

FACTUAL HISTORY

On June 11, 2009 appellant, then a 48-year-old manager of budget and financial analysis, filed an occupational disease claim alleging that she developed uncontrollable hypertension, body aches, digestive problems, major depressive disorder, post-traumatic stress disorder and chest pains due to job stress.

Appellant submitted a narrative statement and listed a pattern of factors of her employment she alleged were responsible for her emotional condition. In July 1997 due to the requirement by Glenn Boquet, her supervisor, that she perform managerial duties. In October 1997 he forced appellant to select his choice for a budget vacancy. In November 1997 Mr. Boquet discriminated against her by refusing to grant her a "far exceeds" rating while awarding this rating to a white male. He refused to allow appellant to attend a scheduled training class in March 1998. In June 1998 Mr. Boquet reduced her staff during the busy season resulting in extra work for her. He harassed appellant in April 1999 when she required surgery. While appellant recovered from surgery in 1999, Mr. Boquet continued to telephone her at home. When she returned to work he required her to complete all the budget corrections by herself.

Appellant claimed that Mr. Boquet began to racially harass appellant from December 1999 through April 2000. Mr. Boquet alleged that out of the blue, he informed her that a friend of his referred to black people as "nig---s." He stated that he was only saying something that his friend had said. Appellant requested that Mr. Boquet not use that language in front of her. She stated that he spoke negatively about black managers and called them idiots. Mr. Boquet called black football players monkeys on two occasions in 2000 and 2006. Appellant indicated that he had hung a confederate flag on the wall of his office for years until he was forced to remove it. Mr. Boquet threatened her with discipline and falsely accused her of keeping him out of the loop. In June 2000, he questioned appellant about her personal vehicle, asked how she could afford it and asked about her husband's job. Mr. Boquet also stated that he hated her.

In February 2001 appellant alleged that Mr. Boquet refused to grant either her or her employee's performance awards. During the months of March through May 2001, Mr. Boquet spoke loudly and asked for items that her system could not generate. He refused to go through appellant, instead requesting information from her employees. From September through December 2001, appellant had to track expenses related to the anthrax attacks, closing of postal office and postal deaths. She had to travel by airplane from October 2001 through July 2002 due to mandatory meetings despite her fear of flying. Mr. Boquet did not require appellant's employee, a white female to fly when she stated that she was afraid. From March through August 2002, he instructed her to come to his office and bring all her staff except for a budget analyst who was black. Appellant stated that he tried to pollute the work environment with racism and hostility. In June 2003 Mr. Boquet required her to print out and provide him with the attachments to his e-mails. This requirement necessitated walking 10 to 12 minutes from one building to another. Mr. Boquet called appellant stupid and belittled her before employees.

Appellant began to change positions in October 2003 and start work as a Complement Coordinator reporting to Tony Ruda, the district manager. She was required to work in both positions for a period of time and was required to work extensive hours, bring work home and

work weekends. Appellant developed chest pain in July 2004 and was diagnosed with high blood pressure. She found that she had an enlarged heart and underwent heart surgery. Due to stress symptoms, appellant requested a return to her budget position in March 2005. During the period August 29, 2005 through October 2005, she evacuated New Orleans for Atlanta, Georgia due to hurricane Katrina. Appellant was instructed to work from Atlanta to assist the hurricane evacuees from the coast. She was responsible for the placement of all Gulf Coast evacuees within the employing establishment's Georgia Cluster and was required to work 10 to 14 hours a day helping employees find places for work. Appellant and her family were displaced by the hurricane. She stated, "I am helping evacuees find relatives and friends who work for the postal service, find job placement, find aid or a higher power."

Appellant requested to return to Louisiana through the receipt of an inadvertent e-mail but found out that her position had been filled when she received an inadvertent e-mail. She returned to Baton Rouge, Louisiana, to work on the Katrina Task Force as the only contact for evacuated employees, 1,500 persons. Appellant stated that she heard so many horrors that she began doubling her medication. On April 2006 her position moved back to New Orleans, while her home was located in Baton Rouge. In July 2006, appellant began to work on the Task Force and as the District Complement Coordinator. She stated that Lynn Western refused to release her when her previously scheduled slot became available for the Advanced Leadership Program (ALP) and this opportunity was provided to another employee, a white male. In November 2006, although appellant did not receive an appropriate evaluation, she was also named in all Katrina-related Equal Employment Opportunity complaints. In April 2007 she stated that Ms. Western began to harass her because she wished to return to her position as manager of budget. Appellant alleged that Ms. Western lied on her mid-year review and was trying to ruin her career. She returned to budget in January 2008. Appellant stated that Ron Greer, the new finance manager, informed her in February through March 2008 that if she had problems with the fact that he had assumed the position for which she had applied for, then she should bid out. She stated that Mr. Greer tried to force her to select Lorina Williams, a coworker, for a budget position through intimidation and threats. Mr. Greer increased the job duties of appellant's position, including daily reports, approving all travel requests statewide and working on Saturdays for teleconferences. In July 2008 he harassed appellant about her employees by refusing to award an employee of the quarter. Mr. Greer allegedly harassed her from August through September 2008 during Hurricane Gustav by initially requiring her to work as the emergency management team and then in an offsite location. Appellant reported to the offsite location in Alpharetta, Georgia, eight hours away but Mr. Greer charged her with absence without leave. She was also denied an award for working during Hurricanes Gustav and Ike.

Beginning in September 2008, Mr. Greer changed the reporting time for appellant and her staff from 8:30 a.m. to 8:00 a.m. Appellant stated that he then allowed her staff to report at 8:30 a.m., but required appellant to report at 8:00 a.m. She stated that he appeared to be stalking her. Appellant stated that her performance evaluation in November 2008 was exceptional, resulting in an overall rating of nine. Mr. Greer changed her rating from a nine to eight. He harassed appellant in February and May 2009 through moving a black male employee from Baton Rouge to New Orleans. Appellant alleged that from June 2008 through March 2009 Mr. Greer argued with coworkers and other managers and caused the doors of the finance office to be locked. Mr. Greer abused all of his managers, his secretary and her employees. Appellant accused him of micromanagement, an abusive manner and a hostile work environment. In a

letter dated March 13, 2009, she requested that Carolyn Weisiger remove Mr. Greer from the finance office. Mr. Greer created a hostile environment by harassing employees, lying, racism, threats and intimidation and locking the doors. On March 26, 2009 appellant was informed through a bio-detection system meeting that if the plant became contaminated then the whole building was at risk of contamination.

A letter dated October 29, 2008 from Mr. Greer informed her that effective Saturday November 1, 2008 her reporting time was 8:00 a.m. to 4:30 p.m. In 2008, appellant's performance rating was seven. She filed a review rating recourse request on March 26, 2009. Appellant submitted a series of e-mails dated March 31, 2009 indicating that she requested a meeting with Steve Moreland at 5:21 p.m. and that he responded to this request at 11:09 p.m. She alleged that Mr. Moreland could not have sent the reply because he was off the rolls by the close of business on March 31, 2009. Appellant received Individual EAS Recognition/Awards Programs on January 20 and 22, 1998, February 3, 1999, December 13, 2000 and April 16, 2002. She submitted a copy of her work history.

Mr. Greer responded to appellant's allegations on July 27, 2009. He stated that her position was not stressful as the reports she was required to complete had a flexible window. Mr. Greer also noted that appellant had standard operating procedures and had a staff of two budget and financial analysts to assist her. He stated that she had not reported stressful work assignments and had received training on all aspects of her job. Mr. Greer stated that appellant generally performed required duties in accordance with expectations, but that he had discussions with her related to her attendance and failure to follow instructions.

Mr. Greer stated that, although he could not respond to appellant's allegations regarding Mr. Boquet, he categorically denied her allegations against him. He stated that he changed the employees reporting time to meet business needs and that although appellant rarely arrived on time, he did not issue discipline to her. Mr. Greer noted that he mentored appellant for a future position as manager, finance. He stated that her position was exempt and that she normally worked 8:00 a.m. to 4:30 p.m. Mr. Greer reported that appellant was rarely required to work an extended day and was allowed to take time off on personal leave when she did.

Mr. Greer stated that appellant spent time in Atlanta during Hurricane Ike with paid housing and a *per diem*. He opined that she did not work long hours and made updates *via* telephone. In reference to appellant's performance awards, Mr. Greer noted that while appellant met her individual goals, the finance department and the district did not meet their goals. He stated that performance is weighted against individual, department and cluster accomplishments.

In regards to the vacant budget and financial analyst position, Mr. Greer stated that he requested that the vacant position be posted for eligible management level employees as was normal. Appellant attempted to post the position to craft employees and was given a direct order to select from two qualified employees. She did not follow Mr. Greer's order and he had a discussion with her. Appellant reposted the position to craft employees and human resources had to change the position back to management employees only.

Charles Turner, tort claims coordinator and union president, submitted a statement dated August 11, 2009 that Mr. Greer used a forceful, tyrannical and autocratic attitude toward his African American employees. He cited examples of behavior toward unnamed employees.

Kim Stovall submitted a witness statement dated July 30, 2009 and asserted that Mr. Boquet denied appellant training. She stated that he harassed appellant by assigning her to the position of complement coordinator and not allowing her to return to her regular position. Ms. Stovall also stated that appellant had difficulty using her leave and that appellant was given more duties. She also alleged that appellant's decisions were verified by a supervisee. Ms. Stovall stated that women were discriminated against at the employing establishment. In regard to Mr. Greer, Ms. Stovall stated that he tracked appellant's whereabouts through a low level employee.

Burdell J. Robinson submitted a statement dated July 30, 2009 and stated that Mr. Boquet treated the male budget managers different from appellant. He also stated that Mr. Greer caused appellant stress because he gave her projects involving numerous reports and then changed his mind causing her to work late or work at home.

In an e-mail dated February 27, 2006, appellant stated that she spoke to 55 callers a day and that she received four additional lines on her telephone which allowed her to speak to an additional 30 callers for requests due to reassignments.

Carol B. Simmons, a coworker, completed an e-mail noting that appellant spent hours on the telephone with employees following Hurricane Katrina and that her job was very tedious and stressful. She stated that appellant worked late hours to make deadlines and to prepare timely reports. Ms. Simmons noted that appellant wished to return to her position as a budget manager in hopes that she would not have to work as many late hours and miss so much time with her family.

In a statement dated August 6, 2009, Pearline Wells, a coworker, stated that Mr. Boquet required appellant to spend many hours writing and rewriting presentations, correcting Finance Department data and correcting speeches. She stated that appellant was forced to work long hours including weekends and after hours. Ms. Wells stated that Mr. Boquet undermined appellant's decisions and eventually stressed her. She noted that appellant worked as the complement coordinator requiring her to work long hours, weekends and bring work home especially after Hurricane Katrina. Ms. Wells stated that Mr. Greer micromanaged appellant and did not understand how to manage or interact with employees.

On August 11, 2009 Chermaine Hebert, one of appellant's employees, stated that Mr. Boquet would publicly intimidate, harass and embarrass appellant. She stated that he micromanaged the department and gave appellant last minute tasks that required her to work late. Appellant's husband submitted a statement.

Appellant submitted a statement dated August 5, 2009. She stated that her position as budget manager included deadlines including five budgets for the state administrative office, six processing and distribution plants and 400 associated offices. Appellant stated that she personally completed 90 percent of the budget preparation. She stated that during budget season

from June through September, she had to adjust each budget approximately three times which required working late and on weekends. Appellant stated that Mr. Greer promised to do the work of other functions and gave her additional workload regardless of her deadlines.

Appellant described her position as district complement coordinator as involving deadlines for notifying the union, the employees, the managers, the corresponding offices, human resources and financial offices. She stated that she did not receive managerial training until 1999 two years after beginning her budget manager position. Appellant also requested Excel training in 2008 and had not received this training.

Appellant stated that she was required to work more than 40 hours a week as budget manger and worked at home. She stated that she sporadically worked long hours throughout the year, but on a daily basis during budget season from June to October. Appellant stated that as a complement coordinator she was given a laptop and cell phone so that she could work at home and on the weekends. She stated that she worked late on a daily basis from October 2003 through February 2008 and after Hurricane Katrina on weekends through 2007. Appellant stated that after she returned as budget manager she worked long hours and took work home May 2008 through April 2009.

On September 12, 2009 the employing establishment accepted appellant's EEO complaint for investigation.

In a decision dated December 24, 2009, OWCP denied appellant's claim finding that she failed to establish a compensable factor of employment. Appellant requested an oral hearing before an OWCP hearing representative. She submitted a statement from Gail Colly, a coworker, dated December 30, 2009. Ms. Colly stated that Mr. Boquet used a racial epithet in front of appellant, displayed a confederate flag and a sign saying that he was a wizard. She stated that he cancelled appellant's finance training in California at the last minute and sent a white female instead. Ms. Colly stated that she was with appellant when Mr. Boquet called her at home while she was recuperating from surgery to seek help with work. She stated that he worked a detail at the complement team, but still completed her duties in the budget office. Ms. Colly stated that Mr. Greer tried to intimidate appellant by telling her that he was the finance manager and that he was aware that appellant had applied for his position and could leave the department if she could not accept his authority.

Appellant submitted an additional statement from Mr. Robinson dated January 18, 2010. Mr. Robinson alleged that Mr. Boquet made appellant print out reports and bring them to his office because Mr. Boquet refused to print out the reports for himself. He stated that he witnessed Mr. Boquet call appellant stupid in a meeting. Mr. Boquet forced appellant to fly after "9/11" even though she was afraid, while Karen Smith, a coworker, was not required to fly. Mr. Robinson stated that Mr. Boquet required appellant to keep tract of terrorist expenses for the state of Louisiana and to perform other budget functions while working as complement coordinator. He stated that appellant received constant calls while working as complement coordinator.

In an additional statement dated January 20, 2010, Ms. Hebert stated that Mr. Boquet forced appellant to do all the managerial duties because he was scared of Irene Bowman, a

supervisor. She stated that he received praises for appellant's work. Ms. Hebert described the cancelling of appellant's training in California by Mr. Boquet. She stated that Mr. Boquet called appellant at home while she was on leave due to surgery. Ms. Hebert stated that appellant worked late and weekends to comply with the deadlines that Mr. Boquet assigned. She alleged that Mr. Boquet required appellant to redo the entire budget and screamed at her. Appellant had to work long hours, take work home and work weekends. Ms. Hebert stated that Mr. Boquet "called black people monkeys and idiots." Mr. Boquet also proudly displayed white supremacy paraphernalia such as a wizard sign referring to the Ku Klux Klan. Ms. Hebert stated that he required appellant to print his e-mails for him and that while appellant was detailed to human resources as complement coordinator she also had her duties as budget manager.

In response to a request from counsel, an OWCP hearing representative changed the oral hearing to a review of the written record. By decision dated June 23, 2010, the hearing representative found that OWCP had not considered the witness statements that appellant submitted in support of her claim. The hearing representative remanded the case for additional development.

On July 23, 2010 OWCP requested that the employing establishment respond to appellant's witness statements. The employing establishment responded on August 10, 2010, stating that the witnesses' statements were based on hearsay or on an account of events as related by appellant. Mr. Greer again stated that appellant was not placed under undue hardship, time constraints or deadlines and was assigned two budget specialists to assist with her daily duties. Lynne S. Western, a retired manager of human resources, submitted a statement dated August 10, 2010 asserting that appellant had a very flexible schedule from 2005 through 2008. She noted that appellant found hotel rooms in Atlanta during Hurricane Katrina and worked from the Atlanta, Georgia postal facility to track and account for employees from Louisiana. Appellant later worked from the Baton Rouge postal facility and was provided with a large house, rented furniture, *per diem* and travel. Ms. Western stated that appellant worked beyond eight hours a day and met deadlines. She stated that no one was forced to work extended hours. Ms. Western stated that appellant worked with another district employee and an area employee in placing the displaced employing establishment workers.

In a statement of accepted facts dated November 19, 2010, OWCP accepted that in the aftermath of Hurricane Katrina appellant worked more than eight hours and that she was tasked with the duty of helping other displaced Hurricane Katrina evacuees as accepted factors of employment. It referred her for a second opinion evaluation on November 22, 2010.

In a report dated January 10, 2011, Dr. Ross Gallo, a Board-certified psychiatrist and second opinion physician for OWCP, reviewed appellant's history of injury. He diagnosed major depressive disorder recurrent and anxiety disorder not otherwise specified. Dr. Gallo opined that the accepted factors did not cause, aggravate, precipitate or accelerate appellant's psychological disorder. He noted that OWCP had accepted two factors of employment and stated that these factors were not cited by appellant as the cause of her depression. Dr. Gallo indicated that appellant attributed her condition to conflict with her manager and instances of biased, punitive and unfair behavior by her supervisor were the prominent causes of her depression.

By decision dated February 8, 2011, OWCP accepted that appellant worked extended hours, beyond an 8-hour day, during the aftermath of Hurricane Katrina and that Ms. Demas directed her to assist evacuees of Hurricane Katrina. It denied her claim, however, based on Dr. Gallo's report. Appellant requested a review of the written record on March 4, 2011. She submitted additional medical reports from Dr. Jirina Fiala, a psychologist, as well as a report from a licensed clinical social worker. Dr. Fiala opined on February 18, 2011 that appellant was functional prior to her occupational stress which resulted in her current condition. In a report dated February 28, 2011, Dr. Frederic L. Henderson, a Board-certified psychiatrist, disagreed with Dr. Gallo and opined that appellant's employment contributed to her diagnosed conditions.

OWCP received a May 1, 2011 report from Dr. Henderson, who stated that appellant was totally disabled due to her major depression, chronic pain disorder and subsyndromal post-traumatic stress disorder. Dr. Henderson noted appellant's hypertension was exacerbated by her emotional state leading to exceedingly high and dangerous hypertension. He stated that her ability to perform deteriorated in the aftermath of stressful work assignments after Hurricane Katrina in 2005 and was clearly disabled by June 2009. Dr. Fiala completed a report on May 10, 2011 and diagnosed post-traumatic stress disorder, major depressive disorder and generalized anxiety disorder. She stated that appellant's emotional condition began while working with a supervisor who engaged in verbal abuse and intimidation in 1999, resolved when the supervisor left and reemerged in 2004. Dr. Fiala stated that appellant's condition escalated to full-blown post-traumatic stress disorder in 2005 during the aftermath of Hurricane Katrina when appellant was required to accept calls at all hours of the night, to listen to employees' stories of family separation and loss.

On May 5, 2011 an OWCP's hearing representative found that the case was not in posture for a decision. He noted that OWCP accepted as compensable working long hours and dealing with distraught employees after Hurricane Katrina. The hearing representative found a conflict between appellant's physicians and Dr. Gallo which required referral to an impartial medical examiner.

In a report dated August 8, 2011, Dr. Andrew Brylowski, a Board-certified psychiatrist, designated as impartial medical examiner interviewed appellant and reviewed the statement of accepted facts. He administered psychological testing and diagnosed major depressive disorder, moderate. Dr. Brylowski opined that appellant's federal employment did not cause aggravate or accelerate her diagnosed condition. He stated that the employee in a structured environment typically provided benefits to people with mental illness.

On August 31, 2011 OWCP denied appellant's claim for an emotional condition finding that the weight of the medical opinion evidence did not establish a causal relationship between her accepted employment factors and her diagnosed condition. Appellant requested an oral hearing on September 23, 2011. In a decision dated January 10, 2012, OWCP's hearing representative set aside the August 31, 2011 decision on the grounds that Dr. Brylowski's report was not sufficiently well reasoned to resolve the conflict. She found that he did not address the central issue of whether the accepted factors caused or contributed to appellant's diagnosed condition. The hearing representative remanded for OWCP to obtain a supplemental report from Dr. Brylowski.

On January 25, 2012 OWCP requested a supplemental report from Dr. Brylowski addressing the etiology of her condition and whether the specific accepted employment factors caused, aggravated or accelerated the condition.

In an addendum of February 6, 2012, Dr. Brylowski stated that the exact cause of major depressive disorder was not known. He again repeated his opinion that appellant's accepted work factors did not cause, aggravate or accelerate major depressive disorder. Dr. Brylowski stated that working during Hurricane Katrina more than eight hours and helping others displaced by Hurricane Katrina would not have caused or aggravated appellant's diagnosed conditions. He concluded, "In other words, helping others and participating in a group effort such as employment has been shown to be helpful with regard to mental health issues and not deleterious. Therefore, in reasonable medical probability, psychiatric diagnosis of major depressive disorder and factitious disorder are not. In reasonable medical probability, related to any accepted factors of employment."

On April 25, 2012 OWCP referred appellant to Dr. Mohsen Morabi, a Board-certified psychiatrist, for an impartial medical examination. Beginning May 9, 2012, counsel requested transportation and overnight transportation as Dr. Morabi's office was located in Houston, Texas, approximately 400 miles from appellant's home in New Orleans, Louisiana. Alternatively he requested a referee examination within 50 miles of New Orleans. Appellant was never examined by Dr. Morabi.

By decision dated August 15, 2012, OWCP again denied appellant's claim based on Dr. Brylowski's report. It issued a revised version of this decision on August 20, 2012.

Counsel requested an oral hearing on August 22, 2012. Appellant submitted her 2008 performance evaluation which stated that she was the contact person for all employees with any Hurricane Katrina-related questions. She testified at the oral hearing on December 6, 2012.

By decision dated February 20, 2013, an OWCP's hearing representative found that appellant had substantiated two compensable employment factors, that she worked more than eight hours a day during the Hurricane Katrina crisis and that appellant was tasked with helping other displaced Hurricane Katrina evacuees. He found that she had not substantiated the additional factors alleged. The hearing representative further found that Dr. Brylowski's February 6, 2012 addendum report was sufficiently well reasoned to be afforded special weight and established that appellant's diagnosed conditions were not due to her employment.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,² the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.³ There are situations where an injury or

² 28 ECAB 125 (1976).

³ 5 U.S.C. §§ 8101-8193.

illness has some connection with the employment but nevertheless does not come within coverage under FECA.⁴ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁵ In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of FECA. Thus disability is not covered when it results from an employee's fear of a reduction-in-force, nor is disability covered when it results from such factors as an employee's frustration in not being permitted to work in a particular environment or to hold a particular position.⁶

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.⁷ Where 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.⁸ A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.⁹

For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under FECA. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. 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.¹⁰

ANALYSIS

Appellant alleged several employment events caused or contributed to her emotional condition. OWCP accepted that she worked more than eight hours a day during the aftermath of

⁴ See *Robert W. Johns*, 51 ECAB 136 (1999).

⁵ *Cutler*, *supra* note 2.

⁶ *Id.*

⁷ *Charles D. Edwards*, 55 ECAB 258 (2004).

⁸ *Kim Nguyen*, 53 ECAB 127 (2001). See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁹ *Roger Williams*, 52 ECAB 468 (2001).

¹⁰ *Alice M. Washington*, 46 ECAB 382 (1994).

Hurricane Katrina. It also accepted that appellant was required to help other displaced Hurricane Katrina evacuees.

Appellant further attributed her emotional condition to actions by her supervisors Mr. Boquet and Mr. Greer. The employing establishment responded to the allegations, however, did not address alleged actions by Mr. Boquet as he had retired in 2006. To corroborate her allegations, appellant submitted witness statements dated August 11, 2009 and January 20, 2010 from Ms. Hebert, an employee of appellant, who worked in the budget department from 1996 to 2000. Ms. Hebert indicated that she wanted to revise her original August 11, 2009 statement after appellant's claim was denied. In her narrative statements, she listed a series of situations and events and her perceptions relative to same and characterized Mr. Boquet's actions.

Appellant submitted witness statements from Mr. Robinson dated January 18, 2010 and Ms. Wells dated August 6, 2009 regarding the allegations that Mr. Boquet required appellant to work long hours and perform managerial duties. Ms. Wells indicated that she knew appellant for 10 years and opined that appellant was treated poorly by her supervisors Mr. Boquet and later Mr. Greer. She mentioned general instances where she believed that appellant was forced to work long hours to accomplish what she thought were unreasonable tasks within the time frames assigned. Ms. Wells offered no specifics relative to dates of occurrence.

Appellant also stated that when she returned to work following surgery in 1999 Mr. Boquet required her to complete all the budget corrections by herself. Ms. Hebert also referenced this allegation but neither statement was specific as to dates, times or frequency of this task(s). In June 2003, appellant claimed that Mr. Boquet required her to print out and provide him with the attachments to his e-mails. This requirement necessitated walking 10 to 12 minutes from one building to another. Mr. Robinson stated that Mr. Boquet made appellant print out reports and bring them to his office in another building. Ms. Hebert stated that Mr. Boquet required appellant to print his e-mails and that she was back and forth to his office. Although this is generally alleged, there are no specifics relative to date(s) or time(s) or frequency as to when this claimed activity occurred.

In October 2003 appellant alleged that she began to work as a complement coordinator reporting to Tony Ruda, the district manager, and was required to continue working in the budget office. She alleged that she was required to work in both positions for a period of time. Mr. Robinson, in his January 18, 2010 witness statement, indicted that sometime after 911 Mr. Greer required appellant to keep track of expenses for antiterrorism in the budget section while detailed as complement coordinator and that appellant was performing two jobs. Ms. Hebert in her August 11, 2009 statement generally alluded to the fact that appellant had concurrent duties as complement coordinator and budget manager, however it remains unclear. Both Mr. Robinson and Ms. Hebert do not offer any degree of specificity relative to their statements. The Board finds that appellant has alleged these additional employment factors from 1996 to 2000, however, they are insufficiently substantiated by the evidence of record as to date, time and place to find them compensable: performing managerial duties, completing budget corrections, performing the functions of two separate positions, walking printed materials between her office and the building that housed Mr. Boquet and working more than eight hours a day on many occasions while supervised by Mr. Boquet.

Appellant stated that in October 1997 Mr. Boquet forced her to select his choice for a budget vacancy. Ms. Hebert stated that she overheard Mr. Boquet directing appellant to hire a certain employee. Mr. Boquet indicated that appellant refused to post the position as he requested. The Board finds that this relates to the administrative functions of her supervisor, Mr. Boquet. 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 generally recognizes that a supervisor must be allowed to perform his or her duties and employees will at times dislike the actions taken.¹¹ Appellant has not submitted evidence establishing how this managerial action constituted error or abuse and has not established a compensable factor of employment in these events.

Appellant attributed her emotional condition to the requirement that she travel by airplane from October 2001 through July 2002 due to mandatory meetings despite her fear of flying. She alleged that Mr. Boquet did not require her employee, a white female to fly when she stated that she was afraid. This is an administrative action and Mr. Boquet exercised his discretion in determining that it was necessary that only one employee, appellant, travel. Appellant has not submitted sufficient evidence to establish error or abuse in this action.

Appellant attributed her emotional condition to Mr. Greer's decision in September 2008 to change the reporting time for appellant and her staff from 8:30 a.m. to 8:00 a.m. She submitted a letter dated October 29, 2008 from Mr. Greer informing her that her effective Saturday November 1, 2008 her reporting time was 8:00 a.m. to 4:50 p.m. Mr. Greer stated that he changed the employees reporting time to meet business needs and that, although appellant rarely arrived on time, he did not issue discipline to her. The Board finds that appellant has not established error or abuse in her scheduled arrival time change. Mr. Greer explained that appellant's schedule was changed due to business needs.¹²

Appellant stated that her performance evaluation in November 2008 was exceptional, resulting in an overall rating of nine. Mr. Greer changed her rating to eight. Appellant requested recourse and alleged that on March 22, 2009 Mr. Greer asked if she would accept less than a nine and changed her submission from a nine to an eight. She submitted her performance rating of eight for 2005 and her performance rating of seven, in 2008. In reference to appellant's performance awards, Mr. Greer noted that while appellant met her individual goals, the finance department and the district did not meet their goals. Performance appraisals are administrative matters¹³ and appellant has not submitted any probative evidence establishing error or abuse in her 2008 rating. Mr. Greer has explained that while she met her goals, her rating was dependent on department and cluster accomplishments. Therefore appellant has not established a compensable factor of employment in regard to her 2008 performance rating.

Appellant further alleged that in November 1997 Mr. Boquet discriminated against her by refusing to grant her a far exceeds rating while awarding this rating to a white male. As noted

¹¹ *T.G.*, 58 ECAB 189 (2006).

¹² *R.M.*, Docket No. 13-264 (issued April 8, 2013).

¹³ *E.M.*, Docket No. 12-1238 (issued April 1, 2013).

above, this action is an administrative action by Mr. Boquet.¹⁴ While both appellant and Ms. Hebert agree that Mr. Boquet gave a higher rating to appellant's coworker, there is no evidence substantiating error or abuse in the ratings given.

Appellant alleged that Mr. Boquet refused to allow her to attend a scheduled training class in March 1998. Training is an administrative matter. The Board has held that training¹⁵ is an administrative function of the employing establishment rather than a duty of the employee. Appellant has alleged favoritism in Mr. Boquet's refusal to allow her to go to California for training, but these allegations are not sufficiently specific to establish error or abuse by Mr. Boquet in this situation.¹⁶

Appellant also alleged that Mr. Boquet reduced her staff during the busy season resulting in extra work for her. She stated that Ms. Western refused to release her when her previously scheduled slot became available for the advanced leadership program and this opportunity was provided to another employee, a white male. Appellant has not submitted any evidence substantiating these allegations and has therefore not established error or abuse in the administrative actions of her supervisors. She requested to return to Louisiana following Hurricane Katrina, but found out that her position had been filled when she received an inadvertent e-mail. The Board notes that job transfers¹⁷ are administrative functions of the employing establishment rather than duties of the employee. Appellant has not submitted evidence of error or abuse and has not established a compensable factor of employment in this regard.

Appellant alleged that in April 1999 while she was using leave recovering from surgery at home, Mr. Boquet continued to telephone her concerning work. Ms. Colly stated that on one occasion while she was visiting appellant at her home in 1999 Mr. Boquet telephoned appellant for help with the budget. Ms. Hebert stated in her January 20, 2010 submission that while appellant was on leave in 1999, when white employees would mess up the budget or could not help him answer questions from the area, Mr. Boquet would call appellant and put her on speakerphone so that employees could hear her. The Board finds that appellant has not established the specifics of the allegations nor established error or abuse in an administrative matter.

While Mr. Boquet, as her supervisor, did contact appellant while on leave regarding work matters, there is no evidence to show that this was done with the frequency that it would rise to the level of error and abuse. When an employee is on leave, they should not be harassed by their supervisor, however, there is not a showing that a witnessed call is inappropriate and not an unreasonable exercise of supervisory authority.¹⁸

¹⁴ *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

¹⁵ *G.G.*, Docket No. 13-644 (issued July 19, 2013); *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995).

¹⁶ *See Denis M. Dupor*, 51 ECAB 482, 486 (2000).

¹⁷ *James W. Griffin*, 45 ECAB 774 (1994).

¹⁸ *Cassandra M. Alston-Daye* Docket No. 04-889 (issued September 1, 2004).

Appellant also alleged that she was harassed by her supervisors. She alleged that Mr. Boquet threatened her with discipline and falsely accused her of keeping him out of the loop. In February 2001, Mr. Boquet refused to grant either appellant or her employees performance awards. During the months of March through May 2001, he spoke loudly and asked for items that appellant's system could not generate. Mr. Boquet refused to go through appellant, instead requesting information from her employees. From September through December 2001, appellant had to track expenses related to the anthrax attacks, closing of postal services and postal deaths. She submitted no evidence in support of these allegations. As appellant has not substantiated these allegations, she has not established harassment. Mere perceptions and feelings of harassment will not support an award for compensation.¹⁹

In June 2000 Mr. Boquet questioned appellant about her personal vehicle, asked how she could afford it and asked about her husband's job. He also stated that he hated her. Ms. Hebert stated that Mr. Boquet called appellant and asked her how she was able to afford her car and told her he hated her. It is not clear how Ms. Hebert would have independent knowledge of the conversation between appellant and Mr. Boquet. For this reason, appellant has not submitted sufficient evidence to corroborate these statements.

Appellant also alleged that Mr. Boquet began to racially harass her. She claimed that sometime between December 1999 and April 2000, out of the blue, he informed her that a friend of his referred to black people as "nig---s" followed by him saying that he was only repeating something that his friend had stated. Appellant requested that Mr. Boquet not use that language in front of her. She alleged that he spoke negatively about black managers and called them idiots. In addition, Mr. Boquet called black football players monkeys on two occasions in 2000 and October 2006. Appellant also alleged he hung a confederate flag on the wall in his office for years until he was forced to remove it. From March through August 2002, she alleged that Mr. Boquet instructed her to come to his office and bring all her staff except for a budget analyst who was black. Appellant stated that he tried to pollute the work environment with racism and hostility.

In support of these allegations, appellant submitted a statement dated December 30, 2009 from Ms. Colly, who stated that appellant told her of Mr. Boquet's statements. In this instance, Ms. Colly does not claim to have witnessed or have personal knowledge of Mr. Boquet's statements. Instead, she notes that she is reporting what appellant told her. The Board finds that Ms. Colly's repetition of appellant's allegations is insufficient to substantiate that the events occurred as alleged and do not establish racial discrimination or harassment.

Ms. Hebert in her revised statement of January 20, 2010 indicated that she felt bad for appellant because she had to put up with Mr. Boquet calling black people monkeys and idiots. She also claimed that Mr. Boquet "proudly displayed white supremacy, such as his wizard sign referring to the KKK." The Board finds that these statements are insufficient to establish that Mr. Boquet created a racially hostile environment. Ms. Hebert's witness statements regarding the use of racial slurs do not reference a specific, time or place, nor does she offer and specifics of what Mr. Boquet had in his office other than something she believed was referring to the

¹⁹ S.B., Docket No. 12-1715 (issued August 7, 2013).

KKK. Without this critical information, the Board finds that these statements are insufficient to find error and abuse.²⁰

Although appellant claimed that Mr. Boquet had a confederate flag on the wall in his office for years until he was forced to remove it, there were no corroborating statements to substantiate this claim. With respect to her allegations with regard to racial harassment, at no time did she reference specific dates. Instead, appellant cited broad time periods spanning months.

Appellant alleged that Mr. Boquet called her stupid and belittled her before employees. Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under FECA.²¹ The Board has generally held that being spoken to in a raised or harsh voice does not of itself constitute verbal abuse or harassment.²² The Board finds that while appellant has alleged that Mr. Boquet called her stupid in a meeting, she did not provide sufficient detail to establish that this comment was made at a specific time.²³ Appellant has not established verbal abuse.

Appellant stated in April 2007 Ms. Western began to harass her because she wished to return to her position as manager of budget. She alleged that Ms. Western lied on her mid-year review and was trying to ruin appellant's career. Mr. Robinson supported that Ms. Western treated appellant badly, but did not support appellant's specific allegations. As appellant has not substantiated her allegation of harassment by Ms. Western, she has not established these alleged events as a compensable factor of employment.

Appellant made a series of allegations against her supervisor Mr. Greer, who completed statements and refuted her allegations of harassment and intimidation. While Ms. Wells stated that Mr. Greer micromanaged appellant, she did not provide support of detailed allegations. As appellant has not submitted witness statements or other evidence substantiating her allegations of harassment by Mr. Greer.

Thus the Board finds that appellant has failed to establish any further compensable factors.

With regard to the development of medical evidence by OWCP as it relates to the two factors of employment found by OWCP, the Board finds that the case is not in posture for a decision due to an unresolved conflict of medical opinion evidence.

Dr. Fiala opined on February 18, 2011 that appellant was functional prior to her occupational stress which resulted in her current condition. The Board notes that OWCP

²⁰ *Supra* note 16.

²¹ *Harrier J. Landry*, 47 ECAB 543, 547 (1996).

²² *T.G.*, 58 ECAB 189 (2006).

²³ *P.T.*, Docket No. 07-134 (issued April 5, 2007).

referred appellant for a second opinion examination with Dr. Gallo who noted that OWCP had accepted two factors of employment and stated that these factors were not cited by appellant as the cause of her depression. Dr. Gallo indicated that appellant attributed her condition to conflict with her manager and that instances of biased, punitive and unfair behavior by her supervisor were the prominent causes of her depression. He opined that the accepted factors did not cause, aggravate, precipitate or accelerate appellant's psychological disorder.

Dr. Henderson submitted a report date May 1, 2011 and stated that appellant's ability to perform deteriorated in the aftermath of stressful work assignments after Hurricane Katrina in 2005 and that she was clearly disabled by June 2009. Dr. Fiala completed a report on May 10, 2011 and stated that appellant's emotional condition began while working with a supervisor who engaged in verbal abuse and intimidation in 1999, resolved when the supervisor left and reemerged in 2004. She stated that appellant's condition escalated to full-blown post-traumatic stress disorder in 2005 during the aftermath of Hurricane Katrina when appellant was required to accept calls at all hours of the night, to listen to employees' stories of family separation and loss.

When there are opposing reports of virtually equal weight and rationale, the case will be referred to an impartial medical specialist pursuant to section 8123(a) of FECA which provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination and resolve the conflict of medical evidence.²⁴

The Board finds that OWCP's hearing representative properly determined that there was a conflict of medical opinion evidence between appellant's treating physicians Dr. Henderson and Dr. Fiala and Dr. Gallo, the second opinion physician. The Board, therefore, finds that Dr. Brylowski was properly selected as the impartial medical examiner.

In contrast to appellant's physicians, Dr. Brylowski, the independent medical examiner, opined in his August 8, 2011 report that appellant's federal employment did not cause, aggravate or accelerate her diagnosed condition. He stated that employees in a structured environment typically provided benefit to people with mental illness.

OWCP's hearing representative found that Dr. Brylowski's report was not sufficiently rationalized as he did not address the central issue of whether the accepted factors caused or contributed to appellant's diagnosed condition and the case was remanded for a supplemental opinion from Dr. Brylowski. In his February 6, 2012 brief addendum, Dr. Brylowski restated his findings in his original report. The Board finds that the independent medical examination of Dr. Brylowski of August 8, 2011 and his addendum report of February 6, 2012 are insufficient to carry the special weight.

The Board finds that there remains an unresolved conflict of medical opinion evidence between appellant's physicians, Drs. Henderson and Fiala and OWCP's referral physicians, Dr. Gallo regarding the causal relationship between appellant's previously accepted factors of employment and her diagnosed emotional condition. In order to properly address the

²⁴ 5 U.S.C. §§ 8101-8193, 8123; *B.C.*, 58 ECAB 111 (2006); *M.S.*, 58 ECAB 328 (2007).

outstanding medical issues in this case, OWCP should forward a statement of accepted facts and medical record to a new Board-certified psychiatrist to resolve the conflict of medical opinion evidence and to determine if any of the accepted factors caused or contributed to appellant's emotional condition. After this and such other development as OWCP deems necessary, it should issue a *de novo* decision.

CONCLUSION

The Board affirms that there are no additional factors, however, it finds that there remains an unresolved conflict of medical opinion evidence and the case is referred to an impartial medical examiner to determine if any of the accepted employment factors caused or contributed to appellant's diagnosed emotional conditions.

ORDER

IT IS HEREBY ORDERED THAT the February 20, 2013 decision of the Office of Workers' Compensation Programs is affirmed in part and remanded in part for further development consistent with this decision of the Board.²⁵

Issued: September 26, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

²⁵ Richard J. Daschbach, Chief Judge, who participated in the preparation of the decision, was no longer a member of the Board after May 16, 2014