

**United States Department of Labor
Employees' Compensation Appeals Board**

H.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
West Sacramento, CA, Employer**

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**Docket No. 16-0998
Issued: May 11, 2017**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On April 11, 2016 appellant filed a timely appeal from a February 17, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish a head injury on January 29, 2015 in the performance of duty; and (2) whether he met his burden of proof to establish an emotional or stress-related physical condition in the performance of duty.

FACTUAL HISTORY

On February 17, 2015 appellant, then a 46-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that on January 29, 2015 he fainted and bumped his

¹ 5 U.S.C. § 8101 *et seq.*

head on the floor after his supervisor threatened him and failed to allow him a rest break. He also alleged that he experienced stress affecting his heart. Appellant stopped work on January 29, 2015. His supervisor noted that he was unsure whether the incident “was staged or not.”

In a statement dated January 29, 2015, W.K., a coworker, related that he and another individual found appellant alone on the floor unresponsive and called for emergency services. S.W., a coworker, related in a statement dated January 30, 2015 that he and W.K. found appellant on the floor near the counter with labored breathing. They called emergency services.

Dr. Trevor John Mills, an osteopath, evaluated appellant at the emergency department on January 29, 2015. He noted that the chest pain began after he had an “argument with his boss.” Dr. Mills diagnosed chest pain and emotional stress.

Dr. Jennifer E. Morley, who specializes in emergency medicine, indicated on January 30, 2015 that appellant could return to full-time work on January 31, 2015.

Appellant filed a grievance alleging that on January 29, 2015 P.K., a supervisor, refused to let him take a break, asked him in a loud voice why he was so late returning to the office, slammed his fist against a table, and threatened to fire him like he had fired appellant’s nephew. He advised that he felt dizzy and fell, but the supervisor did not call for emergency assistance. Appellant believed P.K. was retaliating against him because he had filed a January 6, 2014 grievance when Y.M., a supervisor, told appellant he was on P.K.’s “hit list.”

Dr. Arash Nassim, a gastroenterologist, treated appellant on February 3, 2015 for chest pain and an acute stress reaction. In progress reports dated February 24 and March 17, 2015, he noted a variety of health issues, including generalized anxiety disorder and acute reaction to stress. Dr. Nassim found appellant should remain off work from February 25 to March 18, 2015.

Y.M. responded on February 19, 2015 that he had not harassed appellant, but instead assigned him work as necessary to manage mail. He related, “At no time have I singled out any one driver to do a job, but use the drivers I have available to me at that time.”

In an interview dated February 19, 2015, W.K. advised that on January 29, 2015 he found appellant “lying on the ground kind of up against the counter, he was unresponsive to me touching him or talking to him.” Appellant did not seem unconscious as his eyes moved, but he related that it did not appear that appellant had fallen but rather “like he slid down the side of the counter, or maybe collapsed slowly onto the ground. Appellant’s turban was on his head and he was lying flat with his left hand on his chest and his right hand on the ground.”

On February 24, 2015 the employing establishment controverted the claim, noting that the medical evidence did not discuss a head injury and that it was unclear how appellant fell.

By letter dated March 9, 2015, OWCP requested that appellant submit additional factual and medical information, including a detailed description of the work factors to which he attributed his condition.

In a report dated March 17, 2015, Dr. Nassim related that on January 29, 2015 appellant's supervisor had advised appellant that he was going to be fired like he had fired his cousin. Appellant became dizzy and fell to the ground, but the supervisor did not call for emergency services. Appellant's coworkers found him and called an ambulance. Dr. Nassim referred him to a neurologist as appellant had continued anxiety and difficulty concentrating.

Appellant provided a statement on March 25, 2015 describing the events of January 29, 2015. He began work at 12:00 p.m., took lunch from 2:30 to 3:00 p.m., and was unloading mail at 6:25 p.m. when P.K. instructed him to go to another location. P.K. denied appellant's request for a rest break even though he had worked almost six hours with no break and was entitled to receive two rest breaks each eight hours. After appellant returned to the office at 8:45 p.m., P.K. yelled at him and threatened him. Appellant provided copies of grievances that had been filed by his coworkers against P.K. and Y.M. He also submitted a copy of a Step 2 grievance that he had filed on November 18, 2014 alleging that on October 16, 2014 Y.M. had singled him out for inventory and told appellant that he was on P.K.'s "hit list." The employing establishment denied the Step 1 grievance on November 9, 2014.² On April 10, 2015 appellant appealed the Step 1 grievance, arising out of the events on January 29, 2015, to arbitration.

In a February 6, 2015 statement, received by OWCP on April 10, 2015, appellant related that P.K. had assigned appellant a mail delivery at 6:25 p.m. on January 29, 2015 and had denied his request for a break. When he returned, P.K. asked appellant why he was late and he responded that P.K. should check appellant's form. The supervisor accused him in a loud voice of planning to be late, slammed his fist on the table, and threatened to fire him like he had fired appellant's nephew. Appellant believed that C.D., a manager, gave P.K. his personal family information. He related "When he was still threatening me, my legs started shaking, my head started spinning, and I felt dizzy and fell on the floor and I was unconscious." Appellant indicated that he was discharged from the hospital the following day. He maintained that P.K. refused to call an ambulance for him.

Appellant further questioned why the employing establishment had not taken action on his November 6, 2014 grievance against P.K. and Y.M. He asserted that P.K. would telephone him on his mobile telephone even when he was driving and could not take the call. The supervisor would then harass appellant because he did not answer his telephone. Appellant submitted a copy of his schedule for January 29, 2015.

In a February 11, 2015 interview, P.S., a coworker, related that he was at his desk on January 29, 2015 when appellant returned to his work location. He left the office for five or six minutes and, when he got back, appellant was lying on the floor and did not respond.

C.D., in an April 13, 2015 statement, related that based on an interview with two employees it appeared that appellant had lain or sat down on the floor and had not fallen. She asserted that Y.M. and P.K. did not treat any employees differently or in a poor manner. C.D. advised that appellant's grievance was denied. She denied ever discussing appellant's family

² Appellant also filed a grievance alleging that on October 9, 2014 he was forced to work overtime and perform work from a different craft.

information with P.K., but did discuss work performance and other matters with him in his capacity as a supervisor.

On April 14, 2015 P.K. advised that appellant did not request a break after P.K. had instructed him to deliver mail to another location on January 29, 2015. He indicated that appellant's schedule did include a scheduled lunch break, but did not provide break times as they were built into the routine. P.K. asked appellant to deliver mail during his standby time and, when he returned, asked him in front of P.S. why it took appellant so long to make the delivery in a professional manner. P.K. left the office and when he returned he found appellant lying on the floor. P.K. denied slamming his fist, referring to firing his nephew, or receiving any personal information about him from C.D. He denied threatening appellant, but did tell him that he would talk to him tomorrow with a union steward present. P.K. noted that appellant was released from the hospital the same night with no restrictions. He denied harassing appellant for not answering his mobile telephone, but indicated that he only called about work matters. P.K. indicated that appellant provided his mobile telephone for work communications.

The employing establishment submitted statements from supervisors, Y.M. and T.O., indicating that appellant and other employees were insubordinate, did not follow instructions, took repeated breaks, and created a hostile work environment.³

By decision dated July 30, 2015, OWCP denied appellant's claim for a stress-related condition after finding that he had not established any compensable work factors. It informed him that, as he was attributing his condition to events occurring over the course of more than one workday, it had converted his claim to an occupational disease.

In a report dated July 2, 2015, received by OWCP on September 2, 2015, Dr. Kenneth Cheung, a neurologist, provided a history of appellant fainting on January 29, 2015 after his supervisor yelled at him and threatened to fire him. He diagnosed an adjustment disorder with anxiety, altered mental state, staring spell, cognitive changes, and migraine.

On August 26, 2015 appellant requested a review of the written record. He maintained that a February 26, 2015 grievance settlement established harassment by Y.M. Appellant related that he worked on January 29, 2015 without a break. He disputed that he had been insubordinate and noted that P.S. had not been present when P.K. threatened him. He also questioned why the employer had not obtained statements from his regular supervisors. Appellant attached his usual work schedule effective April 15, 2014 and his January 29, 2015 schedule. His usual schedule reflects break times, but also notes that appellant was on standby time from 6:36 p.m. until 7:50 p.m.

In an emergency department report dated January 30, 2015, received by OWCP on September 2, 2015, Dr. Mills obtained a history that appellant had been experiencing chest pain after his supervisor threatened to fire him. He related, "During this argument he had the gradual onset of left-sided chest heaviness, feeling of 'shallow breathing,' [and] lightheadedness. He sat down on the ground and 'did [not] feel like speaking to anyone' for about 10 minutes, therefore

³ The record also contains statements from coworkers generally indicating that they witnessed appellant unconscious on the floor on January 29, 2015 and a statement indicating that P.K. was disrespectful.

bystanders called EMS [emergency medical services]. [Appellant] reports that he was conscious during this time just having a lot of pain.” Dr. Mills diagnosed chest pain and emotional stress and discharged him from the emergency department.

C.D. signed a grievance settlement on February 26, 2015 regarding appellant’s October 15, 2014 allegation that Y.M. had told appellant that he was on P.K.’s “hit list.” It provided that both employees and supervisor would treat each other with dignity and respect, and that the agreement constituted a settlement of all issues.

Appellant submitted behavioral therapy notes dated February through June 2015 and an August 10, 2015 discharge summary describing his treatment for major depressive disorder and post-traumatic stress disorder. In a treatment note dated June 26, 2014, Dr. Mahendra Singh, a Board-certified internist, related a history of a concussion after a head injury in January 2015 which rendered appellant “unconscious for approximately 15 minutes.” Dr. Singh diagnosed hypertension, chronic headaches, a history of concussion, and depression with anxiety.

In a report dated November 17, 2015, Dr. Janak Mehtani, a Board-certified psychiatrist, noted that appellant became dizzy after P.K. yelled at him and thereafter appellant sat down on the floor. He related, “Apparently, [appellant] fell backwards, passed out, and was unconscious for a few minutes.” Dr. Mehtani diagnosed major depressive disorder with anxiety attacks and post-traumatic stress disorder, compulsive personality traits, and recurrent headaches.

In a decision dated February 17, 2016, an OWCP hearing representative affirmed the July 30, 2013 decision. He found that appellant had not established an emotional condition or stress-related condition due to the work factors on January 29, 2015. The hearing representative further determined that he had not established that he fainted and fell onto the floor on January 29, 2015 and that, even if he had established that he fell and hit his head, the medical evidence was insufficient to show that he sustained an injury.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an “employee of the United States” within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether “fact of injury” is established. First, the employee has the burden of demonstrating the occurrence of an injury at the time, place, and in the manner

⁴ *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

⁵ *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

alleged, by a preponderance of the reliable, probative, and substantial evidence.⁶ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁷ An employee may establish that the employment incident occurred as alleged, but fail to show that his disability and/or condition relates to the employment incident.⁸

As noted, the first fact of injury component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁹ An injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action.¹⁰ An employee has not met his or her burden of proof in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.¹¹

ANALYSIS -- ISSUE 1

Appellant contended that he fainted on January 29, 2015 and fell, striking his head on the floor. The Board finds that there are inconsistencies in the evidence that cast serious doubt upon his assertion that he lost consciousness or fainted and fell to the floor on January 29, 2015. Appellant's coworkers, W.K. and S.W., found him alone and unresponsive on January 29, 2015 and called emergency services. W.K. advised that it appeared that he had slowly collapsed to the ground or slid down from the counter rather than fell, and that his left hand was on his chest and his right on the ground.

Additionally, the most contemporaneous medical evidence does not provide support for the factual component of appellant's claim. In the January 30, 2015 emergency report, Dr. Mills obtained a history of appellant sitting down on the floor due to chest pain after his supervisor threatened to fire him. He noted that appellant did not lose consciousness. In a report dated March 17, 2015, Dr. Nassim related that appellant felt dizzy and fell on January 29, 2015. While he subsequently asserted that he fainted on January 29, 2015, the Board finds that the emergency room report constitutes the most probative evidence and establishes that he did not faint or lose consciousness on January 29, 2015.¹² Consequently, the Board finds that appellant has not established fact of injury due to inconsistencies in the evidence that cast serious doubt as to whether the traumatic incident occurred at the time, place, and in the manner alleged.

⁶ *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁷ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁸ *Id.*

⁹ *See Louise F. Garnett*, 47 ECAB 639 (1996).

¹⁰ *See Betty J. Smith*, 54 ECAB 174 (2002).

¹¹ *Id.*

¹² *See S.W.*, Docket No. 12-1127 (issued October 10, 2012).

Additionally, appellant has not submitted any medical evidence showing that he sustained an injury due to the alleged January 29, 2015 work incident. Dr. Mills' January 30, 2015 emergency room report noted that he had chest pain after an argument with his supervisor. He indicated that appellant sat on the ground after the argument and did not want to speak to anyone for around 10 minutes. Dr. Mills diagnosed chest pain and emotional stress. Dr. Nassim treated appellant in February for chest pain and an acute reaction to stress. On March 17, 2015 he noted that appellant experienced dizziness and fell to the ground after his supervisor told him that he was going to fire him. Dr. Nassim referred appellant to a neurologist. Neither Dr. Mills nor Dr. Nassim diagnosed a head injury, and thus their opinions are of little probative value.

On June 26, 2015 Dr. Singh indicated that appellant related a history of a head injury and concussion in January 2015 with a loss of consciousness for 15 minutes. He diagnosed chronic headaches, a history of concussion, hypertension, and depression with anxiety. Dr. Singh, however, did not address the cause of the diagnosed conditions and thus his opinion is of little probative value on the issue of causation.¹³ Additionally, he relied upon a history of appellant sustaining a concussion and loss of consciousness in January 2015, which is not supported by the evidence.¹⁴

Dr. Mehtani, on November 17, 2015, advised that appellant experienced dizziness after P.K. yelled at him such that he fainted and fell backwards. He diagnosed emotional conditions and recurrent headaches. Dr. Mehtani did not find that appellant sustained an injury to his head on January 29, 2015, and thus his opinion is insufficient to meet appellant's burden of proof.

As appellant has not established the factual or medical component of his claim, he has not met his burden of proof to establish that he sustained an injury on January 29, 2015 in the performance of duty.

LEGAL PRECEDENT -- ISSUE 2

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.¹⁵ 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 frustration from not being permitted to work in a particular environment or to hold a particular position.¹⁶

¹³ See *K.W.*, 59 ECAB 271 (2008).

¹⁴ See *Roger Dingess*, 47 ECAB 123 (1995).

¹⁵ 5 U.S.C. § 8101 *et seq.*; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

¹⁶ *Gregorio E. Conde*, 52 ECAB 410 (2001).

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.¹⁷ 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.¹⁸ 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.¹⁹

For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.²⁰ A claimant must establish a factual basis for his allegations with probative and reliable evidence. Grievances and Equal Employment Opportunity complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.²¹ The issue is whether the claimant has submitted sufficient evidence under FECA to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.²² The primary reason for requiring factual evidence from the claimant in support of his allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by OWCP and the Board.²³

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.²⁴ 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

¹⁷ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹⁸ See *William H. Fortner*, 49 ECAB 324 (1998).

¹⁹ *Ruth S. Johnson*, 46 ECAB 237 (1994).

²⁰ See *Michael Ewanichak*, 48 ECAB 364 (1997).

²¹ See *Charles D. Edwards*, 55 ECAB 258 (2004); *Parley A. Clement*, 48 ECAB 302 (1997).

²² See *James E. Norris*, 52 ECAB 93 (2000).

²³ *Beverly R. Jones*, 55 ECAB 411 (2004).

²⁴ *Dennis J. Balogh*, 52 ECAB 232 (2001).

record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.²⁵

ANALYSIS -- ISSUE 2

Appellant alleged that he sustained an emotional condition as the result of a traumatic injury on January 29, 2015. The Board finds that, while appellant primarily attributed his condition to events occurring on January 29, 2015, he also raised allegations occurring over the course of more than one work shift, and thus his claim is properly considered as an occupational disease claim.²⁶

OWCP denied appellant's emotional condition claim as he did not establish any compensable employment factors. The Board must, therefore, initially review the record of evidence to determine whether these alleged incidents and conditions of employment are covered work factors under FECA.

Appellant's contentions do not pertain to the performance of his regular or specially assigned duties under *Cutler*.²⁷ Rather, he alleged error and abuse in administrative matters and harassment by his supervisor.

In *Thomas D. McEuen*,²⁸ 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 employer 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 facts surrounding the administrative or personnel action established error or abuse by 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.²⁹

Appellant alleged that P.K. erred in ordering him to deliver more mail on January 29, 2015 without a break. The assignment of work is an administrative function and, absent error or abuse, not compensable.³⁰ Appellant related that on January 29, 2015 he began work at 12:00

²⁵ *Id.*

²⁶ A traumatic injury is defined as a "condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift." 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift." 20 C.F.R. § 10.5(q).

²⁷ See *supra* note 16.

²⁸ See *Thomas D. McEuen*, *supra* note 18.

²⁹ See *Richard J. Dube*, 42 ECAB 916 (1991).

³⁰ See *Robert W. Johns*, 51 ECAB 137 (1999).

p.m. and took lunch from 2:30 to 3:00 p.m. At 6:25 p.m., P.K. instructed him to go to another location and denied his request for a break. In a statement dated April 14, 2015, P.K. asserted that appellant had not asked for a break and advised his schedule did not provide a scheduled break time other than lunch. He was instead on standby time when the supervisor instructed him to deliver mail. Appellant has not provided any evidence corroborating that P.K. erred or acted abusively in instructing him to deliver mail the evening of January 29, 2015.

The Board further finds that appellant has not factually established that C.D. disclosed information about his family to P.K. Both C.D. and P.K. denied discussing his personal information and appellant has not submitted factual evidence corroborating his allegation. Appellant has the burden of proof to establish a factual basis for his allegations with reliable and probative evidence.³¹ Consequently, he has not established a compensable work factor.

Appellant primarily attributed his chest pain and acute stress reaction to harassment and verbal abuse by P.K. on January 29, 2015. He asserted that P.K. asked him in a loud voice why it took him so long to return from a delivery, slammed his fist on a table, and threatened to fire him. 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.³² A claimant, however, must substantiate allegations of harassment and discrimination with probative and reliable evidence.³³ Additionally, verbal altercations with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.³⁴

On April 14, 2015 P.K. advised that he had asked appellant, in a professional manner, why his delivery took so long. He denied threatening appellant but did inform him that P.K. wanted to speak to him the next day in front of a union steward. Appellant did not submit any corroborating evidence to support the alleged harassment or verbal abuse by P.K. on January 29, 2015 and thus has not established a compensable work factor.

Appellant alleged that P.K. called his mobile telephone while he was driving and harassed him for not answering. P.K. indicated that he only telephoned about work matters and had not harassed him for not answering while driving. Appellant has not submitted evidence substantiating his assertion and thus has not established a compensable work factor.

Appellant maintained that the employing establishment approved his grievance regarding actions taken by Y.M. on October 15, 2014. A February 26, 2015 grievance settlement indicated that supervisors and managers should treat each other respectfully and that this constituted a settlement of the grievance. Grievances and Equal Employment Opportunity complaints by

³¹ See *Pamela D. Casey*, 57 ECAB 260 (2005).

³² *T.G.*, 58 ECAB 189 (2006); *Doretha M. Belnavis*, 57 ECAB 311 (2006).

³³ *C.W.*, 58 ECAB 137 (2006); *Robert Breeden*, 57 ECAB 622 (2006).

³⁴ *Marguerite J. Toland*, 52 ECAB 294 (2001).

themselves do not establish that workplace harassment or unfair treatment occurred.³⁵ The issue is whether the claimant has submitted sufficient evidence under FECA to establish a factual basis for the claim by supporting his allegations with probative and reliable evidence. The primary reason for requiring factual evidence from the claimant in support of his allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by OWCP and the Board.³⁶ The grievance settlement did not find harassment by management but instead merely noted that the parties should treat each other with respect. The Board finds that appellant has not established a factual basis for his claim of harassment by probative and reliable evidence.³⁷

For the foregoing reasons, appellant has not established a compensable employment factor and therefore did not establish that he sustained an emotional condition in the performance of duty.³⁸

On appeal appellant advised that he submitted supporting medical and factual information. As discussed, however, it is insufficient to meet his burden of proof.

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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established a head injury in the performance of duty on January 29, 2015. The Board also finds that he has not established an emotional condition in the performance of duty.

³⁵ See *J.D.*, Docket No. 09-0818 (issued August 10, 2009).

³⁶ See *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

³⁷ See *R.V.*, Docket No. 10-0652 (issued November 10, 2010).

³⁸ As appellant has not established any compensable employment factors, the Board need not address the medical evidence of record; see *Hasty P. Foreman*, 54 ECAB 427 (2003).

ORDER

IT IS HEREBY ORDERED THAT the February 17, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 11, 2017
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board