United States Department of Labor
Employees' Compensation Appeals Board

T.H., Appellant	)	
and	)	**Docket No. 16-1164**
	)	**Issued: February 24, 2017**
DEPARTMENT OF VETERANS AFFAIRS, GREATER LOS ANGELES HEALTH CARE SYSTEM, Los Angeles, CA, Employer	)	

Appearances:
Daniel M. Goodkin, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 13, 2016 appellant, through counsel, filed a timely appeal from a December 23, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish an emotional condition in the performance of duty.

FACTUAL HISTORY

On January 8, 2014 appellant, then a 50-year-staff pathologist, filed an occupational disease claim (Form CA-2) alleging that he was harassed, belittled, threatened, and yelled at by his supervisor, F.M., chief of the department of pathology, which caused progressive anxiety and depression. He became aware of his condition on November 15, 2011 and realized that it was causally related to his employment on July 15, 2013.

In an undated statement appellant alleged that, after receiving a grant and being selected as a principal investigator, F.M. called him into his office and yelled at him and told him to keep his "mouth shut" and "stop bragging" about his accomplishments because the "bragging" would create jealousies and resentments from colleagues. F.M. asserted that, another investigator, D.Y., and his staff could find noncompliance with the employing establishment rules and regulations for human subject research by appellant and the research laboratory staff. Appellant indicated that the research funding brought in by the selection of an employing establishment principal investigator was supposed to provide the money necessary to hire other staff members to cover the clinical service of a principal investigator during his "protected time," or time he was working on the grant. This would enable the principal investigator to have time off from clinical service work in the hospital during his regular scheduled tour of duty to conduct research and development in the approved studies. Appellant alleged that F.M. denied him "protected time" and therefore he could not devote sufficient time to his research. He alleged that F.M. was paranoid about potentially mixing funding between clinical and research spheres and prohibited him from attending research lab related or other serious research staff meetings during his tour of duty hours. Appellant alleged that F.M. gave him misguided instruction on how to manage his research program and advised him that he was too lenient with his research laboratory staff. He alleged that when F.M. discovered that appellant was not following his instruction he would summon appellant to meetings and interrogate him, becoming angry and threatening, with words like I will "not protect you any longer" from the "jealous" and "retaliatory" members of the committees who would create a negative and hostile environment. This caused appellant to no longer be able to conduct research. He alleged that he lost his principal investigator status because of F.M.'s actions. Appellant alleged that F.M. and his subordinates would constantly call him throughout the day to determine his location and, if he was not at the hospital office, F.M. would demand that appellant return to his office in the hospital. He alleged that F.M. would scream at him, humiliate him in front of others, and threaten him with the loss of his job at least once a day. Appellant alleged that F.M. demanded that appellant move his laboratory to another building on the other side of the campus which would require a substantial amount of time to travel between the hospital building and the new laboratory building.

Appellant submitted reports from Dr. Daniel B. Auerbach, a Board-certified psychiatrist, dated November 5 and December 20, 2013, which reflected that appellant was totally disabled beginning September 28, 2013 due to work-related stress.

On February 18, 2014 OWCP asked appellant to submit additional evidence that included a detailed description of the employment incidents that contributed to his claimed illness.

Appellant submitted a supplemental statement to his occupational disease claim and a detailed history and descriptions of the events surrounding his alleged work-related illness, which reiterated the allegations noted above.

On April 16, 2014 OWCP requested the employing establishment provide comments from a knowledgeable supervisor on the accuracy of statements provided by the employee related to the claim and fully explain points of concurrence and disagreement with supportive evidence.

The employing establishment submitted a May 16, 2014 statement from F.M. who had worked for the employing establishment since 2004 and hired appellant in 2007 as director of molecular pathology. F.M. noted that, in 2009, appellant received a $6,000,000.00 grant by the National Institutes of Health, which had to be administered by the research and development department. He indicated that to allow appellant to focus on his new research grant he relieved him of his responsibilities as the director of molecular pathology, but he was still paid as a clinician. In response to appellant's allegations, F.M. indicated that, after obtaining the grant appellant would walk through the building and brag about his grant, he would arrive at work very late, he fell behind in his clinical duties and research work, and laboratory workers complained about him. D.Y., chief of research and development service, consulted with F.M. and requested that he speak with appellant about attending to his research duties. F.M. spoke with appellant about D.Y.'s concerns, but he did not yell at him, he did not tell appellant that D.Y. would become jealous and he never implied that D.Y.'s research compliance staff would have their way with appellant. He indicated that he advised appellant that bragging would cause jealousy or resentment from his colleagues. F.M. indicated that due to mounting mismanagement of appellant's research he was banned by research and development from going to his lab and was determined to be out of compliance by an administrative investigation board. He indicated that neither he nor D.Y. were part of the investigation. F.M. disagreed with appellant's allegation that he did not have protected time. He indicated that appellant was expected to provide clinical services as a pathologist and once he completed his clinical duties he could focus on research. However, appellant was a low performer, poor time manager, and frequently reported to work late. F.M. asserted that appellant was consistently allowed time for research and administrative tasks. There were clear separations between research and clinical work and he advised appellant and others that they needed to be mindful of this to avoid allegations of misconduct. F.M. indicated that he did not prevent appellant from attending to research duties during clinical hours. He noted that he did not manage appellant's research staff and the administrative investigation board recommended that he act as appellant's mentor. F.M. indicated that appellant's research problems were the result of his mismanagement of his laboratory and research and not the result of misguided instruction from him. He noted that the misconduct substantiated by the board was significant and, as his supervisor, elected the lowest form of discipline which was an admonishment issued around March 7, 2012. F.M. asserted that appellant's statement that he lost his principal investigator status due to F.M.'s actions was untrue as the principal investigator status was suspended by the research committee and he was not a participant. He denied having his staff constantly call appellant to find his location. F.M. further advised that when he met with appellant F.M.'s door was open and he did not scream.

He indicated that institutional and laboratory policy required research activities to be carried out in designated spaces and not in patient care areas. F.M. noted that after appellant was awarded the grant he was provided temporary research laboratory space, but when permanent space was identified, appellant's laboratory was relocated to the research service building where the majority of research was conducted. He advised that nearly all physicians who worked where appellant worked had research space in research buildings.

F.M. submitted an August 15, 2011 memorandum, which had been issued to appellant detailing that the suspension of principal investigator status and laboratory research was due to a continuing lack of appropriate laboratory oversight and concern over multiple incidences of noncompliance of laboratory research. The committee requested a detailed plan identifying the person who would manage his projects on-site. F.M. submitted a November 14, 2011 preliminary administrative investigation board report which examined allegations of research misconduct, conflict of interest, insubordination, and inappropriate conduct. The preliminary investigatory report recommended suspension of appellant's investigator status.

In a decision dated June 10, 2014, OWCP denied appellant's claim for an emotional condition as the evidence did not support that he sustained an emotional condition in the performance of duty.

On July 7, 2014 appellant requested a telephonic hearing which was held on February 10, 2015. He testified that he was hired as a staff molecular pathologist, but the facility had numerous needs that he filled, including medical director of the hematology laboratory, training and rotation for a hemostasis program, medical director of a large research grant, institutional review board member, and onsite director of the pathology laboratory. Appellant indicated that he worked an average of 12 to 14 hours a day and sometimes as many as 20 hours a day and had slept in his laboratory or in his car. He reported being off work from October 2013 to May 2014 due to health issues. Appellant indicated that when he returned to work he had even more job duties, including medical director for the immunology laboratory, comedical director of hemostasis and transfusion medicine, director of outpatient phlebotomy at North Hills, and medical director of the Core laboratory at the Sepulveda clinic. The record was held open for 30 days to afford him time to submit additional evidence. A copy of the transcript was sent to the employing establishment.

Appellant was treated by Dr. James K. Drury, a Board-certified cardiologist, from February 17 to 21, 2015, who opined that appellant's excessive workload with 10- to 14-hour workdays and the medical services for which he was responsible resulted in excessive stress, hypertension, and palpitations. In February 18 and 21, 2015 work capacity evaluations, Dr. Drury noted that appellant had an excessive workload and was totally disabled. Appellant submitted a job description for a clinical anatomical pathologist.

Appellant submitted a March 3, 2015, statement from J.B., a retired medical technologist, who met appellant in 2007 after he was hired to run the pathology laboratory. J.B. indicated that appellant worked very hard and was present in the pathology department a majority of the time during the day, evenings, and on weekends. He noted that appellant was respectful and never treated anyone negatively. Also submitted was a statement from B.K. who was the chief resident at an employing establishment training program from 2008 to 2009. He noted that appellant

worked as medical director and arrived early and left late every day. B.K. described appellant as polite and respectful who never yelled or treated anyone badly.

The employing establishment submitted a March 13, 2015 statement from J.W.R., chief of pathology and laboratory medicine service, who noted that appellant was a full-time clinical pathologist hired in 2007. J.W.R. indicated that appellant claimed he had numerous medical directorship titles and an overwhelming amount of responsibility and workload assigned to him. She described the duties of a medical directorship as providing technical oversight limited to policy and procedure review, consulting with clinical staff regarding test orders, and rendering patient diagnosis and interpretation of results. J.W.R. noted that the medical director performed periodic visits to offsite laboratories and was kept abreast of situations by supervisors, but did not supervise day to day laboratory operations. Since 2013, appellant was no longer a medical director as the laboratories were consolidated under one medical director. J.W.R. advised that appellant was given unsatisfactory performance appraisals by his prior supervisor. She indicated that, since appellant's return to work in January 2015, he has been assigned away from the alleged stressful environment and many of his clinical medical director duties were absorbed by other pathologists. Appellant's current clinical duties would require no more than four hours a day to complete when compared to other clinical pathologists. J.W.R. noted that the employing establishment could not explain why he spent 12 to 14 hours a day performing clinical duties. She disagreed with appellant's claim that he supervised six people and indicated that there was no one under his supervision and he had no supervisory responsibilities.

Laboratory staff reported to the section supervisors who were medical technologist and the section supervisors report to the laboratory manager. J.W.R. noted that appellant's late arrival to the workplace was witnessed by many laboratory staff and pathologists on many occasion. She indicated that appellant was counseled by F.M. for tardiness. Although appellant described duties that, included clinical duties and after hours research, J.W.R. noted that he had not had research funding since 2012 and was expected to perform only clinical duties. Any unfunded research that he chose to continue would be on his own time outside of his clinical time and was completely voluntary and not an employing establishment requirement. J.W.R. advised that appellant was investigated for research misconduct and noncompliance and an administrative investigation board substantiated the claims and he was suspended as principal investigator. She further noted that his impression of having protected research time of 30 percent even without funding was untrue. Appellant was advised that for any physician under clinical services, if research funding is exhausted, the physician is expected to perform clinical work until future funding is awarded. J.W.R. indicated that appellant elected to spend an extraordinary amount of time performing unfunded research outside his clinical duties. Appellant's clinical assignments were comparable to assigned responsibilities of other full-time clinical pathologist. J.W.R. asserted that his illness was not related to work assigned to him and that any perceived stress due to being overworked was the result of additional duties he chose to perform outside his assigned duties.

In a decision dated May 18, 2015, an OWCP hearing representative affirmed the prior decision.

On May 27, 2015 counsel informed OWCP that he had not received a copy of the employing establishment's response to the transcript or the March 13, 2015 statement from

J.W.R. Based on this, the employing establishment response was sent to counsel and the parties were permitted 20 days to provide a rebuttal response. In a letter dated July 30, 2015, OWCP informed appellant that the hearing decision would be amended to allow for consideration of counsel and claimant responses.

In an amended decision dated December 23, 2015, an OWCP hearing representative affirmed OWCP's decision dated June 10, 2014.[3]

LEGAL PRECEDENT

To establish an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.[4]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,[5] the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under FECA.[6] When an employee experiences emotional stress in carrying out his or her employment duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.[7] Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[8] Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.[9] Personal perceptions alone are insufficient to establish an employment-related emotional condition.[10] On the other hand the disability is not covered where

[3] The hearing representative affirmed the decision dated January 20, 2015; however, OWCP did not issue a decision dated January 20, 2015. The prior OWCP decision was dated June 10, 2014.

[4] *George H. Clark*, 56 ECAB 162 (2004).

[5] 28 ECAB 125 (1976).

[6] *See Robert W. Johns*, 51 ECAB 137 (1999).

[7] *Supra* note 5.

[8] *J.F.*, 59 ECAB 331 (2008).

[9] *M.D.*, 59 ECAB 211 (2007).

[10] *Roger Williams*, 52 ECAB 468 (2001).

it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.[11]

ANALYSIS

Appellant alleged that he sustained an emotional condition due to a number of employment interactions and conditions. OWCP denied his emotional condition claim because he failed to establish any compensable employment factors. The Board must initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.

Appellant has attributed his emotional condition to performing his regular or specially assigned duties of his position. He alleged that his workload was excessive and he was required to work long hours. Appellant testified that he was hired as a staff molecular pathologist, but the facility had numerous needs that he filled including multiple medical directorships. He indicated that he worked an average of 12 to 14 hours a day and sometimes as many as 20 hours a day, and had slept in his laboratory or in his car. Beginning in May 2014 appellant had additional duties. However, he provided insufficient corroborating evidence to establish that he was overworked. There is no evidence to support appellant's general allegation of overwork. He submitted a statement from J.B. who indicated that appellant worked very hard and was present in the pathology department a majority of the time during the day, evenings, and on weekends. B.K. noted that appellant worked as medical director and would arrive early and leave late every day. These general statements from colleagues attesting that appellant was frequently in his office or laboratory in the evenings and on weekends are insufficient to establish that he was overworked. There is no evidence that the employing establishment directed him to work beyond his normal tour of duty.

The employing establishment submitted a statement from J.W.R. who disputed that appellant had numerous medical directorship titles and an overwhelming amount of responsibility and workload. J.W.R. explained that a medical directorship provided technical oversight limited to policy and procedure review, but did not supervise the day to day operations of the laboratory. Since 2013, appellant was no longer a medical director as the laboratories were consolidated. J.W.R. indicated that clinical assignments were comparable to assigned responsibilities of other full-time clinical pathologists and his current clinical duties should require no more than four hours a day to complete. She indicated that there was no reason for appellant to spend 12 to 14 hours a day performing his duties and asserted that this additional time was spent on unfunded research outside of his clinical duties. J.W.R. contended that any perceived stress was due to additional duties he voluntarily chose to perform outside of his assigned duties. Thus, to the extent that appellant alleged overwork,[12] this is not established by the evidence. Furthermore, he did not otherwise attribute his emotional condition to performing

[11] *See supra* note 5.

[12] The Board has held that overwork, as substantiated by sufficient factual information to support the claimant's account of events, may be a compensable factor of employment. *Bobbie D. Daly*, 53 ECAB 691 (2002).

a specific regular or specially assigned duty in his job. Therefore, appellant has not established a compensable factor under *Cutler*.[13]

Appellant made several allegations related to administrative and personnel actions. In *Thomas D. McEuen*,[14] the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA as such matters pertain to procedures and requirements of the 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 the employing establishment 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.[15]

Appellant alleged that F.M. yelled at him and told him to keep his "mouth shut" and "stop bragging" about receiving a grant and being selected as a principal investigator because that would create jealousies and resentments from colleagues. The Board has found that an employee's complaints concerning the manner in which a supervisor performs his or her duties as a supervisor or the manner in which a supervisor exercises his or her supervisory discretion fall, as a rule, is outside the scope of coverage provided by FECA. This principle recognizes that a supervisor or manager in general must be allowed to perform his or her duties, that employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.[16] Appellant has presented no corroborating evidence to support that the employing establishment erred or acted abusively with regard to these allegations. F.M. indicated that appellant walked through the building and bragged about his grant, arrived late to work, fell behind on his clinical duties and research work, and the laboratory workers complained about him. The chief of research and development service requested that F.M. speak with appellant about attending to his research duties. F.M. noted speaking with appellant, but denied yelling at him. Appellant has not established administrative error or abuse in the performance of these actions and therefore they are not compensable under FECA.

Appellant alleged that as a principal investigator he was entitled to "protected time" or time off from his clinical service work in the hospital during his regular scheduled tour of duty to conduct research in approved studies, but that F.M. denied appellant's "protected time." He alleged that F.M. prohibited him from attending research, or lab-related or other research related meetings during his duty hours because he did not want to mix funding between the clinical and research spheres. Appellant also alleged that F.M. gave him misguided instruction on managing his research program, indicating that appellant was too lenient with his research laboratory staff.

[13] *See supra* note 5.

[14] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

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

[16] *See Marguerite J. Toland*, 52 ECAB 294 (2001).

The Board notes that the assignment of work is an administrative function[17] and the manner in which a supervisor exercises his or her discretion falls outside the ambit of FECA. Absent evidence of error or abuse, appellant's mere disagreement or dislike of a managerial action is not compensable.[18] The Board finds that appellant has not offered sufficient evidence to establish error or abuse regarding his work assignments. The evidence does not establish that the employing establishment acted unreasonably. F.M. indicated that appellant was expected to provide clinical services as a pathologist and once he completed his clinical work he could focus on research. However, he noted that appellant was a low performer, poor time manager, and frequently reported to work late. F.M. asserted that appellant was consistently allowed time for research and administrative tasks. He advised that there were clear separations between research and clinical work and he advised appellant and others that they needed to be mindful of the separation. F.M. indicated that he did not prevent appellant from attending to research duties during clinical hours. The employing establishment has either denied appellant's allegations or explained the reasons for its actions in these administrative matters. Appellant has presented no corroborating evidence to support that the employing establishment acted unreasonably.

Appellant alleged that he lost his principal investigator status because of F.M.'s actions. The Board has held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment as they do not involve the employee's ability to perform his or her regular or specially assigned work duties, but rather constitute his or her desire to work in a different position.[19] The Board also notes that disciplinary matters are administrative functions of the employing establishment and not duties of the employee and, unless the evidence discloses error or abuse on the part of the employing establishment, are not compensable employment factors.[20] FM. denied this allegation and indicated that the principal investigator status was suspended by the research committee. Appellant has not provided any corroborating evidence that the employing establishment erred in taking away his principal investigator status.

Appellant alleged that F.M. and his subordinates would constantly call him throughout the day to monitor his location and, when F.M. discovered that appellant was not in the hospital office building, he would demand that appellant return to his office in the hospital. Although the monitoring of activities at work is generally related to the employment, it is an administrative function of the employing establishment, and not a duty of the employee.[21] F.M. denied this allegation. Appellant has presented no corroborating evidence to support that the employing establishment erred or acted abusively with regard to these allegations. He also presented no

[17] *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

[18] *See Barbara J. Latham*, 53 ECAB 316 (2002); *see also Peter D. Butt Jr.*, 56 ECAB 117 (2004) (allegations such as improperly assigned work duties, which relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties do not fall within the coverage of FECA).

[19] *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

[20] *C.T.*, Docket No. 08-2160 (issued May 7, 2009).

[21] *See Dennis J. Balogh*, 52 ECAB 232 (2001); *see also John Polito*, 50 ECAB 347 (1999).

corroborating evidence that he was monitored. The Board finds that the evidence does not show that the employing establishment acted unreasonably in monitoring appellant's work.

Appellant alleged that F.M. demanded that he move his laboratory to another building on the other side of campus, which resulted in appellant having to allocate more time in moving between the laboratory and the main hospital building. To the extent that appellant has alleged that the change in the location of his laboratory constituted punishment or was inconvenient this would be analogous to emotional frustration in not being allowed to work in a particular environment. It is well established that when disability results from an employee's frustration over not being permitted to work in a particular environment, to hold a particular position, or to secure a promotion, such disability does not arise in the performance of duty.[22] Appellant has not submitted sufficient evidence to establish that the administrative change in the location of his laboratory constituted administrative error or abuse by employing establishment management.[23] F.M. indicated that institutional and laboratory policy requires research activities to be carried out in designated spaces and not in patient care areas. He noted that after appellant was awarded the grant he was provided for temporary research laboratory space and when permanent space was identified his laboratory was relocated to the research service building where the majority of research is conducted. The record establishes that appellant was not singled out for a laboratory location change as F.M. advised that nearly all physicians who work in building 500 have research space in research buildings. The Board finds that the evidence does not establish that the change in appellant's laboratory location was unreasonable or that it was a form of harassment or discrimination.[24] Thus, appellant has not established a compensable employment factor under FECA with respect to the laboratory location change.

Appellant alleged that he was harassed, screamed at, humiliated in front of others, and threatened with the loss of his job at least once a day. To the extent that incidents alleged as constituting harassment or a hostile environment by a manager are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[25] However, for harassment to give rise to a compensable disability under FECA, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under FECA.[26] The evidence fails to support appellant's claim for harassment as a cause for his emotional condition. F.M. denied that he yelled or screamed at appellant. General allegations of harassment are not sufficient[27] and in this case appellant has not submitted sufficient evidence to establish disparate treatment by his supervisor.[28] Although he alleged that

[22] *See supra* note 5.

[23] An administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. *Charles D. Edwards,* 55 ECAB 258 (2004).

[24] *See infra*, notes 25, 26 and accompanying text regarding harassment.

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

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

[27] *See Paul Trotman-Hall,* 45 ECAB 229 (1993).

[28] *See Joel Parker, Sr., supra* note 26.

his supervisor harassed and engaged in actions, which he believed constituted harassment, he provided no corroborating evidence to establish his allegations.[29] The factual evidence fails to support appellant's claim that he was harassed by F.M.

Appellant alleged that F.M. threatened, yelled and verbally abused him. The Board has recognized the compensability of verbal abuse and threats in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.[30] The Board finds that the facts of the case do not support any specific incidents of verbal abuse. Appellant alleged that F.M. threatened to fire him daily. However, his statement is not specific as to the time or place of any claimed verbal abuse and he did not provide the context for the statements or when they occurred.[31] The Board finds that the evidence does not support any specific incidents of verbal abuse or threats. Appellant provided no corroborating evidence to establish any specific incidents.[32]

Consequently, appellant has not established his claim for an emotional condition as he has not attributed his claimed condition to any compensable employment factors.[33]

On appeal, appellant through counsel reiterated his allegations, asserting that he has established error or abuse by the employing establishment. As explained, the Board finds that appellant has not established his claim for an emotional condition as he has not established any compensable employment factors.

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

CONCLUSION

The Board finds that appellant fails to meet his burden of proof to establish an emotional condition in the performance of duty.

[29] *See William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

[30] *Charles D. Edwards, supra* note 23.

[31] *See Joe M. Hagewood*, 56 ECAB 479 (2005) (without a detailed description of the specific statements made, a compensable employment factor was not established; the mere fact a supervisor or employee may raise his voice during the course of a conversation does not warrant a finding of verbal abuse).

[32] *See supra* note 29. *See also Judy L. Kahn*, 53 ECAB 321 (2002).

[33] As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

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

Issued: February 24, 2017
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