

manager of maintenance operations, made threats towards him. Appellant stopped work on August 1, 2014.

In an undated statement, appellant's supervisor, B.T., advised that appellant was scheduled to begin a temporary developmental detail to Tour 3 maintenance from August 2 through October 31, 2014. She noted that he had not yet started work on Tour 3 because he was currently using annual leave in lieu of sick. B.T. stated that appellant actively resisted being placed on temporary detail. In response to appellant's claim that she made a threat against him, she advised that an investigation was conducted and completed by the acting human resources manager.

By letter dated August 11, 2014, OWCP notified appellant that the evidence was insufficient to establish his claim. Appellant was instructed to complete a questionnaire regarding the factual element of his claim and was also advised of the type of medical evidence needed.

In response, appellant submitted an August 20, 2014 statement advising that he had been experiencing harassment since May 2012 when the maintenance manager informed him that managers would be switching duties as of May 21, 2012. He also advised that he was notified that his schedule was being changed from Tour 2 to Tour 3 on July 17, 2014. Appellant related that he informed B.T. that the shift change would cause extreme hardship to him and his family because he cared for his elderly parents and child. He advised that he believed that her directive to work Tour 3 was an act of aggression and retaliation. Appellant also noted that a coworker told him that B.T. was out to get him because of his friendship with another coworker. He alleged that he overheard one coworker telling another that B.T. was trying to get him fired. Appellant advised that he reported this incident to the maintenance manager and requested that he take appropriate action and initiate an investigation; however, he allegedly passed this task off to the acting human resources manager who then passed the responsibility on to B.T. He noted that he requested July 4, 2014 off, but was denied by B.T. because maintenance manager requested the day off. Appellant claimed that he was consistently loaded down with tasks while other supervisors complained that they had nothing to do and that he verbally and in writing voiced interest in a detail opportunity for maintenance manager of operations, but was denied. He alleged that he felt harassed, threatened, and that his work environment was unsafe.

June 4, 2014 workplace harassment interviews with appellant and B.T. were submitted. Appellant alleged that on May 20, 2014 he overheard an employee telling another employee that B.T. was going to get him fired. He advised that he felt nervous and threatened and that he was being treated differently from the other supervisors. When asked about the incident in question, B.T. denied making the comment.

Also provided were July 14, 2014 notes from a meeting the acting human resources manager had with B.T. He stated that she related that appellant's detail would start August 2, 2014 and last for two to three months. B.T. noted appellant's schedule and advised him that she would work with him if he needed a particular day. She stated that her goal was to give all the supervisors an opportunity to get a better perspective on what other tours had to do. The acting human resources manager stated that B.T. denied that she treated appellant differently than other

supervisors although she acknowledged that she hesitated in her communications with him because he was always giving her a “hard time” when he was given an instruction.

In July 17 and 23, 2014 e-mails, B.T. and appellant discussed his change to Tour 3 and his request to have Sundays off. She advised that she could not accommodate his request because Tour 3 only had two supervisors and that the maintenance manager’s bid position had Sundays and Mondays off. B.T. noted that appellant could ask him to switch days off and that she was willing to work the first two Sundays on his behalf. She also advised that appellant could submit leave request to cover the other days. Appellant reiterated that his tour change was causing a great deal of hardship for him and his family. B.T. responded that she informed him of the temporary tour change in May which gave him time to make temporary arrangements and that he was not the only supervisor making a temporary change in tours.

In undated statements, one of appellant’s coworkers advised that she overheard a conversation between appellant and D.C., the Equal Employment Opportunity (EEO)/ADR specialist, on May 16, 2014. She stated that he told D.C. that he was unable to keep a fellow employee on overtime. The coworker noted that D.C. “pulled rank” and told appellant that she was placed in charge by B.T. and that the employee would be kept on overtime. She noted that D.C. told appellant that she would inform B.T. of the decision. The coworker then advised that later, while in B.T.’s office, she called appellant in to discuss equipment that the fellow employee was working on when appellant told her that this employee was staying on overtime. She advised that B.T. questioned appellant as to why he did not inform her about the decision to keep the employee on overtime. The coworker noted that appellant advised B.T. that D.C. made the decision and told him she would inform B.T. herself. She stated that B.T. reiterated that it was his responsibility to communicate with her. The coworker stated that she felt uncomfortable as she witnessed B.T. question appellant about the matter. She also noted that on May 20, 2014, another coworker, told her that B.T. was going to get rid of appellant and that it was only a matter of time.

In a July 25, 2014 letter, D.C. advised appellant that she concluded the processing of his race and gender discrimination claim initiated on May 1, 2014. She noted that B.T. advised that the tour change was intended to “broaden the supervisor’s knowledge of the difference in a PM tour and operating tour.” D.C. related that B.T. noted that all supervisors who had never worked another tour would be moved temporarily and that appellant was notified that there were accommodations available to him. She concluded that there was no resolution to appellant’s counseling request and that he had the option to file a formal complaint.

In an August 1, 2014 report, Dr. Clive Otsuka, an internist, advised that appellant complained of worsening stress. He noted that appellant related that he had a new boss who had been harassing him for the past five months and that he now has a rash on his right thigh that he attributed to work-related stress. Dr. Otsuka further noted that appellant felt slight depression and that he wanted to stay away from work until he filed grievances. Dr. Otsuka assessed anxiety state, depressive disorder, and possible atopic dermatitis all attributable to stress at work. He noted that appellant did not want medication or to see a psychiatrist at that time.

On August 6, 2014 appellant filed EEO complaints against the employing establishment alleging discrimination on the basis of race, sex, and retaliation.

In an August 27, 2014 disability status report, Dr. Otsuka advised that appellant was unable to work from August 27 to September 30, 2014.

By decision dated November 4, 2014, OWCP denied appellant's emotional condition claim because he failed to establish any compensable work factors. It found that he had not submitted sufficient evidence to support his claims of harassment or any other acts of wrongdoing by the employing establishment.

LEGAL PRECEDENT

To establish a claim that he or she sustained an emotional or stress-related condition in the performance of duty, an employee must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) medical evidence establishing that he or she has an emotional or stress-related disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the condition. If a claimant implicates a factor of employment, OWCP should determine whether the evidence of record substantiates that factor. Allegations alone are insufficient to establish a factual basis for an emotional condition claim and must be supported with probative and reliable evidence. If a compensable factor of employment is established, OWCP must then base its decision on an analysis of the medical evidence.²

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.³ 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.⁴

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.⁵ 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.⁶ In determining whether the employing establishment has erred or acted abusively, the

² G.S., Docket No. 09-764 (issued December 18, 2009).

³ 5 U.S.C. § 8101 *et seq.*; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁵ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

⁶ See *William H. Fortner*, 49 ECAB 324 (1998).

Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁷

For harassment or discrimination to give rise to a compensable disability under FECA, 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.⁸ A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.⁹ The issue is whether the claimant has submitted sufficient evidence under FECA to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹⁰ The primary reason for requiring factual evidence from the claimant in support of allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by OWCP and the Board.¹¹

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of being transferred to a new tour of duty, receiving threats from his supervisor, being constantly loaded down with tasks. He also cited being denied leave requests, and being denied a detail opportunity as contributing to his condition. OWCP denied appellant's emotional condition claim because he failed to establish any compensable employment factors. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA. The Board notes that appellant's allegations do not identify one or more specific work factors or conditions as required under *Cutler*. Appellant alleged that being consistently loaded down with tasks contributed to his condition. Overwork may be a compensable factor of employment if a claimant submits sufficient evidence to substantiate this allegation.¹² Appellant failed to submit factual evidence of overwork generally or identifying particular tasks on specific dates to which he attributes his emotional condition. Therefore, it is not a compensable factor of employment. Appellant also alleged that he expressed interest in a detail opportunity for maintenance manager of operations, but was denied. The Board has held that conditions resulting from the desire for a different job, promotion, or transfer are not compensable.¹³

⁷ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁸ *See Michael Ewanichak*, 48 ECAB 364 (1997).

⁹ *See Charles D. Edwards*, 55 ECAB 258 (2004); *Parley A. Clement*, 48 ECAB 302 (1997).

¹⁰ *See James E. Norris*, 52 ECAB 93 (2000).

¹¹ *Beverly R. Jones*, 55 ECAB 411 (2004).

¹² *See Bobbie D. Daly*, 53 ECAB 691 (2002).

¹³ *Charles E. McAndrews*, 55 ECAB 711 (2004).

Appellant alleged that being transferred to a new tour of duty with a different schedule contributed to his condition. He alleged that he informed his supervisor that the shift change would create an extreme hardship for him and his family. However, a change in a duty shift by itself does not arise as a compensable factor. The factual circumstances surrounding the employee's claim must be carefully examined to discern whether the alleged injury is being attributed to the inability to work his regular or specially assigned job duties due to a change in duty shift, *i.e.*, a compensable factor arising out of and in the course of employment, or whether it is based on a claim which is premised on the employee's frustration over not being permitted to work a particular shift.¹⁴ In this case, appellant related to his supervisor that the change would present a hardship because of family needs and attributed his emotional condition to an inability work his regular or specially assigned job duties. The Board's jurisdiction extends only to those matters which pertain to FECA.¹⁵ Appellant also claimed that his supervisor's directive for him to work Tour 3 was an act of aggression and retaliation. The Board has held that the assignment of a work schedule or tour of duty is recognized as an administrative function of the employing establishment and, absent any error or abuse, does not constitute a compensable factor of employment.¹⁶ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁷ Here, the evidence indicates that all of the supervisors' schedules were changed for professional development, which supports the finding that appellant was not personally targeted. There is no evidence that the employing establishment committed error in this regard. Because appellant did not allege that he was unable to perform the duties of the position and has not established that the change in shift constituted an error or abuse, it is not a compensable employment factor.

Appellant alleged that he requested leave on July 4, 2014, but this was denied by his supervisor. Although the handling of leave requests is generally related to the employment, it is an administrative function of the employing establishment and not a duty of the employee and thus only compensable where the evidence discloses error or abuse.¹⁸ Here, there is no evidence that the denial of appellant's leave request constituted an error or abuse; therefore, it is not a compensable work factor.¹⁹

Appellant also provided his coworker's statement of generalized allegations indicating that D.C. "pulled rank" on him when she kept another employee on overtime. Such generalized allegations are insufficient to establish a compensable employment factor. The Board has held that the manner in which supervisor exercises his or her discretion falls outside the coverage of FECA. This principal recognizes that supervisors or managers must be allowed to perform their duties and that employees will at times disagree with actions taken. Mere disagreement with or

¹⁴ *Helen P. Allen*, 47 ECAB 141 (1995); *Peggy R. Lee*, 46 ECAB 527 (1995).

¹⁵ *See Helen P. Allen, id.*

¹⁶ *Id.*

¹⁷ *Peter D. Butt, Jr.*, 56 ECAB 117 (2004).

¹⁸ *C.S.*, 58 ECAB 137 (2006).

¹⁹ *Id.*

dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.²⁰ There is insufficient evidence to show that B.T. or D.C. acted unreasonably toward appellant with regard to this incident.

Appellant alleged that he overheard a coworker saying that his supervisor was out to get him fired and that this constituted harassment. For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under FECA. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his allegations with probative and reliable evidence.²¹ Appellant submitted a witness statement from his coworker who advised that another coworker, had stated that B.T. was trying to get him fired. However, there is no corroborating evidence to establish that B.T. actually made this statement which comes before the Board wrapped in multiple levels of hearsay. The record indicates that she denied treating appellant disparately.

The record also indicates that appellant filed an EEO complaint. However, evidence that the employee filed a grievance or EEO complaint against the employing establishment does not, by itself, establish that workplace harassment, discrimination, or unfair treatment occurred.²² Appellant has not provided any evidence to support that any specific adverse findings were made against the employing establishment with regard to the claimed incidents at issue.

On appeal appellant argues that he was exposed to harassment, hostile work environment, and retaliation by his supervisor which has affected his ability to report to work. However, as explained he has not established any compensable work factors as a cause of his claimed condition.²³ As such the Board does not need to evaluate the probative value of the medical evidence submitted in support of the claim.

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 in the performance of duty.

²⁰ *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

²¹ *F.H.*, Docket No. 13-294 (issued April 12, 2013).

²² *M.W.*, Docket No. 11-1287 (issued March 26, 2012).

²³ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the November 4, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 27, 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