

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

P.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Columbia, MD, Employer**

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**Docket No. 15-605
Issued: June 1, 2015**

Appearances:
Stanley C. Mason, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 26, 2015 appellant, through counsel, filed a timely appeal from a July 30, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 that she sustained an emotional condition due to factors of her employment.

FACTUAL HISTORY

On May 13, 2013 appellant, then a 48-year-old customer service supervisor, filed an occupational disease claim alleging that she experienced chest pains, difficulty sleeping and eating, weight loss, and stress as a result of working in a hostile work environment. She stated

¹ 5 U.S.C. § 8101 *et seq.*

that she was subjected to frequent loud outbursts by her manager, Postmaster Launda Milner, threats to her job security by intimidation, humiliation in the presence of her coworkers, emotional and spiritual cruelty, and aggressive behavior by bullying. Appellant first became aware of her condition and realized that it resulted from her employment on May 10, 2013. She stopped work on May 15, 2013.

The employing establishment controverted appellant's claim. In a statement, Ms. Miller noted that she had several complaints regarding appellant's behavior. She related that during a meeting on May 10, 2013 appellant jumped out of her seat and began to holler and scream at Supervisor Arlene Streeter. Ms. Milner stated that she had to end the meeting to address appellant's behavior and to discuss with appellant several other complaints from employees regarding her behavior. She reported that appellant was unreceptive to the issues addressed. Ms. Milner stated that when she spoke with appellant later that day *via* telephone she became loud and continued to scream and holler in the same manner as earlier. Appellant left work early that day and has not reported back to work.

In an April 9, 2013 report, Dr. Elvira Pasmanik, a Board-certified internist, noted that appellant had an appointment on April 9, 2013 for complaints of chest pain. She related that appellant was unable to work from April 9 to 12, 2013.

In a May 21, 2013 statement, appellant alleged that since January/February 2013 Ms. Milner bullied, harassed, and intimidated her. She described an incident in the early part of 2013 when Ms. Milner called her into her office to speak with her and began yelling, screaming, insulting, mocking, and taunting her. Ms. Milner refused to let appellant leave and she became so overwhelmed and emotional by the verbal insults that she fell down on the floor and began crying hysterically. Appellant requested to speak with Ms. Milner's boss, John Cordell, but he declined to meet with her. She mentioned another incident in March/April 2013 when Ms. Milner tried to pull a chair from behind her while she was seated at the distribution desk and she almost fell down. Appellant described a third incident in April/May 2013 when Ms. Milner started screaming and flailing her hands at appellant saying, "Get out of my office!" She mentioned a fourth incident that occurred on May 9, 2013 when she asked Ivan Hurwitz, a carrier shop steward, a question while he was speaking with Ms. Milner and she began to flail her hands and loudly stated, "Ivan, you [do not] have to answer that!" Appellant noted that Ms. Milner called her into her office several hours later and began to scream at her. She stated that on May 10, 2013 Ms. Milner called her and continued to question her religion even though she informed Ms. Milner that her comments about religion were offensive to her. Later on that day Ms. Milner called appellant on her cell phone and threatened her if she filed an accident report.

By letter dated May 21, 2013, OWCP advised appellant that there was insufficient evidence to establish her claim. Appellant was advised as to the medical and factual evidence required to support her claim and was given 30 days to provide such information and respond to an attached questionnaire. OWCP also sent a similar letter to the employing establishment and requested additional evidence.

In various reports dated May 11 to 31, 2013, Dr. Pasmanik stated that appellant was under her care for chest pains and stress. She noted that appellant was hospitalized from May 10

to 11, 2013 and would be evaluated on May 13, 2013 to determine whether she could return to work. Dr. Pasmanik reported that appellant was incapacitated from work since May 10, 2013.

On June 10, 2013 appellant responded to OWCP's development letter. She explained that she remained at work from 5:30, 6:30, or 7:30 a.m. until 8:00, 9:00, or 10:00 p.m. Appellant stated that on March 31, 2013 she was at home and became so overwhelmed at having to create the schedule for the carriers that she had to go to the emergency room due to chest pains. She alleged that Ms. Milner would often assign her duties that could not be performed within 8 hours and was told to work 10 hours. Appellant further contended that Ms. Milner subjected her to emotional stress, hostility, and mental cruelty nearly every day by belittling and screaming at her in front of coworkers. She noted that these actions diminished her authority over the people she was assigned to supervise. Appellant stated that Ms. Milner refused two of her requests for transfer. She asserted that on May 10, 2013 Ms. Milner called her on her cell phone and threatened her if she filed an accident report. Appellant noted that she filed a request for Equal Employment Opportunity counseling and filed a complaint with the Department of Labor due to violations of the Family and Medical Leave Act (FMLA). She referred to her March 21, 2013 statement, which described other incidents of harassment.

Regarding her claimed conditions, appellant explained that Ms. Milner's behavior towards her began in January 2012. She began to experience chest pains, felt overwhelmed, and cried at home worrying about the lack of adequate coverage. Appellant noted that her quality of life went from being happy to being afraid of being subjected to mental cruelty and insidious ridiculing. She reported that talking to a counselor made her feel better, but then she returned to thinking about having to work for Ms. Milner again. Appellant stated that in late 1985, early 1986 she became overwhelmed and stressed due to not having passed the required scheme training at the time and was taken to the hospital. She was hospitalized for 7 to 10 days and was again hospitalized for an emotional condition from May 10 to 11, 2013. Appellant noted that she was currently under the care of a counselor for emotional stress, anxiety, chest pains, and feelings of being overwhelmed due to bullying, intimidating, harassment, religious mockery, and mental cruelty. She explained that she was learning how to avoid burnout and how to manage and survive the abusive treatment she was subjected to by Ms. Milner.

Appellant also disagreed with Ms. Milner's statement that she screamed at Ms. Streeter, a supervisor, during a May 10, 2013 meeting. She stated that during that meeting she became so emotional and fearful of Ms. Milner that she had an emotional breakdown and requested to leave the room. Ms. Milner would not let her leave and told her to sit there until she was done yelling and screaming at her. Appellant noted that both Ms. Streeter and Ms. Milner began to belittle, demean, and harass her. She reported that on May 11, 2013 she contacted Ms. Milner *via* the employing establishment's call system and left a leave slip with Josh Burrus, a supervisor, regarding her absence. Appellant contended that Ms. Milner deliberately placed her in absent without leave (AWOL) status for 24 hours despite the approval of the absence as FMLA. She stated that she submitted medical documentation on two occasions for her absence which was approved by the employing establishment's FMLA Coordinator. Appellant explained that she had not reported back to work due to Ms. Milner's unprofessional, demeaning, bullying, and intimidating actions towards her.

Appellant submitted a May 31, 2012 employing establishment form titled "Information for PreComplaint Counseling" where she alleged that she was discriminated against for her color and religion by Ms. Milner. She stated that on May 10, 2013 she was at a meeting with Ms. Milner where she was berated, yelled, and screamed at. Appellant also noted that Ms. Milner left messages on her cell phone answering machine commenting on her religious messages. She contended that there was a continuing pattern of harassment towards her.

Appellant submitted various hospital records including April 1, 2013 hospital discharge instructions which indicated that she was treated for chest pain of an uncertain cause. She also submitted May 10, 2013 hospital records which revealed that she was examined for complaints of sudden onset of chest pain.

Appellant submitted a May 16, 2013 form which approved her request for FMLA leave from May 10 to June 13, 2013. She also submitted copies of her telephone records and indicated which listing was Ms. Milner's call to her on May 10, 2013.

In a June 1, 2013 statement, appellant's husband, reported that his wife worked long hours of 12 or more hours a day and complained of constant verbal and emotional battering from Ms. Milner. He noted that since appellant's employment with the employing establishment he has witnessed her chest pains, crying bouts, weight loss, sleep deprivation, emotional vulnerability, and inattentiveness. Appellant's husband stated that Ms. Milner called his wife's personal cell phone on several occasions after work and on her off days and he could hear the loud and hostile tone of Ms. Milner. He also described an incident when his wife was called to the office and verbally abused by Ms. Milner. Appellant's husband alleged that Ms. Milner's actions created a hostile work environment and caused lasting effects on his wife's overall physical and mental well-being.

In a June 2, 2013 statement, appellant's sister, noted that when appellant first began her new assignment at the employing establishment's worksite she shared with her that the hours were long and that Ms. Milner frequently yelled. She related that appellant began to express her concerns regarding her managers' behavior towards her. Appellant informed Ms. Monroy that Ms. Milner was causing her to have some stressors, often times being verbally abusive, humiliating, and intimidating her among coworkers and other supervisors and harassing appellant about her religious beliefs. Ms. Monroy stated that she noticed her sister became fearful, hopeless, helpless, and agitated and that she experienced sleep problems, difficulty concentrating, weight loss, and loss of appetite.

In a June 4, 2013 intake evaluation report, Dr. James W. Taylor, a clinical psychologist, examined appellant on May 28, 2013 for complaints of stress and anxiety related to problems in her workplace. Appellant stated that she was stressed out with periods of shaking and crying, tension in her chest, headaches and nausea, disturbed sleep, feelings of despair and hopelessness, and panic attacks. Dr. Taylor related that she described a very stressful situation at work with demand for extended hours without additional pay and yelling at the workers and supervisors. He provided findings on examination and diagnosed major depressive disorder and single episode acute stress disorder. Dr. Taylor opined that because of appellant's extreme stress reactions she should remain on FMLA leave until her workplace stress is resolved or until a new site had been established.

In a June 5, 2013 statement, appellant's son, stated that his mother often called him crying hysterically after explaining how she was tormented by her supervisor, Ms. Milner. He noted that he was disturbed to hear the details of the harassment she experienced on a daily basis and the comments made concerning her religion. Appellant's son reported that his mother was hospitalized more than once as a result of the aggravated stress sustained during her employment.

In a June 25, 2013 return to work note, Dr. Pasmanik stated that appellant could return to work to perform her supervisor duties effective June 29, 2013. She noted that she could not return to her current work facility.

In a June 25, 2013 report, Dr. Taylor stated that he examined appellant on May 28 and June 8 and 25, 2013. He related that when she thought about her employment under Ms. Milner she continued to have serious symptoms of stress, anxiety, and shortness of breath. Dr. Taylor opined that appellant's problems had been situational in nature because of the harassing environment at her worksite. He noted that she was eager and ready to start working at a different worksite and advised that she was capable of returning to full duty if the job opportunity becomes available.

In a July 22, 2013 statement, Ms. Milner related that on or about January 18, 2013 Human Resources informed her of an anonymous complaint regarding appellant's conduct toward subordinate employees. She met with appellant in her office in order to discuss her concerns about management style and recommended that appellant enroll in two online management courses. Ms. Milner had no recollection of the incident where appellant alleged that she tried to pull a chair from underneath appellant in front of the staff. She also stated that another employee informed her that appellant was quoting the Bible and making offensive statements to several employees. When Ms. Milner addressed this issue with appellant, appellant became combative and unruly. She further noted that appellant rudely interrupted a conversation she was having with Mr. Hurwitz.

Regarding the May 10, 2013 incident, Ms. Milner stated that an employee complained of being stressed out because appellant yelled at him on a regular basis in front of employees regarding his work performance. When she met with appellant in her office about that matter, Ms. Streeter walked into the office. Appellant then began to address Ms. Streeter in a very demeaning manner, got out of her seat, and became so loud that Ms. Milner asked Ms. Streeter to leave. Ms. Milner informed appellant that her behavior would not be tolerated, but appellant continued to talk in a manner that was unacceptable and disrespectful. She related that she left the building shortly after the meeting because she had another meeting to attend. Around 5:30 p.m. she called back to the office to speak with Mr. Burrus about the conditions of the office and clarify procedures in closing the facility. Mr. Burrus informed Ms. Milner that appellant wanted to speak with her. Ms. Milner stated that appellant began to ask questions about her hours and became argumentative and combative so she asked appellant to put Mr. Burrus back on the telephone. Appellant refused to do so and continued to scream so Ms. Milner ended the telephone call. Mr. Burrus later told Ms. Milner that appellant abruptly left the building a few minutes after the telephone conversation.

Ms. Milner stated that she has tried to coach and guide appellant to be a better communicator with the employees and the supervisors, but explained that her efforts had not been effective with appellant. She pointed out that appellant had several complaints regarding her mistreatment and disrespectfulness. Ms. Milner also contended that she asked appellant to go home after her shift but she would stay to overlook what other supervisors and employees would do during their shifts. She stated that there was no need for appellant to be in the building beyond her tour.

The employing establishment submitted various e-mails from postal employees regarding appellant's behavior towards and treatment of other employees. In a May 21, 2013 e-mail, Virginia Connolly, appellant's coworker, informed Ms. Milner about her concerns regarding appellant's behavior at work. She stated that appellant spoke to her in a demeaning manner in front of employees and described various scenarios on April 5, 10, and May 2, 2013 where she believed appellant was rude, disrespectful, and hostile towards her or other employees and customers. In another May 23, 2013 e-mail, Ms. Streeter informed Mr. Cordell about an incident that occurred that day. She related that appellant came to the worksite with her husband and sister and asked to speak with Ms. Milner about being placed on AWOL status. Ms. Streeter informed appellant that Ms. Milner was unavailable to meet because she was with the auditors. Appellant became very annoyed and began to speak in a louder volume. Ms. Streeter acknowledged that appellant submitted her leave slips, made copies for her, and left.

In an undated letter to the Postmaster General, an anonymous individual who identified himself as a "post office employee," reported that appellant misused her authority at work in order to harass and intimidate employees. He related that she constantly screamed at employees and spoke to everybody in an extremely disrespectful manner and tone. The employee stated that there were several occasions where appellant sent employees home or denied them the use of restroom facilities because she was upset at them. He noted that her continued harassment and intimidation made every employee at their worksite dread coming to work and had a negative impact on both employee morale and productivity.

In a decision dated October 1, 2013, OWCP denied appellant's emotional condition claim finding that the incidents that she alleged caused her emotional condition were administrative matters and not considered compensable factors of employment.

In an appeal request form received on November 1, 2013, appellant requested an oral hearing, which was held on May 14, 2014. Her union representative, Stanley Mason was present. Mr. Mason stated that the majority of letters submitted by the employing establishment were irrelevant to whether appellant sustained an occupational disease. He argued that the manner in which Ms. Milner addressed appellant after those incidents was the cause of her emotional condition. Mr. Mason first alleged that appellant's condition arose out of her official duties as a supervisor of customer service because Ms. Milner told her to address and complete attendance and work performance which required her to work long hours. He noted that, although Ms. Milner and Ms. Connelly advised, appellant that she should not be working during certain hours she was also told to stay at the office until the work was done. Mr. Mason reported that appellant's duties as a supervisor of customer service was to follow the orders of Ms. Milner and to ensure that the performance of the employees were at an acceptable agency level by addressing and disciplining employees for poor performance.

Secondly, Mr. Mason also contended that Ms. Milner harassed and verbally abused appellant during the performance of these duties. He pointed out that she acknowledged in her statement that she spoke with appellant regarding the complaints against her. Appellant stated that Ms. Milner's abuse towards her was nonstop and constant to the point that she had an emotional breakdown. She reported that the abuse went from October 2012 to May 2013. Appellant again described the incident in Ms. Milner's office with Ms. Streeter where she refused to let appellant leave the meeting.

Regarding the employing establishment's response, Mr. Mason argued that Ms. Milner's statement about the incident with Ms. Streeter was not factual and not supported by the record. He stated that she only gathered statements from individuals who she told appellant to discipline. Mr. Mason also pointed out that the employing establishment did not provide a job description of her duties so that OWCP could make a proper determination of whether appellant sustained an injury in the performance of her duties. Appellant further disagreed with Ms. Milner's comments about her talking about religion and quoting Scripture. She stated that Ms. Milner mentioned God and referenced the Bible. Appellant noted that she had some witnesses, but they had not yet provided any statements.

In a June 1, 2014 statement, appellant contended that the preponderance of the evidence supported her claim of being injured in the performance of duty. She argued that the statements from her family members and the various medical reports demonstrate how she was adversely affected by her work environment and ultimately diagnosed with chest pains and major depressive disorder. Appellant reported that the letters from Mr. Hurwitz and Ms. Campbell supported her allegations that she was harassed by Ms. Milner on more than one occasion. She also contended that the attendance report demonstrated that she worked long hours.

In an undated, handwritten statement, Mr. Hurwitz stated that he witnessed two incidents between Ms. Milner and appellant where appellant tried to speak with Ms. Milner while she was speaking with another individual and she raised her voice and asked appellant "Can ... you see we are in a meeting?" In both instances appellant was asked to leave.

In an undated statement, Ms. Campbell stated that she served as acting supervisor at appellant's worksite from February to September 2013. She noted that she witnessed on more than one occasion bullying tactics and disrespectful conduct from Ms. Milner toward appellant. Ms. Campbell related that several times she saw appellant under extreme stress and crying in her office. She reported that she talked to Ms. Milner about her mistreatment of appellant but she felt scared and her job threatened if she continued to speak about Ms. Milner's behavior.

Appellant submitted a position description for supervisor of customer services. She also provided a time and attendance report which provided her work hours from April 6 to 26, 2013. The report revealed that appellant's regular tour of duty was from 5:50 to 2:30 on Saturdays, Mondays and Wednesdays to Fridays.

By decision dated July 30, 2014, an OWCP hearing representative denied modification of the October 1, 2013 decision finding that appellant had not established a compensable factor of employment.

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 the 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.² 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.³

Workers' compensation law does not apply to each and every injury or illness that is somehow related to a claimant's employment.⁴ 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.⁵ In the case of *Lillian Cutler*,⁶ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition under FECA. 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.⁷ On the other hand, when a disability results from a fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position such disability falls outside FECA's coverage because they are found not to have arisen out of employment.⁸

ANALYSIS

Appellant has alleged that she experienced stress, chest pains, anxiety, and a depressive order as a result of her employment. She attributed her emotional condition to several alleged work activities and incidents. OWCP denied appellant's claim finding that she failed to establish a compensable factor of employment. As a preliminary matter, the Board must first determine if any of these alleged incidents are covered employment factors under FECA.⁹

² *V.W.*, 58 ECAB 428 (2007); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ *G.S.*, Docket No. 09-764 (issued December 18, 2009).

⁴ *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

⁵ *A.K.*, 58 ECAB 119 (2006); *David Apgar*, 57 ECAB 137 (2005).

⁶ 28 ECAB 125 (1976).

⁷ *Id.*; see also *Trudy A. Scott*, 52 ECAB 309 (2001).

⁸ *William E. Seare*, 47 ECAB 663 (1996).

⁹ See *P.E.*, Docket No. 14-102 (issued April 1, 2014).

An employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment comes within the coverage of FECA.¹⁰ Appellant attributed her emotional condition to working long hours. In a June 10, 2013 statement, she explained that she was at work at 5:30, 6:30, or 7:30 a.m. and often remained there until 8:00, 9:00, or 10:00 p.m. Appellant, however, has not alleged that her emotional condition was caused by anxiety relating to not being able to complete her regular or specially assigned duties. Rather, she alleged that her condition is due to working long hours. The Board also notes that the time and attendance report that she submitted showed her work hours from April 16 to 26, 2013. Appellant's tour of duty was from 5:50 a.m. to 2:30 p.m. In this regard, the Board notes that appellant has not submitted sufficient evidence regarding her schedule, *i.e.*, whether it was a fixed schedule, flexible schedule, alternative work schedule, nor has she submitted evidence regarding the employing establishment's overtime policy. Rather, appellant has alleged that Ms. Milner assigned her duties that could not be performed within 8 hours and was told to work 10 hours. Ms. Milner however controverted this allegation, stating that appellant was told to go home after her shift ended, but that appellant would stay to "overlook what other supervisors and employees would do during their shift." The Board finds that the weight of the evidence does not substantiate appellant's allegation that she often worked after her shift ended in order to fulfill her work duties.

Appellant also contested several managerial actions by Ms. Milner, including being placed on AWOL status and having transfer requests denied. The Board has held that work space transfers,¹¹ leave matters,¹² disciplinary actions,¹³ and criticism and reprimands,¹⁴ are administrative and personnel matters. Administrative and personnel matters, although generally related to 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 unless, the evidence establishes error or abuse on the part of the employing establishment.¹⁶ The employee bears the burden of proof to establish administrative error or abuse.¹⁷

In this case, appellant has alleged administrative error or abuse when Ms. Milner placed her on AWOL status and denied her transfer requests. She provided a FMLA leave form which demonstrated that her request for FMLA leave was approved for May 10 to June 13, 2013. The Board notes, however, that there is no evidence on the record that Ms. Milner did indeed place appellant on AWOL status or deny her transfer requests. Accordingly, there is also no evidence

¹⁰ *Supra* note 6.

¹¹ *Dan F. Bennett*, Docket No. 05-60 (issued March 7, 2005).

¹² *J.C.*, 58 ECAB 594 (2007).

¹³ *G.S.*, Docket No. 09-764 (issued December 18, 2009).

¹⁴ *Roger W. Robinson*, 54 ECAB 846 (2003).

¹⁵ *M.C.*, Docket No. 10-1628 (issued June 8, 2011); *Matilda R. Wyatt*, 52 ECAB 421 (2001).

¹⁶ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹⁷ *M.W.*, Docket No. 09-2036 (issued June 2, 2010).

that Ms. Milner erred in or abused her administrative duties. The Board has found that an employee's complaints concerning the manner in which a supervisor performs his duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, is outside the scope of coverage provided by FECA. This principle recognizes that a supervisor or manager in general must be allowed to perform his or her duties, which employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or management action is not compensable.¹⁸ Accordingly, the Board finds that appellant did not submit sufficient evidence to establish administrative error or abuse regarding these issues. These incidents, therefore, are not compensable factors of employment.

Appellant also claimed that she was subjected to a hostile work environment from Ms. Milner. For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.¹⁹ Mere perceptions of harassment or discrimination are not compensable under FECA.²⁰ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.²¹ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.²² A claimant must establish a factual basis for his or her allegations or harassment or discrimination with probative and reliable evidence.²³

Appellant contended that Ms. Milner often belittled her and screamed at her in front of her coworkers. She also stated that Ms. Milner made several comments concerning her religion. In support of her allegations, appellant provided a witness statement by Ms. Campbell who related that she witnessed Ms. Milner's bullying tactics and disrespectful conduct towards appellant on more than one occasion. The Board finds, however, that Ms. Campbell's statement is insufficient to establish that Ms. Milner created a hostile work environment. Ms. Campbell does not reference any specific time or place, nor does she offer any specifics of what Ms. Milner did or said to appellant. Without specific information, the Board finds that her statement is insufficient to establish a hostile work environment.²⁴

Appellant also described specific incidents when she was under emotional stress due to Ms. Milner's interactions with her. She mentioned two instances in January or February 2013 and in April or May 2013 when Ms. Milner called appellant into her office and screamed, yelled,

¹⁸ See *Barbara J. Latham*, 53 ECAB 316 (2002); see also *Peter D. Butt, Jr.*, 56 ECAB 117 (2004).

¹⁹ *K.W.*, 59 ECAB 271 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

²⁰ *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

²¹ *J.F.*, 59 ECAB 331 (2008).

²² *G.S.*, Docket No. 09-764 (issued December 18, 2009); *Ronald K. Jablanski*, 56 ECAB 616 (2005).

²³ *Robert Breeden*, *supra* note 19; *Beverly R. Jones*, 55 ECAB 411 (2004).

²⁴ See *M.D.*, Docket No. 13-867 (issued September 26, 2014) (the Board found that a witness statement which confirmed that a supervisor used racial slurs and displayed a white supremacy flag but did not provide any specific information as to time or place was insufficient to establish a compensable factor of employment).

mocked, and taunted her. Appellant also stated that in March or April 2013 Ms. Milner tried to pull a chair from behind her when she was seated at the distribution desk. She further alleged that on May 10, 2013 she was in a meeting with Ms. Milner when Ms. Streeter entered the office and they both began to belittle, demean, and harass her. The Board notes that appellant provided no corroborating evidence or witness statements to establish that these interactions with Ms. Milner occurred as she described. While Ms. Milner acknowledges that she met with appellant in her office on several occasions in order to address employee complaints against her, there is no evidence on the record to suggest that Ms. Milner screamed and yelled at appellant as she alleged. As previously noted, a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.²⁵ On the contrary, regarding the May 10, 2013 incident, both Ms. Milner and Ms. Streeter denied that they yelled at appellant and instead stated that appellant began to holler and scream at Ms. Streeter. Accordingly, the Board finds that these incidents do not constitute a compensable factor of employment.

Appellant further described a May 9, 2013 incident when she asked Mr. Hurwitz a question while he was speaking with Ms. Milner. She related that Ms. Milner began to flail her hands and loudly told Mr. Hurwitz that he did not have to answer appellant. In an undated statement, Mr. Hurwitz confirmed two incidents when appellant tried to speak to him while he was talking to Ms. Milner. He related that Ms. Milner raised her voice and asked appellant to leave. The Board has held, however, that being addressed in a raised or harsh voice does not of itself constitute verbal abuse or harassment.²⁶

Appellant contended that on May 10, 2013 Ms. Milner called her on her cell phone and threatened her if she filed an accident report. She provided telephone records which indicated that a telephone call was made between Ms. Milner and appellant. However, there is no evidence that during this telephone call that Ms. Milner actually threatened her. The Board has found that mere perceptions of harassment or discrimination are not compensable under FECA.²⁷ Because appellant has failed to establish a compensable factor of employment, it is not necessary to address the medical evidence of record.²⁸

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

²⁵ *Supra* note 20.

²⁶ *T.G.*, 58 ECAB 189 (2006); *Charles D. Edwards*, 55 ECAB 258 (2004).

²⁷ *Supra* note 19.

²⁸ *See C.G.*, Docket No. 14-1141 (issued February 27, 2015).

ORDER

IT IS HEREBY ORDERED THAT the July 30, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 1, 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