United States Department of Labor
Employees' Compensation Appeals Board

L.A., Appellant	)	
	)	**Docket No. 13-1544**
and	)	**Issued: September 23, 2014**
DEPARTMENT OF DEFENSE, DEPENDENTS SCHOOLS EDUCATION ACTIVITY, Baumholder, Germany, Employer	)	

Appearances:
Bradley R. Marshall, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 18, 2013 appellant, through her representative, filed a timely appeal from a May 29, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained an emotional or a physical condition causally related to factors of her federal employment.

On appeal, appellant's representative contends that the employing establishment's denial of appellant's request for ergonomic equipment aggravated her physical injuries and caused her major depression and anxiety for which she sought treatment.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 14 and October 26, 2010 appellant, then a 52-year-old speech/language pathologist (assessor), filed occupational disease claims (Form CA-2) alleging that on January 12, 2012 she first became aware that her stress-related physical and mental symptoms became acute and chronic as her working conditions changed daily. She alleged that on April 7, 2010 she realized that her head, neck and shoulder aches, and tingling and numbness in her extremities increased with the length of time she spent at her office workstation. Appellant alleged that she was harassed and undermined in the performance of her work duties. She stated that by May 2010 the pain was unbearable and she was unable to concentrate which impaired her job performance.

By letter dated November 5, 2010, OWCP advised appellant that the evidence submitted was insufficient to establish her claims. It requested additional factual and medical evidence.

In narrative statements dated June 21, November 4 and December 1, 2010, appellant contended that her emotional and physical conditions were caused by several work incidents. In January 2010 her requests for leave to address complications resulting from the surgical removal of her cyst and relief from attending Case Study Committee (CSC) meetings were denied by management. Appellant indicated that she had considerably less concentration at work and her headaches increased. In February 2010 she became exhausted at the end of most workdays and experienced daily headaches, muscle tension and tingling in her extremities that increased with time spent at makeshift workstations, testing sites and in multiple meetings at Smith Elementary School (ES) and Wetzel ES regarding her job description, workload and equipment needs. Appellant claimed that she was given new expectations which included performing other employees' work. By the end of March 2010, her physical symptoms intensified and she sought a medical appointment with Maria Ignacio, a school nurse, for work-related stress. During meetings from March 26 to June 17, 2010 with Smith ES administrators, appellant claimed she was taunted, micromanaged, called a liar, said to have a victim mentality which created a toxic environment. She was also expected to collaborate with CSC co-chairs. On June 8, 2010 Wetzel Principal Helen Balilo, added to her stress. Appellant did not receive dignity or respect from leadership. She received pain management and mental health treatment. Appellant requested ergonomic equipment; a change of supervisors from Assistant Principal Dr. Michelle Woodfork to Principal Dr. Darren Johnson due to increased stress caused by Dr. Woodfork; and an adjusted work schedule until she returned to full physical and behavioral health. She also requested a change of duty station due to an adverse work environment.

On August 25, 2010 appellant returned to the same work environment. Dr. Johnson denied her request that Dr. Woodfork honor a previous superintendent's directive to move her coworker from their shared office. On August 27, 2010 appellant sought an emergency appointment with behavioral health due to increased stress. On September 1, 2010 she verified her use of sick leave on August 27, 2010 to Dr. Woodfork. Appellant requested reasonable accommodations, to include release for medical appointments and time to complete work-related tasks based on her impaired ability to concentrate. She gave Dr. Woodfork a list of items for her new office. In mid-September 2010 Dr. Woodfork remained appellant's supervisor. On October 29, 2010 he instructed her not to address Dr. Johnson with her concerns.

In September 2010 appellant's leave slips for medical appointments for work-related stress were returned to her unsigned. Dr. Woodfork explained the teacher leave policy and instructed her to resubmit the leave slips. Dr. Johnson signed the leave slip after most of appellant's appointment dates had passed. By e-mail dated September 15, 2010, Dr. Woodfork requested a meeting with appellant which was held on September 17, 2010. At the meeting, she reiterated the teacher leave policy and instructed appellant to follow it. Since Dr. Woodfork had not seen appellant's resubmitted leave slips, appellant must have taken unapproved leave. In a follow-up e-mail, she denied harassing appellant about the leave policy. On October 19, 2010 Dr. Woodfork denied appellant's leave slips because they were incorrectly completed.

On September 17 and October 6, 2010 appellant inquired about the status of her request for physical accommodations and June 14, 2010 occupational disease claim. In an October 7, 2010 e-mail, Dr. Johnson responded that the claim had never been filed because David M. Kretz, an administrative officer, reported that he needed more information. Appellant stated that she was advised by Mr. Kretz on June 24, 2010 that no additional information was required. On October 13, 2010 Kecia Martin, a Smith ES secretary, forwarded the originals to the appropriate district personnel.

Drs. Johnson and Woodfork allegedly harassed appellant by requiring her to attend multiple meetings to repeat her requests or findings for each professional judgment call she made, submit leave slips for medical appointments and illnesses that occurred during the duty day. Appellant's supervisors frequently verified her whereabouts at work for the sole purpose of gathering negative information and to fabricate claims of misconduct against her. Appellant was subjected to disparate treatment, as she was required to act civilly and account for her whereabouts when she was away at other schools. During a business meeting on May 19, 2010 with all CSC members present, Dr. Woodfork tried to discredit appellant in front of her colleagues when Dr. Woodfork instructed her to remain at Smith ES all day on Wednesdays and only perform work for the school. On May 26, 2010 Sharon Ford-Bell, a CSC co-chair, dismissed appellant's recommendation regarding her assessment of a student's language skills. At the next meeting, appellant discovered that her submitted report had not been reviewed by the members because Andrea Ramirez, a CSC co-chair, asked questions that were not necessary if she had read the report.

On May 24, 2010 appellant received a letter of counseling dated May 19, 2010 following an April 5, 2010 meeting with her supervisors, Ken Meade and Mary Obermite. During a May 27, 2010 meeting, her supervisors leveled additional charges of misconduct on her part. Appellant was taunted, called a liar, said to have created a toxic environment at Smith ES and treated unprofessionally. She received the letter of counseling two days after she had appealed to her supervisors and the CSC team for relief from her overtaxed assessment workload. Appellant's request was ignored and she was required to complete her assessments. Her supervisors directed her to attend special education meetings which were outside of her regular duties and changed long-standing policies, including her work conditions. Melissa Krantz, a district special education coordinator, was unable to offer appellant guidance regarding her findings related to assessment or eligibility processes due to a lack of experience. Since January 2010 each supervisor came to appellant with hearsay. Vanessa Blankenship and Pamela M. Dirk, assessor technicians, refused to provide support services to appellant from 2009 to 2011. Ms. Ford-Bell and Ms. Ramirez gossiped about appellant to Drs. Johnson and

Woodfork regarding her duties. Dr. Johnson repeatedly directed appellant to attend several meetings from February to March 2010 to present her dissent regarding a student's eligibility and assessment even though she had prepared a statement of her dissent. Appellant was also directed to attend every CSC meeting at Smith ES which was contrary to her job description and a violation of long-standing CSC practices. Prior to a March 24, 2010 meeting, Ms. Krantz questioned appellant about why she had not further evaluated a student. Dr. Johnson took the word of Ms. Ford-Bell, Ms. Ramirez and Ms. Krantz in defining appellant's work role. Appellant contended that Drs. Johnson and Woodfork did not know special education law or her job description. Ms. Ford-Bell and Ms. Krantz were not speech language pathologists yet they argued with her and contradicted her professional judgment. In June 2010 Principal Balilo, Ms. Krantz and the Wetzel ES CSC ignored her repeated requests for native language testing for a student to confirm or refute a language deficit and qualify the student on the basis of English testing results. Following this incident, Ms. Balilo sent an e-mail to Drs. Johnson and Woodfork regarding appellant's performance issues. As a result, she met with her supervisors on three separate occasions from June 11 and 16, 2010 regarding the Wetzel incident and an accusation that she administered tests without parents' permission.

On June 11, 2010 appellant appealed to District Superintendent Lawanna Mangleburg for removal of the letter of counseling and alleged being subjected to disparate treatment since January 2010. Ms. Mangleburg issued two directives for supervisors that were subsequently disregarded.

E-mails dated September 16 to October 25, 2010 between appellant and the employing establishment related to the submission and filing of her claim, her requests for reasonable accommodation and leave, the employee leave policy, scheduling of meetings and her work duties.

An October 1, 2010 form advised that appellant's request for leave commencing at 2:00 p.m. on October 25, 2010 to attend a medical appointment was disapproved by Dr. Johnson.

In a compassionate reassignment application dated December 1, 2010, appellant attributed her major depressive disorder and continuing physical disabilities to her supervisors' bullying management style. She requested reassignment to a location that would improve her concentration and overall health and allow her to work successfully at optimum efficiency.

In a November 17, 2010 letter, Vickie Fergerson, an educational technologist at Smith ES, stated that, from 2008 to 2009, she overheard appellant's officemate shout at her, interrupt her while she was speaking, belittle her and otherwise treat her in a derisive manner. Appellant did not respond in kind and was always professional. She often vacated her office when her officemate entered, choosing to work elsewhere and avoid conflict. Ms. Fergerson related that appellant came to her office many times to escape, seek support or ask for official advice from the Federal Educators' Association (FEA). Increasingly, appellant became tearfully emotional, forgetful and distracted which was quite a change from her usual calm, collected and highly organized personality.

A November 19, 2010 letter from an information specialist, whose signature is illegible, stated that for three years appellant was a valued member of the library group. She was positive,

helpful and professional in her dealings with students and staff. As time progressed, extreme escalating tension was observed between appellant and her officemate. Appellant had to leave the office and continue working in the library or other locations in the building to avoid conflict with her officemate. Stressful conditions continued to arise for her from other quarters and she began to feel unsafe in her work environment. Appellant expressed sadness and anger to the author and other members of the library group. She demonstrated distress while using a computer or working with students as her hand shook and her breathing became fast and shallow. There were times when the author was afraid that appellant would pass out. Appellant sought medical help to alleviate her stress and depression which was caused by her workplace conditions. The author, Sonia Webster who was a library aide, Ms. Fergerson and an "ET" supported appellant throughout this period. After they returned from summer break appellant and her officemate were moved to separate locations in the building. The author stated that appellant efficiently and effectively performed her job and that harassment against her was unfounded.

The employment records included a United States European Command bill of rights for behavioral health care, preemployment medical reports and job application, a speech language pathologist/assessor job description and notification of personnel action (Form SF-50). An article addressed bullying by management.

In sick slips dated April 13 and May 25, 2010, Dr. Cho Cho Kyi, an employing establishment physician, advised that appellant was under care from April 13 to 20, 2010 and that medication would make her drowsy. In a November 17, 2010 report, she noted appellant's complaint of hip pain and headaches. Dr. Kyi advised that x-rays of the hip were normal and a magnetic resonance imaging (MRI) scan of the head showed nonspecific findings.

In a June 8, 2010 sick slip, Ann-Marie Anderson, a psychiatric nurse practitioner, requested that appellant be allowed to remain home from work for two days due to illness. In an August 25, 2010 report, Helen Chrena, a nurse practitioner, stated that appellant had adjustment disorder with depression and anxiety.

In a November 10, 2010 report, Dr. Meaghan Kirschling, a chiropractor, provided findings on physical examination. She advised that ongoing postural stress in appellant's work setting was a major contributing factor that prevented her from achieving long lasting results from physical therapy. Dr. Kirschling recommended ergonomic changes in appellant's work environment.

In a November 8, 2011 report, Dr. Stefan Lampe, a Board-certified psychiatrist, provided a history of his treatment of appellant commencing in June 2010 and the development of her work-related mental health condition. When he last saw her on September 1, 2010, appellant was stressed secondary to her work environment. Her mental status was within normal limits with the exception of an anxious mood. Dr. Lampe diagnosed major depressive disorder. He stated that, based on appellant's history, her symptoms of anxiety and depression worsened while at work and decreased during summer break. When Dr. Lampe saw her during summer break she was clearly doing better than after she returned to work. He concluded that appellant's symptomatology was exacerbated by her work situation.

In an undated report, Dr. Catherine Connolly, a psychiatrist, provided a history of appellant's psychiatric treatment. She stated that since 2008 occupational stressors contributed to her depressive symptoms which included irritability, sad mood, tearfulness, difficulty with concentration and sleep, and loss of interest in her pleasurable activities. Dr. Connolly advised that appellant's depression symptoms appeared to have increased due to current occupational stressors. It appeared appellant had no history of depression prior to the onset of her occupational stress. Dr. Connolly diagnosed recurrent major depressive disorder and opined that a compassionate reassignment would be in appellant's best interest.

By letter dated December 15, 2010, OWCP requested that the employing establishment respond to appellant's allegations.

E-mails dated January 14 to November 2, 2010 addressed, among other things, appellant's work duties, and requests for leave and the removal of Ms. Ford-Bell from the office she shared with appellant.

In a December 2, 2010 letter, Sharon R. Kieta, a school psychologist, stated that as a member of the CSC she never observed or heard administrators at Smith ES belittle, taunt, harass or behave in any way that could be construed as unprofessional. The administrators treated her, other educators, parents and community members in a fair, professional and respectful manner. They did not ask Ms. Kieta or anyone else to perform other employee's job duties. She concluded that based on the treatment she and others received from administrators, appellant's allegations of harassment were in direct contradiction to what she experienced, observed and heard.

In a letter dated December 5, 2010, Ms. Dirk stated that appellant's claim of mistreatment by the administration, specifically during the course of CSC meetings, was unfounded. Drs. Johnson and Woodfork made every possible effort to create a productive and professional work environment. They treated appellant and others in a respectful, equitable and courteous manner and expected employees to conduct themselves in the same manner. Ms. Dirk stated that appellant frequently failed to meet that mark, noting that she ceased discussions without coming to a mutual understanding, did not respond well to procedural changes, frequently exhibited an obtuse attitude towards coworkers regardless of their position or stature and habitually rehashed issues that had been resolved. She stated that appellant's behavior was disruptive and stifled productivity. Appellant also demonstrated an unwillingness to perform her assigned duties as she tried to get Ms. Dirk to perform her work. In September 2010 she twice asked Ms. Dirk to perform duties that were not within the scope of her duties or common practice as advised by CSC chairs, other assessors and Ms. Krantz. To avoid conflict and to maintain a cohesive work environment, Ms. Dirk helped appellant. She stated that Drs. Woodfork and Johnson had open and frank discussions to reach an accord regarding the issues presented by appellant, especially the issues related to various CSC team members. Dr. Woodfork made and continued to make every effort possible to foster a hospitable work environment. Ms. Dirk concluded that appellant's expectations of preferential treatment coupled with her explosive personality and inability to work well with others created a volatile work environment.

In an undated memorandum and January 18, 2011 memorandum, Drs. Johnson and Woodfork responded to appellant's contentions. They moved her and Ms. Ford-Bell to separate

offices as directed by Superintendent Mangleburg. Drs. Johnson and Woodfork provided appellant with an administrative team and military soldiers to assist her physical move and offered a supply technician. Appellant's request for a new supervisor was not feasible based on Drs. Johnson's and Woodfork's administrative right to divide employees. They decided to maintain all their respective employees for the 2009-2010 and 2010-2011 school years and to switch the supervisor lists and integrate any new employees for the 2011-2012 school year. Dr. Woodfork stated that she was appellant's supervisor and never told her not to address Dr. Johnson with her concerns during the October 29, 2010 meeting. It was common for any teacher or "GS" employee to speak to Dr. Johnson or Dr. Woodfork when an administrator was out of the building or otherwise unavailable.

Appellant's correctly completed leave slips were granted while her incorrectly completed leave slips were not granted. She continued to submit incomplete leave slips during the 2010-2011 school year. Appellant was treated with leniency during the entire 2009-2010 school year and was given authorization to leave early for medical appointments and community events. During the spring of 2010, Drs. Johnson and Woodfork verbally authorized her leave requests more frequently than those of other employees. Appellant was allowed to leave work early on three out of the five days she requested to attend medical appointments. Her medical issues began in January 2010, but the leave policy issues and her negative attitude about being accountable for her whereabouts occurred prior in early fall of 2009. It was only when these issues were brought to her attention that she began to claim a series of medical appointments for mental and physical ailments. Appellant was advised about the teacher leave policy by e-mails and verbal conversations because she chose not to follow their directive to do so. Drs. Johnson and Woodfork were prepared to issue a letter of reprimand, suspension, demotion or removal due to her failure to follow the leave policy for a long period. Neither one had requested that she meet with them prior to submitting leave slips. Dr. Woodfork directed appellant to William Suddeth for assistance with her reasonable accommodations request.

The May 19, 2010 letter of counseling was issued to appellant for inappropriately e-mailing her colleagues from her home e-mail address. The e-mails contained threats, and were mean-spirited and accusatory and contrary to the goals of the CSC team. The letter of counseling was issued to address the seriousness of appellant's actions. Drs. Johnson and Woodfork refused to remove the letter from her personnel file for one year.

Appellant was not subjected to disparate treatment and unprofessional demands. Drs. Johnson and Woodfork believed in equity and had a great level of respect for diverse opinions which made a strong organization. All voices were allowed to be heard at CSC business meetings and within the school context. Each member of the Smith ES team had things to learn and teach each other that would make the school and community better. No additional duties were placed on appellant. She was allowed to provide a note of dissension if she disagreed with the CSC team. Appellant's opinions were honored even though they had been overruled by a majority of the CSC team. In September and October 2010 appellant asked Ms. Dirk to perform a task that was outside Ms. Dirk's job description and should have been performed by appellant as verified by Ms. Krantz. In the fall of 2010 Dr. Woodfork and Ms. Krantz instructed Ms. Dirk to perform a certain task as insisted by appellant. Appellant had full control of her schedule of students placed in assessment status. Drs. Johnson and Woodfork requested all staff at Smith ES to submit their bi-weekly schedule to know their whereabouts on

any given day. Appellant did not submit her schedule in detail or on a regular basis. Her caseload was manageable and not extraordinarily large. During the 2009-2010 school year appellant did not regularly attend weekly CSC business meetings thus, she did not receive new cases to assess. Drs. Johnson and Woodfork noted that Ms. Ramirez performed assessments to help appellant. Procedures at Smith ES and certain assessments were changed as requested by appellant. Drs. Johnson and Woodfork were not informed about her physical needs until May and June 2010. On December 7, 2010 an industrial hygienist was contacted to schedule an appointment to interview her and assess her workstation. Based on her education and career, Dr. Woodfork stated that she was fully aware of equitable leadership practices pertaining to racial, ethnic, gender, cultural, ability, religious, sexual orientation, age and national origin diversity. Appellant was not disrespected by colleagues as she was always given an opportunity to bring issues to CSC meetings, provide her perspective and practice SLP assessments.

Appellant received a letter of admonishment from Principal Balilo of the Wetzel ES which outlined her expectations regarding professional attitude in CSC business meetings and in collaboration with colleagues. Drs. Johnson and Woodfork sought to understand appellant and respectfully provide her with information she needed to follow the leave policy.

In a December 7, 2010 letter, Mr. Kretz stated that he did not meet with appellant on June 23 or 24, 2010 regarding the filing of her Form CA-2. He last met with her on June 18, 2010. Mr. Kretz did not tell appellant that he would submit the claim shortly. Based on a June 23, 2010 e-mail, he requested that she pick up the form and complete the information required in block 23. Mr. Kretz did not pick up the form on June 23 or 24, 2010. He did not see the completed CA-2 form until Ms. Martin provided an electronic copy of it to him on November 30, 2010. Mr. Kretz stated that appellant's assertion that he had informed her that new workstation furniture had been ordered in April 2010 was false. No district-level furniture was bought during fiscal year 2010; however, Smith ES, purchased furniture in fiscal year 2010, but not for appellant since she did not provide documentation addressing her specific needs. Smith ES did not receive funding for furniture purchases until June 2010 and purchases were made between June and September 2010. In the fall of 2010 Mr. Kretz was instructed by Dr. Johnson not to purchase any furniture for appellant until she completed a reasonable accommodation worksheet and the process to determine her specific furniture needs was completed. He submitted e-mails dated February 22 and June 22 and 23, 2010 related to the filing of appellant's CA-2 form and her request for new furniture and electronic equipment.

In a February 10, 2011 letter, Dell McMullen, a district superintendent, denied appellant's January 21, 2011 request to change her supervisor and to remove the letter of counseling from her file. There was no evidence that either her supervisor or the letter constituted a barrier to the performance of her essential job functions. Mr. McMullen also denied appellant's request to change her duty station, but stated that she could apply for a change in station through an upcoming teacher transfer program. He stated that Drs. Johnson and Woodfork considered appellant's position description prior to making work assignments which was standard practice for all employees. Mr. McMullen denied her request to change personnel handling her pay claims. He concurred with Dr. Johnson's decision to have the school administrative officer and secretary handle personnel pay claims. There was no evidence that the handling of appellant's pay claims impeded the performance of her essential job functions. Appellant's compensation claim had been processed and there was no evidence that the handling

of the claim impeded the process. Mr. McMullen stated that appellant's request for equipment had been granted and the equipment was ordered through the Client Assistance Program. Appellant's request for flexibility to complete her paperwork at Wetzel ES was also granted. Mr. McMullen related that appellant's supervisor allowed her to choose her current office while her colleague was not given the same opportunity. He stated that the employing establishment was committed to affording all employees respect and access to the rights to which they were entitled. There was no evidence that appellant's administrators disrespected her patient rights or denied her request for leave. It was their responsibility to require appellant to abide by the leave policy. Both of appellant's administrators attended diversity and Equal Employment Opportunity (EEO) training as she requested. Mr. McMullen noted that appellant's January 14, 2011 assertion that her privacy rights related to her workers' compensation claim were violated by her administrators was being reviewed.

In a January 19, 2011 leave slip, appellant requested 12 days of leave from January 25 to February 9, 2011 under the Family and Medical Leave Act (FMLA). In a January 30, 2011 e-mail, she stated that she went on leave as of January 26, 2011 for a two-week surgery recovery period.

In a January 25, 2011 report, an employing establishment provider whose signature is illegible stated that appellant had a right wrist ganglion cyst for which she was scheduled to undergo surgery on January 26, 2011 and stitch removal on February 8, 2011. She was incapacitated through February 9, 2011.

In a March 17, 2011 decision, OWCP denied appellant's claim, finding that she failed to establish a compensable factor of employment.

On March 14, 2012 appellant requested reconsideration. In a November 5, 2010 letter, she contended that the May 24, 2010 letter of counseling she received was unfair, harassing and untimely as she had completed tasks as directed by Dr. Johnson following the April 5, 2010 meeting. The letters she sent to Mrs. Ramirez, Mrs. Ford-Bell and Drs. Johnson and Woodfork from her home computer were emotional, but factual regarding their harassment and failure to provide a safe work environment. On June 14, 2010 Dr. Johnson acted unprofessionally by stating that he would place her by the boiler room since she was having problems with him. Appellant's initial May 14, 2010 request for reasonable accommodation was denied. On October 29, 2010 Dr. Woodfork denied her request for work schedule modification to attend to her medical needs and change of supervisor.

In a May 26, 2010 report, Timothy M. Skinner, a physical therapist, addressed the treatment of appellant's cervicalagia.

In a March 4, 2011 cervical x-ray report, Dr. Kent D. Abbott, a Board-certified radiologist, found multilevel spondylosis changes and evidence of degenerative disc disease.

In reports dated March 8 and September 30, 2011, Hattie Walker, an occupational therapist, assessed appellant's need for an ergonomic workstation following the onset of upper extremity pain from repetitive stress injuries.

In an April 14, 2011 report, Dr. Lampe obtained a history of injury and appellant's psychological treatment. When she filed her workers' compensation claim in October 2010, appellant was feeling much better. Dr. Lampe stated that appellant's November 2010 request for reasonable accommodations and December 2010 request for compassionate reassignment were denied. Appellant faced constant changes upon her return from winter break in January 2011. She was directed to take a half day of leave for even a 30-minute local medical appointment, resulting in no remaining leave. Appellant was required to obtain permission from her direct supervisor to move between buildings. She was also required to assess students inappropriately and attend meetings at two different schools despite having a heavy caseload. Appellant frequently corrected leave slips and a travel voucher due to new rules that only applied to her. She was directed to perform contrary to her job description. In January 2011 appellant contacted her congressman to request an inquiry of her claim which was later closed due to an improper venue to address her concerns. She reported hostile work conditions and abuse of discretion by an administrator. Dr. Lampe noted that appellant became tearful during her sessions. In February 2011 appellant received a letter of reprimand for attending a Black History program. In mid-March 2011 her medication was increased due to worsening symptoms. In April 2011 appellant received a proposed notice of suspension for being absent without leave when she went to the Black History event and failed to follow and delayed following directives. She was told by a post commander that a bill of rights for behavioral health care may not extend to her mental health needs. Dr. Lampe stated that the last time he evaluated appellant she was very depressed and anxious despite an increase in her medication dosage. He reiterated his prior diagnosis of major depressive disorder. Dr. Lampe noted that, based on appellant's history, her anxiety and depression symptoms worsened while at work and decreased during summer break. When he saw her during the summer break she was clearly doing better than after she restarted work. As the reported sobbing continued, appellant clearly became increasingly distraught. Dr. Lampe, therefore, reasonably concluded that her symptomatology was exacerbated by her work situation.

In a March 5, 2012 report, Lea Didion Mattice, Ph.D., a clinical psychologist, noted her treatment of appellant since July 27, 2011. She supported appellant's reassignment to a new district. Appellant had been diagnosed with recurrent major depressive disorder. Dr. Mattice noted that appellant's condition was attributed to her perception of a hostile work environment. When her work environment improved with a change in personnel, her symptoms temporarily improved; however, appellant began to experience further difficulty with interpersonal relationships and her symptoms returned. Dr. Mattice advised that a review of her records revealed no previous mental health diagnoses prior to her presentation to the clinic in June 2010. She opined that a new work setting would alleviate appellant's stress and improve her concentration, mood, function and work performance.

In a September 11, 2011 e-mail, Dr. Johnson indicated that he no longer worked in the employing establishment's schools department. He stated that appellant, as well as, all employees, was asked about their schedule. Dr. Johnson stated that her behavior which included becoming angry about this request, and storming out of meetings, sending nasty e-mails and refusing to attend meetings when she disagreed with others was unacceptable and rendered her unable to work in a team setting. He stated that he was ashamed to have been associated with appellant.

In an April 24, 2012 decision, OWCP denied modification of the March 17, 2011 decision. It found that the evidence submitted was insufficient to establish a compensable factor of employment.

By letter dated January 24, 2013, appellant, through her representative, requested reconsideration. In a March 15, 2013 letter, Dr. McMullen noted that appellant had not received all of her requested ergonomic equipment, but the employing establishment was in the process of ensuring her request was met. He stated that he was unaware of and disagreed with Dr. Johnson's derogatory remarks about appellant. Dr. Johnson stated that she was merely exercising her right to be treated fairly and to receive reasonable accommodations for her disability. He noted that there was no record of any performance deficiencies on appellant's part. Dr. McMullen stated that it was inappropriate to suggest that she should not be an employee.

In a May 29, 2013 decision, OWCP affirmed the April 24, 2012 decision, as modified. It found that appellant established as compensable factors of employment that she worked at makeshift workstations and testing sites and sat in numerous meetings, and the employing establishment partially fulfilled her requests for ergonomic equipment. OWCP found that the medical evidence of record was insufficient to establish that her claimed emotional condition was caused by the accepted employment factors.

LEGAL PRECEDENT

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her stress-related condition.[2] If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.[3] When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, it must base its decision on an analysis of the medical evidence.[4]

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*,[5] the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.[6] When an employee experiences emotional stress in carrying out his or

[2] *Leslie C. Moore*, 52 ECAB 132 (2000).

[3] *Dennis J. Balogh*, 52 ECAB 232 (2001).

[4] *Id.*

[5] 28 ECAB 125 (1976).

[6] *See Robert W. Johns*, 51 ECAB 137 (1999).

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.[7] Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[8] Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.[9] Personal perceptions alone are insufficient to establish an employment-related emotional condition.[10]

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA.[11] 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.[12]

For harassment or discrimination to give rise to a compensable disability, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations that the harassment occurred with probative and reliable evidence.[13] Mere perceptions and feelings of harassment will not support an award of compensation.[14]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[15] The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[16] Neither the mere fact that a disease or condition manifests itself during a period

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[7] *Lillian Cutler, supra* note 5.

[8] *J.F.*, 59 ECAB 331 (2008).

[9] *M.D.*, 59 ECAB 211 (2007).

[10] *Roger Williams*, 52 ECAB 468 (2001).

[11] *Charles D. Edwards*, 55 ECAB 258 (2004).

[12] *Kim Nguyen*, 53 ECAB 127 (2001).

[13] *James E. Norris*, 52 ECAB 93 (2000).

[14] *Beverly R. Jones*, 55 ECAB 411 (2004).

[15] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[16] *Leslie C. Moore, supra* note 2; *Gary L. Fowler*, 45 ECAB 365 (1994).

of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[17]

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish a physical or an emotional condition causally related to factors of her federal employment.

OWCP accepted that appellant worked at makeshift workstations and testing sites, set through numerous meetings and the partial fulfillment of her requests for ergonomic equipment were compensable factors of employment.

Appellant's remaining allegations pertain to administrative actions that began in January 2010 and to allegations that she was harassed and treated in an abusive manner by employing establishment management. Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of FECA.[18] Absent evidence establishing error or abuse, a claimant's disagreement or dislike of such a managerial action is not a compensable factor of employment.[19] The Board finds that appellant's allegations that the denial of leave,[20] requests for change of supervisors and work schedule,[21] reassignment to a new duty station,[22] management's failure to follow a directive to remove her coworker from their shared office, the handling and processing of her compensation claim,[23] issuance of the May 19, 2010 disciplinary letter of counseling and letter of admonishment,[24] and assignment of work and monitoring performance and whereabouts at work[25] pertain to administrative functions. Mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor.[26] While the record contains extensive documentation, it does not establish error or abuse in these matters and they are not compensable factors of employment.

The statements from Drs. Johnson and Woodfork, Mr. McMullen and Mr. Kretz maintain that appellant and Ms. Ford-Bell, her officemate, were moved to separate offices as requested by

[17] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[18] *J.C.*, 58 ECAB 594 (2007).

[19] *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

[20] *T.G.*, 58 ECAB 189 (2006).

[21] *See Matilda R. Wyatt*, 52 ECAB 421 (2001).

[22] *Ernest J. Malagrida*, 51 ECAB 287 (2000).

[23] *See David C. Lindsey, Jr.*, 56 ECAB 268 (2005).

[24] *See Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[25] *Supra* note 19; *Beverly R. Jones*, 55 ECAB 411, 416 (2004); *Charles D. Edwards*, 55 ECAB 258, 270 (2004).

[26] *Supra* note 19.

appellant and only appellant was allowed to select her new office and moved to it with administrative and military assistance. Appellant's request for a change of supervisor was denied for administrative reasons and there was no evidence that her current supervisor prevented her work performance. Although her request for a new duty station was denied, she was advised to apply for a change in an upcoming transfer program. Leave slips that were not complete were denied as appellant routinely disregarded the employing establishment's leave policy. Her request for a flexible work schedule was granted and she was allowed to leave work early three out of five days a week to attend medical appointments. The letter of counseling was issued and remained in appellant's file for one year to demonstrate the seriousness of her actions in sending threatening, mean-spirited and accusatory e-mails to her colleagues; the letter of admonishment was issued due to her lack of professionalism in CSC meetings and collaboration with her colleagues; and all Smith ES staff was requested to submit their bi-weekly schedule so that their whereabouts were known on any given day; and denied that appellant was not allowed to contact Dr. Johnson as it was common practice to speak to him or Dr. Woodfork when an administrator was out of the school building; and that there was a delay in filing her compensation claim. Based on the statements from Drs. Johnson and Woodfork, Mr. McMullen and Mr. Kretz, the Board finds that appellant has failed to establish a compensable employment factor with regard to these administrative matters.

Appellant alleged that she was overworked as she was required to work outside her position description and her coworkers failed to provide her with support services. The Board has held that overwork, when substantiated by sufficient factual information to corroborate appellant's account of events, may be a compensable factor of employment.[27] The record, however, does not substantiate appellant's contentions that she was overworked or did not receive support from her coworkers. Ms. Dirk stated that appellant was unwilling to perform her work duties and responsibilities as appellant twice asked her to perform duties outside her job description. Drs. Johnson and Woodfork stated that in the fall of 2010 Ms. Dirk was instructed to perform a certain task as insisted by appellant. They stated that appellant's caseload was manageable and not extraordinarily large, noting that during the 2009-2010 school year she did not receive new cases because she did not regularly attend weekly CSC business meetings. Drs. Johnson and Woodfork related that her request that the CSC team perform her responsibilities related to a particular task was granted. They also related that procedures at Smith ES and certain assessments were changed as requested by appellant. Drs. Johnson and Woodfork stated that Ms. Ramirez helped appellant by performing her assessments. The Board finds that the evidence is insufficient to establish overwork allegations as Ms. Dirk and Drs. Johnson and Woodfork explained that appellant did not have a heavy workload and received assistance with the performance of her work duties. Appellant has not established a compensable employment factor.

Appellant contended that she was harassed by management and subjected to disparate treatment, dismissiveness, bullying, gossip, a violation of her privacy rights and unprofessional treatment. Mere perceptions of harassment or discrimination are not compensable under FECA.[28] Unsubstantiated allegations of harassment or discrimination are not determinative of

[27] *Bobbie D. Daly*, 53 ECAB 691 (2002).

[28] *James E. Norris, supra* note 13.

whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.[29] Ms. Fergerson overheard Ms. Ford-Bell interrupt appellant while she was speaking, and stated that she was treated in a derisive manner from 2008 to 2009. She noted her reaction to being harassed at work. The Board finds that Ms. Fergerson failed to provide any specific details of dates of these incidents. The Board finds that her general statement does not constitute sufficient evidence of harassment on the part of employing establishment personnel. Similarly, the statement from an unidentifiable information specialist that appellant had to work in other building locations due to the conflict she had with her officemate and the stressful conditions she experienced from other quarters at work, is of a general nature and, therefore, is also insufficient to establish harassment on the part of the employing establishment. The statements from Ms. Kieta, Ms. Dirk, Drs. Johnson and Woodfork, and Mr. McMullen noted that appellant was treated in a fair, professional and respectful manner and not subjected to disparate treatment or harassment by management. Management made an effort to create a hospitable work environment, believed in equity, had respect for diverse opinions, allowed all voices to be heard at CSC meetings and at school in honoring her opinions, did not disrespect or violate her privacy rights, and attended diversity and EEO training as she requested. Ms. Kieta and Drs. Johnson and Woodfork further maintained that appellant did not act in a professional manner as she ceased discussions with CSC team members without reaching a mutual understanding, did not respond well to procedural changes, frequently exhibited an obtuse attitude towards her coworkers, angrily responded to a request regarding her schedule, stormed out of meetings, sent nasty e-mails and refused to attend meetings when she disagreed with others. They stated that her expectations of preferential treatment coupled with her explosive personality and inability to work well with others created a volatile work environment. Based on the statements of Ms. Kieta, Ms. Dirk, Drs. Johnson and Woodfork and Mr. McMullen, the Board finds that appellant has not established a factual basis for her claim of harassment by probative and reliable evidence.[30]

Because appellant has established compensable factors of employment, that she worked at makeshift workstations and testing sites and sat in numerous meetings, and the employing establishment partially fulfilled her requests for ergonomic equipment, the medical evidence of record must be analyzed.[31] The Board finds that appellant has not submitted sufficient medical evidence to establish an injury causally related to the compensable work factors.

Although the reports from Drs. Lampe and Connelly stated that appellant's major depressive disorder was exacerbated by her work environment, they failed to provide adequate medical opinion addressing how her condition was caused or exacerbated by the accepted compensable employment factors.[32] The Board finds, therefore, that the reports of Drs. Lampe

[29] *Id.*

[30] *See Robert Breeden*, 57 ECAB 622 (2006).

[31] *Id.*

[32] *George H. Clark*, 56 ECAB 162 (2004); *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001); *William P. George*, 43 ECAB 1159, 1167 (1992) (medical reports not containing rationale on causal relationship are entitled to little probative value).

and Connolly are insufficient to establish a causal relationship between the accepted compensable employment factors and appellant's emotional condition.

In a March 5, 2012 report, Dr. Mattice found that appellant had recurrent major depressive disorder. She obtained a history of injury which appellant attributed to her hostile work environment. Dr. Mattice opined that a new work setting would alleviate her stress and improve her mental and emotional state and work performance. However, she appears merely to be repeating the history of injury as reported by appellant without providing her own opinion regarding whether appellant's diagnosed emotional condition was work related. To the extent that Dr. Mattice provided her own opinion, the physician failed to provide a rationalized opinion regarding the causal relationship between appellant's recurrent major depressive disorder and the accepted compensable employment factors.[33] Therefore, Dr. Mattice's report is insufficient to meet appellant's burden of proof.

Dr. Kyi's April 13 and May 25, 2010 sick slips and November 17, 2010 report noted that appellant was treated from April 13 to 20, 2010, addressed her reaction to medication and found normal hip x-rays and nonspecific findings on an MRI scan of the head. She did not diagnose a medical condition or provide an opinion as to whether the diagnosed condition was caused or aggravated by the accepted employment factors. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[34] The Board finds that Dr. Kyi's reports are insufficient to establish appellant's claim.

The November 10, 2010 report from Dr. Kirschling, a chiropractor, did not diagnose a subluxation demonstrated by x-ray to exist and is of no probative value.[35]

Dr. Abbott's March 4, 2011 diagnostic test results, addressed appellant's cervical conditions, but failed to provide an opinion addressing whether her diagnosed conditions were caused by the accepted compensable employment factors.[36] The Board finds, therefore, that Dr. Abbott's report is insufficient to establish appellant's claim.

The reports from appellant's nurse practitioners and physical and occupational therapists have no probative value on the issue of causal relationship because nurse practitioners[37] and

[33] *Id.*

[34] *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

[35] Section 8101(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the Secretary. *See* 5 U.S.C. § 8101(2); *see also Merton J. Sills*, 39 ECAB 572, 575 (1988).

[36] *See* cases cited, *supra* note 34.

[37] 5 U.S.C. § 8101(2); *see also M.B.*, Docket No. 12-1695 (issued January 29, 2013).

physical and occupational therapists[38] are not physicians as defined under FECA. The January 25, 2011 report from an employing establishment provider whose signature is illegible has no probative medical value as there is no indication that the document is from a physician.[39]

The Board finds that appellant has failed to submit any other rationalized medical evidence establishing that she sustained emotional and physical conditions causally related to the accepted compensable employment factors. Appellant did not meet her burden of proof.

On appeal, appellant's representative contended that the employing establishment's denial of appellant's request for ergonomic equipment aggravated her physical injuries and caused her major depression and anxiety for which she sought psychiatric and psychotherapy treatment. As stated, the medical evidence does not provide a rationalized medical opinion addressing whether her physical and emotional conditions were caused by the accepted compensable employment factors.

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 failed to establish that she sustained an emotional or a physical condition causally related to factors of her federal employment.

[38] *Id*. at § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005); *E.H.*, Docket No. 08-1827 (issued July 8, 2009).

[39] *See C.B.*, Docket No. 09-2027 (issued May 12, 2010) (reports lacking proper identification do not constitute probative medical evidence).

ORDER

IT IS HEREBY ORDERED THAT the May 29, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 23, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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