



She noted December 18, 2012 as the date of injury and stopped working that day. Felicia N. Brown, appellant's supervisor, controverted the claim stating that appellant's duties and environment were consistent with normal work conditions.

Along with the claim, appellant submitted a copy of her position description, a January 9, 2013 report from Dr. Lauren J. Waxman, a Board-certified psychiatrist, diagnosing adjustment disorder with anxiety over a two year period from work stressors; and a January 15, 2013 Form CA-20 report from Dr. Randall A. Caldron, a Board-certified internist, diagnosing adjustment disorder with work. Other medical reports from Kaiser Permanente diagnosed adjustment disorder with anxiety, occupational problems or work circumstances and included work restrictions.

By letter dated January 18, 2013, OWCP requested additional factual and medical evidence. It afforded appellant 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted additional medical evidence diagnosing adjustment disorder with anxiety along with several statements and e-mails.

In a January 25, 2013 statement, appellant provided background information regarding her work as a contract negotiator and the changes that took place when her office was reorganized in early 2011. She indicated that Ms. Brown began working as her supervisor in February 2011. When Ms. Brown became appellant's supervisor, there were 11 new requirements and over 40 completed contracts that had to be managed. Appellant indicated that only two people remained after the reorganization and Ms. Brown wanted her to handle the 11 new requirements and for the other employee to handle the 40 contracts. She stated that two people could not handle that many contracts and for her to handle 11 new requirements would mean no days off and long hours every day. Appellant indicated that by November 2012 extra people were brought into help, who were subsequently made permanent.

Appellant alleged that prior to bringing the extra people aboard, Ms. Brown abused, harassed, intimidated and stressed her by saying she was not doing her job and demanding that she work faster and smarter. Ms. Brown also made age a factor. She assigned the remaining 10 new requirements to the other employee and assigned the 40 plus contracts to appellant. Appellant alleged that she could not keep up with the 40 contracts and work piled up because she and the other employee could not handle the workload. She stated that from January 2011 through November 2012, additional supervisors were brought in who also gave her directions. Appellant alleged that she was trying to do her job and the additional directions from the other supervisors were a double hit on her plate. However, she stated that she could live with all the changes as long as Ms. Brown stayed away from her, but the stress was compounded because of Ms. Brown's demands and abusiveness towards her was out of control.

Appellant alleged that she had several interactions with Ms. Brown where Ms. Brown was intimidating, verbally abusive, used foul language and harassed her. She indicated that she became so stressed out that she could not function at work or home and constantly tried to maintain her blood pressure and other symptoms for two years.

In the summer of 2011, a management assistant filed an Equal Employment Opportunity (EEO) complaint against Ms. Brown and she had to give two depositions and testify. She alleged that Ms. Brown escalated appellant's harassment by constantly coming into her office, giving her more assignments and telling her that she was not working fast enough or was making too many mistakes. At the same time, Ms. Brown also assigned appellant to train that same management assistant and would send her e-mails telling her what she wanted the management assistant to do. Appellant stated that the management assistant would also be in her office, which bothered Ms. Brown and Ms. Brown would get back at her with verbal abuse including quotas, timeframes and demands. She alleged that, if she did not turn in an assignment to Ms. Brown, who would come into her office and demand to know how long it would take. Whenever she turned in an assignment, Ms. Brown would draw a line through the document, say "wrong, do it over" and Ms. Brown would do that in front of people in her office.

Appellant alleged that Ms. Brown refused to sign her leave slips for doctor's appointments or regular leave. She stated that they had an argument on March 16, 2011 because Ms. Brown told her that she was not going to approve any leave unless it fit into the matrix she had created regarding the workload assigned to her. Appellant stated that they did not come to an agreement regarding her leave requests, but when she wrote Ms. Brown an e-mail requesting justification for the denial of her leave, her leave requests were approved.

From February through September 2011, appellant stated that she had to visit Ms. Brown in her office regarding the workload and her assigned tasks and they had many altercations and confrontations regarding Ms. Brown's abusive and filthy language. She stated that she would constantly ask Ms. Brown to stop cursing and discussing her personal business. Appellant alleged Ms. Brown used obscene language and made racial slurs in the workplace.

On March 16, 2011 appellant told Ms. Brown that she was sick, had completed her work, and needed to go home. She stated that Ms. Brown gave her a dollar and asked her to go get her some chocolate before she left to go home. Appellant stated that this made her angry and she "threw the money on the floor, grabbed her belongings and got out of the building before she exploded." She stated that this incident occurred on a Friday and over the weekend all she could think about was telling Ms. Brown off on Monday. On Monday appellant met with Ms. Brown in the conference room and told her why she was angry and upset with her on Friday. She stated that Ms. Brown did not think anything was wrong with what she had asked appellant to do. Appellant asked Ms. Brown if she felt she was different "and less than her or whether she had that much authority to get that lowdown and dirty and to think that because she was the supervisor she had to run her errands and get her lunch." She also told Ms. Brown that she talked to people in a demeaning manner and had a "filthy and dirty mouth and that she needed to watch her tone and conversation in the workplace." Appellant also stated that she was not accustomed with people using racial slurs or obscene language and that Ms. Brown should not ever talk to her like that and not to mess with her. She also told Ms. Brown that she had no manners and created an explosive environment with her filthy language and was always picking some fight. Appellant stated that Ms. Brown stated that she would not ask her to do anything like that again and appellant accepted Ms. Brown's apology.

In April 2011, appellant was working on a new requirement in her office when Ms. Brown got verbally abusive (and cornered her so she could not get up or get out of her chair)

trying to make her give a date when she would have a contract completed. She alleged that she got stressed out and nervous because she had never had anyone stand over her, get up in her face and demand an answer. Appellant stated that she asked Ms. Brown to leave her office or she would get up and go home. She alleged that Ms. Brown gave her a look which frightened her. Appellant stated that her blood pressure was high when Ms. Brown left her office and appellant stated that she had to go outside and calm down.

Appellant stated that Ms. Brown's personality was too abusive and controlling and alleged that she misused her supervisory authority. She alleged that Ms. Brown constantly abused her by telling her that she worked too slow, made too many mistakes and was not executing. Ms. Brown also insisted that appellant work faster or smarter. Appellant stated that Ms. Brown intended to change the image of their organization and that people did not accept change easily and the employing establishment wanted younger smarter people who could execute.

Appellant indicated that the workload in contracts had always been stressful, but it had never been a constant stress until Ms. Brown abused, demeaned, intimidated, bullied and harassed her to the point where she could no longer function after two years. She indicated that they have had heated, knock out disagreements and that she did not accept Ms. Brown's conduct and obviously Ms. Brown does not like being called out about her filthy language and conduct. Appellant stated that working for Ms. Brown over the last two years had not allowed her to do her best work because of the stress caused by Ms. Brown.

Appellant stated that Ms. Brown brought in a temporary management assistant to help with the workload in March/April 2011, who then became permanent. She indicated that this employee filed an EEO complaint against Ms. Brown and was successful with her settlement.

In a September 24, 2011 e-mail, appellant requested to work at home to get a break as she could not accomplish anything in the office. She also stated that she was being disallowed training for the new assignments. Appellant stated that in order to get her work done she had been unable to take vacations, had missed doctor appointments and was burned out. The office was noisy and she could not concentrate on her work. Ms. Brown responded in a September 27, 2011 e-mail that she expected the completed assignment to be on her desk by October 30 (or November 1 if you choose to come in on Friday and Saturday). In a September 28, 2011 e-mail to Ms. Brown, appellant stated that she did not like the tone of Ms. Brown's message and indicated that she had to do most of the work with Ms. Brown taking credit and appellant being held responsible for delays of deadlines. She also stated in the e-mail that Ms. Brown's tactics "suck."

On October 11, 2011 appellant was given a new requirement during a staff meeting and was told to have the package ready on October 14, 2011. She asked Ms. Brown why she only had three days to complete the package as opposed to 14 days. Appellant was told that the project was reassigned to appellant as the employee to whom it had been assigned had suffered a heart attack. She alleged that she was pushed to work faster, had timeframes and dates on when the projects had to be completed. Appellant stated that she and Ms. Brown argued over the assignment and Ms. Brown nearly demanded that she come in and work her day off and Saturday. She indicated that she agreed so they could make the October 14, 2011 deadline.

Appellant was also assigned various other tasks to be done as soon as possible in addition to the project and her 40 contracts.

Appellant stated that she stayed at her desk all day, hardly took her breaks and that she could not continue at that pace with the “verbal abuse, harassing and bullying from Ms. Brown.

Appellant stated that her work was 40 plus delivery orders and there was no one who could handle 40 contracts. She stated that she accepted whatever work Ms. Brown assigned.

A March 8, 2012 e-mail noted that appellant had agreed to take on another assignment on overtime, to work from home. She accused Ms. Brown of then trying to take away the agreement of doing it from home on overtime.

In a December 13, 2012 e-mail, Ms. Brown indicated that she had reviewed appellant’s timecard and informed her that some of the hours claimed had been denied. She stated that she would like to discuss the matter more fully with appellant on Friday. Appellant responded that she would not be in the office that Friday but would be teleworking that day unless Ms. Brown decided to take that back because she did not like the contents of the e-mail. She wrote Ms. Brown that she should think long and hard about her decision because if she was not going to pay her what was on the overtime sheet, she would file the biggest lawsuit and EEO complaint against her. In a December 24, 2012 e-mail, appellant informed Ms. Brown that she just got notice that Ms. Brown took away her overtime. She wrote, “If you take that time off my card I will file a GRIEVANCE. Don’t you ask me to work out OVERTIME ever. You are a vindictive person. I will strongly suggest you put it back on. I worked my behind off trying to get the contracts done.” Appellant stated that, although the overtime hours were not preapproved, Ms. Brown had asked all the employees to work overtime because they were overloaded. She indicated that she had a total of 50 hours of overtime but was only paid for 20 hours. Appellant stated that she had worked her days off and the weekends for two weeks and that Ms. Brown knew she was working the extra time because of the upcoming holidays.

On December 18, 2012 appellant sent an e-mail to Ms. Brown regarding a statement that she was no longer performing as a GS-12.

Appellant stated that most of her altercations with Ms. Brown were held in private and she was unsure if any of her coworkers were aware of them or would provide statements concerning Ms. Brown’s abusive language. She indicated that she filed an EEO complaint, which had not yet been finalized and denied any stress outside of work or in her personal life. Appellant denied any hospitalizations for emotional problems and has been placed on medication for her current condition. She further stated that her stress condition developed on or around April 2011 after she had three confrontations with Ms. Brown.

In a March 13, 2013 letter, Mary Mercado, injury compensation specialist, stated that the employing establishment did not concur with appellant’s claim. She indicated that appellant had a “similar number of actions (often smaller) with the similar level of difficulty (often less difficult) as all of the other employees (contract specialists) within the Space and Missile Systems Center Specialized Contracting Division.” Ms. Mercado indicated that all of the employees had been offered overtime and compensation time and several employees, including

appellant, had accepted that opportunity. She stated that the level of expectation for each employee was depicted in their respective employee job description and all of the duties assigned to appellant were within her job description. Ms. Mercado stated that to her knowledge, all of the employees got along with each other as no complaints had been brought to her attention. The only complaints received were e-mails from appellant which always coincided with her not meeting her deadlines. However, those complaints were always resolved verbally within days and her packages were always completed (although late as they required rework attributed to errors). To accommodate her complaints, appellant was granted telework to alleviate her extremely long commute and to give her the quiet time she requested. Ms. Mercado indicated that appellant was not the only one in the office with a long commute, nor was she the only employee in a cubical. However, appellant was the only one on telework and her work continued to be late and riddled with errors that required rework. To that end, because she was on telework, other employees had to rework her assignments, including the PCOs supervising/signing the packages when she was unavailable. Appellant continued that the organization was downsized a couple of years ago and the work was commensurate with the number of remaining employees and was executed with no impacts to the mission. Ms. Mercado indicated over the past two years the workload has tripled and policies had changed, but more employees had been added to the team and, therefore, there was no excess or added stress to any one individual. She denied that there was any expectation or excess demand for any one employee to do more than anyone else as the work was spread evenly. Ms. Mercado further indicated that appellant's work product had always been average and all of her packages required more than one set of corrections. Often times the PCO had to execute the corrections out of frustration and pressure to meet the deadline as well as to avoid her insubordinate attitude. Ms. Mercado stated that appellant's workload was decreased over the past two years to accommodate this; however, the number of errors, her lack of attention to detail and her attitude had worsened.

By decision dated July 3, 2013, OWCP denied appellant's claim on the basis that she failed to establish any compensable factors of employment.

On August 2, 2013 appellant requested review of the written record. In an August 2, 2013 statement, she indicated that she was submitting e-mails from Ms. Brown to support her allegations that they had serious altercations for the last two years that included harassment, intimidation and excessive workload. Appellant stated that she testified in another employee's EEO case and Ms. Brown became more hostile and abusive towards her. She discussed issues with her time card and overtime issues. Appellant indicated that she was unable to obtain documentation to corroborate her allegations due to other employee's fear of reprisal. She indicated that she had documented those incidents. Appellant stated that Ms. Brown was a liar and would say anything and had a foul mouth. Numerous e-mails were provided which she asserted supported her claim.

By decision dated November 26, 2013, an OWCP hearing representative affirmed its prior decision.

## LEGAL PRECEDENT

Workers' compensation 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>2</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>3</sup>

It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employing establishment and not duties of the employee.<sup>4</sup> Investigations are considered to be an administrative function of the employer unrelated to the employee's day-to-day duties or specially-assigned job requirements.<sup>5</sup>

For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that the incidents alleged or implicated by the employee did, in fact, occur.<sup>6</sup> Grievances or EEO complaints by themselves are not determinative of whether harassment or discrimination took place.<sup>7</sup> Where a claimant alleges harassment, the issue is whether he or she has submitted sufficient evidence to establish a factual basis for the claim by the submission of probative and reliable evidence to support such allegations.<sup>8</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>9</sup> If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of

---

<sup>2</sup> 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>4</sup> See *Pamela D. Casey*, 57 ECAB 260 (2005); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>5</sup> See *Jeral R. Gray*, 57 ECAB 611 (2006).

<sup>6</sup> *T.G.*, 58 ECAB 189 (2006).

<sup>7</sup> *C.S.*, 58 ECAB 137 (2006).

<sup>8</sup> *Id.* See *Robert Breeden*, 57 ECAB 622 (2006).

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

record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.<sup>10</sup>

The Board has held that a variety of work factors are compensable under FECA. Among them, overwork is a compensable factor of employment if appellant submits sufficient evidence to substantiate this allegation.<sup>11</sup> Also, in certain circumstances, working overtime is sufficiently related to regular or specially assigned duties to constitute a compensable employment factor.<sup>12</sup> Additionally, conditions related to stress resulting from situations in which an employee is trying to meet his or her position requirements are compensable.<sup>13</sup>

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that an emotional condition was caused or adversely affected by his or her employment.<sup>14</sup> Neither the fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.<sup>15</sup>

### ANALYSIS

Appellant alleged that she sustained an emotional condition with consequential physical symptoms and medical conditions due to being overworked, as well as a pattern of reprisals and criticism by her supervisor, creating a hostile work environment. OWCP denied her claim, finding no compensable employment factors under *Cutler*.

Appellant alleged that she sustained stress in the performance of her duties due to the additional responsibilities and excessive workload assigned to her by her supervisor. The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable.<sup>16</sup> OWCP found that this allegation was unclear and contradictory as appellant alleged in some statements a disputative workload while in other statements she stated that she was able to handle the workload and overtime except for her supervisor's behavior towards her. Thus, it found her allegations of additional responsibilities and excessive workloads were not sufficient to be considered a compensable factor of employment.

As to appellant's allegations of being overworked due to staffing shortages the Board finds that she has not established a factual basis for this allegation. The employing establishment

---

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

<sup>11</sup> See *Bobbie D. Daly*, 53 ECAB 691 (2002).

<sup>12</sup> See *Ezra D. Long*, 46 ECAB 791 (1995).

<sup>13</sup> See *Trudy A. Scott*, 52 ECAB 309 (2001).

<sup>14</sup> See *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>15</sup> See *Ronald K. Jablanski*, 56 ECAB 616 (2005); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>16</sup> See *Lillian Cutler*, *supra* note 2.

stated that the work following reorganization and subsequent downsizing was commensurate with the number of remaining employees and was executed with no impacts to the mission. It acknowledged the workload had increased within the last two years, but stated the number of employees had increased with the work spread evenly among employees. This contradicted appellant's allegation that she was overworked or assigned an excessive workload. As appellant has provided no evidence to substantiate her allegation of overwork, she has not established this as a compensable factor of employment.

Appellant alleged stress due to deadlines and the work assigned to her by her supervisor. Assignment of a work schedule is an administrative function and not a work factor and is not compensable absent a showing of error or abuse.<sup>17</sup> Appellant has submitted insufficient evidence to establish that the employing establishment acted unreasonably or committed error with regard to this administrative factor. The employing establishment stated that she had a similar number or a smaller number of assignments than her coworkers and, over the past two years, had been given work of a less difficult nature than her coworkers. It explained that appellant's workload was decreased over the past two years as all of her packages required more than one set of corrections and the number of errors she made along with her lack of attention to detail and negative attitude worsened. The employing establishment noted that her complaints were always resolved verbally within days and that telework was provided to accommodate her extremely long commute and to give her the quiet time she requested. It noted that appellant was the only employee on telework and her work continued to be late and required rework. Appellant did not submit any evidence to substantiate that these administrative functions, *e.g.*, her work assignments were assigned in error or were abusive. The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under FECA.<sup>18</sup> Thus, these actions on the part of management did not constitute a factor of employment.

Appellant attributed her emotional condition to mistreatment and harassment by her supervisor. She alleged that Ms. Brown yelled at her and used profane language and racial slurs. OWCP reviewed all of appellant's allegations of discriminatory treatment and found that they were not substantiated or corroborated. To that end, the Board finds that it properly found that the episodes of discrimination cited by appellant did not factually occur as alleged by her, as she failed to provide any corroborating evidence for her allegations. There is no corroborating evidence that Ms. Brown yelled at, cursed at or used racial slurs to appellant. While appellant documented Ms. Brown's behavior, there is no independent corroboration that these events actually occurred as alleged. She alleged that she and Ms. Brown got into heated arguments. Verbal altercations, when sufficiently detailed by the claimant and supported by the evidence of record, may constitute factors of employment.<sup>19</sup> However, appellant has not submitted any corroboration that any of the events occurred as alleged. Thus, the allegation of mistreatment in this manner is not established and is not compensable.

---

<sup>17</sup> *Cyndia R. Harrill*, 55 ECAB 399 (2004).

<sup>18</sup> *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

<sup>19</sup> *Mildred D. Thomas*, 42 ECAB 888 (1991).

Appellant attributed her emotional condition to matters concerning her leave and the denial of some claimed overtime hours on a timecard. The Board notes that matters pertaining to use of leave and overtime are generally not covered under FECA as they pertain to administrative actions of the employing establishment and not to the regular or specially assigned duties the employee was hired to perform.<sup>20</sup> However, error or abuse by the employing establishment in an administrative or personnel matter or evidence that it acted unreasonably in the administrative or personnel matter, may afford coverage.<sup>21</sup> Appellant stated that her leave requests were ultimately approved. While she may have been frustrated with having to ask Ms. Brown why her leave was denied, she has failed to show that this action demonstrated error or abuse on the part of management. Thus, it is not compensable. The Board further finds that Ms. Brown did not commit administrative abuse or error by changing appellant's timecard to reflect less overtime hours. The Board notes that appellant indicated that the overtime hours were not previously authorized. Therefore, it is the supervisor's discretion to change a timecard regarding unauthorized overtime, if deemed appropriate. Appellant failed to show any evidence of error or abuse in regards to the alteration of her claimed overtime hours. Thus, she has not established a compensable employment factor in this respect.

Appellant alleged that she was denied classes and mandatory training. However, the record is devoid of any documentation from the employing establishment that she was denied time to attend mandatory training classes.

For these reasons, appellant did not establish that her emotional condition arose in the performance of duty.<sup>22</sup>

On appeal, appellant contends that her workload tripled before any new employees were added and her supervisor's constant and continuous abusiveness for two years caused her emotional condition. She further alleged that her supervisor gave her excellent appraisals, bonuses and time off awards for two years yet lied to OWCP saying she was incompetent and other employees had to do her work. As noted above, appellant has not submitted sufficient evidence to establish a compensable factor of employment.

### **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.

---

<sup>20</sup> *Elizabeth Pinero*, 46 ECAB 123 (1994).

<sup>21</sup> *Margreate Lublin*, 44 ECAB 945 (1993).

<sup>22</sup> As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record. *Marlon Vera*, 54 ECAB 834 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 26, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 7, 2014  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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