



## ISSUE

The issue is whether appellant met her burden of proof to establish an emotional condition causally related to factors of her federal employment.

On appeal counsel alleges that appellant has submitted sufficient factual and medical evidence to substantiate her emotional condition claim.

## FACTUAL HISTORY

On September 9, 2010 appellant, then a 75-year-old registered nurse, filed a recurrence claim (Form CA-2a) alleging that she sustained an emotional condition in the performance of duty on April 2, 2010.<sup>3</sup> With her claim she attached a timeline of her emotional condition, beginning in 1985. Appellant alleged that the employing establishment had retaliated against her following the disposition of an accepted traumatic injury claim by issuing an “improper proficiency report.” She alleged that she had been “blackballed” by a supervisor after the disposition of her traumatic injury claim and that this supervisor had favored a family member in promotion.

Appellant noted allegations of harassment. She explained that after requesting to be reassigned to a psychiatry department in 1997, she had been assigned to a nursing home, that the employing establishment was corrupt, and that various supervisors had harassed her. Appellant stated that she had filed a grievance on January 6, 1999 regarding a proficiency report. She noted that on February 14, 2008 she had received a letter from a finance officer regarding a delinquent debt. Appellant stated that she had been harassed, assigned to a different shift, given bogus letters of reprimand, her car vandalized, her locker trashed with empty liquor bottles, and intimidated by supervisors upon reporting these events. She noted that she had been working at the employing establishment for 32 years and suffered physical afflictions as a result of a stressful work environment. Appellant quoted Thomas Jefferson and Honoré de Balzac. She attached various documents regarding misconduct and abdication of responsibilities at her place of employment, and stated that she had been retaliated against as a whistleblower.

By letter dated October 12, 2010, appellant stated that five levels of management had bullied, harassed, and retaliated against her. She alleged that it was standard practice of the employing establishment to attack decent, honest, and hard-working employees.

By letter dated December 2, 2010, OWCP notified appellant that, due to the circumstances of her claim, it was not a recurrence, and would be adjudicated as a new occupational disease claim.

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<sup>3</sup> Appellant had previously filed a traumatic injury claim (Form CA-1) on October 26, 1984 alleging emotional stress occurring on October 1, 1984. OWCP file number xxxxxx715. A memorandum from the Director of the employing establishment dated December 13, 1984 related that no improper actions had been taken by the employing establishment following appellant’s report of alleged patient abuse. However appellant’s reassignment back to ward 55-C was not reprisal, but was inappropriate, because patients and staff on that ward knew of appellant’s allegation. This claim was accepted on April 26, 1989 for “temporary adjustment disorder” and disability benefits were authorized for the period October 1, 1984 to March 24, 1985.

On January 18, 2011 OWCP advised appellant that she needed to submit additional evidence in order to establish her claim. It noted that she had not submitted any evidence to establish that the employing establishment had taken improper actions against her other than her own statements. OWCP further requested that appellant submit a narrative medical report from a psychiatrist or clinical psychologist in support of her claim. Appellant was afforded 30 days to submit this evidence.

By letter dated February 14, 2011, appellant responded to OWCP, contending that her claim was a recurrence of her previously accepted claim dated April 26, 1989. She stated, "A stress claim had been filed in the original claim -- manifesting itself into many frank physical disorders and it took many years to again cause my physical condition to deteriorate to the point of being unable to continue working and realizing history had repeated itself without any new factors." Appellant noted that her work-related condition had been continuous over her career.

With her letter, appellant attached voluminous correspondence dealing with personnel matters, allegations of patient abuse, grievances, and correspondence with her Congressman. In a letter dated June 18, 1985, the Office of Special Counsel (OSC) had informed appellant that it found no evidence of a retaliatory motive in promotion denial, performance evaluation, or denial of workers' compensation benefits. In a letter dated March 10, 1986, the OSC informed appellant that it was unable to conclude that the employing establishment had engaged in retaliation, and that the case had been closed.

By decision dated February 22, 2011, OWCP denied appellant's claim for compensation. It noted that her claim had been adjudicated as a new claim because new employment-related incidents had been claimed. OWCP found that she had not submitted any medical evidence containing a diagnosis related to her claim. It further noted an accepted event that was not a factor of employment: a letter dated August 12, 2010 that was sent regarding an investigation of intimidation and retaliation. OWCP noted that the fact that a letter was sent regarding an investigation did not establish any wrongdoing on the part of the employing establishment. It noted that allegations alone were not sufficient to establish a factual basis for an emotional condition claim.

On March 18, 2011 appellant requested an oral hearing before an OWCP hearing representative.

Appellant again submitted voluminous records of correspondence, received by OWCP on June 28, 2011. By letter dated June 5, 2002, the employing establishment noted that she was involved in a verbal altercation with another staff member, and had been reassigned to a tour of duty during the day shift. In a letter dated June 19, 2002, the employing establishment responded to a letter from appellant alleging improper and unethical conduct with regard to a change in her tour of duty, stating that she needed to file a grievance.

On July 1, 2011 OWCP received an entire copy of the book "Aftermath: A War of Memories" by Dr. Ronald M. Chase.

In a report dated July 23, 2010, Dr. Ronald M. Chase diagnosed appellant with anxiety disorder that may have taken on the proportions of post-traumatic stress disorder.<sup>4</sup> He wrote:

“[Appellant’s] chronic mental condition should have been obvious to the staff at [the employing establishment] since 1985. Her chronic anxiety symptoms, and later her attendance record of physical illnesses, should have been recognized by the risk management team and supervisor staff to offer Employee Assistance Program consultation or psychiatric treatment. [Appellant’s] obsession with righting the perceived wrongs of the system was met with antagonism rather than seen as a plea for help. Her paranoid suspiciousness rose to a level of belief that the hospital administration deliberately chose to torment her by refusing to accommodate her and provide a safe working environment. It is my opinion based on a review of my initial evaluation of the claimant on January 3, 1985; Review of the Decision of the Hearing Representative, October 7, 1986; conversation with claimant on July 21, 2010 that there is a definite causal relationship of work[-]related emotional stressors (Axis IV of the DSM-IV: harassment, retaliation by government for whistle blowing) and the development of a diagnosable condition of Anxiety Disorder which has been continuously present since 1984.”

The hearing was held on June 27, 2011. Appellant contended that her claim had been improperly classified as a new occupational disease rather than a recurrence. She alleged that the lack of the medical evidence in her case file was due to “some sort of something that is not exactly above board.” The hearing representative told appellant that the hearing was not to determine the employing establishment’s corruption, but as to whether she had established a claim for a stress condition. She noted that appellant kept interrupting her and asked her to stop. The hearing representative asked appellant whether any of her charges against the employing establishment had been adjudicated in her favor. Appellant stated that there were several current investigations. The hearing representative stated that just because she had spoken with the Office of the Inspector General, that did not mean that her claims had been adjudicated in her favor. Appellant noted that she had submitted the book to the record because it dealt with the employing establishment and that some of the events depicted in the book were relevant to her case, and that it had been written by her physician. She stated that she wanted to tell her whole story before she retired.

The employing establishment sent a response to the transcript of the hearing on July 19, 2011. It noted that she had not provided any factual evidence identifying employment factors or incidents alleged to have caused an emotional condition. The employing establishment noted that she had not provided rationalized medical evidence connecting her emotional condition to an employment factor, and stated that her physician, Dr. Chase, was biased against the employing establishment because he had been terminated by the employing establishment.

By decision dated August 17, 2011, the hearing representative remanded the case for a *de novo* decision, because OWCP had not made sufficient findings of fact and had not addressed

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<sup>4</sup> Dr. Chase’s certification in a medical specialty could not be confirmed with the American Board of Medical Specialties or the American Osteopathic Association.

each of the factors alleged to have contributed to appellant's emotional condition. The hearing representative noted that OWCP correctly adjudicated appellant's claim as a new claim for occupational disease.

By letter dated October 13, 2011, the employing establishment stated that every allegation or concern brought forward by appellant had been investigated and found to be without merit. It noted that she had not presented any specific or reliable evidence supporting harassment or improper treatment. The employing establishment stated that appellant was not known as a whistleblower and that she had not been "blackballed" from working in psychiatry. It noted that there was no report that her locker had been trashed or vandalized. The employing establishment stated that appellant's psychological condition was a personal, self-generated emotional reaction to administrative issues and, therefore, did not occur in the performance of duty.

By letter dated October 13, 2011, a supervisor at the employing establishment noted that appellant had reported numerous concerns related to patient care, that they had all been reviewed externally and internally, and that they all had been found to be without merit. The supervisor noted that appellant did not have claim status as a whistleblower. He further stated that he was unaware of any "blackballing" of appellant in 1991. The supervisor noted that, with regard to the "bogus" delinquent debt letter, the employing establishment was "unaware of the validity of the negative adjectives allocated to this correspondence." He stated that appellant had not been harassed or reassigned based on any practice of uncovering issues with patient care, and that all of her concerns about patient care had been fully reviewed. The supervisor noted that the employing establishment was also unaware of any "bogus" letters of reprimand, and that there had been no reporting of an incident of vandalizing of her locker.

In an e-mail dated October 14, 2011, a supervisor in the employing establishment stated that he had no knowledge of a bogus delinquent debt assessed to appellant.

By decision dated December 15, 2011, OWCP denied appellant's claim for compensation. It noted that, while Dr. Chase had diagnosed appellant with anxiety disorder and opined that it was work related, he had not described any specific work factors related to appellant's anxiety condition.

OWCP further stated that there was one accepted event that was a factor of employment: appellant's reassignment to a building in which she previously worked on October 1, 1984 was inappropriate because her identity as the reporter of alleged abuse could have been revealed due to the fact that she knew many patients and staff in that building. It noted, however, that this accepted injury resolved no later than 1986, and her current claim was related to new employment incidents occurring subsequent to 1986.

OWCP found that the following events were not compensable factors of employment: (a) the employing establishment's handling of her claim for a traumatic injury she suffered in July 1979; (b) unsubstantiated perception of harassment by coworkers and supervisors when she resisted any form of patient abuse; (c) unsubstantiated perception of being placed in physical jeopardy on February 22, 1984; (d) unsubstantiated perception of harassment by a supervisor on February 22, 1984 when the supervisor refused to supply additional support personnel to cope

with a combative patient; (e) unsubstantiated perception of harassment by a supervisor in March 1984 who accused appellant of trying to cover up the events of February 22, 1984 by not reporting it to a supervisor; (f) unsubstantiated perception of harassment, discrimination, and demoralizing by a supervisor who on March 16, 1984 replaced her with another nurse who had originally refused assignment to the unit and accused appellant of being a blackmailer; (g) unsubstantiated perception of being ignored, debased, and intimidated by a supervisor who on April 2, 1984 ignored appellant's request for clarification of policy and standards regarding refusal of emergency-duty assignments; (h) unsubstantiated perception of being placed in physical jeopardy on July 8, 1984; (i) unsubstantiated perception of being ignored and discriminated against by a supervisor on July 8, 1984 by replacement of a specially-trained male nurse with a female nursing assistant although there was a patient in a threatening mood; (j) unsubstantiated perception of being harassed and ignored by a supervisor who on July 9, 1984 refused to make a personal assessment of a potentially dangerous staffing shortage; (k) unsubstantiated perception of harassment by a nursing service supervisor who on August 8, 1984 requested a clarification to a memorandum; (l) unsubstantiated perception of being ignored, debased, and intimidated by a supervisor on August 8, 1984 when she issued a memorandum regarding a clarification of policy and standards; (m) unsubstantiated perception of harassment and intimidation by a supervisor who on August 9, 1984 prepared a memorandum of misinformation clarification; (n) unsubstantiated perception of a hostile attitude by a coworker on August 29, 1984; (o) unsubstantiated perception of being harassed, degraded, and threatened by a supervisor who on August 29, 1984 questioned the events of that date even though a report had been provided; (p) unsubstantiated perception of being harassed, degraded, and threatened by a supervisor who declined to meet with her and a union representative on September 5, 1984; (q) unsubstantiated perception of a passive and condescending reception by a supervisor on September 6, 1984; (r) unsubstantiated perception of being ignored by a supervisor from September 10 through 30, 1984; (s) unsubstantiated perception of being reassigned to an unsafe place of work on October 1, 1984; (t) unsubstantiated perception of being abused, intimidated, harassed, threatened, belittled, oppressed, and humiliated by a supervisor on October 1, 1984 who announced to others that she should not be in a particular location because she had been reassigned; (u) unsubstantiated perception of being placed in physical jeopardy by a supervisor on October 2, 1984 because she was discouraged from associating with a patient who wished to speak with her; (v) unsubstantiated perception of working under known hostile conditions on October 2, 1984; (w) unsubstantiated perception of the employing agency's mishandling of her October 1, 1984 traumatic injury claim under file number xxxxxx715; (x) unsubstantiated perception of deliberate delay in informing her of the denial of additional leave without pay in 1985; (y) unsubstantiated perception of management at the employing establishment bullying and retaliating against her when the employing establishment denied leave without pay status by letter dated March 19, 1985, with a withdrawal of a grievance for unjustified absent without leave status on May 12, 1985; (z) unsubstantiated perception of being harassed by a supervisor who reassigned appellant to a nursing home after appellant requested to be reassigned to psychiatry in 1997; (aa) unsubstantiated perception of being ignored by a supervisor and being intimidated by the employing establishment when appellant claimed she reported that her car had been vandalized and her locker had been trashed; (bb) unsubstantiated perception of improper conduct of reassigning appellant to the day shift on July 7, 2002; (cc) unsubstantiated perception of being harassed on April 14, 2003 when she was told that her approved vacation time had been forgotten by accident; (dd) unsubstantiated perception of being discriminated against by a

supervisor when she did not receive an annual proficiency report for 1996 and 1997; (ee) unsubstantiated perception of a proficiency report for 1996 being prepared and approved by biased and antagonistic supervisory personnel; (ff) unsubstantiated perception of the employing establishment's mishandling of her December 10, 1997 traumatic injury claim under file number xxxxxx504; (gg) unsubstantiated perception of being discriminated against when supervisors inserted an unissued and "disapproved" proficiency report in her personnel file; (hh) unsubstantiated perception of hostility and threats from a head nurse when appellant reported her for ordering medication procedures contrary to the regulations; (ii) unsubstantiated perception of other nurses taking action against appellant in a contrived and discriminatory manner; (jj) unsubstantiated perception of management placing appellant at a risk of injury when they reassigned her to a nursing home; (kk) unsubstantiated perception of management engaging in improper, unethical, and prohibited personnel practices when her performance rating was lowered in 1998; (ll) unsubstantiated perception of being scapegoated when management ignored her report dated May 14, 2002 regarding an incident on April 30, 2002; (mm) unsubstantiated perception of the nursing service trying to "blacken" her on July 8, 2002; (nn) unsubstantiated perception of being retaliated against when she received a satisfactory rating without promotion in 2003; (oo) unsubstantiated perception of the employing establishment's mishandling of her February 12, 2003 traumatic injury claim under file number xxxxxx261; and (pp) unsubstantiated perception of harassment and discrimination by a supervisor who on July 10, 1984 provided her with misinformation in order to continue to harass appellant and compromise her position. OWCP found that the following incidents were not supported by the evidence of record and thus found that they did not occur: (a) the employing establishment's "blackballing" of appellant from ever working in psychiatry again after her traumatic injury claim of October 1, 1984 was approved; (b) appellant's receiving bogus letters of reprimand, which were then withdrawn; and (c) appellant's receiving of a bogus and illegal finance offer from the employing establishment. OWCP found that appellant's claim should be rejected on the medical component of "fact of injury" because the medical evidence did not support a condition in connection with the specified accepted factor of employment.

On December 16, 2012 appellant requested reconsideration of OWCP's December 15, 2011 decision.

On January 14, 2013 OWCP denied appellant's request for reconsideration, noting that it was untimely filed and that she failed to demonstrate clear evidence of error.

Appellant again requested reconsideration on November 20, 2012.

By decision dated July 1, 2013, OWCP denied appellant's request for reconsideration, noting that it was untimely filed and failed to demonstrate clear evidence of error.

By letter dated August 15, 2013, appellant, through counsel, appealed OWCP's July 1, 2013 decision to the Board.

On February 7, 2014 the Board remanded the case to OWCP, finding that appellant had demonstrated that her request for reconsideration that was found untimely by OWCP on January 14, 2013 had actually been timely submitted. The Board noted that the one-year time

period expired on a weekend and appellant had until the following business day to file the request for reconsideration. The Board set aside the decisions of January 14 and July 1, 2013.<sup>5</sup>

Appellant submitted a disciplinary Board decision dated May 19, 2014, in which all charges against her for violating a policy regarding administration of IV fluid were sustained, but the level of penalty was reduced. She also submitted a statement alleging additional factors of employment alleged to have caused her emotional condition. These allegations included an unusual level of job tension, employing establishment refusal to pay continuation of pay, an employing establishment challenge to file number xxxxxx319, and denial of pay after Hurricane Sandy.

On May 19, 2014 OWCP evaluated the merits of appellant's case and affirmed its prior decisions denying her claim for an emotional condition. It found that appellant's new allegations were unsubstantiated. With regard to the employing establishment's challenge of file number xxxxxx319, OWCP noted that the claim had formally been denied on August 22, 2011, and that appellant had not exercised her appeal rights on that decision.

By letter dated July 23, 2014, appellant, through counsel, again requested reconsideration. With her request for reconsideration, appellant attached a report from Dr. Chase dated July 7, 2013. In this report, Dr. Chase noted that he had known appellant as a colleague since 1983. He diagnosed appellant with an anxiety disorder and stated, "It is my opinion that from the outset in 1985 [appellant] suffered from an anxiety disorder that was directly related to her employment at [the employing establishment.]"

On August 25, 2014 Dr. Chase reviewed appellant's history of allegations and stated that "[The events alleged by appellant] were major life stressors for [appellant]. They contributed to the formulation of the diagnosis -- [a]nxiety [d]isorder -- a recurring condition, a continuum, satisfying the DSM Axis I and Axis IV diagnostic requirements of the previously submitted reports by Dr. Chase."

By decision dated November 10, 2015, OWCP found that appellant had established a medical diagnosis related to her employment-related allegations, that of generalized anxiety. However, it denied her claim on the basis that she had not established compensable factors of employment, affirming its prior finding that appellant's allegations were unsubstantiated or administrative matters, and therefore outside the performance of duty. OWCP noted that these allegations did not occur within the performance of duty related to her occupational illness claim of April 2, 2010.

### **LEGAL PRECEDENT**

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

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<sup>5</sup> Docket No. 13-1601 (issued February 7, 2014).

by the employment, the disability comes within the coverage of FECA.<sup>6</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>7</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>8</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>9</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>10</sup>

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from the employee's performance of his or her regular duties, these could constitute employment factors.<sup>11</sup> 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.<sup>12</sup>

An employee 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 employment factors.<sup>13</sup> This burden includes the submission of a detailed description of the employment factors or conditions which he or she believes caused or adversely affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.<sup>14</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

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<sup>6</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>7</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>8</sup> *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>9</sup> *William H. Fortner*, 49 ECAB 324 (1998).

<sup>10</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>11</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

<sup>12</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>13</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>14</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

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>15</sup> If an employee 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, it must base its decision on an analysis of the medical evidence.<sup>16</sup>

### ANALYSIS

On September 9, 2010 appellant, then a 75-year-old registered nurse, filed a recurrence claim alleging that she sustained an emotional condition in the performance of duty on April 2, 2010. By letter dated December 2, 2010, OWCP notified appellant that due to the circumstances of her claim, it was not a recurrence, and would be adjudicated as a new occupational disease claim. By decision dated August 17, 2011, the hearing representative noted that OWCP correctly adjudicated appellant's claim as a new claim for occupational disease.

As an initial matter, the Board finds that appellant's claim for compensation was correctly adjudicated as a new claim for occupational disease. A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.<sup>17</sup> OWCP regulations define a recurrence of medical condition as the documented need for further medical treatment after release from treatment of the accepted condition when there is no work stoppage. Continued treatment for the original condition is not considered a renewed need for medical care, nor is examination without treatment.<sup>18</sup>

In her initial claim, appellant attached a timeline of series of events, which included several alleged incidents that occurred after 1985, including (but not limited to) incidents in 1997, 1999, 2002, 2003, and 2008. On April 26, 1989 a claims examiner noted that appellant's workers' compensation claim had been approved for a traumatic injury of "temporary adjustment disorder," and that all causally-related conditions had ceased as of March 25, 1985. As such, her claim was not for a spontaneous change in her condition without an intervening alleged injury, but included allegations of new factors causing an emotional condition after 1985. Therefore, OWCP properly adjudicated her claim as a new claim for occupational disease.

In its November 10, 2015 decision, OWCP denied appellant's claim because she had not established any new compensable employment factors. The Board must, then, review whether

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<sup>15</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

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

<sup>17</sup> 20 C.F.R. § 10.5(x); see *S.F.*, 59 ECAB 525, 531 (2008). See 20 C.F.R. § 10.5(y) (defines recurrence of a medical condition as a documented need for medical treatment after release from treatment for the accepted condition).

<sup>18</sup> *Id.* at § 10.5(y).

these alleged incidents and conditions of employment are covered factors under the terms of FECA.

Appellant's allegations do not pertain to her regular or specially assigned duties under *Cutler*.<sup>19</sup> Rather, she alleged error, abuse, and retaliation in administrative matters and harassment and discrimination on the part of her supervisors. The Board has found that 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. 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>20</sup>

In its December 15, 2011 decision, OWCP found that 42 separate allegations of error, abuse, and retaliation in administrative matters and/or harassment and discrimination on the part of her supervisors were not compensable factors of employment, because the events had not been substantiated. The Board notes that for each of these allegations, the only evidence in the case record was appellant's own statements. She did not provide documentation that many of her charges against the employing establishment had been adjudicated in her favor. Investigations of wrongdoing, stemming from these allegations, do not prove that the allegations actually occurred. The book by Dr. Chase, dealing generally with problems at the employing establishment, also does not prove appellant's specific allegations.

In fact, evidence provided by appellant indicates that several of these investigations were adjudicated against her allegations: in a letter dated June 18, 1985, the OSC had informed appellant that it found no evidence of a retaliatory motive in promotion denial, performance evaluation, or denial of workers' compensation benefits. In a letter dated March 10, 1986, the OSC informed appellant that it was unable to conclude that the employing establishment had engaged in retaliation, and that the case had been closed.

Various supervisors and the employing establishment disputed several of appellant's allegations. By letter dated October 13, 2011, the employing establishment stated that every allegation or concern brought forward by appellant had been investigated and found to be without merit. It noted that she had not presented any specific or reliable evidence supporting harassment or improper treatment. The employing establishment stated that appellant was not known as a whistleblower and that she had not been "blackballed" from working in psychiatry. It noted that there was no report that her locker had been trashed or vandalized. The employing establishment stated that appellant's psychological condition was a personal, self-generated emotional reaction to administrative issues and, therefore, not in the performance of duty. By letter dated October 13, 2011, a supervisor at the employing establishment noted that appellant had reported numerous concerns related to patient care, that they had all been reviewed externally and internally, and that they all had been found to be without merit. The supervisor noted that appellant did not have claim status as a whistleblower. He further stated that he was unaware of any "blackballing" of appellant in 1991. The supervisor noted that, with regard to

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<sup>19</sup> See *supra* note 2.

<sup>20</sup> See *supra* notes 4 through 6.

the “bogus” delinquent debt letter, the employing establishment was “unaware of the validity of the negative adjectives allocated to this correspondence.” He stated that appellant had not been harassed or reassigned based on any practice of uncovering issues with patient care, and that all of her concerns about patient care had been fully reviewed. The supervisor noted that the employing establishment was also unaware of any “bogus” letters of reprimand, and that there had been no reporting of an incident of vandalizing of her locker. In an e-mail dated October 14, 2011, a supervisor in the employing establishment stated that he had no knowledge of a bogus delinquent debt assessed to appellant.

The Board finds that appellant failed to submit any evidence of error or abuse with respect to each of her 42 allegations because they were unsubstantiated. Appellant’s remaining allegations, including those found to have not occurred by OWCP, and the allegations evaluated by OWCP in its May 19, 2014 decision, were also unsubstantiated by supporting evidence. She did not submit evidence, such as a final complaint or grievance, which showed that the employing establishment had committed wrongdoing with respect to any of these matters. Thus, appellant has not established a compensable employment factor under FECA with respect to her claims that supervisors committed error or abuse with respect to administrative matters, nor has she established a compensable employment factor under FECA with respect to the claimed harassment and discrimination.

For the foregoing reasons, appellant has not established any compensable employment factors under FECA and, therefore, has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.<sup>21</sup>

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 did not meet her burden of proof to establish an emotional condition causally related to factors of her federal employment.

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<sup>21</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 10, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 25, 2016  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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