United States Department of Labor
Employees' Compensation Appeals Board

L.K., Appellant	)	
and	)	**Docket No. 16-1311**
	)	**Issued: January 17, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Eatontown, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 8, 2016 appellant filed a timely appeal from a December 22, 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.

ISSUE

The issue is whether appellant has established an emotional condition in the performance of duty.

[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.*

FACTUAL HISTORY

On April 14, 2014 appellant, then a 63-year-old bulk mail entry unit clerk, filed an occupational disease claim (Form CA-2) claiming that she sustained an emotional condition in the performance of duty due to a pattern of sexual harassment by a male coworker J.B. from 1999 through January 2014. She contended that the employing establishment failed to enforce its agreement to prevent J.B. from having any contact with her. Appellant stopped work on January 13, 2014 and did not return.

Appellant alleged specific incidents of harassment by J.B. in statements dated May 10, 2010 through May 21, 2014. She emphasized that she never had any relationship with J.B. other than working in the same facility. Appellant alleged that J.B. exposed himself to her in 1998. On March 9, 1999 J.B. entered the dock office in which she worked and "slapped [her on the] buttock." Appellant ordered him to stop. J.B. then "brushed his hand against [her] breast." Appellant screamed at J.B. to stop and immediately reported the incident to her supervisor. J.B. was thereafter suspended for 14 days. Appellant was off work for six months, using her own leave to cover the absence. When she returned to work in 2000, she was transferred to the annex facility, away from J.B. J.B. would still come to the annex, although she claimed he had no business there, to harass her. In March 2000, he also allegedly carved the words "f*ck [appellant's given name]" into her desk. Appellant worked at the annex facility until 2003, when the annex was closed, and she had to return to the main post office where J.B. worked. She alleged that J.B. threatened to stalk her and would find ways to be in proximity to her. Appellant alleged that on December 10, 2006, J.B. entered appellant's office and began to read a newspaper. Appellant requested that J.B. leave her office. J.B. refused and was removed by supervisor M.T.

Appellant asserted that on February 7, 2008, J.B. entered her office to sign another employee's retirement card and refused to leave. When she called for a supervisor, J.B. left, stating that he could not "deal with the insane." Appellant alleged that from April 2008 through April 2009, J.B. repeatedly parked his car at the dock ramp so he would enter the facility in immediate proximity to her work area. She alleged that on May 21 and August 8, 2008, J.B. saw her from a distance, then walked purposefully toward her, veering away at the last instant. Appellant alleged that on June 12, 2008, J.B. shoved her as she was standing at the time clock. The employing establishment issued J.B. a letter of warning on June 17, 2008 as he failed to obey the standing directive of having no contact with her. On June 27, 2008 a supervisor allegedly instructed her where to walk in the building to avoid J.B. Appellant also disagreed with a supervisor who instructed her to leave the workroom floor when she was helping another supervisor sell candy to coworkers for a charitable organization.

Appellant contended that on February 12, 2009 J.B. positioned himself near the time clock so that appellant had to go near him to punch in. She asserted that on May 28, 2009, J.B. came into contact with her at a retirement party and stood in a doorway to block her exit. Appellant provided a photo of J.B. standing in the doorway. She also alleged that on December 24, 2009 J.B. loitered outside the restroom area with his friends. Appellant also experienced anxiety because she was required to communicate with J.B. by radio if he was assigned to expediting.

Appellant's final allegation concerned J.B.'s January 2014 bid for a job in the expediter's office where appellant worked which, if he was offered the position, he would have sat next to her in a small room, in violation of the agreement to keep J.B. away from her. She also contended that the employing establishment should have disqualified J.B. from working as an expediter as he had previously falsified his payroll records and was prohibited from handling money. Appellant went to the civilian police to get a restraining order, but was told that restraining orders were not available for stalking in New Jersey. When J.B. was offered the position on January 10, 2014 appellant experienced chest pains and stopped work. She alleged that the employing establishment largely ignored J.B.'s harassment of her, that managers refused to investigate her allegations, and that managers refused to tell the entire truth of the matter in their depositions. She contended that supervisor P.A. once told her to "shut up and do her job" when she reported J.B.'s harassment.

In support of her claim, appellant submitted coworker statements and depositions from her Equal Employment Opportunity (EEO) claims against the employing establishment. In a November 10, 2009 deposition, supervisor M.P. stated that he and supervisor J.F. were aware of J.B's history of sexual harassment against appellant, and that the two of them were to be kept separate. He confirmed that he had instructed J.B. to "stay away" from appellant, the dock, and the ramp area several times in April and May 2008. M.P. corroborated appellant's account of the December 10, 2006 incident where J.B. went into appellant's office and had to be removed, and the June 12, 2008 incident where J.B. shoved appellant at the time clock.

On November 10, 2009 plant manager M.T. testified that J.B. had falsified his payroll records and, as a consequence, he could not perform jobs requiring "detailed responsibilities" or work as a timekeeper. M.T. elaborated in his September 17, 2010 deposition that after J.B. bumped appellant at the time clock, he asked him "when he was going to get his life together."

Plant manager J.F. testified on November 12, 2009 that in April 2008, she was aware of a management agreement with appellant that J.B. was not to be in her proximity, but that J.B. repeatedly violated this agreement by approaching appellant when he had no assigned tasks requiring him to be in her work area. She ordered an investigation, and issued a letter of warning when it showed that J.B. continued to harass appellant. J.F. noted that J.B.'s personnel file showed that he received a 14-day suspension in 1999 for exposing himself to appellant. J.B. was also found to have falsified his payroll records. J.F. confirmed that J.B. parked his vehicle at the ramp in appellant's work area, and was told by managers to stop.

In a November 12, 2009 deposition, another plant manager, J.B., affirmed that she was briefed by other managers in 2003 that there was a standing directive that coworker J.B. not to come into contact with appellant because of the incident where he exposed himself to her. She confirmed that "management in 2007 continuously instructed J.B. not to go to the platform area when appellant was working. [W]e try to keep the two parties separate."

Coworker M.S. testified on September 17, 2010 that in June 2008, J.B. purposefully went to the dock where appellant worked to make himself known to her.

In a March 3, 2014 statement, coworker R.H. confirmed that, while standing next to appellant at the time clock on June 12, 2008, J.B. approached appellant from across the room and

pushed her forcefully. He was escorted from the employing establishment by management the following day, but returned to work four days later.

In an April 11, 2014 letter, Postmaster M.C. noted that, when appellant found out that J.B. had been awarded a job in her work unit on January 10, 2014, she explained that "there was an agreement that the two employees would not work together."

On May 12, 2014 OWCP advised appellant of the additional evidence needed to establish her claim, including factual corroboration of the alleged harassment, and a statement from her attending physician explaining how and why those factors would cause the claimed emotional condition. Appellant was afforded 30 days to submit such evidence.

In response, appellant submitted a January 28, 2014 narrative report from Dr. Samuel A. Bobrow, an attending licensed clinical psychologist. Dr. Bobrow related appellant's account of years of sexual harassment by coworker J.B. Appellant alleged that J.B. exposed himself to her in 1996. She asserted that in 1997, J.B. touched her buttocks and grabbed her breasts. In the following years, J.B. harassed her by coming in to her office for no reason. In January 2014, J.B. was awarded a job in appellant's work unit, violating the agreement that J.B. was not to be in contact with her. Appellant stopped work due to extreme anxiety. On examination, Dr. Bobrow found appellant extremely anxious, with pressured speech. Appellant reported headaches, sleep disturbance, loss of appetite, persistent intrusive thoughts about J.B., depressed mood, and increased anxiety. Dr. Bobrow noted that appellant had been under psychiatric treatment for years due to J.B.'s continuing sexual harassment. He opined that the sexual assault and harassment caused severe, recurrent major depression, and generalized anxiety disorder. Dr. Bobrow emphasized that J.B.'s "repeated sexual assaults and harassment and management's refusal to end this harassment [was] clearly the cause of [appellant's] current depression and anxiety condition which disables her from work."

In a January 29, 2014 letter, Dr. Bobrow diagnosed major depression. He held appellant off work, as work was "the major cause of her depression." In March 5 and July 9, 2014 notes, he diagnosed major depression, single episode, moderate, with anxiety. Dr. Bobrow held appellant off work.

By decision dated October 14, 2014, OWCP denied the claim, finding that appellant had not established any compensable factors of employment. On October 21, 2014 counsel requested a hearing. In a February 3, 2015 decision, an OWCP hearing representative set aside the October 21, 2014 decision, finding that OWCP failed to fully consider the numerous statements submitted. The hearing representative remanded the case for a full consideration of the evidence.

In a March 10, 2015 decision, OWCP again denied the claim, finding that appellant had not established any compensable factors of employment. It accepted the following events involving J.B. were factual, but were mere perceptions of harassment that were not compensable: the December 10, 2006 newspaper incident; the February 7, 2008 retirement card incident; the May 21, 2008 walking toward appellant incident, the June 12, 2008 shoving incident; the August 8, 2008 walking toward appellant incident; the May 28, 2009 retirement party door incident; the December 24, 2009 restroom incident; J.B. parking his car on the dock ramps and

entering the facility through appellant's work area; and J.B. coming to the annex when she was assigned there in 2000 although he had no business there. OWCP found the following incidents occurred as alleged, but failed to constitute administrative error or abuse: on June 27, 2008, supervisor M.P. instructed appellant where she could walk in the building due to the June 12, 2008 incident; she was required to communicate by radio with the dock expediter, a task to which J.B. was occasionally assigned; and a supervisor told appellant to leave the workroom floor when she was helping another supervisor sell candy for a charitable organization.

OWCP further found that the following incidents did not occur: J.B. exposed himself to appellant; the employing establishment agreed to keep J.B. away from appellant; J.B. touched her inappropriately on several occasions; J.B. wrote the words "f*ck [appellant's given name] into appellant's desk in March 2000; J.B. threatened to stalk her when she was transferred to the main facility in August 2004; supervisor P.A. told appellant to "shut up and do her job" when J.B. harassed her; J.B. defied a management directive to stay away from appellant; J.B. entered appellant's office for no reason; J.B. interrupted her conversation with supervisor M.T., causing appellant to leave; she reported the August 8, 2008 incident but did not receive a response; the employer did not complete an investigation; on February 12, 2009 J.B. positioned himself such that appellant had to walk near him and then followed appellant to her office; management lied to protect itself and J.B.; management ignored J.B.'s harassment; and that she was told not to complain about communicating with J.B. by radio when he was assigned to expediting.

OWCP did not address Dr. Bobrow's reports as appellant had not established a compensable employment factor.

In a March 17, 2015 letter, counsel requested a hearing, held September 10, 2015. At the hearing, appellant reiterated her allegations against J.B. Counsel argued that these incidents, as corroborated by management depositions, established a concerted pattern of sexual harassment creating a hostile work environment. Appellant retired from federal employment in April 2015.

Following the hearing, appellant provided June 12 and 17, 2008 and January 8 and 9, 2014 statements asserting that J.B. parked in the dock area on May 26, 2008 to harass her, shoved her at the time clock on June 12, 2008 in front of witnesses J.S. and R.H.; loitered in her work area on January 9, 2014; deliberately bid on a job in her office, which he was awarded on January 10, 2014; and that she attempted to obtain a restraining order against him for stalking. Appellant also submitted additional statements and depositions from her coworkers related to specific allegations against J.B. She asserted that a $15,000.00 EEO settlement awarded her in 2001 regarding the indecent exposure incident proved that she was telling the truth. Appellant provided a copy of the 2001 settlement agreement, which did not specify the incident for which the settlement funds had been awarded. Her April 8, 2014 EEO claim alleging a hostile work environment was dismissed due to insufficient proof.

Appellant also submitted additional management statements and depositions. Regarding the alleged March 9, 1999 slap on buttock incident, supervisor J.J. corroborated that at 1:30 p.m. on March 9, 1999, appellant "came out of the expeditor office very upset, and stated that J.B. had 'hands problems.'" J.J. reported the incident to manager A.R., telling her she "had to do something to [J.B.] because he was sexually harassing [appellant]." In a March 11, 1999 letter, manager A.R. confirmed that on March 9, 1999 she received a call from supervisor J.J., who

asked A.R. to come to the dock area as appellant was very upset. Appellant then described to A.R. an incident where J.B. had "put his hands on her behind twice and brushed against her breasts. She said then that [J.B.] has a problem with his hands." A.R. spoke to J.B. and "gave him a direct order to stay away from [appellant] now and in the future." Supervisor M.U. submitted a March 11, 1999 statement, describing his March 10, 1999 investigative interview about the incident where J.B. entered the expeditor's office and struck appellant on her buttocks. Appellant told him to stop. J.B. then asked for office supplies. As appellant leaned over a drawer to obtain them J.B. "intentionally brushed his hand against her breast. [Appellant] screamed loudly at him to stop and got up and left the expediter's office." Regarding the March 2000 incident in which someone allegedly defaced her desk, supervisor D.H. provided a November 2, 2000 statement, confirming that appellant reported to him in March 2000 that someone had written "f*ck [appellant's given name]" on her desk.

Regarding the June 12, 2008 shoving incident, in an August 27, 2010 deposition, coworker R.H. stated that he witnessed J.B. push appellant at the time clock on June 12, 2008. In a June 13, 2008 letter, employing establishment supervisor G.M. advised J.B. that he was being placed in emergency, off-duty status "because of allegations regarding his conduct on June 12, 2008. G.M. issued a formal letter of warning to J.B. on June 17, 2008 on the charge of "failure to follow instructions." J.B. was 'instructed to avoid any contact with a fellow employee. On Thursday June 12, 2008 after clocking out [he was] in proximity of this employee, and therefore in violation of instructions."

With regard to appellant's assertion that the employing establishment had an agreement that J.B. was to be kept away from her, plant manager J.F. confirmed in an August 13, 2008 letter that she advised appellant that "she would do her best to ensure that [J.B.] did not go near [appellant] or [her] work area and if he did, [the plant manager] would follow the necessary steps toward disciplinary action." In a November 10, 2009 deposition, supervisor G.M. confirmed that J.B. "was not supposed to be near" appellant. Both appellant's and J.B.'s schedules had to be changed "so they would n[o]t be at the time clock at the same time." In a November 10, 2009 deposition, supervisor L.G. confirmed that J.B. was instructed to stay away from appellant, but that J.B. continued to frequent appellant's work area, enter her office, park adjacent to her work area, and approach her in common areas. L.G. noted that she requested that appellant take lunch early when J.B. would be assigned work near her work area. In a September 17, 2010 deposition, Supervisor E.N. confirmed that there was "supposed to be separation between J.B. and appellant, and that J.B. was disciplined both for falsifying his time records and for his conduct against appellant, and that supervisors discussed these measures due to J.B.'s continued misconduct. In a May 6, 2014 letter, Postmaster M.C. asserted that prior to January 2014, he was unaware that J.B. was not to be in proximity to the appellant or that they were not to work together.

Regarding appellant's allegations that J.B. parked by the dock ramp in 2008 and 2009 to enter the facility through her work area and frequented the dock when he had no business there, J.B. admitted in his November 12, 2009 deposition that he entered the facility using the rear dock ramp, although he was then an unassigned regular with no tasks in the dock area. In a June 22, 2008 letter, coworker M.M. asserted that on June 18, 2008, she witnessed J.B. in appellant's dock work area at 7:45 a.m., speaking on his cell phone. In a November 10, 2009 deposition, Supervisor G.M. affirmed that, despite the policy that J.B. was to stay away from appellant, J.B.

parked at the dock and entered the building using the dock ramp, in appellant's work area. J.B. was then instructed to park in the front of the building. Concerning appellant's allegation that in January 2008, J.B. entered her office and refused to leave, coworker R.I. corroborated the account of events, including that when appellant picked up the phone to page a supervisor, J.B. stated "I [a]m out of here, I can[no]t deal with the insane," and left. In a September 5, 2008 statement, coworker J.G. asserted that on August 7, 2008 he was standing with appellant at the time clock, waiting to punch in, when J.B. began to walk toward them from a distance of 80 feet. Appellant "became nervous." Regarding appellant's allegation that on December 10, 2008, J.B. entered her office, read a newspaper, and would not leave, Supervisor M.T. testified on November 10, 2009 that on December 10, 2008 he had to remove J.B. from appellant's office as he was reading a newspaper and would not leave. Appellant provided statements from two coworkers asserting that on April 16 and May 5, 2010, she became agitated when J.B. was seen near the restroom closest to the expediter's office.

Concerning the allegation that J.B. should not have been awarded the January 2014 bid to work in the expediter's office as he was prohibited from handling money, supervisor M.T. confirmed on November 10, 2009 that J.B. had been removed from his job as a timekeeper because he falsified his pay records, and was no longer permitted to hold positions requiring handling money. In an April 2010 letter, Manager B.H. confirmed that J.B. was "prohibited from bidding on jobs that involve handling money."

Following the hearing, counsel submitted notes from Dr. Bobrow dated January 29 to November 12, 2014, diagnosing major depression, single episode, moderate, and finding appellant disabled for work.

By decision dated December 22, 2015, an OWCP hearing representative modified OWCP's March 10, 2015 decision, finding that appellant established the June 12, 2008 shoving incident and May 28, 2009 retirement party incident as compensable factors of employment. She found that the remainder of the incidents appellant alleged were not compensable, as appellant did not establish that J.B. "harassed her by his mere presence" because there was no corroborating evidence that the employing establishment restricted J.B. from contacting her. The hearing representative denied the claim as causal relationship was not established as Dr. Bobrow's reports were focused "on the allegations of repeated harassment that ha[d] not been accepted as compensable employment factors."

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 regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA. 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.[3]

Appellant has the burden of establishing by the weight of the reliable, probative, and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.[4] This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[5]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment 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.[6] If a claimant 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, OWCP must base its decision on an analysis of the medical evidence.[7]

For harassment or discrimination to give rise to a compensable disability under FECA, there must be probative and reliable evidence that harassment or discrimination did in fact occur.[8] Mere perceptions of harassment, retaliation or discrimination are not compensable under FECA.[9]

ANALYSIS

OWCP accepted that appellant established two compensable employment factors: the June 12, 2008 incident where J.B. shoved appellant at the time clock; and the May 28, 2009 incident where he blocked appellant's exit from a retirement party. It accepted these events as compensable because the employing establishment had issued disciplinary actions against J.B. in both instances. However, OWCP denied numerous additional incidents established as factual, based on its finding that no evidence corroborated appellant's assertion that management ordered

[3] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

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

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

[6] *See Charles D. Edwards*, 55 ECAB 258 (2004); *Norma L. Blank*, 43 ECAB 384 (1993).

[7] *Lori A. Facey*, 55 ECAB217 (2004); *Norma L. Blank*, *id*.

[8] *Marlon Vera*, 54 ECAB 834 (2003).

[9] *Kim Nguyen*, 53 ECAB 127 (2001).

J.B. to stay away from her. The Board finds that the evidence of record clearly establishes that the employing establishment directed J.B. to avoid appellant.

Appellant submitted depositions from six employing establishment managers and supervisors, corroborating her assertion that J.B. was to be kept away from her. In an August 13, 2008 letter and November 12, 2009 deposition, plant manager J.F. stated that she was aware of management's agreement to keep J.B. away from appellant. She explained that this policy originated with a 14-day suspension imposed on J.B. for a 1998 incident in which he exposed himself to appellant. J.F. noted that J.B. repeatedly violated the agreement. Supervisor G.M. testified on November 10, 2009 that J.B. "was not supposed to be near" appellant, and that their schedules were changed so that they would not be at the time clock at the same time. Supervisor M.P. testified in a November 10, 2009 deposition that J.B. and appellant were to be kept separate. Supervisor M.P. recalled instructing J.B. to avoid appellant and her work area several times in April and May 2008. Supervisor L.G. testified on November 10, 2009 that J.B. was instructed to avoid appellant, but that he continued to appear in her work area and office, and approached her in other areas of the building. L.G. noted that she requested that appellant take lunch early when J.B. would be assigned work near her work area. Plant manager J.B. testified on November 12, 2009 that other managers briefed her in 2003 about the directive that J.B. not come into contact with appellant because of the 1999 incident where he exposed himself to her. She explained that J.B. had to be instructed continuously to avoid appellant's work area, and that they tried "to keep the two parties separate." Supervisor E.N. testified on September 17, 2010 that J.B. was to be kept separate from appellant and that J.B. was disciplined for violating that directive. The Board finds that these statements are sufficiently specific, detailed, and consistent to meet appellant's burden of proof to establish that the employing establishment ordered J.B. to avoid her. In view of the high probative quality of this evidence, postmaster M.C.'s May 6, 2014 letter that he was unaware of the directive is not credible.

As appellant has established as factual that the employing establishment ordered J.B. to avoid her, it must now be determined whether incidents in which he appeared in appellant's work area were also compensable. OWCP found that the following events were established as factual, but were "mere perceptions of harassment" in the absence of a management directive forbidding J.B. to be near appellant: J.B. went to the annex where appellant worked in 2000 although he had no business there; on December 10, 2006, J.B. came into appellant's office, read a newspaper and was removed by supervisor M.T.; in early 2008, J.B. came into appellant's office, refused to leave, then declared that he could not "deal with the insane;" on May 21, 2008, J.B. narrowly missed running into appellant in the time clock area; J.B. parked his car on the dock ramps and entered the facility through appellant's work area in April 2008; on August 8, 2008, J.B. approached appellant from a distance and passed her at the time clock; and on December 24, 2009, appellant encountered J.B. outside the restroom in her work area. It has been established that the employing establishment ordered J.B. to avoid appellant and her work area. Therefore, the above factually accepted events, in which J.B. defied the order to avoid appellant and entered her office or immediate area for no legitimate reason, also constitute incidents of harassment that are compensable factors of employment.[10]

[10] *Supra* note 8.

OWCP further found that appellant established as factual, but noncompensable, that supervisor M.P. instructed her where to walk in the building to avoid J.B. on June 27, 2008, that she was occasionally required to communicate with J.B. by radio while expediting, that a supervisor instructed her to leave the workroom floor while she was helping a supervisor sell candy for a charity, and that J.B. was awarded the expediter job in January 2014. The Board finds that these events concern appellant's dislike with the manner in which supervisors carried out their duties. However, an employee's dissatisfaction with the way a supervisor performs duties or exercises discretion in assigning work is not compensable absent error or abuse.[11] To support such a claim, a claimant must establish a factual basis by providing probative and reliable evidence.[12] As appellant did not submit corroborating evidence establishing error or abuse of these instances, she did not establish compensable employment factors in this regard.

Additionally, appellant also alleged that J.B. exposed himself to her on one occasion in the late 1990s. She submitted a November 12, 2009 deposition from Plant Manager J.B. affirming that managers told her in 2003 that J.B. exposed himself to appellant. Plant Manager J.F. testified on November 12, 2009 that J.B.'s personnel file showed that he was given a 14-day suspension in 1999 for exposing himself to appellant. Appellant asserted that a $15,000.00 EEO settlement issued in 2001 proved that the exposure incident occurred as alleged. However, the Board finds that this evidence is insufficient to establish that J.B. exposed himself to appellant. Appellant did not identify the date on which the incident occurred and she failed to provide personnel documents corroborating the reason for the 14-day suspension. In the absence of such evidence, appellant has not met her burden of proof to establish the incident as factual.

Appellant also alleged that J.B. touched her inappropriately on several occasions, including on March 9, 1999. OWCP found that appellant had not established these incidents as factual. In support of these allegations, appellant also provided depositions from supervisors J.J., A.R., and M.U., affirming that she reported the March 9, 1999 incident within minutes of its alleged occurrence, and repeated her account in March 10 and 11, 1999 investigative interviews. However, the record does not contain witness statements corroborating that J.B. actually touched appellant inappropriately as alleged. Therefore, she has failed to establish these incidents as factual.

Additionally, appellant asserted that J.B. carved an obscene threat into her desk in March 2000, threatened to stalk her in August 2004, harassed her on February 12, 2009, that supervisor P.A. told her to "shut up," and that the employing establishment failed to properly investigate her allegations. The Board finds that appellant did not submit sufficient evidence to establish these incidents as factual. Therefore, she has failed to establish that these alleged events were compensable factors of employment.

As appellant established compensable factors of employment, OWCP must now review the medical evidence of record to determine whether it is sufficient to establish causal relationship between those factors and the claimed emotional condition.

[11] *Donney T. Drennon-Gala*, 56 ECAB 469 (2005); *Linda J. Edward-Delgado*, 55 ECAB 401 (2004).

[12] *See Barbara J. Nicholson*, 45 ECAB 843 (1994).

Therefore, the case will be remanded to OWCP for consideration of the medical evidence in light of the work factors now accepted as compensable. Following this and any other development deemed necessary, OWCP shall issue a *de novo* decision in the case.

On appeal, counsel contends that OWCP erred by finding that "the factual evidence did not demonstrate that [J.B.] was not to have contact with the appellant." He argues that the EEO depositions established the December 10, 2006 and February 7, 2008 incidents where J.B. went into appellant's office, that J.B. parked at the dock ramp from April 2008 to April 2009, and the May 28, 2009 incident in which he blocked a doorway, as factual. As found above, the events enumerated by counsel are now accepted as compensable, and the case will be remanded for additional development.

CONCLUSION

The Board finds that the case is not in posture for a decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 22, 2015 is set aside, and the case remanded for additional development consistent with this decision.

Issued: January 17, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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