiming credit for not taking a lunch break on days when she attended approved therapy sessions under the Family and Medical Leave Act (FMLA) and ate at her desk. Ms. Hollins stated that on such days, she observed nonwork-related information on appellant's computer screen. She noted appellant's October 5, 2011 e-mail which requested approval of two hours a day to review over 2,000 pages of investigative materials regarding her EEO complaint as instructed by the employing establishment's civil rights office. Ms. Hollins denied her request. She stated that appellant did not respond to her October 25, 2011 e-mail requesting verification of the civil rights office's request and refused to provide the investigative materials at the October 31, 2011 meeting. Subsequently, she provided a copy of a memorandum that forwarded a compact disc containing documents related to her EEO investigation. Ms. Hollins stated that during the October 31, 2011 meeting appellant became argumentative when she discussed her performance under the PIP. She contended that the PIP was fictitious. Appellant was advised that the PIP was still in place and instructed to follow the guidelines to succeed. Ms. Hollins answered appellant's questions regarding her work performance and referred her to a resource book for further information. She advised employees not to ask appellant any work-related questions in response to her comment that such questions were disruptive. Appellant claimed that four years of her work had been lost due to problems with her home computer. After she was advised by Ms. Hollins that her work files should never be stored on her personal home computer, appellant stated that the lost files were not work related, but rather related to her EEO claims. Ms. Hollins concluded that Ms. Holder was present during the entire October 31, 2011 meeting and she could attest that neither Ms. Hollins nor appellant raised their voices or engaged in the claimed behavior.

In a December 1, 2011 witness statement, Ms. Holder related that she was present during the October 31, 2011 meeting and that Ms. Hollins was direct, firm and professional. She did not witness any yelling, hollering or unfair treatment as claimed by appellant.

In a December 9, 2011 decision, OWCP denied appellant's claim, finding that she failed to substantiate a compensable employment factor as Ms. Holder and Ms. Hollins disputed her allegations. It further found that since she did not establish a compensable employment incident, it was not necessary to review the medical evidence of record.

On January 22, 2012 appellant requested an oral hearing before an OWCP hearing representative.

Appellant submitted e-mails dated July 11, 2011 through March 29, 2012 which further alleged that Ms. Hollins harassed, abused and subjected her to a hostile work environment. In a February 21, 2012 e-mail, Ms. Hollins denied appellant's request for leave until March 15, 2012. She stated that appellant had no available leave and no further leave could be extended because the employing establishment had extended every possible leave opportunity to her to facilitate her well being and return to work. Ms. Hollins insisted that she return to work no later than February 27, 2012. She stated that appellant's failure to return to work and to be available to resume her job responsibilities would result in absent without leave (AWOL) status. Ms. Hollins granted her leave without pay (LWOP) from February 16 through 26, 2012. In an e-mail dated February 22, 2012, appellant requested that the employing establishment instruct Ms. Hollins to discontinue sending her threatening e-mails. In e-mails dated February 23 and March 13, 2012, she requested reassignment from her hostile work environment during the investigation of her EEO complaint and traumatic injury claim. In a March 26, 2012 e-mail, Ms. Hollins advised appellant that although she previously had a reduced workload under the PIP due to her medical appointments and time in the office, there was no current medical documentation warranting such workload. Appellant would have to work independently on new assignments so that Ms. Hollins could access her ability to perform the duties of her position. In e-mails dated March 27, 2012, appellant contended that Ms. Hollins did not respond to her requests to review questions she had prepared for contractors and to provide documents to help her analyze reports. In a March 29, 2012 e-mail, she contended that Ms. Hollins improperly placed her on AWOL status as she had submitted the required medical documentation to support her absence from work. Ms. Hollins also improperly placed appellant on leave under the FMLA as she was on leave under OWCP. In e-mails dated March 29, 2012, Ms. Hollins advised her to stop amending her timesheets as doing so without permission would result in the denial of access to her timesheet. Appellant was deemed AWOL since she did not return to work until March 16, 2012. She was allowed one hour instead of the two hours she requested to review documents related to her claim and EEO complaint.

In a report also dated November 28, 2011, Dr. Shade reiterated his diagnoses of stress. Appellant has been off work for the past two months and was reluctant to return to her prior stressful job environment. She was awaiting relocation to another city or state and a civil rights investigation.

In an undated summary of the union investigation based on interviews of employees, Theresa M. Brandon, appellant's union representative, determined that there was a hostile work environment at the employing establishment. Ms. Brandon's summary noted that Ms. Hollins shared information about staff performance, including appellant's work performance, with others which created embarrassment and tension in the unit. She and Ms. Flores had meetings only with appellant to discuss her performance. Appellant did not receive any positive feedback during these meetings. On August 20, 2009 the voices of Ms. Hollins and Ms. Flores were raised while talking to appellant during their meeting. Ms. Brandon stated that Ms. Hollins assigned work, reviewed staff work and conducted training while it was management's responsibility to perform these duties. A witness stated that the impetus for the strained relations between appellant and Ms. Hollins was a training session that took place from June 8 to 12, 2009

in San Francisco, California. Appellant questioned Ms. Hollins about a regulation and Ms. Hollins responded with an impatient and a short tone of voice as she chastised her for not asking the right questions. The witness stated that Ms. Hollins did not hide her emotions and could be difficult to work with if she did not like you, noting the firing of a former employee who splashed water on Ms. Hollins. On October 6, 2009 Ms. Brandon received an e-mail from appellant stating that she overheard Ms. Hollins talking to someone about her confidential interview with Ms. Brandon.

In a February 9, 2012 letter, the civil rights center amended appellant's formal EEO complaint to include additional allegations. Beginning in February 2011 she was threatened by her supervisor who denied her access to the employing establishment. Beginning in June 2011 management refused to provide appellant with a copy of the files regarding the denial of her initial request for reasonable accommodation and reassignment. Commencing September 2011, it refused to process her third request for reasonable accommodation. Commencing July 21, 2011 management refused to place appellant on administrative leave while her request for reasonable accommodation was being processed. In approximately August 2011, it refused to give her sufficient information on her PIP. On September 8, 2011 management denied appellant's second request for reasonable accommodation. She was harassed on a continuous basis by her supervisor regarding ongoing job interviews. Beginning in July 2011 appellant was harassed by her supervisor concerning her use of medical leave. She was assigned work that was usually assigned to colleagues in higher grade positions. On October 31, 2011 appellant's supervisor screamed at her while stating that she tried to make the civil rights center think that she was not given time to work on her case.

In a June 4, 2010 report, Sat Kartar Khalsa, Ph.D., advised that appellant had chronic post-traumatic stress disorder on Axis I, psychosocial stressors and severe workplace harassment on Axis IV and a global assessment functioning score of 56 on Axis V. Dr. Khalsa found no diagnosis on Axis II and deferred to appellant's physician on Axis III.

In a June 20, 2012 decision, an OWCP hearing representative affirmed the December 9, 2011 decision. The hearing representative found that the majority of appellant's allegations involved administrative or personnel matters and there was no evidence of agency error or abuse in the handling of these matters. She also found that it was not necessary to address the medical evidence as appellant failed to establish a compensable employment factor.

On July 11, 2012 appellant requested reconsideration.<sup>2</sup>

In a July 9, 2012 e-mail, Donna R. Walton, Ed.D., advised appellant that she would be sending her a psychological report under separate cover.

In a July 20, 2012 e-mail, OWCP informed appellant that it received a returned copy of a transcript of the April 26, 2012 oral hearing. She was asked to contact OWCP if she did not receive a copy of the transcript. In a July 24, 2012 e-mail, appellant stated that she did not remember if she received the transcript. She contended that she developed a serious mental

---

<sup>2</sup> Appellant also requested reconsideration of OWCP decisions issued in her claims under OWCP File Nos. xxxxxx703 and xxxxxx954.

disability as a result of being forced to work in a hostile and terrifying work environment since May 2009. Her four requests for reasonable accommodation/reassignment were denied by Ms. Hollins and Betty A. Lopez, a manager. Appellant had no choice but to retire on disability.

In an August 20, 2012 decision, OWCP denied appellant's request for reconsideration of its June 20, 2012 decision, finding that the evidence submitted was not relevant and, thus, insufficient to warrant a merit review of its prior decision.

### **LEGAL PRECEDENT -- ISSUE 1**

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of her federal employment.<sup>3</sup> To establish that 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 her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>4</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>5</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>6</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>7</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>8</sup> In determining whether the employing establishment has erred or acted abusively, the Board will

---

<sup>3</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>4</sup> *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

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

<sup>6</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>7</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>8</sup> *See William H. Fortner*, 49 ECAB 324 (1998).

examine the factual evidence of record to determine whether the employing establishment acted reasonably.<sup>9</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>10</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>11</sup>

### ANALYSIS -- ISSUE 1

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. OWCP denied her emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA. The Board notes that appellant's allegations do not pertain to her regular or specially assigned duties under *Cutler*.<sup>12</sup> Rather, appellant has alleged error and abuse in administrative matters and harassment and discrimination on the part of her supervisors.

Appellant alleged that Ms. Hollins, her supervisor, wrongly refused to help retrieve work lost on her computer, changed information in her contracts, assigned her work that was performed by senior analysts and that she had previously performed, denied her access to the employing establishment to retrieve required documents, leave, reasonable accommodation and reassignment and a reduction of her workload under the PIP, ignored her request for assistance with questions she had prepared for contractors or to provide documents needed to help her analyze reports, placed her on AWOL status and on leave under FMLA. She further alleged that Ms. Hargraves requested that she submit medical documentation even though she had previously submitted the requested information. Appellant contended that management wrongly refused to give her a copy of the files related to the denial of her request for reasonable accommodation and provide her with sufficient information concerning her PIP. She filed an EEO claim alleging harassment by Ms. Hollins. The Board has found that an employee's complaints concerning the manner in which a supervisor performs her duties or the manner in which a supervisor exercises her supervisory discretion fall, as a rule, outside the scope of coverage provided by FECA. This principle recognizes that a supervisor or manager in general must be allowed to perform her

---

<sup>9</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>10</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>11</sup> *Id.*

<sup>12</sup> *Cutler*, *supra* note 5.

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,<sup>14</sup> handling of pay and leave issues,<sup>15</sup> denial of requests for reasonable accommodation and reassignment,<sup>16</sup> official time to engage in personal activity<sup>17</sup> and access to the employing establishment pending a medical clearance, request for medical documentation,<sup>18</sup> processing of a compensation claim,<sup>19</sup> monitoring of work<sup>20</sup> and the filing of an EEO complaint alleging harassment<sup>21</sup> are administrative matters and not compensable absent a showing of error or abuse on the part of the employing establishment. Although appellant has alleged error or abuse by Ms. Hollins, she did not submit any probative evidence establishing error or abuse regarding the above-noted administrative matters. Ms. Hollins explained that the lost documents were on appellant's personal home computer and not on a work computer. Appellant told her that the lost documents were work related, but after she informed appellant that these documents should not be stored on her personal computer, appellant stated that the documents were related to her EEO complaint. Ms. Hollins explained that appellant was placed on a PIP due to her poor work performance. She initially denied her request for official time to review over 2,000 pages of an investigative report because appellant had not provided verification that the review was required as requested. Ms. Hollins subsequently approved one hour to review the requested documents. She denied appellant's request for leave through March 15, 2012 because she no longer had any available leave and the employing establishment had provided her with every possible leave opportunity. Ms. Hollins granted appellant LWOP from February 16 through 26, 2012 and advised her to return to work by February 27, 2012. She explained that appellant was deemed AWOL as she did not return to work until March 16, 2012. Ms. Hollins stated that upon her return to work her workload was not reduced under the PIP as previously done because there was no medical documentation to support a workload reduction. She explained that appellant had to work independently so that she could access her ability to perform her work duties. Ms. Hollins advised appellant about the correct manner to complete her timesheet as she incorrectly entered hours as if she were on a flexible schedule rather than a fixed schedule while under a PIP and claimed credit for not taking a lunch break on days when she attended therapy under FMLA. Ms. Hollins observed nonwork-related information on her computer on the days she claimed credit for not taking a lunch break.

---

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

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

<sup>15</sup> *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997).

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

<sup>17</sup> See generally *Dinna M. Ramirez*, *supra* note 15; *Lillie M. Hood*, 48 ECAB 157 (1996).

<sup>18</sup> *James P. Guinan*, 51 ECAB 604, 607 (2000); *John Polito*, 50 ECAB 347, 349 (1999).

<sup>19</sup> *D.P.*, Docket No. 10-1755 (issued March 24, 2011); *David C. Lindsey, Jr.*, 56 ECAB 268 (2005).

<sup>20</sup> See *Lori A. Facey*, 55 ECAB 217, 224 (2004).

<sup>21</sup> *Michael A. Salvato*, 53 ECB 666, 668 (2002).

The Board finds that appellant has failed to establish a compensable employment factor with regard to the above-noted administrative and personnel matters.

Appellant alleged that Ms. Hollins created a hostile work environment by hollering and yelling on October 31, 2011 in response to her request for reasonable official time to review 2,000 pages of an investigation report regarding her EEO complaint. The Board has generally held that being addressed in a raised or harsh voice does not of itself constitute verbal abuse or harassment.<sup>22</sup> The Board notes that the fact that Ms. Hollins hollered and yelled at appellant on October 31, 2011 is insufficient, by itself, to warrant a finding that her action amounted to verbal abuse as appellant did not show how such a response would rise to the level of verbal abuse or otherwise fall within the coverage of FECA.<sup>23</sup> Although appellant stated that witnesses observed Ms. Hollins' behavior, she did not submit any statements from the witnesses to corroborate her allegation of verbal abuse. Ms. Hollins denied that she hollered and yelled during the October 31, 2011 meeting. She stated that during the meeting appellant became argumentative and claimed that the PIP was fictitious when her performance was being discussed. Ms. Holder stated that she was present at the October 31, 2011 meeting and that Ms. Hollins was direct, firm and professional. She did not witness any yelling, hollering or unfair treatment directed towards appellant. Based on the statements of Ms. Hollins and Ms. Holder, the Board finds that appellant has not met her burden of proof to establish verbal abuse.

Appellant alleged that she was harassed subjected to a hostile work environment by Ms. Hollins and Ms. Campbell who threatened her when they instructed her not to contact employing establishment executives or any other analyst regarding any matter. Ms. Hollins also threatened to deny her access to her timesheet if she did not stop amending her timesheet without permission. She continuously harassed appellant about ongoing job interviews and her use of medical leave. Appellant requested that Ms. Hollins stop sending threatening e-mails and contacting her and her family at home. 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>24</sup> An employee's charges that she was harassed or discriminated against, is not determinative of whether or not harassment or discrimination occurred.<sup>25</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>26</sup> The Board finds that the factual evidence fails to support appellant's allegation of harassment. Appellant did not submit any witness statements from individuals describing the

---

<sup>22</sup> *T.G.*, 58 ECAB 189 (2006).

<sup>23</sup> *Peter D. Butt, Jr.*, 56 ECAB 117 (2004).

<sup>24</sup> *J.C.*, 58 ECAB 594 (2007); *Robert G. Burns*, 57 ECAB 657 (2006); *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

<sup>25</sup> See *Ronald K. Jablanski*, 56 ECAB 616 (2005); *William P. George*, 43 ECAB 1159 (1992).

<sup>26</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).

threats made and harassment by Ms. Hollins and Ms. Campbell. Further, Ms. Brandon's summary of the union investigation does not provide the specific statements upon which she relied to make her summary findings that appellant was subjected to a hostile work environment. Further, the record does not contain a final EEO decision regarding this matter. The Board finds that appellant has not established a factual basis for her allegation that she was harassed. Therefore, she has failed to establish a compensable factor of employment in this regard.

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>27</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

To require OWCP to reopen a case for merit review under section 8128 of FECA,<sup>28</sup> OWCP's regulations provide that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.<sup>29</sup> To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>30</sup> When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review of the merits.

### **ANALYSIS -- ISSUE 2**

On July 11, 2012 appellant disagreed with OWCP's June 20, 2012 decision, denying her emotional condition claim on the grounds that she did not submit sufficient factual evidence to establish a compensable employment factor. She did not show that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant did not advance a relevant legal argument not previously considered.

The underlying issue on reconsideration is factual in nature. The Board finds that appellant has not submitted relevant and pertinent new evidence on the issue of whether she established a compensable employment factor. Dr. Walton's July 9, 2012 e-mail addressed her intent to send a psychological report to appellant under separate cover and OWCP's July 20, 2012 e-mail asked appellant whether she had received a copy of the April 26, 2012 oral hearing transcript. This evidence is not relevant to the underlying issue of whether appellant established a compensable employment factor. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>31</sup>

---

<sup>27</sup> *Karen K. Levene*, 54 ECAB 671 (2003).

<sup>28</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

<sup>29</sup> 20 C.F.R. § 10.606(b)(3).

<sup>30</sup> *Id.* at § 10.607(a).

<sup>31</sup> *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

Appellant's July 24, 2012 e-mail informed OWCP that she did not remember whether she had received the hearing transcript. She alleged that, she developed a serious mental disability as a result of being forced to work in a hostile and terrifying work environment since May 2009. Appellant stated that her four requests for reasonable accommodation and reassignment were denied by Ms. Hollins and Ms. Lopez. Although this e-mail constituted new evidence in support of appellant's claim for an emotional condition, it is repetitious of e-mails already considered by OWCP and, therefore, cumulative in nature. Evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case for a merit review.<sup>32</sup>

The Board finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her July 11, 2012 request for reconsideration.<sup>33</sup>

### CONCLUSION

The Board finds that appellant has failed to establish that she sustained an emotional condition while in the performance of duty. The Board further finds that OWCP properly denied her request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

---

<sup>32</sup> See *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Betty A. Butler*, 56 ECAB 545 (2005).

<sup>33</sup> *Robert E. Cullison*, 55 ECAB 570 (2004); *M.E.*, *supra* note 32 (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

**ORDER**

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

Issued: June 6, 2013  
Washington, DC

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

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

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