



tension and stress with headaches during day-to-day tasks and upon receiving blood pressure readings from an occupational health unit in November/December 2012. He further alleged that on December 26, 2012 he first realized that his conditions were caused by his federal employment.

Appellant submitted employment records, which included a history of his employment, a description of a contract specialist position and a notification of personnel action (SF-50) that denied his within-grade increase because his work was not at an acceptable level of competence.

Medical reports dated December 26, 2012 and January 30, 2013 stated that appellant's stress, anxiety, and depressive symptoms were caused by his employment and that he was indefinitely disabled from work.

By letter dated February 11, 2013, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. It requested that he submit factual and medical evidence. OWCP also requested that the employing establishment respond to appellant's allegations and submit medical evidence if he was treated at its medical facility.

In a February 22, 2013 letter, appellant stated that his work performance as a contract specialist intern was fully successful from November 2010 to March 2011. Since March 2011 he had been in and out of work on sick leave due to stress, headaches, and high blood pressure levels. On December 4, 2012 appellant became fatigued with a headache while performing his daily routine at work. He left work early and sought treatment from a federal occupational health facility where it was determined that he had an abnormal, stroke-level, blood pressure reading. Appellant checked his blood pressure the next morning as instructed and received normal readings, but he continued to have chronic headaches during the workday through December 2012. He was then advised by his physician to stop work.

Appellant claimed that he believed he had received inadequate training. A majority of his direct training came from a budget analyst who could not fully train him on his job description, noting that help was often needed on more complex contracts. Director Patricia Pelikan, appellant's former supervisor and a building manager, was supposed to be his primary trainer, but she was promoted in May 2012. In April and May 2012 she provided appellant with detailed, direct hands-on training. In March 2012 appellant received a satisfactory performance rating which he attributed to the training he received from Director Pelikan. He stated that in an April 20, 2012 memorandum, Director Pelikan noted his nonperformance of critical elements in his job description. In a May 21, 2012 memorandum, Dr. Pelikan stated that he had improved since the previous 30 days. Appellant requested direct training in Kansas City, Missouri and was told that it was not available due to a lack of funding.

Appellant claimed that from May to November 2012 he did not receive any direct contract assistance similar to the assistance provided by Director Pelikan. He reached out to peers in Kansas City for assistance and direction on complex issues and was ridiculed by them. Appellant stated that he was unable to meet management's expectations due to a lack of job training. He was informed by Javonne Robinson, a Director and appellant's supervisor, that the two-year training period was sufficient as he had taken every course, received adequate training, and should have received good outcomes regarding performance expectations. Appellant told

Ms. Robinson on numerous occasions that he had not received adequate contract specialist guidance. He claimed that his overall work environment had been supportive, but his peers in Kansas City had told his supervisor that they were dissatisfied with his incompetent work. They were unwilling to further assist appellant when needed. Ms. Robinson told him that some workers did not want to answer his calls. Appellant alleged that in November and December 2012 management and his peers ridiculed him during his final intern performance presentation. He stated that management written assessments showed he was having problems with cognitive understanding and had confusion at times during the evaluation period. In an undated narrative statement, appellant again contended that a lack of complete and formal training during his intern program as a contract specialist, compounded with his daily job demands to meet deadlines with a heavy workload in an uncomfortable work environment hindered his successful completion of the program and any possible career promotion.

In e-mails dated March 4 and 7, 2013, Cynthia Corley, a budget analyst, and Crystal Martin, a contracting officer, responded to appellant's question as to whether he received adequate training. Ms. Corley stated that she was not the right person to answer his question. She did not think appellant had received a lot of one-on-one guidance at the end of his training period, but stated that she had no idea what his other training in Kansas City, online, or shadowing in Kansas City entailed. Ms. Corley noted that he had learned a lot about his position because he taught her a lot of new things. Ms. Martin stated that she was unable to answer appellant's question. She stated that in some instances he should have known about certain areas at that stage of his career.

Memoranda dated April 20 and November 8, 2012 documented Director Pelikan's discussion with appellant regarding his failure to meet performance expectations, placement on a Performance Assistance Plan (PAP), and deferral of a within-grade step increase. She stated that he was not entitled to a within grade step increase while his performance was less than fully successful.

Medical records dated February 14 to June 27, 2013 noted that appellant had depression and anxiety causally related to his employment and addressed his medical treatment and work capacity.

In a February 26, 2013 narrative statement, Ms. Robinson related that on November 8, 2012 appellant was placed on a PAP for 120 days because he had not demonstrated successful work in two critical areas, learning and growth, as a contract specialist in a career intern development training program. Appellant informed Ms. Robinson that family stress, which included going through a divorce and travelling to Delaware to care for his mother, affected his work performance and inability to focus. Ms. Robinson stated that as part of the PAP she met with him on a weekly basis to review his performance and discuss his weekly task assignment list. They worked through any questions and comments regarding his workload. Appellant had challenges with being detailed and organized in his workload. Field office contract specialists informed Ms. Robinson that he was not engaged on a call during monthly meetings because he made jokes. She stated that he had attended all classes to obtain a level 1 warrant, but had not demonstrated proper and consistent development of contract solicitations and files. Appellant also had several training and shadowing opportunities with other contract specialists in the region during the training program, as he requested. Ms. Robinson arranged for him to shadow a

contract specialist in St. Louis, Missouri and a field office director and his contract specialist to assist him. She received feedback from the St. Louis office that appellant worked more on his workload than shadowing the office to learn about its processes and the contract specialist role. In June 2012 Ms. Robinson worked with another field office director and her contract specialist to assist appellant. Appellant asked questions to which he should have known the answers, after having been in the intern program for two years. Ms. Robinson stated that he never told her that he did not understand a particular element of his role or position. Appellant had a conduct and ethic issue as he plagiarized his third quarter panel in the first year of the intern program. He informed Ms. Robinson that he did not take the program and panels seriously.

By letter dated March 11, 2013, OWCP requested that the employing establishment respond to appellant's latest allegations.

In a March 22, 2013 narrative statement, Director Pelikan listed training courses taken by appellant during the course of the intern program from November 2010 to August 2012, and his on-the-job training.

In an April 1, 2013 narrative statement, Ms. Robinson related that appellant's first year of the intern program he received successful reviews with remarks for improvement in each panel regarding his need to pay more attention to detail, organization, and gaining the concepts of his current position. In year two of the program, May and December 2012, appellant did not receive a satisfactory rating with several panel recommendations for improvement in certain areas. Each of his panel reviews noted or recommended that he increase or grow his organizational skills, attention to detail, and connect the concepts of his position with classroom training, coaching, and shadowing experiences he had received. Ms. Robinson stated that due to Director Pelikan's contracting experience and background, she was able to coach appellant and pair him with a contract specialist in regional and field offices to teach him his role and responsibility as a contract specialist intern. Director Pelikan also ensured that roles and expectations were established, coordinated with a team to organize all procurement information, and drafted several documents for appellant. After appellant expressed his concern about not receiving enough training from Director Pelikan, she took all measures to provide him with the best possible training. Prior to her promotion, Director Pelikan had several discussions with appellant regarding his responsibilities. She told him that she would continue to be his resource and that she was just a call away for support. Ms. Robinson stated that appellant did not reach out to Director Pelikan and noted that his work performance was not satisfactory after Ms. Robinson became his acting supervisor in June 2012. She instructed appellant to submit weekly reports and attend weekly meetings with her to discuss his performance. Ms. Robinson did not know if he was ridiculed by his peers. She was informed by appellant's coworkers that they had to return his submissions due to poor grammar, incorrect information, and lack of detail. A contract specialist and contract officers followed up with appellant by making corrections and assisting him with his work because they wanted him to succeed.

Ms. Robinson did not recall telling appellant that his coworkers did not want to answer his calls. She noted that appellant struggled to answer basic questions asked by panels. Ms. Robinson stated that Director Pelikan was sensitive to his requests for leave on short notice to attend to his family's business following the death of his father. She noted that his requests created constraints on his workload. Ms. Robinson related that appellant received the same

training classes and opportunities as other interns in the contract specialist intern program. Appellant's workload did not change, but it may have appeared to him to have changed since he no longer was provided with guidance to perform his daily tasks and he had to use information from his training classes and coaching sessions. Ms. Robinson submitted employment records, which included, among other things, an August 2, 2011 letter of counseling issued to appellant for copying and pasting parts of another intern's panel report and presenting it as his own work, and evaluation panel review summaries dated May 21 and December 20, 2012 indicating that he was not making satisfactory progress.

In a July 24, 2013 decision, OWCP denied appellant's claim, finding that the evidence did not establish that the claimed incidents occurred as alleged.

By letter dated July 31, 2013, appellant, through his attorney, requested a telephone hearing with an OWCP hearing representative. He submitted medical records dated March 4 to December 27, 2013 which addressed appellant's emotional and physical conditions, limitations, disability for work, and medical treatment.

In a February 26, 2014 decision, an OWCP hearing representative affirmed the July 24, 2013 decision, finding that appellant had not established any compensable factors of employment. She found that it was not necessary to address the medical evidence as he failed to establish a compensable employment factor.

### **LEGAL PRECEDENT**

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by factors of his or her federal employment.<sup>2</sup> To establish that he or she sustained an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.<sup>3</sup>

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.<sup>4</sup> On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-

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<sup>2</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>3</sup> *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>4</sup> 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>5</sup>

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.<sup>6</sup> 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.<sup>7</sup> In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.<sup>8</sup>

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 a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>9</sup> 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 record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.<sup>10</sup>

### ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of several actions by his supervisors and coworkers. OWCP denied his emotional condition claim because he had not established any compensable employment factors. The Board must, thus, initially review whether the alleged incidents and conditions of employment are covered employment factors under the terms of FECA. The Board notes that appellant's allegations do not pertain to his regular or specially assigned duties under *Cutler*.<sup>11</sup> Rather, appellant has alleged error or abuse in administrative matters and harassment on the part of his supervisors and coworkers.

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<sup>5</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>6</sup> See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>7</sup> See *William H. Fortner*, 49 ECAB 324 (1998).

<sup>8</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>9</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>10</sup> *Id.*

<sup>11</sup> *Supra* note 4.

Appellant's allegations regarding inadequate training and denial of his request for direct training in Kansas City,<sup>12</sup> unsatisfactory performance appraisals,<sup>13</sup> counseling sessions,<sup>14</sup> generation and administration of his PAP,<sup>15</sup> a step increase denial,<sup>16</sup> and issuance of the August 2, 2011 letter of counseling for copying and pasting parts of an intern's panel report and presenting it as his own work,<sup>17</sup> are administrative matters and are therefore not compensable absent a showing of error or abuse on the part of the employing establishment. Although he has generally alleged that his training was inadequate which resulted in his peers' dissatisfaction with his work as incompetent, unwillingness to help him by answering his telephone calls, ridicule during his performance presentation, and his inability to meet deadlines, he has not submitted reliable and probative evidence corroborating this or establishing error by the employing establishment with regard to his training. Appellant acknowledged receiving detailed direct hands-on training from Director Pelikan in April and May 2012. Ms. Corley and Ms. Martin both stated that they could not answer appellant's question as to whether he had received adequate training. Ms. Corley related that he did not receive a lot of one-on-one guidance at the end of his training period, but stated that she did not know the extent of the training he received and the shadowing he performed in Kansas City. She also stated that appellant learned a great deal about his position and taught her many new things. Ms. Martin indicated that he did not know about certain things that he should have known at that stage of his career. Director Pelikan provided an extensive list of training courses taken by appellant during the course of his two-year intern program from November 2010 to August 2012.

Ms. Robinson stated that he received the same training classes and opportunities as other interns in the contract specialist intern program. She arranged for appellant to shadow a contract specialist in St. Louis and twice arranged for him to receive assistance from a field office director and his contract specialist. Ms. Robinson noted that she received feedback from the St. Louis office that appellant worked more on his workload instead of shadowing the office to learn about its process and the contract specialist role. She related that Director Pelikan's contracting experience and background enabled her to coach appellant. Ms. Robinson noted that after appellant complained to Director Pelikan about not receiving adequate training, Director Pelikan took every measure to provide the best possible training to him. She further noted that prior to Director Pelikan's promotion, Director Pelikan told appellant that she would still be available to him and that she was just a telephone call away. Ms. Robinson stated that there was no change in appellant's workload and attributed his perception of an apparent change in his workload to no longer receiving the same guidance to perform his daily tasks and his reliance on

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<sup>12</sup> *R.H.*, Docket No. 13-1193 (issued May 29, 2014); *C.B.*, Docket No. 11-1457 (issued February 10, 2012); see *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

<sup>13</sup> *David C. Lindsey, Jr.*, 56 ECAB 263, 271-72 (2005).

<sup>14</sup> *Barbara E. Hamm*, 45 ECAB 843 (1994); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

<sup>15</sup> *Robert Breeden*, 57 ECAB 622 (2006).

<sup>16</sup> *Donald Duncan*, Docket No. 95-2080 (issued May 19, 1988); *Elaine Trujillo*, Docket No. 93-1539 (issued September 6, 1994).

<sup>17</sup> *Janice I. Moore*, 53 ECAB 777 (2002).

using information obtained from his training classes and coaching sessions. She related that he never informed her that he did not understand his role as a contract specialist.

Regarding appellant's performance appraisal and placement on a PAP, Ms. Robinson stated that, while he received successful panel reviews in the first year of the intern program, he did not receive a satisfactory rating in year two of the program because he needed to grow or increase his organizational skills, his attention to detail, and to connect the concepts of his position with the classroom training, coaching, and shadowing experiences which had been provided to him. She related that appellant was placed on a PAP for failing to demonstrate successful work in the two critical areas of learning and growth. Ms. Robinson noted that, under the PAP, she met with him on a weekly basis to review his performance, discuss his weekly task assignment list, and address any questions and comments regarding his workload. She further noted that appellant had difficulty with being detailed and organized in his workload. Field office contract specialists informed Ms. Robinson that he did not productively engage in calls during monthly meetings because he made jokes. Ms. Robinson stated that, although appellant had attended all classes to obtain a level 1 warrant, he had not demonstrated proper and consistent development of contract solicitations and files. She related that he attributed his poor work performance to personal issues, such as a pending divorce and travelling out of town to care for his mother and family business.

Regarding the step increase denial, Ms. Robinson explained that appellant was not entitled to a within grade step increase while his performance was less than fully successful. In response to the issuance of the August 2, 2011 letter of counseling, she stated that appellant explained to her that he did not take the intern program and panels seriously.

Appellant's own statements and the statements of Ms. Robinson and Director Pelikan establish that the employing establishment did not act unreasonably or err in the handling of the above-stated administrative matters. There was no evidence of error or abuse. The Board finds, therefore, that appellant has not established a compensable employment factor.

Appellant alleged that his peers viewed his work as incompetent and they were unwilling to answer his telephone calls and ridiculed him during his performance presentation. However, 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 or feelings of harassment or discrimination do not constitute a compensable factor of employment.<sup>18</sup> An employee's charges that he or she was harassed or discriminated against, is not determinative of whether or not harassment or discrimination occurred.<sup>19</sup> To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>20</sup> The Board finds that the factual evidence fails to support appellant's allegation of harassment. Appellant did not submit witness statements from

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<sup>18</sup> *J.C.*, 58 ECAB 594 (2007); *Robert G. Burns*, 57 ECAB 657 (2006); *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

<sup>19</sup> *See Ronald K. Jablanski*, 56 ECAB 616 (2005); *William P. George*, 43 ECAB 1159 (1992).

<sup>20</sup> *See G.S.*, Docket No. 09-764 (issued December 18, 2009); *C.S.*, 58 ECAB 137 (2006); *Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

individuals indicating that his coworkers viewed his work as incompetent, refused to assist him, or ridiculed him. Further, while Ms. Robinson stated she was told by appellant's peers that his work had to be returned to him due to poor grammar, incorrect information, and lack of detail, she noted an instance where a contract specialist and contract officers followed up with him and made corrections and assisted him with his work because they wanted him to succeed. She stated that she did not recall telling appellant that his peers did not want to answer his calls. Ms. Robinson also stated that she did not know if he was ridiculed by his peers. The Board finds that appellant has not established a compensable employment factor.

Since appellant has not established a compensable work factor, the Board will not address the medical evidence.<sup>21</sup>

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that he sustained an emotional or a physical condition causally related to factors of his employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the February 26, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 21, 2015  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>21</sup> *Karen K. Levene*, 54 ECAB 671 (2003).