



## **FACTUAL HISTORY**

On January 26, 2012 appellant, then a 45-year-old medical supply technician, filed a claim for work-related stress (Form CA-2) which allegedly arose on or about June 1, 2010. She attributed her condition to hostile and aggressive attitudes from both coworkers and her supervisor. Appellant also alleged that a coworker shoulder-butted her. Additionally, she claimed that coworkers often left their work for her to do. When appellant reported the incidents, her supervisor allegedly responded with a hand gesture and/or a condescending, aggressive attitude.

The record indicates that the employing establishment hired appellant in March 2010 and assigned her to sterile processing services (SPS) where she worked 3:00 p.m. to 11:30 p.m., Monday to Friday. SPS was organized into two eight-hour shifts and work was assigned on a rotating basis in accordance SPS's primary functions: decontamination and preparation/packaging. Kathleen Hoelzl supervised appellant. Erian Felder was the coworker who allegedly shoulder-butted appellant on November 15, 2011. Appellant also allegedly had strained relations with five other coworkers: Jennear Quarles, Sherri Collins, Wade Garner, Marisela Daniels and Shannon Cross.

In a January 30, 2012 statement, appellant provided a chronology of employment incidents dating back to May 2010. The first reported incident involved Ms. Quarles who was assigned to train appellant.<sup>2</sup> Around the latter part of May 2010, appellant informed Ms. Hoelzl that she was having problems with Ms. Quarles. Appellant claimed that Ms. Quarles had trained her to do something one way and then would subsequently give her "attitude" for doing things incorrectly. Ms. Quarles reportedly denied appellant's accusations and allegedly addressed her in a "nasty tone...." Appellant also alleged that Ms. Quarles started "flipping" out on her because staff had not been doing their assigned work. She and another coworker were reportedly in tears as a result of Ms. Quarles' early morning criticism. Appellant decided to stay away from Ms. Quarles.

On an unspecified day in early June 2010, appellant reportedly left the decontamination section and went to preparation/packaging to help out. When she arrived, Mr. Felder told her that she had to return to decontamination because Ms. Quarles and Ms. Collins had complained about her being in preparation/packaging. Apart from the fact that someone had complained, Mr. Felder was unaware of the particular issue. When appellant returned to decontamination, Ms. Quarles, Ms. Collins and two other individuals were just standing at the door. Ms. Quarles reportedly had a "smerky" (sic) grin on her face and Ms. Collins was laughing. Appellant indicated that she broke down in tears because she did not understand why this happened.<sup>3</sup> Ms. Hoelzl subsequently offered appellant the option of switching to another shift (12:30 p.m. to

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<sup>2</sup> During her initial training appellant had been assigned to work day shift (6:00 a.m. to 2:30 p.m.).

<sup>3</sup> Appellant stated that she later learned that Ms. Quarles' and Ms. Collins' problems with her stemmed from her friendship with Larry Owens, who is "black." Appellant identified herself as "white."

9:00 p.m.) to complete orientation and training with someone other than Ms. Quarles. Appellant accepted the offer and changed shifts/trainers effective June 21, 2010.<sup>4</sup>

On August 12, 2010 Ms. Hoelzl reportedly spoke with appellant regarding concerns raised by Mr. Garner, who allegedly complained that every time he came into decontamination at the beginning of their shift, appellant would leave and go to preparation/packaging. Appellant stated that she explained to Ms. Hoelzl that when the work was done in decontamination she would go to preparation/packaging to help out. She saw no need in standing around with Mr. Garner in decontamination when all the work to be completed was elsewhere. Ms. Hoelzl reportedly accepted appellant's explanation. Appellant expressed feelings of harassment and Ms. Hoelzl provided the option of switching to the evening shift (3:00 p.m. to 11:30 p.m.) which appellant accepted.

During an August 16, 2010 staff meeting, appellant reportedly voiced her concerns to Mr. Garner about having complained to Ms. Hoelzl. She also expressed concerns about another conversation the two had where Mr. Garner allegedly implied that she had lied about him having left blood and tissue on the table in decontamination. Additionally, appellant reportedly criticized Mr. Garner for his "attitude" and "condescending" tone when addressing Mr. Felder.

In September 2010, Ms. Collins reportedly complained to appellant about work the day shift did not do. Appellant stated that she told Ms. Collins she did not appreciate what she was doing and was tired of Ms. Collins jumping down her throat the minute she arrived at work. She accused the day shift of dumping their work on the evening shift. Ms. Collins reportedly became irate and posted some nasty things on facebook®. Appellant indicated that she reported the incident to Ms. Hoelzl who offered to bring in a mediator and arrange a sit-down. However, she declined mediation, fearing it would only make matters worse for her.

In late-February or early-March 2011, while Ms. Hoelzl was on vacation, Ms. Quarles posted a description of the lead technician's duties on the scheduling/agenda board.<sup>5</sup> Appellant thought it "childish and inappropriate" and reported the incident to Ms. Hoelzl upon her return, but by then someone had removed the document.

On March 10, 2011 appellant and Mr. Felder were in decontamination doing their work and discussing nonwork-related issues. Ms. Collins reportedly emerged from the ladies room and stated to them "let's take this outside." Appellant had no idea what Ms. Collins was talking about or whether the comment was directed to her or Mr. Felder. She felt the remark was completely inappropriate and uncalled for. Appellant also stated that she felt "threatened" and was not sure if Ms. Collins had a weapon or something to really cause harm.

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<sup>4</sup> In a February 16, 2012 statement, Ms. Hoelzl indicated that she interpreted appellant's June 2010 concerns as being of a "personality conflict nature." She also stated that at no time did appellant's trainer offer negative feedback regarding her performance or her ability to learn the job. Ms. Hoelzl acknowledged reassigning appellant because of expressed concerns about how she and her trainer were "verbally interacting." She further noted that appellant successfully completed her orientation in October 2010.

<sup>5</sup> A copy had also reportedly been pasted on Mr. Felder's locker.

On March 17, 2011 appellant learned that Ms. Quarles informed Ms. Hoelzl that the night shift had been leaving early. She was upset by the accusation and felt her livelihood was being threatened. Appellant reportedly told Ms. Hoelzl that things were getting out of hand and it was now affecting her family. Ms. Hoelzl did not understand what appellant meant, but nonetheless reassured her that she had nothing to worry about and would not lose her job.

Appellant accused Ms. Quarles and Ms. Collins of removing work-related information from the SPS agenda board on March 24, 2011. She also questioned why Ms. Collins had only sterilized half the hand towels that she and others had folded the previous evening and left on the sterilization cart. An acting supervisor informed appellant that the towels had not been properly labeled and, therefore, were removed from the cart. Appellant then questioned why the day shift staff could not just simply label the towels and sterilize them.

On March 30, 2011 at approximately 8:00 p.m., Mr. Felder telephoned Mr. Garner inquiring as to his whereabouts. He reportedly told Mr. Garner that he hoped he had not left the building, otherwise he would have to inform Ms. Hoelzl. Appellant and Ms. Cross witnessed the incident. Mr. Garner reportedly showed up 10 minutes later without offering any explanation. The next day, appellant overheard Mr. Garner and Ms. Cross using profanity in the decontamination area. Mr. Felder was not in that day and Mr. Garner reportedly threatened to put a fist through the back of his head.

Appellant's January 30, 2012 statement also included numerous dates between March and November 2011 where she compiled information on which coworkers took lengthy breaks or were otherwise unaccounted for during the workday. She also documented a sterilization procedure performed by Ms. Collins that was reportedly contrary to SPS protocol. Additionally, appellant identified days when some coworkers worked in pairs/groups while she was left to perform other tasks by herself. Also, she identified various tasks that Mr. Felder and/or Ms. Daniels left for her to perform which appellant believed could have and should have been done by others.

On November 14, 2011 Ms. Hoelzl reportedly spoke with appellant regarding a work assignment given her by Mr. Felder. Appellant had not carried out the task and she told Ms. Hoelzl she did not do it because she does everything else. She also advised Ms. Hoelzl that she wanted a union steward present. Ms. Hoelzl stated that she would offer a steward for Mr. Felder as well, but the discussion would have to be postponed for now.

On November 29, 2011 Ms. Hoelzl allegedly asked appellant who was supposed to be in decontamination. Appellant replied that Ms. Daniels was scheduled, but she had not put in an eight-hour shift in decontamination since she arrived. Ms. Hoelzl reportedly got upset and waved appellant off and stated that she would just go check the schedule herself. Appellant also reported that Ms. Daniels did some work while talking on her telephone for over an hour.

On December 6, 2011 appellant advised Ms. Hoelzl that certain equipment needed repair. She also told Ms. Hoelzl that she had similarly advised Ms. Daniels of the problem, but Ms. Daniels ignored her advice and proceeded to utilize the broken sterilization equipment. Appellant alleged that Ms. Hoelzl snottily asked, "Anything else you need to tell me?"

On December 8, 2011 Ms. Hoelzl reportedly called some day shift employees into her office to inquire about whether they heard anyone use foul language. Appellant indicated that Ms. Hoelzl never called her in to ask what, if anything, she may have heard.

Between December 14, 2011 and January 19, 2012, appellant documented specific times/dates when Ms. Daniels and/or Ms. Cross either left the facility or took extended breaks.

On January 9, 2012 Ms. Hoelzl reportedly advised appellant that she needed to let a supervisor know the next time she left early. Appellant had advised Ms. Cross of her early departure and questioned the need to inform a supervisor. She indicated that Ms. Hoelzl immediately got cocky.

On January 19, 2012 appellant observed Mr. Felder working in decontamination without the appropriate personal protective equipment (PPE). Ms. Hoelzl reportedly observed this breach of SPS protocol, but did not say anything to Mr. Felder about his missing PPE.

On January 23, 2012 Ms. Daniels allegedly replied "F... you" in response to a question appellant asked. She ignored Ms. Daniels' response and kept working. Appellant also reported that Ms. Daniels was not properly clothed while working in decontamination on January 24, 2012.

OWCP also received a copy of a January 6, 2012 e-mail to Patricia Morrison wherein appellant questioned the need for documenting her January 3, 2012 work activities. She wondered why the day shift, which had the majority of staff, did not have to document why they left so much work for the evening shift. Appellant also took exception to Ms. Hoelzl's allocation of resources among the day and evening shifts.

Appellant's May 2010 to January 2012 chronology did not reference the alleged shoulder-butting incident. However, in a February 29, 2012 statement, she noted that Mr. Felder shoulder-butted her at approximately 5:30 p.m. on November 15, 2011. Appellant's supervisor was not on duty at the time. Appellant reported the incident to the employing establishment police on November 15, 2011, and the agency threat assessment team (TAT) investigated the matter.

The employing establishment did not provide a statement from the accused (Mr. Felder) or submit a copy of the TAT findings. However, Ms. Hoelzl's February 16, 2012 statement revealed that the TAT found only 1 of 12 risk factors present which represented a low-level threat according to the TAT coordinator. She also reported there were no witnesses to the alleged incident. Additionally, Ms. Hoelzl indicated that, while the matter was under investigation, the accused was assigned to another shift. She further stated that appellant and the accused were provided access to the employee assistance program (EAP) and alternative dispute resolution (ADR). Both parties reportedly declined ADR.

OWCP also received various treatment notes and reports from Dr. David D. Stahl, a Board-certified internist, covering the period January 26 to June 7, 2012. He first examined appellant on January 26, 2012 and diagnosed anxiety/stress and depression. In a February 3, 2012 narrative report, Dr. Stahl noted that appellant reported having had conflicts with at least two coworkers on her shift which evolved over the past few months. They were reportedly rude

to appellant which made the work environment not very congenial. Dr. Stahl also noted that appellant had approached her supervisor about this conflict, but nothing had been done to resolve the issue and things had not changed. He further indicated that appellant presented to EAP which had been helpful. There were no unusual stressors outside work. Dr. Stahl prescribed Zoloft and excused appellant from work for a two-week period. He subsequently increased appellant's Zoloft dosage and extended the period of disability through March 2012. Dr. Stahl advised that appellant could return to work effective April 2, 2012 with one particular accommodation: avoidance of coworker(s) who caused the stress issue.<sup>6</sup>

The employing establishment did not immediately authorize the requested accommodation. Therefore, on April 2, 2012 Dr. Stahl extended the period of disability until the accommodation was fulfilled. He also provided a June 7, 2012 work capacity evaluation (psychiatric/psychological conditions (OWCP-5a)). Dr. Stahl explained that, due to coworker-related issues, appellant could not perform her previous job with same coworkers/hours. However, she could return to work with an accommodation: "not same job [with] same coworkers...."

By decision dated July 23, 2012, OWCP denied appellant's emotional condition claim. Appellant had not demonstrated a compensable employment factor. The alleged shoulder-butting incident was not factually established. Consequently, OWCP denied the claim without reviewing the medical evidence of record.

On August 8, 2012 appellant requested reconsideration. She submitted the appeal request form that accompanied the July 23, 2012 decision. Appellant's representative followed up with an August 27, 2012 letter requesting that OWCP reconsider the claim and vacate the original denial. He noted that the employing establishment had twice denied appellant's request for an accommodation. While appellant was willing to return to work, the employing establishment unreasonably expected her to go against her physician's orders. Her representative argued that forcing her to return to the hostile work environment that initially caused the injury would likely worsen appellant's condition.

In support of the request for reconsideration, appellant's representative submitted various medical records from Dr. Stahl, including his latest report dated August 27, 2012. OWCP also received a June 8, 2012 formal denial of appellant's request for reasonable accommodation under the Americans with Disabilities Act (ADA). The employing establishment also denied reconsideration. Appellant's representative submitted copies of her June 14, 2012 reconsideration request, as well as the employing establishment's July 2, 2012 denial of reconsideration. There was also an August 8, 2012 notice of appellant's intent to pursue the ADA accommodation issue before Equal Employment Opportunity Commission (EEOC).

In his August 27, 2012 report, Dr. Stahl noted that appellant returned for follow-up on her anxiety/depression and panic disorder that stemmed from a work-related matter at the Buffalo Veterans Administration Hospital. He explained that, over a period of more than two years, there was increasing conflict within SPS involving appellant's supervisor, Ms. Hoelzl, and fellow coworkers Mr. Felder, Ms. Daniels and Ms. Cross. Because she had been off work

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<sup>6</sup> The proposed accommodation had been a topic of discussion as early as February 15, 2012.

several months now without any interaction with her supervisor or coworkers, appellant was reportedly doing well from a depression/anxiety standpoint. Dr. Stahl stated that, while appellant could resume work, she was not to return to her former position in SPS and was to avoid direct contact with the above-named individuals. He indicated that should appellant relapse, signs or symptoms would include a worsening of her depression/anxiety, an inability to sleep or feel rested, decreased appetite, mood changes, weight changes and poor ability to focus on her work tasks, as well as other facets of her life. In conclusion, Dr. Stahl reiterated that appellant may return to work, but not to her previous department and that she should not have direct interaction with the previously identified four coworkers.

In a November 9, 2012 decision, OWCP denied appellant's request for reconsideration and did not revisit the merits of the claim.

Appellant's November 15, 2012 application for review (AB-1) identified the November 9, 2012 nonmerit decision as the subject of the current appeal. Although the appeal was filed within 180 days of OWCP's July 23, 2012 merit decision, neither she nor her representative specifically requested review of OWCP's July 23, 2012 decision.<sup>7</sup> Nonetheless, the Board will review both the merit and nonmerit decisions.

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

To establish that she sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.<sup>8</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the purview of workers' compensation. 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>9</sup> Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.<sup>10</sup>

An employee's emotional reaction to administrative or personnel matters generally falls outside FECA's scope.<sup>11</sup> Although related to the employment, administrative and personnel

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<sup>7</sup> See 20 C.F.R. § 501.3(c)(4).

<sup>8</sup> See *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>9</sup> *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>10</sup> *Lillian Cutler*, *id.*

<sup>11</sup> *Andrew J. Sheppard*, 53 ECAB 170, 171 (2001); *Matilda R. Wyatt*, 52 ECAB 421, 423 (2001).

matters are functions of the employer rather than the regular or specially assigned duties of the employee.<sup>12</sup> However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.<sup>13</sup>

Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his or her allegations with probative and reliable evidence.<sup>14</sup> When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter, OWCP must base its decision on an analysis of the medical evidence.<sup>15</sup>

### **ANALYSIS -- ISSUE 1**

On her January 26, 2012 Form CA-2, appellant attributed her claimed emotional condition to hostile and aggressive attitudes from both coworkers and her supervisor. She specifically alleged that a coworker shoulder-butted her. Appellant also claimed that coworkers often left their work for her to complete. When she approached her supervisor about her concerns, Ms. Hoelzl allegedly responded with a hand gesture and/or a condescending, aggressive attitude. Appellant provided a January 30, 2012 chronology of more than three dozen employment incidents that allegedly occurred between late-May 2010 and January 25, 2012.

Initially, the Board finds there are no *Cutler* allegations. Appellant did not specifically attribute her claimed emotional condition to her regular or specially assigned work duties or a requirement imposed by the employment. Although she reportedly performed work she believed should have been done by other coworkers, she did not claim that performing any of the assigned tasks caused an emotional reaction. Additionally, appellant has not submitted any evidence in support of her allegation that Mr. Felder shoulder-butted her on November 15, 2011. There were no reported witnesses to the alleged incident. Also, the actual findings from the TAT investigation have not been made a part of the record.<sup>16</sup>

A large part of what appellant reported in her January 30, 2012 chronology is unsubstantiated. But even if fully substantiated, the relevance of most of the included information is unclear. It is evident that appellant closely monitored her coworker's activities, particularly the time spent on breaks and what she considered lengthy and unexcused absences. However, it is not readily apparent how these reported incidents either caused or contributed to appellant's claimed emotional condition. It is also unclear how appellant was adversely affected

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<sup>12</sup> *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005).

<sup>13</sup> *Id.*

<sup>14</sup> *Kathleen D. Walker*, *supra* note 8.

<sup>15</sup> *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

<sup>16</sup> Appellant purportedly submitted a copy of the November 25, 2011 TAT summary along with her February 29, 2012 statement. However, the Board is unable to locate the referenced TAT summary.

by Ms. Collins' failure to abide by SPS sterilization protocol or Ms. Daniels' and Mr. Felder's failure to wear appropriate clothing/PPE. While appellant depicted her colleagues as perhaps less diligent and less conscientious than herself, the reported incidents do not demonstrate a "hostile and aggressive attitude" as appellant alleged in her claim.

Appellant also failed to substantiate her allegation that Ms. Hoelzl responded to her complaints with a hand gesture and/or a condescending, aggressive attitude. In fact, the January 30, 2012 chronology included several instances where Ms. Hoelzl was very accommodating in response to various complaints appellant raised. In June 2010 when appellant complained about Ms. Quarles, Ms. Hoelzl allowed her to switch shifts and trainers. She also reportedly accommodated appellant in August 2010 when she switched her to the evening shift after Mr. Garner complained about appellant's performance. In September 2010, Ms. Hoelzl reportedly offered to bring in a mediator to address appellant's concerns regarding Ms. Collins, but appellant declined the offer of mediation. Appellant also noted that she approached her supervisor in March 2011 regarding accusations about the night shift leaving early, and Ms. Hoelzl reportedly reassured appellant there was nothing to worry about and that she would not lose her job. These specific instances outlined by appellant in her January 30, 2012 statement belie her general allegation on Form CA-2 that Ms. Hoelzl responded to complaints with a hand gesture and/or a condescending, aggressive attitude.

Appellant claimed to have felt threatened by a remark Ms. Collins allegedly made on March 10, 2011. At the time, she and Mr. Felder were reportedly discussing nonwork-related issues when Ms. Collins emerged from the ladies room and allegedly stated to them "let's take this outside." Appellant indicated that she and Mr. Felder looked at each other "confused and had no idea what [Ms. Collins] was talking about." She was also unsure if the comment was directed to her or Mr. Felder. But despite all the admitted uncertainty surrounding this remark, appellant stated that she felt "threatened." According to appellant, this was an example of a hostile work environment and she claimed to have been unsure if Ms. Collins had a weapon or something to really cause harm.

Verbal altercations and difficult relationships with coworkers and supervisors/managers, when sufficiently detailed and supported by the record, may constitute compensable factors of employment.<sup>17</sup> However, this does not imply that every ostensibly abusive or threatening statement uttered in the workplace will give rise to coverage under FECA.<sup>18</sup> For appellant to prevail on her claim, she must support her allegations with probative and reliable evidence.<sup>19</sup>

It is not clear as to why appellant could feel threatened by Ms. Collins' ostensibly benign remark "let's take this outside." It is even more difficult to bridge the gap between the substance of the alleged remark and appellant's stated concern that Ms. Collins might somehow be armed with a weapon after departing the ladies room.

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<sup>17</sup> *Marguerite J. Toland*, 52 ECAB 294, 298 (2001).

<sup>18</sup> *Fred Faber*, 52 ECAB 107, 109 (2000).

<sup>19</sup> See *Kathleen D. Walker*, *supra* note 8.

Appellant also reported several alleged incidents with Ms. Hoelzl between November 29, 2011 and January 9, 2012. In one incident, Ms. Hoelzl reportedly got upset with appellant and waved her off after appellant commented about an absent coworker. On December 6, 2011 after reporting a coworker's use of broken equipment, Ms. Hoelzl "snottily" asked appellant, "Anything else you need to tell me?" In another incident, appellant reportedly questioned Ms. Hoelzl's instructions regarding a time and attendance issue and Ms. Hoelzl immediately got "cocky."<sup>20</sup> Although she characterized these events in unfavorable terms, appellant has not provided sufficient detail that might otherwise warrant further consideration of the alleged incidents as possible verbal abuse.

On January 23, 2012 another coworker, Ms. Daniels, allegedly stated "F... you" to appellant in response to a question appellant asked. By her own account, appellant provoked Ms. Daniels. Despite provocation, the alleged response would be unprofessional and inappropriate for the workplace. However, appellant stated that she ignored Ms. Daniels' response and kept working. Thus, even if substantiated, appellant admittedly was not adversely affected by Ms. Daniels' alleged remark.

The Board finds that appellant has not established a single incident of compensable verbal abuse by either a coworker or a supervisor/manager.

Appellant identified several incidents where she took exception to either her then-trainer's or supervisor's oversight. In May and June 2010, she complained about Ms. Quarles, who had been assigned to train her. Ms. Hoelzl eventually reassigned appellant because of what she identified as a "personality conflict." She did not otherwise assess blame on either appellant or Ms. Quarles. Another incident involving Ms. Hoelzl allegedly occurred on November 14, 2011 when she questioned appellant about an assignment from Mr. Felder she had not completed. Appellant indicated that she told Ms. Hoelzl she did not complete the assignment because she does everything else. Subsequently, she complained about having to document her January 3, 2012 work activities for management. Additionally, appellant took exception to Ms. Hoelzl's allocation of resources among the day and evening shifts.

Assigning work and monitoring performance are administrative functions of a supervisor.<sup>21</sup> The manner in which a supervisor exercises his/her discretion falls outside FECA's coverage. This principle recognizes that supervisors must be allowed to perform their duties, and at times employees will disagree with their supervisor's actions. Mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor.<sup>22</sup> With respect to the above-noted incidents involving Ms. Quarles and Ms. Hoelzl, appellant has not demonstrated error or abuse on the part of her employer with respect to work assignments, allocation of resources and monitoring of work activities.

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<sup>20</sup> Time and attendance issues are generally not compensable absent evidence of error or abuse on the part of the employing establishment in discharging its administrative responsibilities. See *C.S.*, 58 ECAB 137, 145 (2006); *T.G.*, 58 ECAB 189, 197 (2006); *Joe M. Hagewood*, 56 ECAB 479, 488 (2005).

<sup>21</sup> *Donney T. Drennon-Gala*, 56 ECAB 469, 475 (2005); *Beverly R. Jones*, 55 ECAB 411, 416 (2004); *Charles D. Edwards*, 55 ECAB 258, 270 (2004).

<sup>22</sup> *Linda J. Edwards-Delgado*, 55 ECAB 401, 405 (2004).

Because she failed to establish a compensable factor of employment, OWCP properly denied appellant's claim without addressing the medical evidence of record.<sup>23</sup>

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

OWCP has the discretion to reopen a case for review on the merits.<sup>24</sup> An application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>25</sup> When an application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.<sup>26</sup>

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

Appellant's August 8, 2012 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. She also did not advance a relevant legal argument not previously considered by OWCP. Appellant submitted the appeal request form that accompanied the July 23, 2012 decision. She indicated that she was seeking reconsideration, but did not otherwise elaborate. Appellant's representative submitted an August 27, 2012 letter similarly requesting that OWCP reconsider the claim. However, he did not present any argument relevant to the issue on reconsideration. Instead, appellant's representative focused on the employing establishment's denial of her request for an accommodation under ADA. The issue on reconsideration was whether appellant established a compensable employment factor. Neither appellant nor her representative addressed this particular issue. Therefore, appellant is not entitled to a review of the merits based on the first and second requirements under section 10.606(b)(2).<sup>27</sup>

Appellant also failed to submit any "relevant and pertinent new evidence" with her request for reconsideration. The additional medical evidence submitted was not relevant to the issue on reconsideration. Similarly, the documentation regarding the denied ADA accommodation was not relevant to the issue of whether appellant established a compensable employment factor. Because appellant and her representative did not provide any new evidence that might arguably impact the prior decision, appellant is not entitled to a review of the merits based on the third requirement under section 10.606(b)(2).<sup>28</sup>

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<sup>23</sup> *Garry M. Carlo, supra* note 15.

<sup>24</sup> 5 U.S.C. § 8128(a).

<sup>25</sup> 20 C.F.R. § 10.606(b)(2).

<sup>26</sup> *Id.* at § 10.608(b).

<sup>27</sup> *Id.* at § 10.606(b)(2)(i) and (ii).

<sup>28</sup> *Id.* at § 10.606(b)(2)(iii).

**CONCLUSION**

Absent a compensable employment factor, appellant has not established that she sustained an emotional condition in the performance of duty on or about June 1, 2010. The Board also finds that OWCP properly denied her August 8, 2012 request for reconsideration.<sup>29</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 9 and July 23, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 15, 2013  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>29</sup> Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this latest merit decision. *See* 5 U.S.C. § 8128(a); 20 C.F.R. §§ 10.605-10.607.