

**United States Department of Labor  
Employees' Compensation Appeals Board**

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<b>S.S., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 15-1454</b>
	)	<b>Issued: December 15, 2015</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>CENTRAL ARKANSAS HEALTH CARE</b>	)	
<b>SYSTEM, North Little Rock, AR, Employer</b>	)	

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*Appearances:* *Case Submitted on the Record*  
*James W. Stanley, Jr., Esq., for the appellant*  
*Office of Solicitor, for the Director*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 25, 2015 appellant, through counsel, filed a timely appeal from a June 2, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 her burden of proof to establish an emotional condition in the performance of duty causally related to factors of her federal employment.

On appeal, counsel asserts that the medical evidence of record establishes that appellant's emotional condition was related to a hostile work environment and further asserts that a hearing representative did not make credibility findings regarding appellant's testimony.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On December 11, 2013 appellant, then a 48-year-old diagnostic radiologic technologist, filed an occupational disease claim (Form CA-2) alleging that factors of her federal employment caused depression. She stopped work on December 3, 2013 and has not returned.

In letters dated December 18, 2013, OWCP informed appellant of the evidence needed to support her claim and also requested that the employing establishment respond.

Appellant provided an undated statement in which she noted that she began working in the cardiac catheterization laboratory (cath lab) of the employing establishment in March 2011. She stated that, when she began working there, she had no cath lab experience and was constantly being compared to others with more experience and felt that she was being “watched like a hawk.” Appellant related that she was immediately aware that there were “aggressive attitudes” there, and each person had a certain way of getting things done. She specifically described events in February 2012 and June 2013, the first when she disagreed with instructions from a registered nurse and felt that she was being picked on, and the second when she found that a coworker left her name off reports. Appellant stated that she reported numerous incidents to her supervisor, *e.g.* that her locker was broken into, that employees were moving catheters around, placing new stickers on cable boxes to confuse her, and that others were promoted to positions for which she felt she was qualified. She concluded that since September 2013 she had worked in a very hostile environment where everyone had turned against her.

Appellant submitted copious evidence in support of her claim including documentation of an Equal Employment Opportunity (EEO) complaint, portions of performance appraisals, laboratory results, and an article regarding workplace bullying. In e-mails dated February 15, 2012 and June 10, 2013, Brad Massey, cardiovascular manager, discussed workplace bullying and a monthly meeting agenda. In an August 5, 2013 e-mail, he mentioned that box stickers had been inadvertently changed, and reminded the staff to be aware of the change and fix the error.

In reports dated December 17, 2013, Dr. Richard Owings, a Board-certified psychiatrist, diagnosed depression, anxiety, and paranoia related to work stress. He checked a form box marked “yes,” indicating that the diagnoses were work related, stating, “[appellant] reports harassment by coworkers and supervisors.” Dr. Owings advised that appellant was totally disabled, but could resume regular duty on February 1, 2014.

On January 30, 2014 Dr. Donna Brown, a psychiatrist, asked that appellant be accommodated with an alternate work environment that did not involve patient care, clinical decision making, or exposure to the prior hostile environment. She noted that appellant continued to have concentration difficulties that could promote errors and the hostility in the prior work environment could exacerbate or worsen her condition.

On February 7, 2014 OWCP forwarded appellant’s statement and the e-mails to the employing establishment and asked for a response.

In treatment notes dated April 17 to October 9, 2012, Dr. Owings described appellant’s emotional condition and prescribed medication. Dr. Brown also continued to submit reports in which she reiterated her diagnoses and conclusions.

On February 11, 2014 the employing establishment controverted the claim. In a February 14, 2014 statement, Mr. Massey specifically addressed appellant's allegations. He maintained that leaving appellant's name off a procedure report was not intentional, and that there was nothing to be gained by leaving a name off because job performance was not measured by cases completed. As to appellant's allegation that equipment was moved, Mr. Massey stated that he could not remember this and that appellant would need to be more specific. He admitted that the cardiac cath lab could be stressful if a patient's life was in danger, and indicated that monthly team-building meetings were held, that there was a monthly party to celebrate birthdays, and that appellant was always welcome to talk with him. Mr. Massey advised that all employees were treated in the same manner, and appellant was always free to express her concerns or opinions at monthly meetings, but never did so. He concluded that she had no conduct problems, that any performance problems were very minor and fixed on the spot or with additional training, and that she received the highest rating on her most recent performance evaluation.

On February 19, 2014 appellant additionally alleged that her supervisor did not properly follow procedure in filing a (Form CA-2) claim. She attached e-mails in which she described problems she had accessing a work computer after she stopped work, including that on January 23, 2014 she logged onto someone else's computer and discovered that one of her computer drives had been tampered with, that a firewall had been turned off her personal computer, and that her password was changed. Appellant reported this to information systems specialists and requested an investigation. She further alleged that her supervisor changed her leave request for sick leave and leave-without-pay to annual leave, and that she requested an audit of earning and leave statements for the years 2009 through 2013, stating that the earning and leave statements did not match her pay stubs. Appellant submitted e-mails in which she contacted employing establishment personnel about these concerns, and questioned why her 2013 performance appraisal was not in her electronic personnel file. She also submitted e-mails describing difficulties she had at the employing establishment on February 6, 2014 regarding leave forms. Appellant submitted a number of earnings and leave statements.

In statements dated February 11, 2014 appellant described events that occurred from November 26, 2013 to February 11, 2014. She described computer issues, problems with leave, filing her claim, filing medical reports, obtaining earnings and leave statements and pay stubs, and with her reasonable accommodation request. Appellant stated that she was offered a position in the gastroenterology laboratory and this upset her because it was not within the recommendations of her physician. She further indicated that two personal telephones and her home computer had been accessed illegally, that her telephone camera was turned on to streaming, and that apps were inappropriately placed on her telephones. Appellant stated that the only computer she had been able to consistently use at the employing establishment since she stopped work on December 3, 2013 was in the nursing education room which she had been using to file leave requests, *etc.* She related that in 2008 and 2009 she reported radiology management to the Office of Inspector General in Washington, DC, but nothing was done about it, and that when the opportunity arose for her to leave radiology, she moved to the cath lab. She indicated that she had contacted the Federal Bureau of Investigation, the Office of Special Counsel, and the Secret Service regarding her concerns, to no avail.

Additional evidence submitted included leave-without-pay policy, memoranda regarding agency whistleblowing and workplace harassment, the 2013 and 2014 performance plans for a diagnostic radiology technician, appellant's SF-50 forms dated December 15, 2011 to March 10,

2013, her performance appraisals from 2011 and 2013, leave analysis forms, a number of e-mails voicing her concerns, and photographs of computer screens which she claimed documented her allegations.

On March 5, 2014 someone from Dr. Brown's office with an illegible signature indicated that appellant could resume work in a different department without direct patient care. On March 12, 2014 Dr. Richard C. Flanigin, a psychiatrist, indicated that she had no physical restrictions and could return to work in a different facility or department without direct patient care and minimal contact with coworkers.

On April 3, 2014 appellant forwarded leave requests, and a February 25, 2014 report in which Dr. Brown diagnosed major depressive disorder and anxiety disorder, both severe, caused by appellant's work environment. She also forwarded a list of noncompetitive positions, her résumé, and a referral request for noncompetitive hire. Appellant included a March 31, 2014 offer of reassignment to a medical support position in primary care. Dr. Flanigin indicated that she was not able to perform patient care, interact with physicians or case managers, and was unable to travel to distant clinics. Appellant did not accept the position.

On April 1, 2014 Dr. Flanigin advised that appellant had a psychiatric disability and could be considered for employment under 5 C.F.R. § 213.3102(u), Noncompetitive Appointment for Persons with Disability. Dr. Flanigin noted that appellant was likely to perform well in a quiet office environment with little to no patient contact or care and minimal coworker interaction within an office. On April 3, 2014 he advised that she could not return to work.

On May 5, 2014 the employing establishment denied appellant's request for accommodation, stating that, based on the parameters and limitations listed on the application, there were no funded, vacant positions for which she qualified.

On May 29, 2014 OWCP again requested that the employing establishment respond to appellant's allegations.

In correspondence to the employing establishment dated April 29, 2014, appellant voiced her disagreement with the job offer. She also noted that she requested an investigation into hacking and other computer issues, and requested a return of access of her employing establishment computer. Appellant resubmitted e-mails regarding computer issues.

In a June 24, 2014 statement, Mr. Massey provided a comprehensive list of appellant's time and leave. He explained her leave requests predating and postdating December 3, 2013, when she stopped work, and furnished supporting documentation. Mr. Massey specifically explained many computer leave requests appellant made and indicated that he had no access to her pay stubs. Regarding her telephone and computer issues, he advised that there was no way to illegally access the facility's telephones. Mr. Massey reported that he had information system's personnel check appellant's computer access, and he found nothing wrong, but felt it best to turn off her access to her computer until she was able to return to work. He advised that she did not file an EEO complaint.

In a July 10, 2014 report, Dr. Flanigin advised that he began treating appellant in March 2014 for major depressive disorder and generalized anxiety disorder. He reported that, after reviewing her psychiatric record, there had been a pattern of work stressors since 2010 that

aggravated her condition, and that she had had problems with mood instability and depression dating back to the early 2000's. Dr. Flanigin noted appellant's description of incidents at work when she felt bullied, and believed that her telephone had been tapped. He opined that her diagnoses only continued to escalate, noting that she experienced extreme paranoia, stating "although some of it is warranted, I am beginning to believe [that appellant] could suffer from an underlying delusional disorder, aggravated by stress at work." Dr. Flanigin concluded that appellant should not work at the present.

By decision dated August 7, 2014, OWCP found that appellant had no compensable factors of employment and denied her claim.

Appellant, through counsel, timely requested a hearing before an OWCP hearing representative. In a November 24, 2014 report, Dr. Leigh Anne Bennett, a Board-certified psychiatrist and associate of Dr. Flanigin, advised that she began treating appellant on August 28, 2014 because appellant preferred a female physician. She noted her review of appellant's records and diagnosed major depressive disorder, recurrent, severe, with psychotic features; anxiety disorder not otherwise specified; and rule-out mood disorder, not otherwise specified. Dr. Bennett related appellant's description of a hostile work environment where she was harassed, and opined that, based on the information she had, it was her opinion that the circumstances at work were the major contributor to appellant's emotional condition. She concluded that appellant was unable to work in any capacity.

At the hearing, held on March 17, 2015 appellant testified that, after becoming a whistleblower in 2008 and 2009, she requested a transfer to the cardiac cath lab, and problems began early on. She stated that she was bullied by the nurses and treated in a hateful manner by all employees, and that when she complained to Mr. Massey, he sent out an e-mail regarding bullying. Appellant also described computer issues, alleged that files were removed from her electronic personnel file, and described incidents where her name was left off a report and labels were misplaced on boxes of catheters which, she maintained, was done to make her look bad and make mistakes. She stated that she requested a transfer and discovered that others were promoted, but she was not. Appellant stated that two personal cellular phones were illegally accessed, and files deleted, and tracking devices added. She testified that from September to December 2013 the work environment was toxic, that she stopped work on December 2, 2013 and had not returned, and had applied for social security disability. A friend and coworker, Mala Waller, testified in support of appellant's claim.<sup>2</sup>

Following the hearing, counsel argued that, based on appellant's testimony and that of Ms. Waller, a hostile work environment existed in the cath lab, and that the medical evidence supported appellant's claim that her emotional condition was caused by her employment. In a March 17, 2015 statement, Ms. Waller reported previous instances of claimed harassment and noted appellant's description of incidents of bullying. She described appellant's current condition.

In a June 2, 2015 decision, an OWCP hearing representative found that appellant did not establish a compensable factor of employment and affirmed the August 7, 2014 decision.

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<sup>2</sup> Ms. Waller did not work in the cath lab. She is a former physical therapist who had an employment injury and at the time of the hearing worked at the employing establishment as a clerk in logistics.

## 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.<sup>3</sup> If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.<sup>4</sup> When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.<sup>5</sup>

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*,<sup>6</sup> 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.<sup>7</sup> When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of, and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.<sup>8</sup> Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.<sup>9</sup> Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.<sup>10</sup> Personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>11</sup>

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.<sup>12</sup> Where the

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<sup>3</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>4</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>5</sup> *Id.*

<sup>6</sup> 28 ECAB 125 (1976).

<sup>7</sup> *See Robert W. Johns*, 51 ECAB 137 (1999).

<sup>8</sup> *Supra* note 6.

<sup>9</sup> *J.F.*, 59 ECAB 331 (2008).

<sup>10</sup> *M.D.*, 59 ECAB 211 (2007).

<sup>11</sup> *Roger Williams*, 52 ECAB 468 (2001).

<sup>12</sup> *Charles D. Edwards*, 55 ECAB 258 (2004).

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.<sup>13</sup>

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.<sup>14</sup> With regard to emotional claims arising under FECA, the term “harassment” as applied by the Board is not the equivalent of “harassment” as defined or implemented by other agencies, such as the EEO Commission, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers’ compensation under FECA, the term “harassment” is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by coemployees or workers. Mere perceptions and feelings of harassment will not support an award of compensation.<sup>15</sup>

### ANALYSIS

Appellant has not alleged that her emotional condition was due to any specific job duties under *Cutler*. Rather, she has alleged that she was harassed and worked in a hostile work environment, and that coworkers bullied her and tried to make her look bad and make errors.

Appellant also alleged that proper procedures were not followed when she filed her claim, that her personnel file was inappropriately accessed, that her leave balances were incorrect, that she had computer difficulties, and difficulty in filing medical reports. As a general rule, a claimant’s reaction to administrative or personnel matters falls outside the scope of FECA.<sup>16</sup> The Board has long held that disputes regarding leave,<sup>17</sup> the inability to obtain a transfer,<sup>18</sup> and the handling of a workers’ compensation claim,<sup>19</sup> are administrative functions of the employing establishment and, absent error or abuse, are not compensable.<sup>20</sup> Mr. Massey thoroughly explained appellant’s various leave requests. Appellant also complained about various computer issues such as having difficulty with access after she left work in December 2013. Mr. Massey contacted information systems, and her computer was checked nothing was found to be wrong. He felt that it would be best to turn off access to her computer

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<sup>13</sup> *Kim Nguyen*, 53 ECAB 127 (2001).

<sup>14</sup> *James E. Norris*, 52 ECAB 93 (2000).

<sup>15</sup> *Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>16</sup> *Carolyn S. Philpott*, 51 ECAB 175 (1999).

<sup>17</sup> *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995).

<sup>18</sup> *Alberta Kinloch-Wright*, 48 ECAB 459 (1997).

<sup>19</sup> *Bettina M. Graf*, 47 ECAB 687 (1996).

<sup>20</sup> *Supra* note 12.

until appellant returned to work. There is also no evidence of record that her electronic personnel file was inappropriately accessed. There is nothing in the record to substantiate error or abuse in these administrative matters. As such, they are not compensable factors of employment.

As to appellant's allegations that her locker was broken into and that her private cellular telephones and home computer were illegally accessed and tracking devices placed on them, she has submitted no probative evidence to substantiate these claims.

The bulk of appellant's claim is based on her allegation that there was a hostile work environment in the cath lab and that all employees there treated her in a disrespectful, aggressive manner, and bullied and harassed her. She described several events that, she maintained, were done to discredit her and cause her to make errors. These included leaving appellant's name off reports and changing stickers on boxes of supplies.

Mere perceptions of harassment or discrimination are not compensable under FECA,<sup>21</sup> and 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 with probative and reliable evidence.<sup>22</sup> While Ms. Waller testified that she believed that appellant was subjected to a hostile environment, she did not witness any specific events or provide supportive documentation to show that harassment did, in fact, occur. Appellant submitted no additional evidence. She submitted nothing to show a persistent disturbance, torment or persecution, *i.e.*, mistreatment by employing establishment management.<sup>23</sup> Appellant therefore did not establish a factual basis for her claim of harassment by probative and reliable evidence.<sup>24</sup>

As to counsel's argument on appeal that OWCP's hearing representative did not make credibility findings regarding appellant's testimony, in the June 2, 2015 decision, the hearing representative specifically stated, "I have carefully evaluated all evidence of record, to include the testimony presented at the hearing and the evidence submitted thereafter," and found it insufficient to establish an emotional condition in the performance of duty.

Finally, as appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record.<sup>25</sup>

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish an emotional condition in the performance of duty causally related to factors of her federal employment.

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<sup>21</sup> *Supra* note 14.

<sup>22</sup> *Id.*

<sup>23</sup> *Supra* note 15.

<sup>24</sup> See *Robert Breeden*, 57 ECAB 622 (2006).

<sup>25</sup> *Katherine A. Berg*, 54 ECAB 262 (2002).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 2, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 15, 2015  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board