United States Department of Labor
Employees' Compensation Appeals Board

R.E., Appellant	)	
and	)	**Docket No. 15-0047**
	)	**Issued: August 14, 2015**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Madison, WI, Employer	)	

Appearances:
Timothy M. Scheffler, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 6, 2014 appellant, through counsel, filed a timely appeal from an April 16, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employee' 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.

ISSUES

The issue is whether appellant has met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On November 17, 2009 appellant, then a 56-year-old cardiac nurse practitioner (NP), filed an occupational disease claim alleging depression and post-traumatic stress disorder

[1] 5 U.S.C. § 8101 *et seq.*

(PTSD) due to the emotional stress she suffered while employed. She related that on January 29, 2007 she was diagnosed with mental disorders and on Apri1 7, 2008 she was diagnosed with a physical disorder caused by her working conditions. The employing establishment indicated that appellant returned to her preinjury job, but retired on December 22, 2008.

By letters dated February 9, 2010, OWCP informed appellant and the employing establishment of the type of evidence needed to support her claim.

In an undated statement, appellant asserted that she was harassed within the employing establishment. She stated that the majority of the stress that she endured was from a doctor (D.R.) and the nurse manager (J.W.).[2] Appellant alleged that she and her coworker (D.H.) were required to work significant overtime, but were ordered to only document that they worked eight-hour shifts. She asserted that the overtime could be documented by computer records and patient documentation.

Appellant stated that she began an NP internship on January 5, 2004 in cardiology with a disability.[3] She asserted that the employing establishment refused to accommodate her.[4] Appellant noted that on October 25, 2005, she injured her toe due to falling at work while carrying a shelf. Within four days she had an infection. Despite her illness she continued to try to work because her NP partner was gone and D.R. insisted there always had to be one NP at work.[5] In January 2006, J.W. moved appellant and her NP partner into NP stalls in the cardiology office. On February 14, 2006 she requested an accommodation, but was refused and told nothing in the office would ever change. Appellant noted that two cardiologists pleaded for her to have a better desk and work conditions. On February 9, 2006 her supervisor (L.E.) decided that the NP stalls were "intolerable" and indicated that she would help change the situation, but nothing changed. Appellant alleged that she had pain due to the long hours of overtime. She described incidents from February through July 2006 regarding her efforts to obtain workstation accommodations. Appellant requested a transfer out of cardiology on February 18, 2006 and asked for workstation changes on March 6, 2006, which were denied. On March 14, 2006 she requested a transfer due to the negative and demeaning manner she was treated by D.R. and J.W. An ergonomic evaluation occurred on April 5, 2006, after being cancelled on prior occasions. Appellant was informed that the ergonomic committee was fired and the only change permissible was rotating her desk 30 degrees.[6] After this, she was "given three more clinics." Appellant noted that, in May 2006, she was sitting at the resident's desk, when no residents were present, and D.R. told her to return to her stall. In July 2006, she and D.H. were relocated to a filthy basement, which was not really an office, and she had to clean it

[2] Appellant indicated that she "did not list each incident of mental anguish because they occurred nearly daily."

[3] Appellant stated that she was involved in a car accident on January 2, 2002 which resulted in spinal cord damage and necessitated multiple surgeries from October 2002 through December 2003.

[4] Appellant noted that she had shortness of breath and chest pain on August 17, 2005 and was diagnosed with interstitial pulmonary fibrosis. Additionally, she had bilateral pneumonia from immunodeficiency and had been off work as she was not responding to pneumonia medication.

[5] Appellant indicated that she was diagnosed with giardia-lamblia and cellulitis of her right toe.

[6] Appellant noted that, around May 30 to June 3, 2006, the position of her desk was changed.

before moving in. On July 23, 2006 appellant sent an e-mail to a nurse case manager (C.O.) regarding her schedule because she had a larger than normal client load and was often scheduled with patient meetings and other tasks, such as exercise stress testing or inpatient consults, at the same time.[7] On September 29, 2006 she went to the administrator to complain of the lack of accommodation, emotional abuse, and other problems she had while in cardiology. Appellant identified an October 6, 2006 incident involving a patient in the surgical ICU who was given the wrong medication. She explained that L.E. informed her they were not going to address the issue and that appellant would be held responsible. Appellant noted that on January 29, 2007 she saw a psychiatrist and was diagnosed with severe depression and PTSD which would be triggered by anything associated with the employing establishment.[8] In August 2008, she stated that she was getting letters that she was going to be fired because she was physically unable to work.

Appellant provided medical evidence from Dr. Meg Little, a Board-certified psychiatrist. In a March 18, 2010 report, she noted prescribing medications for appellant since August 14, 1999. Dr. Little opined that work-related conditions caused appellant's psychological stress. She diagnosed major depressive disorder, dysthymic disorder, generalized anxiety disorder, and PTSD that were caused or aggravated by employment conditions.

The employing establishment responded to OWCP's February 9, 2010 request and controverted the claim. L.E. indicated that on August 31, 2006 appellant's supervisor met with her to discuss a concern. After a fact finding investigation appellant was disciplined for a conduct issue. When she requested changes in her workstation, accommodations were made. L.E. noted that on April 11, 2006 appellant's workstation was modified by rotating her desk 90 degrees in accordance with a workstation evaluation and concerns expressed by appellant. In July/August 2006, her office workstation was moved and appellant confirmed that she was satisfied with her office space and arrangements. L.E. also explained that appellant was not meeting the requirement of completing her progress notes within 72 hours and accommodations were made to assist her. The due date for her proficiency examination was extended three months and her progress notes improved. L.E. also noted that appellant was offered a lateral transfer to a full-time position in primary care, but she declined.

In a letter dated April 21, 2010, OWCP requested additional information with regard to: whether appellant was accommodated for her nonwork-related disabilities; whether D.R. required that a NP always be on staff; whether appellant was required to work despite being ill; whether appellant had a larger than normal client load and an impossible schedule; whether appellant was subjected to emotional abuse from her superiors; and whether appellant was told she would be held accountable if she reported an incident involving a patient and his being prescribed the wrong medication.

In a response received on June 1, 2010, L.E. confirmed that appellant was accommodated to her satisfaction with regard to her workstation. She denied that appellant was not given sick leave and any other leave requests. Regarding her workload, L.E. indicated that a data analysis

[7] Appellant indicated that her doctor was appalled at this and prescribed more pain medication.

[8] Appellant alleged that her rheumatoid arthritis was also related to the work-related stress.

was performed and reviewed by senior medical staff. The review revealed that appellant had a normal workload in relation to expectations and national standards. L.E. indicated that at no time was there abuse or lack of proper workplace accommodation by the supervisors who worked with appellant with regard to a proper workplace. She explained that "at no time did the supervisor ignore an incident at which time a patient was placed on the wrong medication."

In a letter dated June 11, 2010, OWCP requested additional information from the employing establishment regarding accommodations and work hours.

In response, S.S., a human resources coordinator, stated that the ergonomic assessment of appellant's workstation was no longer available. However, he confirmed that on April 11, 2006 appellant's workstation was modified in accordance with the requirements of that time and she indicated that she was satisfied. S.S. also indicated that the employing establishment was not aware of any requirement to work overtime or being ordered to not document her actual time. He advised that the expectations of each provider was expressed through scope of practice expectations and both clinical and administrative expectations were clarified with providers on a regular basis with input from mangers and various other medical service chiefs.

In an August 10, 2010 decision, OWCP denied appellant's claim, finding that the evidence of record failed to establish an emotional condition in the performance of duty. It found that appellant had not established any compensable factors of employment.

On September 2, 2010 appellant requested a hearing, which was held on December 22, 2010. At the hearing, she indicated that she was harassed from January 2004 through her last day of work on January 17, 2007. Appellant reiterated that the employing establishment refused to accommodate her disability. She stated that she was not given a proper work area and was relegated to working in a multi-use area, kitchen, a hallway, and the basement.[9] Appellant noted that from January through May 2006 four of the staff cardiologists quit or decreased their time at the employing establishment and the workload was redistributed and she was the only cardiology provider. She asserted that she worked 14 to 16 hours daily. Appellant explained that she was assigned brand new patients that were critically ill and only given a half hour to see patients while the other NP always had at least one or two cardiologists in the clinic at the same time to ask questions. In September 2006, staff was added and the NPs were taken off intensive care consults, so her hours were reduced, but she still usually worked 10 hours a day. Appellant indicated that her back and legs became extremely weak and she was constantly falling. She advised that when she brought her doctor's notes saying she needed to work a normal eight-hour day and that she needed standard equipment, they told her not to bother, they were not interested in it. Appellant indicated that her supervisor told her there was no money in the outpatient budget, especially for her "special needs." She alleged that she was told to "suck it up" and referred to her as "a subordinate" instead of by her name. Appellant stated that, at a November 3, 2006 meeting, she was told that she had two weeks to shape up and that she would be fired for any transgression, even if she was five minutes late for clinic. She explained that on November 9 she was given more assignments to complete by December 7. On

[9] Appellant noted that an old Xerox fax machine was next to her desk which constantly broke down and required constant interruptions as she was always asked about the machine. She stated that she faced the wall and people were coming from behind would startle her, causing her to turn around 180 degrees to see who was there.

January 4 appellant was called and told she needed to come up to her proficiency and at both meetings she was told to "shut up." She explained that on January 17, 2007 she was again scheduled to do stress tests and be in the clinic at the same time. Appellant noted that a patient was going to have a heart attack. When she contacted a cardiologist, he refused to come as he was seeing patients and she later was "reamed out" by this physician and she "broke down."

In a January 21, 2011 statement, appellant alleged that her medical conditions stemmed from the denial of her requests for accommodation for injuries caused by her traffic accident. This prevented her from working successfully without unnecessary pain and stress. Appellant also alleged that her supervisors, especially J.W., harassed her and made her life difficult. She reiterated that her workload and duties were beyond routine and that she was not given any guidelines or protocols to perform her duties. Appellant stated that she was not allowed to document her overtime and was prevented from seeking compensation for her long hours. She repeated that there were problems with her workstations. J.W. told appellant to "suck it up." She argued that he intentionally took stairs and made it difficult for her to reach him, knowing that she had numerous disabilities. Appellant also argued that (C.H.), the assistant medical director, refused to address her concerns and referred to her as a subordinate. She alleged that she was told that C.H. would take great pleasure in having her dismissed for any indiscretion. Appellant stated that she lived in fear of losing her job due to circumstances related to patient care, which she could not control. She explained that she had a mental breakdown after the January 17, 2007 incident.

By decision dated April 13, 2011, OWCP affirmed the August 10, 2010 decision.

On April 5, 2012 appellant's counsel requested reconsideration. He argued that her emotional condition was work related and the nonaccommodation was an act of discrimination which made normal, easy tasks painful, and difficult. Counsel argued that appellant's stress arose directly from the difficulty in performance of her duties and not from her frustration over the administrative act of not being accommodated. He submitted a September 27, 2011 offer of judgment in a matter pending in the United States District Court for the western district of Wisconsin in which the employing establishment offered to pay her $150,000.00 to settle an Equal Employment Opportunity (EEO) discrimination claim. The offer specified that it was made for settlement purposes only and was not an admission of liability.

OWCP also received a September 8, 2011 deposition of D.H. in the EEO matter. She stated that appellant was given a chair that was so low that she had to sit on textbooks in order to use her computer. D.H. indicated that they attempted to swap the chair for a more suitable one, and they were reprimanded and required to put the ergonomically correct chair back. She noted that, when appellant's work area was at the end of the hallway, she had to twist and turn painfully and management refused to allow her to work in an alternative and generally vacant location to avoid pain. D.H. stated that the workload was heavy and they were expected to work up to 20 additional hours per week, without being provided overtime or compensatory time. She explained that only after appellant left, did she finally begin to receive additional compensation. D.H. noted that appellant was subjected to unwarranted discipline and was told that she was not seeing the appropriate number of clinic patients, despite not being scheduled to see additional patients. She indicated that appellant was disciplined for not recording her work correctly, while at the same time, management was not recognizing the number of hours worked. D.H.

confirmed that in 2006 J.W. told appellant to "suck it up" after requesting accommodations and her request was not taken seriously. She stated that appellant was in tears after meeting with management discussing issues of workload and performance. D.H. noted that C.H. got angry and red in the face and pounded his fist on the table, and told her that when he called her, she should be there.

By decision dated April 16, 2014, OWCP denied modification of it prior decision.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA. On the other hand the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.[10]

Appellant has the burden of establishing by the weight of the reliable, probative, and substantial evidence that the condition, for which she claims compensation was caused or adversely affected by employment factors.[11] This burden includes the submission of a detailed description of the employment factors or conditions, which she believes caused or adversely affected the condition or conditions, for which compensation is claimed.[12]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by the physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.[13] If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of the matter establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.[14]

[10] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 126 (1976).

[11] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[12] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[13] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[14] *Id.*

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.[15] 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.[16] 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.[17]

ANALYSIS

Appellant alleged that her work factors caused her to suffer an emotional condition. OWCP denied her claim on the basis that no compensable factors had been established. The Board must review whether the allegations are sufficient to establish compensable factors under FECA. The Board finds that appellant has not established any compensable factors of employment.

Appellant attributes, in part, her emotional condition to the stress from being overworked and having to be in two places at once. The Board has held that conditions related to stress resulting from situations in which a claimant is trying to meet his or her position requirements are compensable.[18] Appellant indicated that she worked up to 16 hours per day, but was not allowed to document her time or collect overtime. She argued that the significant amount of overtime could be proven by computer records and patient documentation. However, this documentation was not provided. The Board notes that specific dates and times would be needed to determine the allegation. Furthermore, the employing establishment denied that this was the case. S.S., the human resources coordinator, indicated that the employing establishment was not aware of any requirement to work overtime and being ordered to not document her actual time. Appellant argued that her work increased due to staffing shortages from January through May 2006. She stated that she was assigned new critically ill patients and only given a half an hour to see patients while the other staff had more support. Appellant advised that in September 2006 her hours were reduced, but she still usually worked 10 hours a day without sufficient guidance. L.E. explained that, with regard to appellant's workload, a data analysis was performed and indicated that appellant had a normal workload in relation to expectations and national standards. Appellant also submitted a September 8, 2011 deposition of her coworker, D.H., who indicated that appellant's workload was heavy and they were expected to work up to 20 additional hours per week, without pay. D.H. noted that, after appellant left, they received additional compensation. She also indicated that appellant was told that she was not seeing the appropriate number of patients, despite not being scheduled to see additional patients. However, the Board notes that neither appellant nor D.H. provided specific documentation covering particular time periods to support these allegations of working without pay or being scheduled

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

[16] *Kim Nguyen*, 53 ECAB 127 (2001). *See Thomas D. McEuen*, *supra* note 10.

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

[18] *Richard H. Ruth*, 49 ECAB 503 (1998).

for more than one task at a particular time. The employing establishment denied the allegation of being required to work overtime and no further documentation was submitted. The employing establishment indicated that the workload was normal in relation to expectations and national standards. The Board finds that appellant has not submitted sufficient corroborating evidence about her work duties and workload, and has not established a compensable work factor under *Cutler*.[19]

Appellant also made several allegations related to administrative and personnel actions. In *Thomas D. McEuen*,[20] the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA as such matters pertain to procedures and requirements of the employing establishment and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under FECA would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[21]

The Board notes that appellant's allegations that the employing establishment failed to accommodate her work area, improperly assigned her work duties, denied her requests for transfer and denied her leave, relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, and do not fall within the coverage of FECA.[22] Although these matters are generally related to the employment, they are administrative functions of the employing establishment, and not duties of the employee.[23]

Regarding her allegations that the employing establishment failed to accommodate her, appellant indicated that two cardiologists pleaded for her to have a better desk and work conditions. She indicated that on February 9, 2006, L.E. indicated that the NP stalls were "intolerable." D.H. asserted that appellant was given a chair that was so low that she had to sit on textbooks to use her computer and that they were reprimanded when they attempted to swap the chair. However, appellant did not provide supporting documentation that her requests for accommodation were erroneously ignored or that she was wrongly reprimanded at a specific time for trying to change chairs. The employing establishment indicated that she was accommodated and noted that on April 11, 2006, her workstation was modified by rotating her desk 90 degrees in accordance with a workstation evaluation and concerns expressed by her. Furthermore, it confirmed in July/August 2006, appellant's office workstation was moved and

[19] *See supra* note 10.

[20] *See Thomas D. McEuen, supra* note 10.

[21] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[22] *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).

[23] *Id.*

appellant confirmed that she was satisfied with her office space and arrangements. S.S. confirmed that on April 11, 2006, appellant's workstation was modified in accordance with the requirements of that time. L.E. confirmed that appellant was accommodated to her satisfaction with regard to her workstation. The evidence indicates that the employing establishment responded to appellant's request for accommodation and there is no evidence that it acted unreasonably with regard to specific requests at particular times. Appellant has not established a compensable work factor in this regard.

Appellant also made allegations about the assignment of work and denial of her request for a transfer. She indicated that she was assigned to do several things at the same time. Appellant indicated that she made several requests to transfer which were denied. The assignment of work is an administrative function of the employing establishment and not a duty of the employee.[24] Denials by an employing establishment of a request for a different job, promotion, or transfer are not compensable factors of employment absent a showing of error or abuse as they do not involve the employee's ability to perform his or her regular or specially assigned work duties, but rather constitute his or her desire to work in a different position.[25] The Board notes that the employing establishment has denied appellant's allegations and appellant has not submitted sufficient evidence to support that the employing establishment acted unreasonably in assigning work or denying requests for a transfer on any specific occasion. L.E. indicated that appellant declined to accept a transfer to an outpatient position. There is no evidence to support the actions of the employing establishment were erroneous or abusive. Appellant also alleged that management ignored incidents involving patients. She referred to an incident that occurred on October 6, 2006 when a patient was given the wrong medication. Appellant asserted that she was told that she would be held responsible for any adverse outcome. L.E. explained that "at no time did the supervisor ignore an incident at which time a patient was placed on the wrong medication." The Board finds that this has to do with how management handles a particular situation and the Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under FECA.[26] Appellant had not established a compensable employment factor in these matters.

To the extent that appellant asserts that she was improperly denied leave, the Board notes that, while the handling of leave requests and attendance matters are generally related to employment, they are administrative matters and not a duty of the employee.[27] LE. denied that appellant was not allowed to use appropriate leave. Appellant has not submitted any corroborating evidence to support that the employing establishment acted unreasonably with regard to leave matters.

Appellant also alleged harassment and a hostile work environment due to actions of management. She stated that she was harassed due to her preexisting disability. Appellant stated

[24] *See Lori A. Facey*, 55 ECAB 217 (2004).

[25] *Hasty P. Foreman*, 54 ECAB 427 (2003).

[26] *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

[27] *See Joe M. Hagewood*, 56 ECAB 479 (2005).

that J.W. told her to "suck it up." She argued that D.R. intentionally took stairs to make it more difficult for her to reach him in view of her numerous disabilities. Appellant also argued that C.H. refused to address her concerns, referred to her as a subordinate, and indicated that she would take great pleasure in having her dismissed for any indiscretion, even being late to a clinic. D.H.'s deposition noted that appellant was in tears after meeting with management discussing issues of workload and performance as C.H. got angry and red in the face and pounded his fist on the table, and told her that when he called her, she should be there. Appellant asserted that she was retaliated against for being a whistle blower in relation to the October 6, 2006 incident involving the wrong medication being given. She noted a January 17, 2007 incident in which another cardiologist "reamed her out." 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 alone are not compensable under FECA.[28] The Board finds that appellant has not established that management harassed her. The employing establishment denied acting improperly. The Board has reviewed appellant's allegations and finds that she has not submitted sufficient evidence to establish improper treatment. Appellant has either not submitted evidence that a particular event occurred at a given time and place or she has not provided sufficient evidence of the context in which any event happened. Additionally, the employing establishment denied any type of harassment or retaliation and the offer of judgment provided by appellant specifically provides that there is no admission of liability.[29] Appellant has not submitted sufficient evidence to establish harassment or a hostile work environment by the employing establishment.

With regard to J.W. telling appellant to "suck it up," the Board notes that, while D.H. confirmed that this occurred, it is not clear exactly when this occurred or the precise context in which the statement was uttered. The Board has recognized the compensability of verbal abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace constitutes abuse and will give rise to coverage under FECA.[30] The Board finds that this did not constitute a compensable factor as appellant did not show how such an isolated comment would rise to the level of verbal abuse or otherwise fall within the coverage of FECA.[31]

Consequently, the Board finds that appellant has not established a compensable employment factor with respect to these allegations of harassment. As appellant has not established a compensable employment factor, it is not necessary to address the medical evidence.[32]

On appeal, counsel asserts that appellant has established that she had established compensable employment factors, and that her physical disability was aggravated by working conditions at the employing establishment. He asserts that OWCP erred in not examining the

[28] *Ruthie M. Evans*, 41 ECAB 416 (1990).

[29] *See Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

[30] *See Mary A. Sisneros*, 46 ECAB 155, 163-64 (1994); *David W. Shirey*, 42 ECAB 783 (1991).

[31] *See Peter D. Butt Jr.*, 56 ECAB 117 (2004).

[32] *Garry M. Carlo*, 47 ECAB 299 (1996). *See Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

aggravation of the preexisting physical condition and not viewing the emotional distress and resulting disability as a subsequent injury connected to her preexisting condition. As explained, above, however, appellant has not established a compensable employment factor with respect to her claimed emotional condition. While she has referenced physical conditions in her claim, the claim is for an emotional condition. Until a compensable employment factor is established, it is not necessary to address the medical evidence regarding causal relationship.[33]

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

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

ORDER

IT IS HEREBY ORDERED THAT the April 16, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 14, 2015
Washington, DC

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

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

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

[33] *See id.* This decision does not preclude appellant from filing a claim for a physical condition if she feels that work duties caused or contributed to a diagnosed condition.