DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 14, 2014 appellant filed a timely appeal from an October 3, 2014 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 met his burden of proof to establish that he sustained an emotional condition or an aggravation of his lupus condition in the performance of duty.

FACTUAL HISTORY

On April 7, 2014 appellant, then a 59-year-old housekeeping aid supervisor, filed an occupational disease claim (Form CA-2) alleging that his lupus condition was aggravated by a

\(^1\) 5 U.S.C. § 8101 \textit{et seq.}
hostile work environment. He indicated that he was the subject of two investigations, including a criminal investigation for allegedly assaulting an employee, and both proved to be based on false allegations. Appellant filed an Equal Employment Opportunity (EEO) Commission complaint alleging that he was continuously harassed by upper management in retaliation against him. He stated that he was diagnosed with lupus in 2002 related to his military service and alleged that his condition worsened as a result of his stressful work environment.

In an April 11, 2014 letter, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

In support of his claim, appellant submitted investigative reports dated September 15, 2013 and January 31, 2014. He also submitted documentation related to his EEO complaint and an EEO decision dated January 15, 2014 remanding the case for further development of his harassment claim.

Appellant submitted witness statements, including a September 4, 2013 statement from LeRoy Morgan, appellant’s coworker, who indicated that appellant was falsely accused of assaulting Ann Orlow. Mr. Morgan believed that appellant was “suffering from some form of harassment” and noticed that he was “quite stressed lately with dealing with the issues at hand.” In an April 24, 2013 statement, Eleanore Mullins, a fellow supervisor, stated that “upper management [was] trying to terminate [appellant].”

In reports dated July 31, 2013 through June 10, 2014, Dr. William Shaffer, a Board-certified family practitioner, indicated that appellant was seen for workers’ compensation and diagnosed back strain and possible groin strain. On May 8, 2014 he opined that the “stressful and hostile work environment (as reported to me by [appellant]) has resulted in his anxiety and depression.”

In reports dated December 4, 2013 through April 28, 2014, Dr. Sarah Hanson, appellant’s clinical psychologist, diagnosed major depressive disorder, panic disorder, adjustment disorder with anxiety, and post-traumatic stress disorder. Appellant reported experiencing an unhealthy and hostile work environment and Dr. Hanson opined that this led to a significant amount of stress, panic, depression, and paranoia.

By decision dated October 3, 2014, OWCP denied appellant’s claim finding that the evidence was not sufficient to establish any incidents of a hostile work environment or harassment as occurring as alleged.

LEGAL PRECEDENT

In providing for a compensation program for federal employees, Congress did not contemplate an insurance program against any and every injury, illness, or mishap that might befall an employee contemporaneous or coincidental with his or her employment. Liability does not attach merely upon the existence of an employee-employer relation. Instead, Congress provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.2 The phrase while in the

---

2 See id. at § 8102(a).
performance of duty has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers’ compensation law of arising out of and in the course of employment.

In *Lillian Cutler*, the Board noted that workers’ compensation law is not applicable to each and every injury or illness that is somehow related to an employee’s employment. There are situations when an injury or illness has some connection with the employment but nonetheless does not come within the coverage of workers’ compensation as they are found not to have arisen out of the employment. When an employee experiences emotional stress in carrying out his or her employment duties, or has fear and anxiety regarding his or her ability to carry out his or her duties, and the medical evidence establishes that the disability resulted from his or her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee’s disability resulted from her emotional reaction to her day-to-day duties. The same result is reached when the emotional disability resulted from the employee’s emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of the work.

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, unhappiness with doing inside work, desire for a different job, brooding over the failure to be given work she desires, or the employee’s frustration in not being permitted to work in a particular environment or to hold a particular position. Board case precedent demonstrates that the only requirements of employment which will bring a claim within the scope of coverage under FECA are those that relate to the duties the employee is hired to perform.

To the extent that disputes and incidents alleged as constituting harassment by coworkers are established as occurring and arising from a claimant’s performance of his or her regular duties, these could constitute employment factors. However, for harassment to give rise to a compensable disability under FECA there must be evidence that harassment did, in fact, occur. Mere perceptions of harassment are not compensable under FECA.

Administrative and personnel matters, although generally related to the employee’s employment, are administrative functions of the employer rather than the regular or specially

---

3 28 ECAB 125 (1976).
4 *Id.* at 130.
5 *See supra* note 3.
6 *See Anthony A. Zarcone*, 44 ECAB 751 (1993).
assigned work duties of the employee and are not covered under FECA. However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded. In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.

A claimant has the burden of establishing by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors. This burden includes the submission of a detailed description of the employment factors or conditions, which believes caused or adversely affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed compensable factors of employment and may not be considered. If a claimant does implicate a factor of employment, OWCP should then consider whether the evidence of record substantiates that factor. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim; the claim must be supported by probative evidence. Where the matter asserted is a compensable factor of employment and the evidence of record established the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.

The Board has held that a variety of work factors are compensable under FECA. Among them, overwork is a compensable factor of employment if appellant submits sufficient evidence to substantiate this allegation. Also, in certain circumstances, working overtime is sufficiently

---


17 See Bobbie D. Daly, 53 ECAB 691 (2002).
related to regular or specially assigned duties to constitute a compensable employment factor. Additionally, conditions related to stress resulting from situations in which an employee is trying to meet his or her position requirements are compensable.

**ANALYSIS**

Appellant alleged that he sustained an emotional condition or an aggravation of his lupus condition as a result of a number of employment incidents and conditions, some of which he alleges were taken in retaliation for his EEO complaint. OWCP found these to be noncompensable employment factors. Therefore, the Board must review whether the alleged incidents are covered employment factors under FECA. The Board notes that appellant’s allegations do not pertain to his regular or specially assigned duties under *Cutler*. Rather, appellant has alleged harassment by his supervisors.

In *J.R.*, the employee alleged that his fibromyalgia condition was aggravated by a hazardous and hostile work environment perpetrated by his station manager. OWCP found that he did not submit any evidence substantiating his allegations as there was no evidence substantiating any derogatory remarks made by his station manager. Although appellant alleged that his station manager told him that he was worthless because he was not a team player, there was no witness statement corroborating this incident and there was no evidence of record from any witness substantiating appellant’s contention that he was harassed by her. Thus, the Board found that there was no evidence from appellant in support of his allegations that he was harassed by his supervisors.

In the present case, OWCP found that appellant was not subjected to any harassment and did not submit any evidence substantiating his allegations. Specifically, there is no evidence substantiating any harassment by upper management in retaliation against appellant for filing an EEO complaint. In a September 4, 2013 statement, Mr. Morgan, a coworker, indicated that appellant was “suffering from some form of harassment” and noticed that he was “quite stressed lately with dealing with the issues at hand.” In an April 24, 2013 statement, Ms. Mullins, a fellow supervisor, stated that “upper management [was] trying to terminate [appellant].” However, Mr. Morgan and Ms. Mullins do not provide any details of the alleged harassment. They did not describe any of the specific actions of management officials which they believed constituted improper actions or created a hostile work environment. They did not provide a detailed discussion about any specific incidents and conditions they personally witnessed that created such an environment. The Board finds that the statements from Mr. Morgan and Ms. Mullins are of limited probative value to establish harassment or discrimination because they

---

19 See *Trudy A. Scott*, 52 ECAB 309 (2001).
21 See supra note 3.
are vague and general in nature. For these reasons, appellant has not established a compensable employment factor under FECA with respect to the claimed harassment.

Actions of a claimant’s supervisor which the claimant characterizes as harassment may constitute a compensable factor of employment. However, for harassment to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.\(^{23}\) An employee’s charges that he or she was harassed or discriminated against, is not determinative of whether or not harassment or discrimination occurred.\(^{24}\) 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.\(^{25}\)

The Board finds that the factual evidence fails to support appellant’s allegation of harassment. Further, the record does not contain a final EEO decision regarding this matter. Although the record contains an EEO decision dated January 15, 2014, it is not a final decision as it remanded appellant’s EEO complaint for further development. The Board has long held that grievances and EEO complaints by themselves do not establish that workplace harassment or unfair treatment occurred.\(^{26}\) The Board finds that appellant has not established a factual basis for his allegation that he was harassed. Therefore, appellant has failed to establish a compensable factor of employment in this regard.

Furthermore, it is unnecessary to address the medical evidence of record as appellant has failed to establish a compensable factor of employment.\(^{27}\)

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that he sustained an emotional condition or an aggravation of his lupus condition in the performance of duty.


\(^{26}\) See *W.B.*, Docket No. 12-1369 (issued May 1, 2013).

\(^{27}\) See *Garry M. Carlo*, 47 ECAB 299, 305 (1996).
ORDER

IT IS HEREBY ORDERED THAT the October 3, 2014 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: April 10, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees’ Compensation Appeals Board

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