United States Department of Labor
Employees' Compensation Appeals Board

G.C., Appellant	)	
and	)	**Docket No. 15-1231**
	)	**Issued: February 2, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Los Angeles, CA, Employer	)	

Appearances:
Appellant, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 12, 2015 appellant filed a timely appeal from an April 23, 2015 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On February 17, 2014 appellant, then a 56-year-old consumer and industry contact (C & IC) manager, filed an occupational disease claim (Form CA-2) alleging that she sustained "stress/back/neck" conditions as a result of her employment. She first became aware of her

[1] 5 U.S.C. § 8101 *et seq.*

condition on January 7, 2014. Appellant explained that due to the endless questioning of her leadership style and communication abilities, she was subjected daily to a dictatorial and hostile environment created by her immediate manager, L.B. She indicated that the work environment consisted of: no questions asked; mistakes not tolerated; performance without questioning authority; intimidation; bullying; undermining; policing; micromanaging; and no dignity and respect. The record does not indicate that appellant stopped work. The employing establishment controverted the claim.

Return to work notes dated August 30, 2013 and January 10, 2014 from Dr. Mark D. Schneider, an osteopath and family practitioner, were submitted. A timesheet with hand notation "[Family and Medical Leave Act] (FMLA) disapproved February 13, 2014" was received along with a January 7, 2014 routing slip from L.B., marketing manager, noting a discussion with appellant on January 7, 2014 covering irregular attendance, unauthorized leave, and unscheduled days taken December 27, 2013 and January 2, 2014, and a performance improvement plan for the Consumers Affairs Department to achieve the goals of the Los Angeles District.

In a March 12, 2014 letter, OWCP advised appellant of the deficiencies in the evidence and requested additional factual and medical evidence. This included a detailed description of her allegations which caused her emotional condition and a narrative medical report from her treating psychiatrist or psychologist which contained her medical history, diagnosis, and an explanation of causation. Appellant was afforded 30 days to submit the requested information.

On April 8, 2014 OWCP received June 3, 2013 and February 11, 2014 disability notes from Dr. Schneider. In a February 18, 2014 note, Dr. Schneider indicated that appellant was under his care for stress, back, and neck conditions. He advised that she was totally disabled and would return for a follow up on April 18, 2014. Documentation from the Employee Assistance Program (EAP) was also submitted.

In a March 29, 2014 statement, appellant indicated that she worked for L.B. from May 3, 2013 to January 7, 2014 including a 12-month assignment in a Human Resource (HR) unit -- Manager Learning Development & Diversity. From the start of the temporary assignment, L.B. had a dictatorship leadership style and abrasive communication which affected appellant's health and psyche, which caused chest pain, problems sleeping, stomach cramps, neck, and back pain, and upsetting emotions.

Appellant outlined a series of allegations that she indicated caused her financial stress. L.B. did not approve her sick leave for the period late January to February 2014, for a total of 152 hours despite the fact that she had FMLA and sick leave hours available. L.B. gave appellant a letter of concern on January 7, 2014 for two annual leave absences from work on December 27, 2013 and January 12, 2014, although she previously asked for this leave on December 20, 2013 and the manager in charge at that time, Brenda Coronado, had approved it. Appellant also had over 500 hours annual leave at that time. When she questioned why she was given the letter of concern on January 7, 2014 L.B. ended the meeting with a sarcastic remark, "Go to your Hispanics," which she considered to be racist. Appellant was sent a May 3, 2013 e-mail by L.B. regarding a congressional letter which was not signed. She found the e-mail inflammatory because L.B. had already been informed by another manager, Ms. Ramela, that appellant was not to be disturbed because her father was sick. L.B. did not approve appellant's

bereavement leave for her father's passing because she disapproved of appellant bereaving for her father. She also disapproved appellant's request to leave work to see her mother's social worker because she wanted appellant to attend a telecom.

A June 4, 2014 e-mail from L.B. wrote: "I am not comfortable with your failure to follow instructions." She summoned appellant to her office around early or middle July 2013 after appellant had expressed her concerns regarding L.B. to the district manager. Appellant alleged that L.B. stood up and yelled at her while making hand motions because she was upset that appellant had reported her to the district manager. She alleged that L.B. bullied her on several occasions from July to August 2013 by asking her whether she had performance issues yet again.

On August 26, 2013 appellant texted L.B. to request FMLA because of her neck pain. However, L.B. never submitted appellant's FMLA request. On September 5, 2013 she gave appellant an attendance review and commented that appellant had a pattern of being off work on unapproved leave. Appellant then realized L.B. had coded certain dates as unscheduled leave (unapproved leave), even though she had submitted her paperwork to L.B. in a timely manner requesting such approved leave.

L.B. stormed into appellant's office on September 11, 2013 and asked in a rude and abusive tone if appellant was answering customer calls and informed her that she had performance issues yet again. Once appellant was accepted in the EAS Leadership Program, she alleged that L.B. asked if she wanted to go on a temporary assignment as a safety manager. She related that this showed that L.B. wanted to get rid of her. While appellant was on temporary assignment, L.B. sent her two job postings on November 12, 2013. She alleged that this was an example of L.B. not wanting her to return to her position as a C&IC manager. When the Learning and Development Department (L&DD) Manager returned on December 2, 2013 L.B. asked the HR manager, Ms. Robinson, if she wanted appellant for another week in her unit. Appellant alleged that this was another example that L.B. did not want her back.

On December 16, 2013 appellant's first day back from her temporary assignment, L.B. did not allow her to do her Spanish public speaking on television, but instead had a clerk, who was not media trained, address the media. Appellant alleged that L.B. also had her drive the clerk to the airport to address the media.

L.B. sent an e-mail to another manager, Ben Rios, asking if he had a temporary assignment for appellant. Appellant stated that she had no idea that L.B. was inquiring about temporary assignments for her. This was alleged to be another example that L.B. wanted to get rid of appellant. She never informed appellant's former staff that she had returned to her original position once her temporary assignment was over. L.B. stated that this led appellant's former staff to report to the clerk who had covered appellant's position when she was away. On December 21, 2013 appellant received an e-mail from L.B. who informed her of changes in procedure, such as she was not to delegate certain duties even though she is the Manager of C&IC. She alleged that this e-mail was threatening.

On December 26, 2013 appellant sent an e-mail to L.B. requesting days off for the holidays. She also reminded L.B. of her earlier July 30, 2013 leave request for December 26, 27,

and 31, 2013. Appellant received a December 31, 2013 e-mail from L.B., which stated that things would be changing. She stated that she perceived this e-mail as threatening. Appellant indicated that she received an e-mail from an employee whom she supervised who told her what to do as if she was her supervisor. Since L.B. had allowed this employee to tell appellant what to do, she perceived this as another form of harassment by L.B. Appellant submitted several e-mails and statements supporting her allegations. Statements from Miguel Salazar and M.T. Shooshtari attesting to her character were also received.

On April 15, 2014 OWCP sent a copy of appellant's allegations to the employing establishment requesting comments. In a May 15, 2014 statement, L.B. responded to appellant's allegations. She indicated that appellant was paid sick leave from January 8 to 17, 2014. Appellant was verbally notified that she did not have an approved FMLA case and therefore needed to have acceptable documentation for any unscheduled absences. On January 23, 2014 she was given written notification that she would be placed on leave without pay (LWOP) status until acceptable documentation was received. On January 31, 2013 appellant notified L.B. that a specialist had informed her that her FMLA case had been denied in December 2013. L.B. stated that HR Manager, S. Marney, had informed her that appellant had been advised that her medical documentation did not meet the requirements of FMLA. She indicated that appellant was notified on March 28, 2014 that the medical documentation received on February 18, 2014 did not cover the time period from January 21 to February 14, 2014 and she was requested to resubmit her application with appropriate medical documentation. L.B. indicated that appellant returned to pay status on February 18, 2014 the date acceptable medical documentation was received. She stated that appellant's FLMA case was not approved until March 10, 2014 and did not cover January and February 2014. Previous FMLA requests were disapproved by shared services. Appellant was paid FMLA/LWOP per rules and regulations of the employing establishment and adjustments were made for all her pay issues.

L.B. denied issuing a letter of concern on January 7, 2014. Instead, appellant was given an attendance review and discussion because of her unauthorized leave absences on December 27, 2013 and January 2, 2014. L.B. indicated that appellant had requested the dates prior to her scheduled vacation, but was told that she was needed to manage and oversee operations because other managers in the department had already scheduled vacation for those dates. Appellant requested December 12 and 13, 2013 as alternative dates off and she was granted those dates. L.B stated that, when she was on vacation, appellant had informed Ms. Coronado that she had authorized leave by sliding a Leave Request Form under the office door with a post-it note attached to it. Appellant, however, did not have authorized approval to take leave on December 27, 2013 and January 2, 2014.

During the January 7, 2014 meeting, appellant told L.B. that she believed that she was not liked because she was Hispanic. L.B. stated that the meeting was based solely on performance and had nothing to do with race and she told appellant not to make such accusations. She stated that appellant called her a racist and she responded, "I am not a racist; let's get back to the reason we are here." L.B. sent appellant an e-mail on May 3, 2013 regarding the status of a past due congressional complaint letter that required the district manager's signature. She denied ever being informed by Manager Ramela not to disturb appellant. L.B. stated that appellant's bereavement leave was not disapproved. She indicated that appellant had sent her a text message when she was out of the office on the day of the meeting requesting to

leave the unit because of her need to meet with her mother's social worker. L.B. stated that she asked appellant to stay until she returned to the office because of her late request for leave and the fact that there was no one to cover the meeting if she was not there. She noted that appellant planned the meeting a week in advance, but did not inform her until the day of the appointment. L.B. did not recall an e-mail from appellant on June 4, 2014 stating that she was not comfortable with appellant's failure to follow instructions. However, she noted that appellant failed to follow instructions on many occasions.

L.B. denied standing up, yelling at appellant, or making hand motions in front of appellant during a meeting around early to mid-July 2013 after appellant had spoken to the district manager about her. She denied bullying appellant from July to August 2013 by asking if appellant had performance issues yet again. L.B. stated that she had asked appellant if she had been trained on the programs that were under her responsibility because the records on those areas were spotty. She provided training when appellant told her that she had not received prior training.

L.B. denied receiving a text from appellant on August 26, 2013 regarding her FMLA request due to neck pain. She stated that FMLA requests were made to shared services and not to management since management does not grant approval for FMLA requests. Appellant was granted sick leave for the period August 26 to 30, 2013. L.B. stated that appellant was given an attendance review on September 5, 2013. She noted that appellant's leave requests were untimely and that her leave was not scheduled in advance as dictated by FMLA. L.B. denied storming into appellant's office on September 11, 2013 and asking in a rude and abusive tone if she was answering customer calls and stating that she had performance issues yet again. Appellant stated that she was on vacation in Las Vegas, Nevada on September 11, 2013. L.B. indicated that appellant brought up the discussion regarding the open position of manager of health and safety. She told appellant that Ms. Robinson decides the position and she would need to talk to Ms. Robinson regarding the position.

L.B. indicated that, even though appellant was detailed to human resources, she was still required to perform evaluations and to oversee her work development through the Executive Leadership (ELD) program. She indicated that she recommended that appellant apply for areas she was interested in after her detail. L.B. explained that appellant did not immediately return to her assignment as she was still needed in L&DD even after the manager, Mr. Burgin, had returned because many new hires were hired during his absence and he needed to be briefed on what transpired during his absence.

L.B. explained that the employing establishment does not have an assigned Spanish public speaker. The clerk selected to speak to the media was specifically requested by the television company and the Pacific Area Public Speaking/Media Department. This request was made while appellant was on detail. Appellant was asked to drive the employee to the airport to address the media as she was on the list to check out vehicles in the district, she was a manger over the department and the task was arbitrarily assigned to her.

L.B. also noted that instruction from the district and area level directed all support staff provide lobby assistance to the field office during the holiday season.

Other managers were notified by L.B. that appellant was interested in temporary assignments as appellant had expressed interest in wanting to be a manager/postmaster at the employing establishment. Appellant had informed L.B. that she had applied for other managerial positions, but was not selected due to a lack of experience. L.B. stated that, through the ELD process, she had discussed with appellant getting some field experience in order to be more qualified when she applied for such positions in the future. As a result, she reached out to other senior managers to see if there were any details available for appellant. L.B. noted that all the senior managers were Hispanic, but race did not play a factor in the request.

L.B. stated that appellant did not immediately resume the duties of her permanent position after she returned, but allowed others to perform her duties. She indicated that the December 21, 2013 e-mail regarding changes in the department's workload was sent when appellant was on detail. As a result, since appellant was on detail, it was obvious that she would not be delegating duties which pertained to her position as manager of C&IC.

Appellant's December 26, 2013 e-mail request for leave was never received and L.B. also noted that she was on vacation during this time period. She further indicated that appellant had requested December 12 and 13, 2013 as alternative days off in exchange for the original requested dates of December 26, 27, and 31, 2013. L.B. indicated that the dates appellant requested had already been taken by other managers.

L.B. stated that the December 31, 2013 e-mail pertained to organizational changes regarding processes within the department and was not specifically sent to target appellant. She stated that appellant had requested additional training from her employee, Natashi Garvins, on how to navigate the programs related to consumer affairs. Since Ms. Garvins was appellant's employee and reported to her, L.B. indicated that she was not responsible for Ms. Garvin's actions toward appellant. Numerous e-mails supporting L.B.'s statements were submitted.

By decision dated June 20, 2014, OWCP reviewed each of appellant's allegations and denied the claim as she had not established compensable employment factors.

On July 2, 2014 appellant, through her counsel, requested an oral hearing before the Branch of Hearings and Review. After an oral hearing was scheduled, appellant's counsel changed the request to a written review of the record by an OWCP hearing representative. In a January 27, 2015 letter, appellant's counsel indicated that the claim was based solely on the physical injuries sustained by appellant.

On April 9, 2015 additional evidence was submitted into the record.[2] This included diagnostic testing and interpretive studies of appellant's cervical spine and lower extremities. Medical documentation from Dr. Harley R. Deere, a neurosurgeon, noted neck, shoulder, arm, and low back problems. In an October 28, 2013 report, he noted that appellant had a lumbar laminectomy when she was 26 years old and was able to go back to work. Dr. Deere noted results of diagnostic testing, appellant's problems throughout the years, and that diagnostic studies confirmed multilevel disc desiccation from C2-3 through C6-7 and osteoarthritis of the right hip. He noted that on October 21, 2014 appellant had been under increased emotional

[2] The employing establishment was not afforded a copy of the additional evidence.

turmoil ever since her last employment and was forced to sit in a very uncomfortable position in a chair. Appellant felt that she had poor ergonomics as far as the arrangements on her desk were concerned and she developed increased low back pain. It was her opinion that she was unable to work because of the back and leg pain.

In a December 9, 2014 report, Dr. Jacob Tauber, a Board-certified orthopedic surgeon, diagnosed severe degenerative disc disease, cervical, and lumbar spine with cervical stenosis and sciatica, and degenerative arthritis, right hip. He opined that appellant suffered a permanent aggravation of her degenerative spinal conditions as a result of a nonergonomic workstation and keyboarding activity.

By decision dated April 23, 2014, an OWCP hearing representative affirmed the June 20, 2014 decision. The hearing representative noted that the current claim alleged that appellant was experiencing stress, neck, and back pain as a result of harassment in her work environment. The decision notes that she never mentioned in her statements allegations regarding her workstation or keyboarding activity. Appellant was advised that if she wished to pursue a claim for her orthopedic conditions, as her counsel indicated, she must file a new claim.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative, and substantial evidence that the condition, for which she claims compensation, was caused or adversely affected by factors of her federal employment. To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.[3] The medical opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[4]

It is well established that, in an emotional condition claim, a claimant must first establish a compensable work factor before the medical evidence is considered.[5] A claimant has the burden of establishing by the weight of the reliable, probative, and substantial evidence that the condition, for which she claims compensation, was caused or adversely affected by employment factors.[6] This burden includes the submission of a detailed description of the employment

[3] *See K.M.*, Docket No. 15-1600 (issued November 6, 2015); *Wanda G. Bailey*, 45 ECAB 835, 837 (1994); *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

[4] *Roy L. Humphrey*, 57 ECAB 734 (2006); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

[5] *Richard Yadron*, 57 ECAB 207 (2005).

[6] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

factors or conditions, which the employee believes caused or adversely affected the condition or conditions, for which compensation is claimed.[7]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.[8] Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.[9]

An employee's emotional reaction to administrative or personnel matters generally falls outside the scope of FECA.[10] Although related to the employment, administrative, and personnel matters are functions of the employing establishment rather than the regular or specially assigned duties of the employee.[11] However, to the extent the 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.[12]

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his or her regular duties, these could constitute employment factors.[13] 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 of harassment or discrimination are not compensable under FECA.[14]

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.[15]

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[7] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[8] *Pamela D. Casey,* 57 ECAB 260, 263 (2005).

[9] *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[10] *Andrew J. Sheppard*, 53 ECAB 170, 171 (2001); *Matilda R. Wyatt*, 52 ECAB 421, 423 (2001).

[11] *David C. Lindsey, Jr.,* 56 ECAB 263, 268 (2005).

[12] *Id.*

[13] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[14] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[15] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

ANALYSIS

The Board notes that appellant's allegations do not pertain to her regular or specially assigned duties under *Cutler*.[16] This claim pertains to her allegation that she experienced stress and neck, and back pain as a result of her manger's management style, harassment, and retaliation.[17]

Appellant filed an emotional condition claim, which OWCP denied as the evidence did not establish a compensable factor of employment. Therefore, the Board must review whether the alleged incidents are covered employment factors under FECA.[18]

Appellant made a series of specific allegations regarding administrative and personnel actions with regard to leave matters,[19] administrative discipline and assignment and monitoring of work[20] by her manager. In *Thomas D. McEuen*,[21] the Board held that an employee's emotional reaction to administrative or personnel matters by the employing establishment is generally not covered under FECA as such matters pertain to procedures and requirements of employing establishment and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under FECA would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[22]

Appellant alleged several matters pertaining to leave. She alleged that her manager disapproved 152 hours of sick leave for the period late January to February 2014; she had requested leave for December 25, 27, and 31, 2013, but was not allowed to take leave on December 27, 2013 and January 2, 2014, although her request was approved by another manager; her request to leave work to see her mother's social worker was denied. Appellant's manager responded to appellant's allegations and provided verified reasons for the denial of leave. Sick leave for the period late January to February 2014 was denied because appellant's FMLA case was denied in December 2013 because acceptable medical documentation was not provided. Appellant had been informed both of the status of her FMLA case and that her

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[16] 28 ECAB 125 (1976).

[17] On appeal, appellant noted that she would pursue a separate claim for her physical injuries sustained from the performance of her duties.

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

[19] *J.C.*, 58 ECAB 594 (2007).

[20] *Donney T. Drennon-Gala*, 56 ECAB 469, 475 (2005); *Beverly R. Jones*, 55 ECAB 411, 416 (2004); *Charles D. Edwards,* 55 ECAB 258, 270 (2004).

[21] 41 ECAB 387 (1990); *reaff'd on recon*., 42 ECAB 556 (1991).

[22] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

medical documentation did not meet the requirements of FMLA. Furthermore, the medical documentation received on February 18, 2014 did not cover the period January 21 to February 14, 2014. Appellant was not allowed to take off December 27, 2013 and January 2, 2014 because L.B explained that she never received the December 26, 2013 e-mail requesting leave. L.B. further indicated that appellant had requested to be off December 12 and 13, 2013, in exchange for the original requested dates of December 26, 27, and 31, 2013 as other managers had already taken the original days requested by appellant. Appellant's request to leave work to see her mother's social worker was denied as L.B. was notified at the last minute of appellant's need to leave work, but she was needed at a meeting.

The Board finds that there is no credible evidence of error or abuse by the employing establishment in the handling of these administrative matters relating to leave requests. Mere disagreement or dislike of a supervisory or managerial action will not be compensable absent evidence of error or abuse.[23] The Board finds that appellant has not established any error or abuse related to these administrative matters.

Appellant alleged that she was issued a letter of concern on January 7, 2014 due to two annual leave absences from work on December 27, 2013 and January 2, 2014, which her prior manager, Ms. Coronado, had approved. L.B. stated a letter of concern was not issued on January 7, 2014. Rather, appellant was given an attendance review because of her unauthorized absences on December 27, 2013 and January 2, 2014. L.B. explained that before appellant went on vacation, she told appellant that she was needed at work on those dates because they were short on managers during the holidays. However, while L.B. was on vacation, appellant had informed Ms. Coronado that the leave for those dates was authorized. There is no evidence of error or abuse by the employing establishment in either performing an attendance review for unauthorized annual leave on December 27, 2013 and January 2, 2014 or the denial of annual leave on those dates as they were short on managers during the holidays. Thus, appellant has not established a compensable employment factor relating to these allegations.

Appellant alleged that the May 3, 2013 e-mail by her manager regarding a congressional letter was inflammatory as the manager was informed by another manager, Ms. Ramela, that appellant was not to be disturbed because of her sick father. The manager acknowledged sending the May 3, 2013 e-mail. However, she denied being informed not to disturb appellant. There is no evidence of abuse. Appellant did not provide any evidence to substantiate her allegation that Ms. Ramela told her manager that appellant did not want to be disturbed.

Appellant alleged that several instances where she perceived her manager did not want her to return to her old position after her temporary assignment was over. She stated that her manager sent her two job postings on November 12, 2013 when she was on temporary assignment; her manager asked the HR manager if she wanted her for another week in her unit after the LD&D manager had returned; and sent an e-mail to another manager, Mr. Rios, asking whether he had a temporary assignment for her; appellant's manager responded that she was required to oversee appellant's work development through the ELD program and the job recommendations were part of appellant's work development. Appellant explained that, even

[23] *A.K.*, Docket No. 14-437 (issued June 9, 2014).

though the LD&D manager had returned, she was still needed because a new personnel were hired during that manager's absence and appellant needed to brief that manager on what transpired during his absence. She further stated that since appellant had expressed an interest in wanting to be a manager and postmaster at the employing establishment, gaining field experience through temporary assignments was the best way to make her more eligible for such positions, and this was why other managers were notified that appellant was interested in temporary assignments.

The Board finds that there is no evidence that appellant's manager acted abusively in either sending appellant job postings or notifying other managers that she was interested in temporary work assignments. There is also no evidence of managerial abuse in recommending to another manager that she work another week in her temporary assignment after that unit's manager had returned. Mere perceptions of harassment or abuse, absent any factual substantiation, is not in the performance of duty.[24] Thus, appellant's reactions are not compensable work factors.

Appellant considered several e-mails from her manager threatening. This included a December 21, 2013 e-mail, which stated that she was not to delegate certain duties even though she was manager of C&IC; and a December 31, 2013 e-mail indicating that things were changing. The manager explained that the December 21, 2013 e-mail was sent to appellant while she was on temporary assignment. Since appellant was on detail to another department, it was obvious that she would not be delegating duties as a manager of C&IC. The December 31, 2013 e-mail pertained to organizational changes on processes within the department and was not sent to target appellant. There is no evidence of error or managerial abuse. Mere perceptions of harassment or abuse, absent any factual substantiation, is not in the performance of duty.[25] Furthermore, the fear of losing one's job or job security in not sufficient to constitute personal injury in the performance of duty.[26] Thus, appellant has not established compensable employment factors.

Following appellant's return from her temporary assignment, she alleged that her manager did not allow her to do Spanish public speaking on television on December 16, 2013, but rather had a clerk perform the task and that she had to drive the clerk to the public speaking engagement. She also alleged that her manager did not report to her staff that she had returned to her original position once her temporary assignment was over which led to her old staff reporting to the clerk who covered her position while she was away. L.B. explained that the employing establishment did not have an assigned Spanish public speaker; that the clerk in question was specifically requested by the television company while appellant was on temporary assignment, and since she was eligible to use an employing establishment vehicle, she was asked to drive the clerk to the speaking engagement. She also explained that appellant did not immediately resume her duties once she returned to her permanent position.

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[24] *Supra* note 14.

[25] *Id*.

[26] *Purvis Nettles*, 44 ECAB 623 (1993); *Lorraine E. Schroder*, 44 ECAB 323 (1992).

The Board again finds that these allegations do not establish any abuse by management. Thus, appellant's reactions are not compensable work factors.

OWCP found that the record did not substantiate that the following alleged incidents occurred: during an attendance review on January 7, 2014, the manger made the remark for appellant to "Go to yours Hispanics;" that her bereavement leave was not approved; that a June 4, 2014 e-mail from the manager stated: "I am not comfortable with [appellant's] failure to follow instructions;" that during a July 2013 meeting, the manager stood up and yelled at appellant while making hand motions; that the manger bullied appellant on several occasions from July to August 2013 by asking if she had performance issues again; that the manger never submitted appellant's FMLA request of August 26, 2013; that the manager coded certain dates as unscheduled leave; that the manager stormed into appellant's office on September 11, 2013; that the manager asked her to go on a temporary assignment as a safety manager; and that appellant received instructions from an employee she supervised.

L.B. specifically denied these allegations. The manager also provided detailed background information to explain the context of appellant's allegations. Appellant has not provided any eyewitness statements or probative evidence to substantiate her allegations. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting her allegations with probative and reliable evidence.[27] The Board finds that the factual evidence fails to support appellant's allegations of harassment in the above matters. The Board thus finds that appellant has not established a factual basis for her allegation that she was harassed. Therefore, appellant has failed to establish a compensable factor of employment.

As appellant has not established a compensable factor of employment it is unnecessary to address the medical evidence of record.[28]

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

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

[27] *See G.S.*, Docket No. 09-764 (issued December 18, 2009); *Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans,* 41 ECAB 416 (1990).

[28] *See Margaret S. Kryscki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the April 23, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 2, 2016
Washington, DC

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

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

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