

employment. She addressed the behavior of her first-line supervisor, Greg Wheelden: “I could not come into work without extreme anxiety. I shake when I am around him (Greg Wheelden), have thrown up in the parking lot before coming to work, have sat at my desk and cried. I cry everyday since being subjected to his behavior.”

In a statement supporting her claim, appellant related that in August 2008 she first worked for her supervisor. She alleged that, from the beginning, it was obvious who his favorite employees were. Mr. Wheelden would only say good morning to certain people depending on his mood. There were times he would walk by the billers and say, “Bill, bill, bill,” then go to the accounts receivable group, pull up a chair and chat for an hour. Appellant alleged that this happened nearly everyday.

Appellant contributed to a breakfast club because she wanted to be included and possibly become one of her supervisor’s favorites. “I knew if I could become one of the select few favorites I would be treated with respect.”

After a year or more, Mr. Wheelden called appellant into his office and complained about another employee. Appellant was shocked by what he stated, how he stated it and that he called her in specifically to talk about it. “This scared me to death. To this day I am still afraid of Mr. Wheelden and what he will do to me.” Appellant stated that she did what she could to get on his good side. She would go to the gas station on breaks or to get his fountain pop at lunchtime. When she went to lunch, appellant always asked if he wanted anything. “I bought Greg pops and lunches many many times in an effort to get on his good side in hopes of being treated better.”

Appellant alleged that every morning Mr. Wheelden would go to female coworkers rub their shoulders and say, “Good morning, sweetie.” Once in a while Mr. Wheelden would say good morning to the billers, but it was uncommon.

Appellant alleged that several people in the supervisor’s group of favorites would consistently take long breaks or long lunches. When she came back from lunch late, she was required to put in 15 minutes of annual leave. Appellant would apologize to the supervisor any time she was late or going to be gone. She felt that she needed to explain her reasons for being absent because she did not want to receive the silent treatment. Even when appellant explained and apologized, Mr. Wheelden would not say a word to her for at least two days. He told her it was not necessary to put comments on leave requests. “I believe now that he did not want these comments in to document that he was treating me differently than the AR staff.”

Appellant listed dozens of dated incidents and e-mails to support that Mr. Wheelden treated his favorites differently and gave her the silent treatment. On April 24, 2012 she explained to Mr. Wheelden that she would not be at work because she was helping her father find a home for her grandmother, with whom she was very close. Appellant thought he was very cold to her because she was not one of his favorites: “unless you have something very Urgent, I would like you to be here the entire week.” If she had been one of his favorites, Mr. Wheelden’s tone would have been more like the e-mail he sent a coworker on March 23, 2011: “I know the interstate was closed all day and we missed you, maybe we will see you in the morning.” When a coworker’s aunt was sick, she heard Mr. Wheelden say, “Good luck, do what you have to do, family is important.” When it came to anyone outside of his favorites group, he was very cold.

A few weeks after the coworker's aunt was sick, appellant's uncle committed suicide. She mentioned it to everyone at work hoping that someone would be sympathetic. "I was wrong. In fact not one person stated that they were sorry for my loss. I never got a card, no flowers, nothing." Moreover, the timekeeper told appellant that she would have to use annual leave instead of sick leave for family care or bereavement. When appellant confirmed that she could use the latter and informed the timekeeper, the timekeeper abruptly asked: "Well what are you going to do because I need to know?" Appellant was taken aback and stated to leave it the way it was; she did not want to cause problems or disagreement.

Appellant did not feel she was treated fairly because a less-senior coworker was receiving training, but her request was denied. She noted that Mr. Wheelden, who was supposed to be on leave, found out from coworkers when appellant would be late. Although, Mr. Wheelden told appellant he was not singling her out and that he had not seen anyone else who was tardy, she explained he was in no position to, as his shift started after they arrived at work. Appellant alleged that one coworker was late every day from 3 to 10 minutes. One day, another coworker was 10 minutes late. Appellant did not report her, but she believed this coworker did not use leave. Although she identified these coworkers by name, she stated: "I am not looking to report other employees. I am looking for equal and fair treatment." Appellant took full responsibility for being late, but she did not feel it was appropriate to single out one employee among six and make them use leave for being late if all employees were not held to the same standard, including the supervisor.

On one day, appellant felt she had to explain to the supervisor that she was at work but in the bathroom, otherwise she would have to put in for leave. "This is how terrified I am of him. I feel like I have to tell him when I am in the bathroom."

Appellant explained how she wanted people to like her and how she tried everyday to say something nice. She went out of her way to try and form some type of professional/friendly relationship with her coworkers, but as one e-mail showed, only one person stated something back. Appellant sent an e-mail to Mr. Wheelden letting him know what was going on. "I did this all the time so he would see that I am being a team player, trying and to keep him in the loop. As you can see -- no reply -- Greg most of the time, would not reply back which made me feel insignificant and that I was invisible."

Appellant stated that a new coworker began to treat her the same way the supervisor did:

"This day was another one of those days I felt alone. The new girl at first seemed like she was like me. I thought finally I will have someone who will be my partner so to speak. We can work as a team and help each other out. I actually gave her all the test answers for her blackboard training.... She asked me not to tell the other girls or Greg so I didn't. Once I gave her the answers everything seemed so different. She would only be nice to me or talk to me when Des was gone. She was a different person when others were around but when it was just her and I, then I was good enough to talk to. This is how Greg would treat me. If it was just him and I he would build me up. If others are around he would knock me back down. He would ignore me, give me the silent treatment for taking

leave, refuse to respond to e-mails and even deny me the common courtesy of a good morning or good night.”

Appellant stated that Mr. Wheelden routinely talked to employees about other employees. Whether it was personal or concerned leave status, “when it comes to [him], nothing is confidential.”

On February 20, 2013 appellant stated that she cried all day because of how she was treated. Although Mr. Wheelden wanted her to find a work buddy and told her several times that it was great she found one; but she learned from her work buddy that the supervisor was trying to get the work buddy in trouble by e-mailing the work buddy’s boss and asking whether the work buddy was still helping appellant with her prosthetics report. “I just know now from day one when Greg sent that e-mail to Sherri stating he couldn’t wait to get rid of us that I was set up for failure from the very beginning.” Appellant stated that Greg played on her emotions and apparently thought it was entertaining to build her up and then knock her down. “This was the day I finally broke. I could not face going back to that office and being treated the way I was treated. Something had to change.”

The record contains a photo image of a computer screen showing an e-mail response from Mr. Wheelden to a program application specialist regarding upload results and extract file transfers: “I guess, isn’t it time to retire yet? 7 staff from my shop can retire with a 25,000.00 buyout and are to be gone no later than May 11th, to be honest, I hope they all go, they are all a huge pain in the butt.”

Statements from other coworkers described their interactions working for Mr. Wheelden. A union representative stated that he thought Mr. Wheelden was unqualified to be a manager and how the supervisor liked to pit his employees against one another. He stated that Mr. Wheelden was a master manipulator and how it affected the mental health of two employees. According to the union representative, Mr. Wheelden stated that he wanted to rid himself of appellant and stated the same thing about two other employees.

An employee whose desk was by the break room, stated that she occasionally overheard conversations. She stated that employees had kept appellant from new information and “from just basically helping her with things without her feeling like she was beneath them.” One day, appellant asked how do to something with the margins in a spreadsheet and the employee replied with a very quick “you just click here and here,” then continued with her work not caring whether appellant understood. “They whisper to each other all of the time over there and [appellant] is the only one who is left out. Even the new gal has been taken in to this click [*sic*] and whispers with them.” The employee stated that “those 3 girls” and Mr. Wheelden had completely alienated appellant from that section. She stated that appellant worked in a hostile work environment.

Another employee stated that Mr. Wheelden did not treat people equally. Mr. Wheelden displayed favoritism by giving privileges others were denied. Not only did he not resolve conflicts, he created a hostile work environment with his management style. The employee noted how the breakfast club created hostility with the outsiders until employees from outside the section complained. Mr. Wheelden told his favorites they could go to the farmers market for

lunch but stated nothing to the other employees. One of his favorites took two 20- to 25-minute smoking breaks in the morning and afternoon plus long lunches. When the employee was mentioned to Mr. Wheelden, he became angry. The next day, she received an oral reprimand for being one to two minutes late for a few days in a row. The employee stated that Mr. Wheelden created animosity between employees by telling each what they wanted to hear without ever solving problems.

Another employee, retired, stated that favoritism, gossiping and cruelty happened on a daily basis. She noted how she was denied a bonus even though she felt her job made a major contribution. The employee stated Mr. Wheelden sat for hours with his favorites and then walked by the billers saying, "Get to work!" She stated that the atmosphere was very tense at all times.

Another employee, recently retired, stated that he and other employees had many problems with Mr. Wheelden and that grievances were filed. He called Mr. Wheelden deceitful, a liar and someone who showed favoritism. "Whatever difficulty [appellant] is having with Mr. Wheelden, I'm willing to bet that [he] is the root of [it]. Mr. Wheelden has no compassion for his employees, he [is] very cold hearted and thinks only of himself and what makes him look good."

In a decision dated May 30, 2013, OWCP denied appellant's claim. It reviewed the many incidents alleged in the submitted records and found that she did not establish a compensable factor of employment. OWCP determined that the administrative actions of Mr. Wheelden were generally not compensable factors of employment and that appellant did not submit evidence of error or abuse. Appellant's perception of how Mr. Wheelden viewed her was considered self-generated and not arising out of the employment.

On appeal, appellant referred to the statements of other employees who worked for the supervisor, as they would show an ongoing problem with him. She contended that he lied about everything and that she had never lied about anything. Appellant stated that Mr. Wheelden continued to mistreat her and that she wanted her annual leave restored.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² When an employee experiences emotional stress in carrying out his or her employment duties or has fear and anxiety regarding his or her ability to carry out his or her duties and the medical evidence establishes that the disability resulted from his or her 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 resulted from his or her emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of her work. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force, job

² *Id.* at § 8102(a).

insecurity or frustration from not being permitted to work in a particular environment or to hold a particular position.³

Workers' compensation does not cover an emotional reaction to an administrative or personnel action unless the evidence shows error or abuse on the part of the employing establishment.⁴ The Board has held that actions of the employing establishment which the employee characterizes as harassment or discrimination may constitute a factor of employment giving rise to coverage under FECA, but there must be some evidence that harassment or discrimination did in fact occur. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.⁵ Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.⁶ The primary reason for requiring factual evidence from the claimant in support of his allegation of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by OWCP and the Board.⁷

It is well settled that an employee's reaction to supervision is not a compensable factor of employment under *Cutler*.⁸ Complaints about the manner in which a supervisor performs his or her duties or the manner in which a supervisor exercises his or her discretion fall, as a rule, outside the scope of coverage provided by FECA. This principle recognizes that a supervisor or manager must be allowed to perform his or her duties and that employees will, at times, dislike the actions taken. Mere disagreement or dislike of a supervisory or managerial action is not compensable, absent evidence of error or abuse.⁹

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Thomas D. McEuen*, 41 ECAB 387 (1990), *referred on recon.*, 42 ECAB 566, 572-73 (1991).

⁵ See *Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

⁶ *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

⁷ *Paul Trotman-Hall*, 45 ECAB 229 (1993) (Michael E. Groom, Alternate Member, concurring).

⁸ *Reco Roncaglione*, 52 ECAB 454 (2001) (disagreement with the associate warden held not compensable, whether viewed as a disagreement with supervisory instructions or as perceived poor management); *Robert Knoke*, 51 ECAB 319 (2000) (where the employee attributed his emotional injury to the manner in which his supervisor spoke to him about undelivered mail, the Board found that a reaction to the instruction itself was not compensable, as work assignments given by supervisors in the exercise of supervisory discretion are actions taken in an administrative capacity and as such, are outside the coverage of FECA); *Frank A. Catapano*, 46 ECAB 297 (1994) (supervisory instructions, with which the employee disagreed, held not compensable in the absence of evidence of managerial error or abuse); *Rudy Madril*, 45 ECAB 602 (1994) (where the employee questioned his supervisor's instructions to move from belt number five to belt number six and unload mail and became upset because he felt he was being pushed and picked on, the Board found that the incident was not a compensable factor of employment).

⁹ *T.G.*, 58 ECAB 189 (2006).

ANALYSIS

The Board notes that appellant did not attribute her emotional condition to the performance of her regular or specially assigned duties as a revenue technician under *Cutler*. Rather, appellant contends that her emotional condition is related to actions by her supervisor. As noted in *McEuen*, complaints about the manner in which a supervisor performs his duties or the manner in which a supervisor exercises his discretion falls outside the scope of coverage provided by FECA. A manager's style, *per se*, is not a compensable factor of employment. It must be established factually that the manager committed error or abuse to support a compensable factor pertaining to any administrative or personnel matter. Similarly, allegations pertaining to perceived instances of harassment or discrimination must be established by probative factual evidence.

The record in this case contains appellant's multiple allegations pertaining to actions of her supervisor. The Board finds that she did not submit sufficient evidence to establish her allegations as factual. The statements of appellant's coworkers relate their general impressions as to his management style and perceived lack of compassion. The statements do not provide sufficient information as to specific instances to support error or abuse on the part of the supervisor with regard to time, place or parties involved. Further, there is no formal finding by the MSPB or EEOC or other administrative body that Mr. Wheelden violated a specific rule or regulation or policy in his interactions with appellant.¹⁰ There is only appellant's allegation that he had favorites among the employees and lacked management and people skills. She noted that he was intimate with certain employees in accounts receivable but not in billing. Appellant contributed to a breakfast club and performed favors for her supervisor; but found that they were not reciprocated. She suspected, but did not prove, that Mr. Wheelden selectively enforced leave requirements or policies concerning training. The evidence of record is insufficient to establish that he violated any specific rule regarding confidential information. Appellant alleged that Mr. Wheelden would give her the silent treatment. She saw differences in how he responded to her personal loss and those of other employees. Appellant felt he treated her coldly. She perceived that he would build her up when he was alone with her, but then knock her down when she was not around in order to set her up for failure. The Board notes that appellant's feelings of job insecurity, without evidence of error or abuse, are not a compensable factor of employment.¹¹

Such allegations, unsupported by evidentiary proof of administrative error or abuse, are not sufficient to establish a compensable factor of employment. Absent probative factual evidence, her allegations are also not sufficient to establish harassment or discrimination on the part of her supervisor. Workers' compensation does not apply to each and every injury or illness

¹⁰ *E.g.*, *R.G.*, Docket No. 10-947 (issued April 25, 2011) (where an arbitrator's decision demonstrated that the employing establishment erred in prematurely suspending the claimant from work, the record established a compensable factor of employment).

¹¹ *See Robert Breeden*, 57 ECAB 622 (2006).

that is somehow related to an employee's employment.¹² Mere perceptions of harassment or discrimination are not compensable.¹³

Accordingly, the Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty. The Board will affirm the May 30, 2013 decision.

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 not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the May 30, 2013 decision of the Office of Workers' Compensation Programs is affirmed.¹⁴

Issued: August 7, 2014
Washington, DC

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

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

¹² *Supra* note 3.

¹³ *See Dorthea M. Belnavis*, 57 ECAB 311 (2006).

¹⁴ Richard J. Daschbach participated in the preparation of the decision but was no longer a member of the Board after May 16, 2014.