United States Department of Labor
Employees' Compensation Appeals Board

W.M., Appellant	)	
and	)	**Docket No. 15-1080**
	)	**Issued: May 11, 2017**
DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, Flagstaff, AZ, Employer	)	

Appearances:
Mark Mallery, 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 April 2, 2016 appellant, through his representative, filed a timely appeal from a March 24, 2015 merit decision of the Office of Workers' Compensation Programs. 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.[3]

[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.*

[3] Appellant timely requested an oral argument before the Board pursuant to section 501.5(b) of the Board's *Rules of Procedure*, 20 C.F.R. § 501.5(b). After exercising its discretion, the Board on October 15, 2015 denied request for oral argument. *Order Denying Request for Oral Argument*, Docket No. 15-1080 (issued October 15, 2015).

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 December 20, 2013 appellant, then a 47-year-old park ranger, filed an occupational disease claim (Form CA-2) alleging that on November 15, 2013 he first became aware of his poor sleeping, racing thoughts, elevated anxiety, depression, and impaired focus, concentration, and energy which caused significant interference with his ability to function. He further alleged that on December 9, 2013 he first realized that his conditions were caused or aggravated by a November 12, 2013 meeting he had with his supervisor and superintendent to discuss their failure and refusal to provide him with a 2013 Employee Performance and Appraisal Plan (EPAP). Appellant contended that, on the following morning, his supervisor telephoned him and demanded more work. He stated that, when he asked his supervisor for clarification, she hung up on him. Appellant stopped work on November 19, 2013. He was hospitalized on November 24, 2013. Appellant did not submit any additional evidence.

On the claim form, C.S., appellant's supervisor, noted that appellant was off work based on a physician's advice. She related that there was not enough information for her to determine the connection between his statements and information provided by his physician.

In a February 7, 2014 letter, OWCP advised appellant of the medical and factual evidence necessary to establish the claim. By letter of the same date, it also requested additional information from the employing establishment.

OWCP received medical reports dated December 4, 2013 to March 6, 2014 which addressed appellant's emotional conditions, the causal relationship between his conditions and employment, work capacity, and medical treatment.

In response, appellant provided a March 5, 2014 statement. He advised that his disability began on November 19, 2013 when his physician took him off work for one week. Appellant was hospitalized on November 24, 2013. On December 9, 2013 one week from his hospital release he was cleared to work from home at a 50 percent schedule. Before appellant could start work, however, his supervisor "bombarded" him with new work assignments and refused to provide the resources he needed to perform his job. He worked an entire week, but took off work again due to the new assignments with no accommodation. Appellant's physician again authorized him to work from home on a 50 percent schedule. Recently, he released appellant to increase his work schedule to 75 percent, but this had not been implemented. Due to a threat of a government shutdown in the fall of 2013, appellant asked his supervisor when he could expect his fiscal year (FY) 2013 EPAP. He believed that he could lose his job if he did not have a current rating if there was a government shutdown. When the situation was not resolved, on November 5, 2013, appellant complained to his superintendent. He noted that initially his supervisor claimed that she had previously provided him critical elements and performance standards for his FY 2013 EPAP. Appellant claimed that this was not true and asserted that his supervisor was not truthful with him at other times. On November 8, 2013 he met with his

supervisor regarding this situation. On November 12, 2013 appellant met with C.S. and K.C., the superintendent, to discuss not receiving a FY 2013 EPAP. On November 13, 2013 C.S. called him and gave him new assignments in a rude and unprofessional manner and then hung up on him. On November 15, 2013 K.C. informed appellant that he was not going to receive a FY 2013 EPAP and that he had no rights to appeal her decision to the Merit Systems Protection Board (MSPB). He later learned from a human resources manager that he would receive a FY 2013 EPAP (which was signed in March 2014). The evening before he was to begin part-time work on December 10, 2013, he was sent an e-mail list of demands from C.S. that increased his stress and anxiety and interfered with his ability to function. Appellant was also given an entirely new job *via* a draft of his FY 2014 EPAP which stated that his office was being moved to a new and less desirable location and wholesale changes were being made to his duties. He noted that the FY 2014 EPAP did not run during the fiscal year, but instead it covered the period December 2013 to March 2014. It had many more critical elements than were allowed.

Appellant noted that, in a December 11, 2013 letter, his physician indicated that he had a chronic condition that was adversely affected by stress and that any flexibility in his workload or an extension of deadlines would be medically helpful. Appellant claimed that C.S. reviewed the letter and responded that management was already doing enough to accommodate him and nothing more would be done. She also denied his temporary request for a cell phone and wireless printer/scanner while he worked at home. Appellant did not have a landline telephone and was forced to use his personal cell phone. He related that he did not have any witness statements. Appellant claimed that his managers never gave a reason for not giving him a performance appraisal. C.S. initially claimed that she had completed his FY 2013 EPAP, when she had not actually done so. Later, after appellant filed an Equal Employment Opportunity (EEO) complaint, an EEO counselor informed him that his supervisor finally admitted she had not completed his 2013 EPAP. During the November 12, 2013 meeting, his request for a different manager went unanswered by K.C. and C.S. Appellant asserted that his supervisor never discussed his performance rating or put an EPAP in place in 2012. She never conducted a mid-year review or provided a performance plan, feedback, an interim review, coaching, mentoring, or year-end review. Appellant rejected his supervisor's offer to backdate his EPAP because it might be illegal and unethical. He noted that her offer to create a 2014 EPAP was part of the job and not a resolution for him not having a 2013 rating of record. Appellant claimed that C.S. yelled at him on the telephone when he asked for clarification of an assignment to prepare a critical needs hire packet. After she responded affirmatively to his request to put the assignment in writing, she hung up on him. Appellant noted that the only stressful situation outside work was the death of his mother-in-law in October 2013. He did not participate in any hobbies. Appellant previously received psychiatric treatment following an adverse reaction to a high dose of steroids used to treat his lung infection.

Appellant submitted e-mails and statements dated November 5, 2013 to March 3, 2014. Some of these e-mails discussed the incidents involving C.S. and K.C. that he alleged in connection with the present claim. In addition, appellant contended that he worked beyond his four-hour a day work restriction and the FY 2013 EPAP fully successful rating he received was discriminatory and retaliatory. He asserted that C.S. violated his medical privacy rights on February 28, 2014 by asking him to complete a questionnaire/evaluation and discriminated against him by failing to accommodate his physician's request to increase his work hours. Appellant requested extra time due to the passing of his mother-in-law, his recent illness and

hospitalization, and limited work plan. He also requested authorization to participate in teleconferences, attend courses, and add a person to his team to assist with his work assignments.

In a March 3, 2014 letter, appellant accepted the employing establishment's offer for modified work, six hours a day with two hours of work performed at work and four hours of work performed at home. However, he requested that the employing establishment provide him with transportation as a temporary reasonable accommodation because he could not drive to and from work due to his current medical condition and medication.

C.S., in a March 21, 2014 memorandum, controverted the claim. She denied bombarding appellant with work assignments from December 9 to 14, 2013. C.S. noted that, while his work duties, which included supervising six employees, could not effectively be performed from home, he was nonetheless accommodated with a temporary part-time telework agreement to work at home from 10:00 a.m. to 2:30 p.m. Appellant was given a list of assignments prioritized in groups of low, medium, and high. After appellant expressed concern about being able to complete his assignments on a part-time schedule, management assured him that it would be generally flexible with his due dates and work with him. It also only required him to complete low and medium priority assignments and temporarily assigned his supervisory work to another employee. C.S. denied that appellant had not received accommodations or resources needed to perform his job. On December 9, 2013 K.C. approved appellant's December 8, 2013 request to telework four hours a day for 30 days. On December 11, 2013 C.S. approved appellant's December 10, 2013 request to change his work schedule to 9:00 a.m. to 11:00 a.m. and 2:00 p.m. to 4:00 p.m.

On December 10, 2013 appellant requested a cellphone and wireless printer/scanner. C.S. indicated that, while a cellphone was not immediately available, one became available on February 13, 2014. She informed appellant that he would be reimbursed for the cost of using his personal cellphone. C.S. related that he did not initially receive the requested printer/scanner because his time away from the office was only supposed to be for 30 days and it took that long to order the equipment. On February 21, 2014 appellant received the requested equipment as he had submitted medical documentation on January 21, 2014 indicating that he may not return to full-time work for six months.

On February 28, 2014 C.S. denied the physician's February 20, 2014 request that appellant increase his hours at work to four or six hours a day because there was a limit as to how much work he could perform at home. She suggested that he work four hours at home and two hours in the office. On March 3, 2014 appellant informed C.S. that he could not drive to work due to his medication and requested that temporary transportation be provided. C.S. noted that appellant had been asked to submit medical documentation on February 3, 2014, but had not done so because he did not want C.S. to see his medical information. She related that she was acting in several jobs at the beginning of FY 2013 and delayed preparing EPAPs for staff. C.S. further related that appellant's absence on approved medical leave throughout winter 2012 and spring 2013 was also part of the delay.

In April 2013 C.S. met with him regarding his FY 2013 EPAP, but she did not complete it due to other pressing business. She also had not conducted a mid-year review with him due to his many approved absences. Before the November 12, 2013 meeting C.S. realized that she

made a mistake by not getting appellant's appraisal signed. On November 7, 2013 she telephoned him and apologized for her oversight and presented two alternatives. C.S. maintained that appellant became upset and hung up on her. During the November 12, 2013 meeting K.C. denied appellant's request for a new supervisor, but she offered to arrange mediation or conflict resolution. Appellant signed his FY 2013 EPAP on March 2, 2014. K.C. had no knowledge that appellant could lose his job during a government shutdown if he did not have a FY 2013 performance appraisal.

C.S. denied speaking to appellant in a rude and unprofessional manner during a discussion of work assignments or hanging up the telephone on him. She asserted that he was given a list of assignments and not demands before his return to work on December 10, 2013. C.S. indicated that organizational changes that were being made before his illness resulted in assignment changes. She related that appellant's job was essentially the same with new assignments within the scope of his job description. C.S. noted that his office had been relocated from Sunset Crater Volcano to Walnut Canyon National Monument, which was closer to his home. She denied that appellant was asked to work more than his part-time schedule. Appellant was reminded on one occasion not to work more than the approved four hours a day. C.S. related that appellant and other employees may have felt pressures at work, but appellant did not mention such stresses to management. There were no staff shortages or changes in his workload. Organizational changes due to the arrival of a new superintendent were discussed with the staff before appellant's illness. C.S. related that overall appellant performed at a satisfactory level and did not have any performance or conduct problems.

C.S. submitted e-mails and documents pertaining to the incidents noted in her March 21, 2014 response to OWCP's development letter. She also submitted copies of appellant's FY 2013 EPAP which indicated that he received a fully successful performance rating and a description of his park ranger position.

In a July 11, 2014 decision, OWCP denied appellant's claim for an emotional condition because he had failed to establish any compensable employment factors. Thus, appellant did not establish an injury in the performance of duty.

On August 3, 2014 appellant requested an oral hearing before an OWCP hearing representative. During a telephonic hearing held on February 9, 2015, he testified about the events of the November 12, 2013 meeting. Appellant contended that K.C. tried to coerce him into falsifying his FY 2013 EPAP, but he refused to do so. He again claimed that C.S. stated that she had completed his FY 2013 EPAP during the meeting. Appellant identified a human resources employee who had informed him that he could lose his job in the event of a government shutdown without an EPAP or rating. He reiterated that C.S. had hung up on him suddenly after their November 13, 2013 telephone call and that she had assigned him duties and deadlines that he could not possibly meet due to physician-ordered reduced work schedule and she refused to change them.

In a March 13, 2015 letter, K.C. responded to appellant's hearing testimony. She denied that she tried to coerce appellant into falsifying his appraisal during the November 12, 2013 meeting. K.C. related that, at the meeting, C.S. apologized to appellant for not earlier finalizing his performance appraisal. She and C.S explained the options for providing appellant with a

performance rating of record. The first option offered was for his supervisor to complete a draft performance plan they had discussed earlier in the year and rate his performance using those elements and standards, but only if they both agreed the draft represented their mutual understanding of his performance expectations. The second option was to establish his FY 2014 performance plan right away and rate his performance 90 days from establishment (the minimum required time for an official rating of record) so that he would have an official rating in three months. K.C. related both solutions which had been suggested by an employing establishment employee relations specialist as appropriate. She maintained that C.S. had not claimed to have completed appellant's FY 2013 EPAP at the meeting. C.S. readily admitted, at that meeting and several days prior to it, that the official performance plan document had not been finalized and signed after they met to discuss the plan in April 2013. She explained that she did not realize the plan had not been finalized until it was time to complete the appraisal process in early November 2013. C.S. had not misrepresented this situation during the meeting. K.C. denied that appellant's supervisor hung up on appellant. She contended that the employer could not guarantee a stress-free workplace as a reasonable accommodation. Appellant's supervisor provided him with a prioritized list of things that he could do on a reduced schedule. This was done specifically to help him organize the time he was able to work. K.C. advised that the employing establishment continued to challenge appellant's claim.

By decision dated March 24, 2015, an OWCP hearing representative affirmed the July 11, 2014 decision, finding that as appellant had not established any compensable employment factors he did not establish an emotional condition in the performance of duty.

LEGAL PRECEDENT

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by factors of his or her federal employment.[4] To establish that he or she sustained an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.[5]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but, nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.[6] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-

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

[5] *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

[6] *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.[7]

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA[8] However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.[9] In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.[10]

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.[11] 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.[12]

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and factors. OWCP denied the emotional condition claim on the grounds that he had not established any compensable employment factors. The Board must initially review whether these alleged incidents and conditions of employment are compensable employment factors under the terms of FECA. The Board notes that some of appellant's allegations pertain to his regular or specially assigned duties, as under *Cutler*.[13] Appellant has also alleged harassment and discrimination on the part of his supervisors.

[7] *Gregorio E. Conde*, 52 ECAB 410 (2001).

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

[9] *See William H. Fortner*, 49 ECAB 324 (1998).

[10] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[11] *Dennis J. Balogh*, 52 ECAB 232 (2001).

[12] *Id.*

[13] *See supra* note 6.

Appellant alleged that he was overworked because he was given new work assignments and he worked beyond his four-hour a day work restriction. The Board has held that overwork, when substantiated by sufficient factual information to corroborate appellant's account of events, may be a compensable factor of employment.[14] The record, however, does not substantiate appellant's contention that he was overworked. C.S. noted that when appellant expressed concern about completing his list of prioritized assignments on a part-time schedule, she assured him that she would be generally flexible with his due dates and work with him. She also only required him to complete low and medium priority assignments and temporarily assigned his supervisory work to another employee. K.C. maintained that the prioritized list of assignments given to appellant by C.S. could be performed on a reduced work schedule. She indicated that these assignments were provided to help him organize his time. The Board finds that the evidence is insufficient to establish overwork allegations as C.S. and K.C. explained that appellant did not have a heavy workload and received assistance with the performance of his work duties. Appellant has not established a compensable employment factor regarding *Cutler* factors.

The Board notes that appellant's primary allegations regarding management's failure to provide him with a FY 2013 EPAP in a timely manner and the filing of an EEO complaint concerning this matter,[15] denial of his request for reasonable accommodations[16] and transfer to a different supervisor,[17] modification of his work schedule and assignment of work,[18] decision to reassign him to a new duty station,[19] and request for medical documentation[20] relate to administrative matters. The Board finds that the administrative and personnel actions taken by management in this case contained no evidence of agency error and are, therefore, not considered factors of employment. As noted in *Thomas D. McEuen*,[21] complaints about the manner in which a supervisor performs his duties or the manner in which a supervisor exercises his discretion falls outside the scope of coverage provided by FECA. It must be established factually that the manager committed error or abuse to support a compensable factor pertaining to any administrative or personnel matter.

C.S. noted that appellant signed his FY 2013 EPAP on March 2, 2014. She apologized to him for her delay in completing his mid-year review and performance appraisal and noted her delay in completing other employees' FY 2013 performance appraisals. She explained that the delay was due to her acting in several jobs at the beginning of FY 2013 and appellant's absence

[14] *Bobbie D. Daly*, 53 ECAB 691 (2002).

[15] *Michael A. Salvato*, 53 ECAB 666, 668 (2002).

[16] *See K.M.*, Docket No. 14-1860 (issued June 2, 2015).

[17] *See Matilda R. Wyatt*, 52 ECAB 421 (2001).

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

[19] *Ernest J. Malagrida*, 51 ECAB 287 (2000).

[20] *James P. Guinan*, 51 ECAB 604, 607 (2000); *John Polito*, 50 ECAB 347, 349 (1999).

[21] *Supra* note 8.

from work on approved medical leave throughout winter 2012 and spring 2013. C.S. indicated that she met with appellant in April 2013 regarding his FY 2013 EPAP, but she did not complete it due to other pressing business. She and K.C. provided appellant with two options for completing his FY 2013 EPAP, as deemed appropriate by an employee relations specialist prior to the November 12, 2013 meeting, but he became upset with her and hung up the telephone as she attempted to discuss his options. C.S. maintained that she had no knowledge about whether he could have lost his job during a government shutdown if he did not have a current appraisal. K.C. noted that C.S. apologized to appellant for not finalizing his performance appraisal in a timely manner. K.C. denied that C.S. claimed to have completed his FY 2013 EPAP and readily confessed prior to and at the meeting her realization that it had not been finalized until early November 2013. She also denied trying to coerce appellant to falsify his appraisal during the November 12, 2013 meeting. Although appellant filed an EEO claim regarding management's failure to timely complete his FY 2013 EPAP, he did not submit a final EEO decision finding error or abuse on the part of management. Under these circumstances, the Board finds that appellant has not established error or abuse in the handling of this administrative matter.[22]

Regarding appellant's allegation that he was denied reasonable accommodations, C.S. responded that she had approved his request for a temporary part-time telework schedule upon his return to work on December 10, 2013 even though his park ranger position involved supervising six employees which could not be effectively performed from telework status at home. She also approved his request to change his original telework hours. C.S. related that she denied appellant's request to increase his work hours from four hours a day to six hours a day due to the limitation on the amount of work that could be performed at home. The record, however, indicates that the employing establishment later offered him a modified position, six hours a day, two hours at home and four hours in the office. While appellant accepted this position, C.S. denied his request for temporary transportation to work due to his medical condition and medication because he refused to submit supportive medical documentation. She related that at the time of appellant's request for a cell phone, a cell phone was not immediately available, but noted that one became available on February 13, 2014. C.S. also related that he did not initially receive a wireless printer/scanner because he was only supposed to telework for 30 days and it would have taken that much time to order the equipment. However, she noted that appellant subsequently received the equipment after submitting medical documentation that he could not return to full-time work for six months. The Board finds that C.S. provided a reasonable explanation for management's decision and appellant has failed to establish that the employing establishment erred in this matter.[23]

Regarding the denial of appellant's request for a transfer to a different supervisor, C.S. acknowledged the denial by K.C., but noted that K.C. offered to arrange mediation or conflict resolution. The Board finds, therefore, that appellant has failed to establish error or abuse with regard to the denial of his request for a transfer to a new supervisor.[24]

[22] *See V.D.*, Docket No. 10-280 (issued October 8, 2010) (the fact that appellant was not given performance standards was not compensable where no adverse actions resulted from this).

[23] *See supra* note 16.

[24] *See supra* note 17.

Regarding the assignment of appellant's new work duties, C.S. denied that she demanded that he perform newly assigned work duties upon his return to work on December 10, 2013. She explained that the changes in his assignments were due to organizational changes which involved the arrival of a new superintendent. C.S. noted that the assignments were listed in priority in groups of low, medium, and high. She also noted that appellant's new assignments were within the scope of job description. In response to his allegation that he was being moved to a new and less desirable location, C.S. indicated that his new duty station was closer to his home. Thus, the Board finds that C.S.'s statement establishes that she did not err or commit abuse in the exercise of her supervisory duties in assigning new work duties to appellant and reassigning him to a new duty station. Appellant has failed to establish a compensable factor of his employment.

The Board finds that appellant's allegations regarding the above-noted administrative matters were refuted by the responses of C.S. and K.C. They sufficiently addressed each of his allegations and demonstrated that they acted appropriately in their administrative capacity with regard to each of the situations which arose in the work environment.[25] Thus, appellant has not established a compensable employment factor.

Appellant additionally contended that he experienced harassment and discrimination by the employing establishment. Harassment and discrimination by supervisors and coworkers, if established as occurring and arising from the performance of work duties, can constitute a compensable work factor.[26] A claimant, however, must substantiate allegations of harassment and discrimination with probative and reliable evidence.[27] Appellant asserted that C.S. yelled at him during a telephone conversation when he asked her for clarification regarding a work assignment.[28] He claimed that she abruptly hung up the phone. Appellant contended that management discriminated and retaliated against him by rating him fully successful in FY 2013. He did not, however, substantiate these allegations with any witness statements. C.S. denied speaking to him in a rude and unprofessional tone. She also denied hanging up the telephone on him. As noted above, C.S. related that appellant became upset and hung up the telephone on her following their discussion about her FY 2013 EPAP. K.C. maintained that C.S. did not hang up on appellant. Based on the statements of C.S. and K.C., the Board finds that appellant has not established a factual basis for his claim of harassment and discrimination.[29] Appellant has not established a compensable employment factor.

[25] The evidence submitted by an employing establishment on the basis of their records will prevail over the assertions from the claimant unless such assertions are supported by documentary evidence. *See generally Sue A. Sedgwick*, 45 ECAB 211, 218 n.4 (1993).

[26] *T.G.*, 58 ECAB 189 (2006); *Doretha M. Belnavis*, 57 ECAB 311 (2006).

[27] *C.W.*, 58 ECAB 137 (2006); *Robert Breeden*, 57 ECAB 622 (2006).

[28] *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); *see also D.S.*, Docket No. 15-0411 (issued September 10, 2015).

[29] *See Robert Breeden*, *supra* note 27.

As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record.[30]

On appeal, appellant disagrees with OWCP's decision denying his emotional condition claim and contends that the submitted evidence was not properly taken into account and was intentionally misconstrued. The Board finds that OWCP properly reviewed all of the evidence of record. Further, for the reasons stated above, the Board finds that appellant failed to establish a compensable work factor.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the March 24, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 11, 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

[30] *A.K.*, 58 ECAB 119 (2006).