

ISSUE

The issue is whether OWCP met its burden of proof to rescind its acceptance of appellant's claim for post-traumatic stress disorder (PTSD) and major depressive disorder.

FACTUAL HISTORY

On February 18, 2014 appellant, then a 42-year-old administrative assistant, filed an occupational disease claim (Form CA-2) alleging that she suffered from aggravation of major depressive disorder, PTSD, severe anxiety, social isolation, nightmares, anxiety attacks, chronic obstructive pulmonary disease (COPD), and asthma due to sexual harassment, increased workload, being berated for her job performance, lack of training, changed duties, and unfair performance appraisal. She first became aware of her condition on July 6, 2009 and realized that it resulted from her federal employment on April 1, 2013. Appellant stopped work on February 3, 2014. On the reverse side of the claim form, the employing establishment indicated that she stopped work before February 3, 2014.

Appellant provided a detailed narrative statement dated February 18, 2014 regarding her history of PTSD and major depressive disorder and asserted that her federal employment aggravated these conditions. She alleged that she experienced severe stress and anxiety when she was assigned to work under supervisor, A.A., because she was not properly trained and was only instructed to "watch and learn." Appellant noted that, despite not having clear standards or proper guidance, she was critiqued for her job performance and constantly reminded to get her duties done. She reported that her workload increased significantly and she performed five times the amount of audits as another assistant. Appellant also asserted that she worked in a hostile environment because she was yelled at and spoken to inappropriately. She related that her conditions became so severe that she was admitted to the hospital for a severe asthma attack and was admitted to an inpatient psychiatric hospital. Appellant noted that she participated in a partial hospitalization program from September 25 to December 20, 2013.

Appellant described several interactions with A.A., her supervisor, which she alleged established a hostile work environment. She related that, on September 24, 2012, she returned to work after extended sick leave due to surgery and that A.A. was her new supervisor after the realignment of Business Management Leaders Program (BMLP) employees. Appellant informed A.A. that she needed to close out approximately 97 BMLP audits. She noted that A.A. told her that she needed to finish that work quickly and to learn how the National Employee Development Center (NEDC) worked. He then informed appellant that she would be working with C.E., another administrative assistant, who was his "go to" person. Appellant related that, same day, she was informed that A.A. was going to move her from her old BMLP cubicle to the front office with C.E. for "diversity" reasons. She noted that she worked late because she had over 200 files, as well as drawers and cabinets, to pack up. Appellant explained that, the next day, she inquired about a specific process because it was different from what she did at BMLP and A.A. yelled at her. She related that, on October 11, 2012, A.A. asked her to rewrite her accomplishments in her performance appraisal three times because she put too much in it. Appellant alleged that A.A. informed her that if she did not narrow down her accomplishments he would simply give her a "Fully Successful" rating. A.A. further told her that because she was black and worked public service then she would never be treated fairly because "that's just the

way it is.” She further stated that A.A. wanted her to sign off on her performance appraisal even though he never sat down with her to review it.

Other interactions with A.A. included when A.A. told her to put some lipstick on. Appellant also described an incident when A.A. spoke loudly at her in front of the other staff because she worked extra time. She related that on February 2, 2013 she informed A.A. that her chest was hurting. A.A. told appellant: “You are like a 2013 top of the line BMW on the outside, but on the inside you are out of gas.” Appellant noted that she did not appreciate A.A.’s statements and controlling attitude.

In addition to interactions with A.A., appellant alleged that working with C.E. created a hostile work environment. She related that she asked C.E. to show her what she needed to learn and was told to simply watch and learn. Appellant stated that on October 25, 2012 she met with A.A. and C.E. about duty assignments and C.E. refused to have the timesheets moved under appellant as primary timekeeper. Instead, C.E. wanted appellant to merely use her username for timekeeping purposes, even though that was against regulations. Appellant further described that on November 9, 2012 she overheard A.A. tell C.E. to keep appellant busy while he was gone and C.E. responded “Not a problem.” She indicated that she found this comment frustrating since A.A. still had not established work assignments for her. Appellant further alleged that she did a lot of C.E.’s work because all that C.E. did was converse with staff and spend a lot of time in the back office. She noted that another coworker, S.S., often came to the front desk to gossip with C.E. Appellant related that he would often bang his hands loudly on appellant’s desk and ask her how she liked working with C.E. When she asked S.S. several times to stop hitting her desk, C.E. would just smile and laugh. Appellant expressed that she found this behavior aggravating. She noted that she spoke with S.G., the acting director of NEDC, about C.E.’s behavior. When A.A. returned from his trip, he informed appellant that he spoke with S.G. about appellant’s concerns with C.E. and that he would move her desk.

Appellant further described that on April 2, 2013 she was informed about an employee who was owed compensation time based on her audit. When she informed A.A., he became very upset and talked very loudly. She stated that C.E. disrupted their conversation because she thought headquarters should do audits and not themselves. After appellant left A.A.’s office she turned around to ask A.A. if she could telework the next day, but C.E. would not let her go back in A.A.’s office. She instructed appellant to send A.A. an e-mail to request to telework. Appellant sent A.A. an e-mail to request telework, but he denied it because C.E. was already teleworking that day. She alleged that a concerned supervisor would have approved telework because of the stress that she was experiencing at work. Appellant described another incident when she became aware of an audit going back to 2009. She informed A.A. that C.E. should work on this audit because appellant was already working on four audits and C.E. was the timekeeper for the employee. A.A. e-mailed appellant to put it on her to-do list. Appellant asserted that A.A. treated her as if she had never worked as an administrative assistant. She described how the stress and anxiety she was under put her in the hospital for asthma and COPD. When appellant was released from the hospital she requested telework until she was authorized by her physician to return to the office. A.A. denied her request to telework because he did not want her to do any work until she was fully able to return to the office. Appellant believed that A.A. unreasonably denied her request for accommodation since he allowed another employee to telework to take care of her mother and let C.E. telework whenever she asked.

In addition to her interactions with A.A. and C.E., appellant alleged that she experienced sexual harassment and unwanted physical touching by S.S. at work. She described that, on January 30, 2013, S.S. walked by her work area and stated “Ooh, you need to quit smiling. I swear when you smile I get chills all over” and moved his body as if he was experiencing chills. Appellant noted that later that day S.S. asked her to come into his work area because he was having trouble with EmpowHR. After she assisted him, S.S. grabbed her left hand tightly and grinned at her in a flirtatious way. When appellant snatched her hand away, S.S. told her to “calm down” because he “just wanted to hold the hand of a beautiful woman.” She stated that, on April 2, 2013, she was passing by S.S.’s work area to go to the breakroom when S.S. embraced her with his right hand and touched her upper chest with her left hand to lift her necklace. Appellant noted that, later that day, S.S. came by her work area to ask what she was doing that evening. When she told him that she was going to get some rest, he replied, “I wish I could be a bed bug in your bed” and giggled. Appellant noted that she was so upset about S.S.’s comment that her heart started to beat fast and her chest tightened. When she informed A.A. of S.S.’s behavior, he was upset at the way S.S. was acting towards her, but informed her that she could “handle it.” Appellant indicated that A.A. told her that she was a fox (as if to say he could not blame S.S. for flirting with her) and smiled at her. She explained that she sent S.S. an e-mail regarding the incident. Appellant noted that night she was so stressed and anxious about how S.S. would respond that she had trouble sleeping. She related that, the next day, he became very upset and told her that she was being overly sensitive. Appellant noted that later that afternoon S.S. sent her an e-mail which stated “from now on I will be strictly official.”

J.D., Director of the NEDC, explained in a letter dated February 27, 2014 that he began work at the employing establishment on January 12, 2014, after the timeframe of the alleged occurrences described in appellant’s workers’ compensation claim, so he could neither corroborate nor refute any of the alleged facts or occurrences alleged by her.

In a February 10, 2014 witness statement, K.B., appellant’s prior supervisor, explained that she was appellant’s supervisor from August 2010 to July 2012. She noted that appellant reported an incident with S.S., whom K.B. did not supervise. K.B. informed her supervisor, S.D., Director of NEDC, of the incident, who reported it to A.A., S.S.’s supervisor. She explained that appellant was moved to another location to put distance between appellant and S.S.

Appellant received medical treatment from Dr. Germaine Hawkins, a psychiatrist, who indicated in narrative reports dated February 17 and May 1, 2014, that she had a long history of PTSD and major depression disorder. Dr. Hawkins related that on her most recent visit she was very distractible, depressed, emotionally labile, and angry and complained of severe anxiety attacks, flashbacks about her childhood, and feeling overwhelmed from inappropriate sexual advances from both a boss and coworker. He explained that appellant’s symptoms caused work impairment since the alleged perpetrators worked at her current place of employment. Dr. Hawkins opined that she was unable to work due to high anxiety and PTSD symptoms, which were easily worsened by stress. He noted that returning to work would cause further worsening of appellant’s emotional stability. In the May 1, 2014 report, Dr. Hawkins opined: “as a direct result of the incidents describe[d] by [appellant] while in the performance of her duties she sustained [PTSD].” He submitted a work capacity evaluation form, (OWCP-5a)

which indicated that appellant was diagnosed with major depression disorder and PTSD and was unable to work.

By letter dated April 28, 2014, OWCP informed appellant that the evidence submitted was insufficient to establish her claim and advised her of the evidence needed to establish her claim. Appellant was afforded 30 days to submit the additional information and to respond to its questionnaire.

In a May 22, 2014 report, Dr. Ed Wolski, a physical medicine and rehabilitation specialist, related that appellant complained of episodes of panic attacks, nausea, and chest pain from anxiety, palpitations, fatigue and headaches, depression, sadness, anxiety, appetite loss, insomnia, and feelings of guilt and of failure. He diagnosed major depressive disorder, aggravated PTSD, and unspecified anxiety disorder. Dr. Wolski opined that appellant “sustained psychological work injury secondary verbal abuse by [appellant’s] supervisor and coworker and inappropriate sexual advances in the work environment.” He noted that she described verbal abuse by her supervisor, A.A., since August 2012 and flirtatious behavior, including inappropriate touching, and invading her personal space, by a coworker, S.S. Dr. Wolski noted that appellant notified her direct supervisor, but no direct action was taken except to relocate her to an alternate workstation. Appellant provided various psychotherapy notes dated June 3 to August 6, 2014 for follow-up treatment for anxiety and depression from Dr. Wolski and Ryan Stepinoff, a certified physician assistant.

On May 27, 2014 OWCP received appellant’s response, through counsel, to its development letter. She related that appellant’s detailed statement and the witness statement answered OWCP’s questionnaire. Counsel asserted that the totality of evidence demonstrated that appellant satisfied the five basic elements in order to accept her claim. She resubmitted appellant’s detailed narrative statement, K.B.’s witness statement, and Dr. Hawkins’ medical report.

Erin Crandall, a licensed professional counselor, reviewed appellant’s history of medical treatment regarding her mental health in a June 13, 2014 initial behavioral medicine consultation report. She related that appellant sustained a “work[-]related condition as a result of perceived mistreatment on the job combined with added work demand and pressure.” Ms. Crandall noted that appellant worked as an administrative assistant for NEDC and described in detail the various employment incidents that appellant alleged caused her anxiety and aggravated PTSD. She diagnosed anxiety disorder, severe, recurrent major depressive disorder, and PTSD. Ms. Crandall indicated that appellant had a history of mental health treatment, but her condition did not impact her ability to perform work-related duties prior to the work-related condition of July 6, 2009. She explained how PTSD, anxiety, and depression could be triggered and how it affected the brain and neurological systems. Ms. Crandall opined that appellant exhibited moderate-to-severe symptoms of anxiety and moderate-to-severe symptoms of depression related to her work environment and work-related conditions. She noted that “the perceived treatment and behavior from [appellant’s] supervisor and coworker has caused [appellant] to experience significant psychological stress which impairs her ability to perform work-related duties successfully.”

In a letter dated June 16, 2014, Laura O'Connor, a workers' compensation case manager for the employing establishment, indicated that the employing establishment was challenging the validity of appellant's occupational disease claim. She alleged that appellant had not submitted any medical evidence to support that appellant's employment caused, attributed, or aggravated her mental health.

In a July 18, 2014 report, Dr. Jack Currin, a licensed clinical psychologist, indicated that appellant demonstrated multiple behavioral, emotional, and social stressors including symptoms of anxiety, depression, PTSD, sleep disturbance, and use of ineffective coping techniques. He related that appellant had a history of inpatient and outpatient mental health treatment prior to the work-related injury. Dr. Currin provided examination findings and noted diagnoses of PTSD, major depressive disorder, and anxiety disorder. He reported: "as a result of the work-related condition on July 6, 2009, [appellant] has developed symptoms of depression, anxiety, as well as an aggravation of preexisting PTSD." Dr. Currin noted that appellant's psychological distress interfered with her ability to perform normal work-related duties. He recommended that she undergo psychological intervention and therapy, including individual psychotherapy sessions.

By letter dated November 12, 2014, OWCP informed the employing establishment that additional information was needed before it could render a decision on appellant's claim. It requested that the employing establishment provide comments from a knowledgeable supervisor on the accuracy of all statements provided by appellant. The employing establishment was afforded 30 days to provide the requested information.

In a November 19, 2014 letter, the employing establishment requested a 30-day extension to submit additional information. It also resubmitted the June 16, 2014 controversion letter.

By letter dated November 20, 2014, counsel requested clarification as to why OWCP requested additional information from the employing establishment when it had six months to comply with OWCP's original development letter.

OWCP denied appellant's claim in a decision dated February 9, 2015. It determined that she failed to establish that she sustained a medical condition as a result of a compensable factor of employment. OWCP also found that the factual evidence was insufficient to establish that the work events that appellant described occurred as alleged.

In a February 26, 2015 letter, counsel alleged that OWCP did not review all of the evidence that appellant submitted with her claim. She noted that in its February 9, 2015 decision OWCP indicated that no witness statements were received even though appellant provided a witness statement. Counsel pointed out that appellant provided a very detailed statement regarding the work factors she believed contributed to her emotional condition and the employing establishment did not controvert her statement. She resubmitted Dr. Hawkins' medical report and K.B.'s February 10, 2014 witness statement.

On March 4, 2015 OWCP accepted appellant's claim for PTSD and recurrent major depressive disorder.

In a July 29, 2015 letter, Ms. O'Connor, a case manager for the employing establishment, disputed appellant's claim for wage-loss compensation for the period September 12, 2013 to

July 17, 2015 because appellant resigned from the employing establishment effective October 17, 2014. She also noted that, at the time of the accepted date of injury, appellant was not an employee of the employing establishment. Ms. O'Connor reported that appellant did not become an employing establishment employee until August 29, 2010, which was after her alleged date of injury.

By letter dated August 4, 2015, Ms. O'Connor questioned OWCP's basis for reversing its denial decision. She related that an appeal or reconsideration request was not filed by appellant or counsel and that there was no letter explaining the decision to reverse the original denial. Ms. O'Connor requested that OWCP further develop the claim to determine how the date of injury was selected.

OWCP notified appellant of its proposal to rescind acceptance of her claim for PTSD and major depressive disorder on August 24, 2015. It determined that OWCP erred in accepting her claim because the factual evidence failed to establish fact of injury. OWCP noted that appellant failed to provide factual evidence and witness statements to establish that she sustained an emotional condition causally related to factors of her employment.

In letters August 14 and September 22, 2015, Ms. O'Connor reiterated that at the time of the alleged date of injury of July 6, 2009 appellant was not employed by the employing establishment. She also asserted that there was no evidence that the allegations made by appellant were substantiated, and accordingly, that there was no factual basis for her claim.

Counsel alleged in a September 16, 2015 letter that a thorough review of appellant's case file would show that the witness statements and factual and medical evidence submitted were sufficient to establish the claim. She also asserted that OWCP failed to provide a clear explanation for rescinding the acceptance of appellant's claim. Counsel noted that OWCP did not fully explain why it sent an additional development letter to the employing establishment after it had 30 days to respond to the initial development letter. She noted that, in order to rescind the acceptance of a claim, OWCP must establish that its prior acceptance was erroneous based on new or different evidence or through new legal argument or rationale. Counsel noted that OWCP could not merely review the evidence and arrive at a different conclusion, citing *George E. Reilly*.³ She asserted that the August 24, 2015 proposal to rescind the accepted claim was not based upon new evidence or legal argument, but instead a "mere review" of appellant's case file. Accordingly, counsel asserted that OWCP did not meet its burden of proof to rescind appellant's claim.

By decision dated March 1, 2016, OWCP finalized the proposal rescision of the acceptance of appellant's claim for PTSD and major depressive disorder due to a lack of factual evidence and witness statements corroborating the alleged employment incidents. It determined that there were no alleged events that constituted compensable factors of employment. OWCP found that appellant failed to establish fact of injury as she did not demonstrate that the alleged employment factors had occurred as described.

³ 44 ECAB 459 (1993).

LEGAL PRECEDENT

According to FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.⁴ The Board has upheld OWCP's authority under this section to reopen a claim at any time on its own motion and, where supported by the evidence, set aside, or modify a prior decision and issue a new decision.⁵ The Board has noted, however, that the power to annul an award is not arbitrary and that an award for compensation can only be set aside in the manner provided by the compensation statute.⁶

Workers' compensation authorities generally recognize that compensation awards may be corrected, in the discretion of the compensation employing establishment and in conformity with statutory provision, where there is good cause for so doing, such as mistake or fraud. Once OWCP accepts a claim, it has the burden of justifying termination or modification of the compensation benefits. This also holds true where OWCP later decides that it erroneously accepted a claim.⁷

OWCP bears the burden of justifying rescission of acceptance on the basis of new evidence, legal argument, and/or rationale.⁸ Probative and substantial positive evidence⁹ or sufficient legal argument¹⁰ must establish that the original determination was erroneous. OWCP must also provide a clear explanation of the rationale for rescission.¹¹

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.¹² There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation.¹³ In the case of *Lillian Cutler*,¹⁴ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition under FECA. Where the injury or illness results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employing establishment or by the nature of the work, the injury or illness comes within

⁴ 5 U.S.C. § 8128.

⁵ See *John W. Graves*, 52 ECAB 160, 161 (2000). See also 20 C.F.R. § 10.610.

⁶ *Delphia Y. Jackson*, 55 ECAB 373 (2004).

⁷ See *V.C.*, 59 ECAB 137 (2007).

⁸ See *John W. Graves*, *supra* note 5; *Alice M. Roberts*, 42 ECAB 747, 753 (1991).

⁹ See *Michael W. Hicks*, 50 ECAB 325, 329 (1999).

¹⁰ See, e.g., *Beth A. Quimby*, 41 ECAB 683, 688-89 (1990).

¹¹ See *supra* note 7.

¹² *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

¹³ *A.K.*, 58 ECAB 119 (2006); *David Apgar*, 57 ECAB 137 (2005).

¹⁴ 28 ECAB 125 (1976).

the coverage of FECA.¹⁵ On the other hand, when an injury or illness results from an employee's feelings of job insecurity per se, fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or hold a particular position, unhappiness with doing work, or frustration in not given the work desired, such injury or illness falls outside FECA's coverage because they are found not to have arisen out of employment.¹⁶

An employee has the burden of proof to establish 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.¹⁷ 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.¹⁸

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.¹⁹ 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.²⁰

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 work 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 compensable factors of employment and may not be considered.²¹ If an employee does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim. The claim must be supported by probative evidence.²² If a compensable factor of employment is substantiated, OWCP must base its decision on an analysis of the medical evidence.²³

¹⁵ *Cutler, id*; see also *Trudy A. Scott*, 52 ECAB 309 (2001).

¹⁶ *William E. Seare*, 47 ECAB 663 (1996).

¹⁷ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹⁸ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹⁹ *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

²⁰ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

²¹ *Dennis J. Balogh*, 52 ECAB 232 (2001).

²² *Charles E. McAndrews*, 55 ECAB 711 (2004).

²³ *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

ANALYSIS

Appellant alleged that she developed aggravation of major depressive disorder, PTSD, and other conditions due to harassment by her supervisor, A.A., and coworkers, C.E. and S.S. In a decision dated March 4, 2015, OWCP accepted her claim for PTSD and major depressive disorder, but failed to discuss the factual aspect of her claim. By decision dated August 24, 2015, it proposed to rescind the acceptance of appellant's claim because she failed to establish that the claimed incidents occurred as alleged. By decision dated March 1, 2016, OWCP finalized the rescission of the acceptance of her claim, finding that OWCP erred in accepting her claim as the evidence of record failed to establish any compensable factors of employment.

The Board finds that OWCP met its burden of proof to rescind its acceptance of appellant's claim as the evidence demonstrated that OWCP's initial acceptance was in error. In its March 4, 2015 decision, it accepted her emotional condition claim without first determining whether any of the alleged employment incidents constituted a compensable factor of employment. The Board has previously found that OWCP met its burden of proof to rescind appellant's claim for an emotional condition when OWCP failed to analyze whether the factual evidence, including statements from witnesses, supervisors, and coworkers, demonstrated that the alleged employment incident occurred as alleged and were in fact compensable factors of employment.²⁴

Likewise, in this case, OWCP failed to evaluate whether any of the alleged harassment by appellant's supervisor or coworkers or other factors appellant attributed to a hostile work environment occurred as she alleged and constituted compensable factors of employment. Appellant provided a detailed narrative statement, which contained numerous dates and descriptions of alleged verbal abuse by her supervisor and a coworker and unwanted sexual advances by another coworker. OWCP, however, did not provide any discussion in its March 4, 2015 acceptance decision of the factual evidence from appellant or the employing establishment as to whether the claimed events occurred as alleged and whether they occurred in the performance of duty. This discussion is particularly needed in this case since OWCP had previously denied appellant's emotional condition claim in a decision dated February 9, 2015, which found that the claimed incidents did not occur as alleged. As previously noted, in claims for emotional conditions, OWCP, as part of its adjudicatory function, must make findings of fact regarding which alleged working conditions are deemed compensable work 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 compensable factors of employment and may not be considered.²⁵ The record reveals that OWCP did not make such findings of fact in this case.

In its March 1, 2016 decision, OWCP noted that it made an error in accepting appellant's claim as the factual evidence did not establish that the alleged employment incidents occurred as she described. For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in

²⁴ *C.M.*, Docket No. 09-1314 (issued April 16, 2010); *see also S.F.*, Docket No. 15-1851 (issued August 4, 2016).

²⁵ *Supra* note 21.

fact, occur.²⁶ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.²⁷ Unsubstantiated allegations are not determinative of whether such harassment or discrimination occurred.²⁸ A claimant must establish a factual basis for his or her allegations of harassment or discrimination with probative and reliable evidence.²⁹

The Board finds that the evidence of record is insufficient to establish that any of the alleged employment incidents beginning in August 2012 that appellant described occurred as alleged. The only witness statement appellant submitted was a February 10, 2014 statement by K.B., appellant's supervisor. K.B. merely related, what appellant told her about an incident involving S.S. She did not actually witness the alleged incident and could not provide any first-hand knowledge about whether the alleged incident occurred. Furthermore, K.B. did not provide any details regarding this alleged incident involving S.S. in order for OWCP to determine whether such an incident constituted harassment or discrimination. Accordingly, as appellant has failed to establish any employment incident that occurred within the performance of duty as alleged, the Board finds that OWCP presented sufficient evidence to rescind the acceptance of her claim. OWCP provided a clear explanation in establishing that its prior acceptance of the claim was erroneous as the factual evidence was insufficient to establish that any of the alleged employment incidents beginning in August 2012 occurred as alleged. Therefore, it met its burden of proof to rescind appellant's claim.

On appeal, counsel contends that OWCP did not meet its burden of proof to rescind the acceptance of appellant's claim. She asserted that OWCP did not prove that the acceptance of appellant's claim was erroneous or based on new or different evidence. Counsel also described the factual information that OWCP must review and alleged that appellant provided sufficient evidence to establish her claim. She requested a thorough review of appellant's case file and reinstatement of appellant's wage-loss and medical benefits. As explained above, however, OWCP provided adequate explanation that the initial March 4, 2015 acceptance of appellant's claim was erroneous because it failed to properly evaluate the factual evidence. The Board has reviewed the evidence and found that it is insufficient to establish that any of the alleged employment incidents occurred as described.

CONCLUSION

The Board finds that OWCP met its burden of proof to rescind its acceptance of appellant's claim for PTSD and major depressive disorder.

²⁶ *K.W.*, 59 ECAB 271, 276 (2007); *Robert Breeden*, 57 ECAB 622, 625 (2006).

²⁷ *J.F.*, 59 ECAB 331, 339 (2008).

²⁸ *G.S.*, Docket No. 09-764 (issued December 18, 2009); *Ronald K. Jablanski*, 56 ECAB 616, 620 (2005); *Penelope Owens*, 54 ECAB 684, 686 (2003).

²⁹ *Robert Breeden*, *supra* note 26; *Beverly R. Jones*, 55 ECAB 411, 416 (2004).

ORDER

IT IS HEREBY ORDERED THAT the March 1, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 3, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy 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