

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

S.D., Appellant	)	
	)	
and	)	<b>Docket No. 14-0701</b>
	)	<b>Issued: October 2, 2015</b>
U.S. POSTAL SERVICE, OFFICE OF	)	
INSPECTOR GENERAL, Carol Stream, IL,	)	
Employer	)	
	)	

*Appearances:*  
Jeffrey P. Zeelander, Esq., for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 7, 2014 appellant, through counsel, filed a timely appeal from a February 3, 2014 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 sustained an emotional condition in the performance of duty.

**FACTUAL HISTORY**

On May 1, 2012 appellant, then a 42-year-old auditor, filed an occupational disease claim alleging depression and anxiety disorder as employment related. She alleged that she first

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

became aware of this condition on November 4, 2010 and realized that it was employment related on April 12, 2012. The factors of employment identified by appellant included discriminatory acts, harassment, and hostile work environment caused by her manager and coworker. Appellant stopped work on March 12, 2012.

In an undated statement, appellant described an October 5, 2011 encounter with Samuel Nkansah, the auditor in charge, which occurred while on a site visit at the Dulles Plant and Distribution Center. She was on the plant workroom floor writing on her notepad and waiting for the workroom supervisor when Mr. Nkansah joined her and started to make conversation. Appellant stated that she acknowledged his presence and made a gesture indicating that he should wait a minute.

Appellant alleged that Mr. Nkansah approached her with a hostile demeanor and that his manner caused her to become fearful and anxious. She alleged that he stated, "Who do you think you are telling me to wait? Do not ever tell me to wait, I tell you to wait." Appellant indicated that Mr. Nkansah's attitude made her afraid and very apologetic. She apologized twice hoping to calm him down and explained that she was not being disrespectful.

After the October 5, 2011 incident, appellant alleged that Mr. Nkansah "attacked her work papers." She informed Nathaniel Adusei, another manager and Mr. Adusei in October 2001 met jointly with her and Mr. Nkansah. Mr. Adusei informed appellant that both he and Mr. Nkansah would review her working papers. On October 14, 2011 appellant, Mr. Adusei, and Mr. Nkansah met to discuss the October 5, 2011 incident. Mr. Nkansah denied the incident took place.

On November 7, 2011 appellant stated that she met with Mr. Adusei to discuss her annual performance appraisal. Mr. Adusei told her that she was not performing at her grade level and that he would be issuing a performance expectation memorandum (PEM). On November 8, 2011 appellant forwarded an e-mail regarding the October 5, 2011 incident to Andrea Deadwyler, audit director, who told her during their telephone conversation, that if Mr. Adusei, believed that appellant should be issued a PEM she would support his action as he knew her work better.

Appellant alleged both men attacked her work and provided her with 70 coaching notes. She was issued *via* e-mail a 60-day PEM. Appellant reported that Mr. Adusei directed her to review all her work products (at least 100 work products) during the time she took leave for Thanksgiving and Christmas. She filed an Equal Employment Opportunity (EEO) Complaint in February 2012. In March 2012, appellant stated that she was hospitalized as a result of the discrimination, harassment, and hostile work environment. She stated that when a friend requested Family Medical Leave Act (FMLA) on her behalf, Mr. Adusi denied the request. Appellant asserted that he sent her harassing e-mails and called her at home with the message that if she did not return to work the next day, she would be considered absent without leave. She denied any other sources of stress during that time frame.

In an undated statement, Mr. Adusei took issue with appellant's allegations. On October 14, 2011 he stated that he met with her and Mr. Nkansah about the October 5, 2011 incident. Mr. Adusei stated that Mr. Nkansah denied appellant's allegations. He informed them

both that, since he had not been present when the alleged incident occurred, he could not determine who was telling the truth. On November 7, 2011 Mr. Adusei met with appellant to discuss her annual performance. During that meeting, he informed her that she was not performing at her GS-13 grade level and, as a result, a PEM would in fact be issued. Mr. Adusei explained that this was to allow appellant to improve her performance. He stated that her appeal of her annual performance rating had been denied by the Deputy Inspector General for Support Operations.

As appellant's audit manager, Mr. Adusei indicated that he is responsible for evaluating appellant's performance. He stated that he had explained to her the consequences of unacceptable performance during the 60-day PEM and met with her on several occasions during that period to discuss her work performance. Mr. Adusei stated that appellant's work did not meet expectations and, on December 21, 2011, she was allowed to revise her working papers before resubmitting them for review.

Mr. Adusei reported that appellant's working papers continued to show an inattention to detail, incorrect grammar, missing conclusions and a lack of clarity. He stated that he reviewed Mr. Nkansah's coaching notes to appellant and agreed with them.

On January 26, 2012 the last day, appellant was at the office, she asked Mr. Adusei if he was ready to issue the Performance Improvement Plan (PIP). Mr. Adusei answered that he was still reviewing her working papers and he would let her know his decision after the review. He stated that he told appellant that her working papers were not clear and concise and that he had difficulty reviewing them. This caused major delays in getting work papers finalized. Mr. Adusei placed her on a 90-day PIP on February 29, 2012. He informed appellant *via* an e-mail that she was performing unacceptable work for a Journey Band auditor and his assessment was based on her work products during the 60-day period covered by the PEM.

Regarding her request for FMLA leave forms, Mr. Adusei stated that he did not know the person making the request on behalf of appellant and did not think it was appropriate to provide official forms to strangers. He noted that she had other alternatives to obtain an FMLA form.

Mr. Adusei stated that he received an excuse slip *via* fax from appellant on March 12, 2012 which stated that she should be excused from work due to illness. On March 15, 2012 he sent her an e-mail that he had not heard from her since the excuse slip. Mr. Adusei mentioned in his e-mail that he called appellant's house on March 13, 2012 and was informed that she was in the hospital and requested FMLA on her behalf. He asked that she call him, but the call was not returned. Mr. Adusei indicated that he called appellant again on March 14 and 15, 2012, and left voice messages for her to return his call, but she did not. He noted that her excuse slip did not say when she would return to work and he needed to find out that information. On March 16, 2012 appellant left a voice message for Mr. Adusei indicating that she was returning his telephone calls and that she was taking a leave of absence. Mr. Adusei returned her call approximately 20 minutes later, but no one answered and he left a voice message requesting that she submit the leave of absence request in writing. He stated that appellant never submitted her leave of absence request and he was advised to designate her absence from work as absent without leave (AWOL) status since she had not contacted him for several days and he had no

indication of how long she would be out. On March 20, 2012 Mr. Adusei had a telephone conversation with her and informed her that she was on AWOL status.

Mr. Adusei told appellant during the conversation that he had not received an updated medical report from her and he instructed her to report to work. He denied her allegations of harassment at work and *via* e-mail were discriminatory or harassing. Several attachments were included to support Mr. Adusei's statements.

In a letter dated May 15, 2012, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised as to the medical and factual evidence required to support her claim and given 30 days to provide the requested information.

In an undated statement, appellant repeated her allegations. She also noted that her disapproved annual leave requests from March 12 to 15 and 19 to 23, 2012 were later approved as earned annual leave.

Appellant also submitted medical reports dated February 9, May 6 and 21, and July 13, 2012; a May 12, 2012 Form CA-20; several letters of interviews concerning unauthorized overtime usage, duplicative CA-20 forms, e-mails from appellant dated October 11, 14, and November 22, 2011 and February 1, 2, and 3, 2012; e-mails from the employing establishment dated October 11, November 8, and December 21, 2011, January 27, February 1, 2, 3, and 29, March 15 and 16, 2012; an excuse slip dated March 12, 2012; employee performance evaluation reports; the employing establishments regulations concerning performance; appellant's signed statement of certification from the development letter; an award brochure, duplicate notices of unsatisfactory performance dated November 18, 2011 and February 29, 2012; list of provider and pharmacy, leave notification, position description, EEO investigative affidavit; Form CA-7 forms for the period beginning from May 7 to June 15, 2012; and congressional inquiries about appellant's claim.

By decision dated August 10, 2012, OWCP denied appellant's claim on the grounds that she did not establish any compensable work factors. It noted that she had attributed her condition to the administrative functions of the employing establishment and that no error or abuse was shown that would bring these actions into the performance of duty. OWCP further found that appellant did not submit sufficient evidence to substantiate her allegations of discrimination or harassment and that she worked in a hostile work environment.

On July 17, 2013 OWCP received a reconsideration request from appellant. In a July 17, 2013 statement, appellant stated that she worked as an auditor for the employing establishment from 2008 until October 2012, when she was terminated.

Appellant indicated that the pressure to find cost savings was tremendous from the day she started this position. She stated that her work as an auditor required her to make recommendations that directly affected people's lives as they might lose their jobs. Overtime, appellant alleged that she was tormented by how her work was affecting the lives of the people she audited. She reported that she felt overwhelmed by the stress and the duties associated with her position. Appellant also reported being micromanaged and constantly being set up to fail.

Appellant reported that she had been evaluated as “satisfactory” in her annual review on November 7, 2011, but two weeks later, she was placed on a PEM. During this time, she stated that she continued to deteriorate due to the stresses of simply performing her job and being criticized for her work performance. Appellant indicated that these criticisms started in late 2011 and coincided with her deteriorating emotional condition.

In November 2012, appellant began treatment with Bernadette C. Beasley, a licensed clinical psychologist, due to the effect her day to day duties had on her. She indicated that her condition deteriorated and she was hospitalized from March 9 to 13, 2012. After her discharge, appellant treated with Dr. Joseph Beck, a Board-certified psychiatrist. She provided an account of audits conducted. Appellant reported interviewing with various managers and the stress she experienced when audit results were suggestive of the need for downsizing. Again, she reported work stress when engaged in determining as an auditor whether charges were reasonable. Appellant reported instances of experiencing stress when discovering that contracts were modified without sufficient price or cost analyses.

Appellant stated that she experienced stress because she was unable to report deletion of clock rings, disallowances for overtime and what she felt were improper payments or schedule reports. She concluded that her stress resulted from discovering that the findings of her audit had an impact on others’ lives. Appellant stated that the stress and pressure she felt became so overwhelming that she could no longer perform the duties of her job. The personnel actions taken due to her poor performance finally made her so depressed that she had to be admitted into the hospital.

A medical report dated June 19, 2013 from Dr. Beck was submitted along with several treatment notes dated April 19, 23, May 29, June 27, July 13, August 17, September 14, December 3, 2012 and February 4, March 6 and May 8, 2013. Also submitted were hospital records from Riverside Medical Center with an admit date of March 9, 2012 and a discharge date of March 12, 2012.

By decision dated February 3, 2013, OWCP denied modification of its prior decision.

### **LEGAL PRECEDENT**

To establish a claim that he or she sustained an emotional condition in the performance of duty, an employee must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.<sup>2</sup>

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment.<sup>3</sup> There are situations where an injury or an

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<sup>2</sup> V.W., 58 ECAB 428, 431 (2007); *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

<sup>3</sup> L.D., 58 ECAB 344, 350 n.8 (2007); *Robert Breeden*, 57 ECAB 622, 625 (2006).

illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation.<sup>4</sup> 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>5</sup> 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.<sup>6</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>7</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>8</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>9</sup>

The Board has held that the manner in which a supervisor exercises his or her discretion generally falls outside the coverage of FECA. This principal recognizes that a supervisor or manager must be allowed to perform their duties and that employee's will, at times, disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.<sup>10</sup> Although the handling of leave requests and attendance matters are generally related to employment, they are administrative matters and not a duty of the employee.<sup>11</sup>

### ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. OWCP denied her emotional condition claim on the grounds that she did not establish compensable work factors. The Board must initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.

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<sup>4</sup> *A.K.*, 58 ECAB 119, 121 (2006); *David Apgar*, 57 ECAB 137, 140 (2005).

<sup>5</sup> 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309, 314 (2001); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>6</sup> *J.F.*, 59 ECAB 331, 338 (2008); *Gregorio E. Conde*, 52 ECAB 410, 411-12 (2001).

<sup>7</sup> *See Matilda R. Wyatt*, 52 ECAB 421, 423 (2001); *Thomas D. McEuen*, 41 ECAB 387, 391-92 (1990).

<sup>8</sup> *See William H. Fortner*, 49 ECAB 324, 325 (1998).

<sup>9</sup> *Ruth S. Johnson*, 46 ECAB 237, 241 (1994).

<sup>10</sup> *S.M.*, Docket No. 09-2290 (issued July 12, 2010); *Linda J. Edwards-Delgado*, 55 ECAB 401, 405 (2004).

<sup>11</sup> *C.T.*, Docket No. 08-2160 (issued May 7, 2009); *Jeral R. Gray*, 57 ECAB 611, 615-16 (2006).

The reaction to assigned work duties is a compensable work factor. To the extent that appellant was reacting to the performance of her work duties, this is a compensable work factor. She provided an account of audits conducted and alleged stress while performing the duties of the audit. While she attributed her stress generally to the nature of her job during specific audits, appellant did not submit any factual evidence to support her allegations of unfairness she observed, she further alleged that her stress resulted from discovering how the findings of her audits impacted other's lives and the pressure she experienced in trying to find ways to reduce costs and keep the employing establishment viable. Thus, she has simply not articulated a factor under *Cutler*.<sup>12</sup> It is essential that the record show some credible evidence to support that an employee's allegations are an accurate reflection of the actual regular or specially assigned duties.

The Board notes that when appellant presented her claim to OWCP, she relied on allegations of hostility, harassment, and discrimination by her supervisors. Appellant now claims to have suffered stress from a recognition that her work as an auditor might result in job loss or in disciplinary action against other employees who failed to follow procedures. She has not abandoned her contention that she was the victim of harassment but has made substantial new factual claims. The Board finds no support for them in the record and therefore need not consider why they were not a part of appellant's initial account of her employment. A wholesale change in appellant's factual allegations after an initial denial of a claim may raise questions of the credibility of those facts.

Appellant also made allegations related to various administrative and personnel matters. She alleged that on October 5, 2011 a charged incident occurred with Mr. Nkansah, who denied that such an incident occurred. Beyond appellant's unconfirmed statement, there is no evidence of record to support that the incident took place in the manner she described and an employment factor is not established. On October 14, 2011 Mr. Adusei met with appellant and Mr. Nkansah to discuss the alleged October 5, 2011 incident. Because he was not present and because Mr. Nkansah denied appellant's allegation, he could not determine the truth of the matter. Investigations are an administrative function of the employing establishment because they are unrelated to an employee's day-to-day or specially assigned duties or to a requirement of the employment.<sup>13</sup> While the employing establishment investigated appellant's allegation of improper behavior, there was no allegation or evidence of any error or abuse by the employing establishment. Thus, appellant has not established a compensable work factor.

Appellant attributed her emotional condition to the review of her working papers, meetings to review of her work, the issuance of a PEM for 60 days *via* e-mail and the issuance of a PIP for 90 days. However, supervisory discussions and evaluations of job performance and performance are administrative matters and are covered only when a showing of error or abuse is made.<sup>14</sup> Under these circumstances, the Board finds that appellant did not support that her supervisors acted erroneously or abusively regarding the review of her working papers, meetings

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<sup>12</sup> *See supra* note 5.

<sup>13</sup> *K.W.*, 59 ECAB 271 (2007).

<sup>14</sup> *Beverly A. Spencer*, 55 ECAB 501 (2004); *Roger W. Robinson*, 54 ECAB 846 (2003).

to discuss review of her working papers, the issuance of a PEM for 60 days and the issuance of a PIP for 90 days. These are not compensable factors of employment.

Appellant contended that her condition was partly the result of a November 8, 2011 conversation with the audit director, Ms. Deadwyler, who told appellant that she would support Mr. Adusei's action if she was issued a PEM as he knows her work better. An employee's complaint concerning the manner in which a supervisor performs his or her duties as a supervisor or the manner in which a supervisor excises his or her supervisory discretion fall, as a general rule, outside the scope of coverage of FECA.<sup>15</sup> While Ms. Deadwyler's comment may have disturbed appellant, the record supports that Mr. Adusei was appellant's supervisor and was in fact able to evaluate and review her performance. As noted, Mr. Adusei found appellant's working papers were not clear and concise, were difficult to review which resulted in delays. Appellant has not established error or abuse by either Ms. Deadwyler's comment or Mr. Adusei's actions. Therefore, she has not established a compensable work factor.

Appellant has attributed her condition to being directed by her supervisor to re-review her work products during the time she took leave for the holidays. While she alleged this involved at least 100 work products, the employing establishment stated that the total work papers was 42. An employee's complaint concerning the manner in which a supervisor performs his or her duties as a supervisor or the manner in which a supervisor excises his or her supervisory discretion fall, as a general rule, outside the scope of coverage of FECA.<sup>16</sup> In this case, appellant has not provided any corroborating evidence to establish an allegation of error or abuse on the part of the employing establishment.

Appellant cited the denial of her leave requests, being placed in an absent without pay status, and being denied access to FMLA forms when a friend requested them for her. The Board notes that the handling of pay and leave issues<sup>17</sup> and access to the employing establishment pending a medical clearance, request for medical documentation,<sup>18</sup> monitoring of work<sup>19</sup> and the filing of an EEO complaint alleging harassment<sup>20</sup> are administrative matters and not compensable absent a showing of error or abuse on the part of the employing establishment.

Mr. Adusei called appellant at home to inform her that, if she did not return to work the next day, she would be absent without pay. Appellant stated that he called her home on March 13, 2012 and was informed that she was in the hospital and requested FMLA on her behalf. Mr. Adusei denied the request. Mr. Adusei stated that he did not think it appropriate to provide official forms to strangers. He further stated that appellant could have obtained the

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<sup>15</sup> *C.S.*, 58 ECAB 137 (2006).

<sup>16</sup> *Id.*

<sup>17</sup> *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997).

<sup>18</sup> *James P. Guinan*, 51 ECAB 604, 607 (2000); *John Polito*, 50 ECAB 347, 349 (1999).

<sup>19</sup> *See Lori A. Facey*, 55 ECAB 217, 224 (2004).

<sup>20</sup> *Michael A. Salvato*, 53 ECAB 666, 668 (2002).

FMLA forms from other sources. Under these circumstances, the Board finds that appellant has not established error or abuse in denying the FMLA form to her boyfriend.

Appellant stated that she called Mr. Adusei on March 15, 2012 and left a voice message that she would be taking a leave of absence. She stated that he disapproved her annual leave request from March 12 to 16, 2012 and March 19 to 23, 2012, and that the requested leave was subsequently approved. Mr. Adusei stated that he called appellant back, but nobody answered the telephone so he left a voice message for her to submit the leave of absence request in writing, which would be subject to management's approval. Although appellant's leave requests were subsequently approved, this does not establish that the original denial of the annual leave requests or the placement of her on AWOL were in error.<sup>21</sup> As she did not submit corroborating evidence establishing error or abuse, she failed to establish a compensable employment factor in this regard.

Appellant more generally argued that she was harassed, discriminated against, and forced to work in a hostile work environment by Mr. Adusei and Mr. Nkansah. To the extent that incidents alleged as constituting harassment or a hostile environment by a supervisor are established as occurring and arising from her performance of her regular duties, these could constitute employment factors.<sup>22</sup> However, for harassment to give rise to a compensable disability under FECA, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under FECA.<sup>23</sup> The evidence does not support the claim for harassment.

On appeal, counsel submitted a brief reiterating appellant's allegations, asserting that she has established compensable work factors and error or abuse on the part of the employing establishment. The Board has reviewed the entire case record and all the documents appellant submitted in support of her claim for an emotional condition as well as the employing establishment response. As explained above, the Board finds that she has not established her claim for an emotional condition as she has not attributed her claimed condition to any compensable employment factors.

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.

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<sup>21</sup> See *C.T.*, Docket No. 08-2160 (issued May 7, 2009) (the mere fact that a personnel action is later modified or rescinded does not, in and of itself, establish error or abuse).

<sup>22</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>23</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991). See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

**CONCLUSION**

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 3, 2014 decision of the Office of Workers' Compensation Programs is affirmed.<sup>24</sup>

Issued: October 2, 2015  
Washington, DC

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>24</sup> Michael E. Groom, Alternate Judge, participated in the preparation of this decision but was no longer a member of the Board effective December 27, 2014.