

the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

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

FACTUAL HISTORY

On July 22, 2014 appellant, then a 41-year-old part-time registered nurse, filed an occupational disease claim (Form CA-2) alleging that she developed an emotional condition as a result of constant stress and anxiety over her job status, being moved between shifts and departments, answering to several supervisors, and rearranging her schedule to attend appointments related to a prior work injury. She indicated that she sought a different job that would not be so physically demanding. Appellant applied for 14 jobs, but was not selected and believed that she had been discriminated against. She advised that the employing establishment never made a permanent job offer and she received little feedback and had unanswered questions. Appellant reported working light-duty because of an October 12, 2012 work-related right shoulder injury and a May 8, 2013 reinjury.³ She became aware of her condition and its relation to her federal employment on October 12, 2012. Appellant resigned on August 8, 2015.

On August 6, 2014 OWCP asked appellant to submit additional evidence, including a detailed description of the work incidents that contributed to her claimed illness. It requested that the employing establishment comment on the accuracy of all statements.

The employing establishment submitted an August 13, 2014 statement from P.G., a nurse manager, who indicated that on January 17, 2014, she requested that appellant meet with her to discuss appellant's new assignment in the Outpatient Clinic. On January 24, 2014 appellant responded by e-mail and indicated that she was not aware that she was being reassigned. P.G. informed appellant that the new assignment would meet her restrictions as well as the needs of the service. She advised that the reassignment would take place on February 18, 2014. Appellant presented to the Outpatient Clinic area February 18, 2014. P.G. noted accommodating appellant's medical schedule, annual leave schedule, as well as a shift change schedule. She indicated that she answered appellant's questions in meetings held on June 16 and July 16, 2014 with the associate director of Patient Care Services and the chief nurse of Ambulatory Care to address appellant's concerns. P.G. did not learn of the emotional condition claim until July 18, 2014 when appellant sent her an e-mail.

² 5 U.S.C. § 8101 *et seq.*

³ Appellant filed a claim for a traumatic injury claim which occurred on October 12, 2012 and was accepted for right shoulder sprain/strain, file number xxxxxx235. Compensation benefits were terminated on October 22, 2014. Appellant filed another traumatic injury claim for an injury to the right shoulder on May 8, 2013; however, this claim was denied by OWCP, file number xxxxxx930.

Also submitted was an August 28, 2014 statement from D.D., an employing establishment workers' compensation specialist, who noted that appellant performed limited-duty work associated with a May 20, 2013 traumatic injury and the employing establishment ensured all work performed was within her physician's restrictions. She indicated that appellant was explicit in her desire to work additional hours due to a financial hardship despite her work restrictions. D.D. indicated that appellant had been working in a limited-duty capacity due to a previous traumatic injury and permanent job offers could not be made on a temporary condition. She noted the employing establishment provided limited-duty work consistently. With regard to appellant's assertion that she had to rearrange her schedule in order to attend appointments related to her injury, D.D. advised that appellant was a part-time employee who generally worked three days a week and could attend appointments on her off days.

By decision dated September 16, 2014, OWCP denied appellant's claim for an emotional condition as the evidence failed to establish that the events occurred, as alleged.

On October 9, 2014 counsel requested an oral hearing before an OWCP hearing representative.

In an undated narrative statement, appellant alleged: (1) she had at least seven limited-duty assignments due to an October 12, 2012 work-related shoulder injury and some assignments required changes in shifts, supervisors, units, and nursing-related duties; (2) the employing establishment did not provide training to perform the limited-duty assignments and she was concerned about her ability to perform the duties; (3) she applied for 14 jobs for which she was not selected; (4) she requested reasonable accommodations, but was not offered a permanent job offer; (5) she developed stress due to insecurity about maintaining her nursing position; (6) she was a part-time employee and was not allowed to work additional hours after her traumatic injury; (7) she had issues regarding payment of medical bills related to her separate traumatic injury claim; (8) the limited-duty assignments did not meet her medical restrictions or that she was worked outside her restrictions; (9) the employing establishment forced her to sign an illegal document on October 12, 2012 and failed to provide her two weeks' notice prior to a change in her limited-duty assignment; (10) the employing establishment denied her leave requests and she was unable to attend prescribed physical therapy appointments; (11) the employing establishment untimely filed, mishandled claim forms, or made false statements; and (12) the employing establishment's actions concerning the identified incidents were in retaliation, harassment, or punitive.

Appellant submitted employing establishment job offers dated October 12, October 25, November 16, 2012, May 14, September 6, November 16, 2013, and February 18, July 11, September 4, September 16, 2014. She also provided a list of 17 jobs for which she had applied for at the employing establishment from 2012 to 2014.

Appellant submitted October 26 and November 23, 2012 employing establishment medical records from a health care provider with an illegible signature, indicating that she was partially disabled from October 12 to December 14, 2012. The provider noted that appellant could work within restrictions and attend physical therapy up to three times per week. Appellant submitted a statement from a social worker who noted that she had presented for two sessions through the Employee Assistance Program (EAP) on July 25 and August 5, 2014.

Also submitted was a September 25, 2014 report from Dr. Wallace Huff, a Board-certified orthopedist, who treated her for a right acromioclavicular (AC) work injury. Dr. Huff diagnosed AC joint osteoarthritis after trauma. Also submitted was an October 2, 2014 report from Dr. Edward Marshall, a licensed clinical psychologist and EAP counselor, who treated appellant for stress, depression, and anxiety related to her shoulder injury.

In a decision dated March 24, 2015, an OWCP hearing representative set aside the September 16, 2014 decision and remanded the case for further development. She indicated that following OWCP's decision appellant submitted factual evidence outlining the work factors believed to have caused her emotional condition along with supportive evidence. The hearing representative instructed OWCP to address the factual evidence submitted by appellant and forward this information along to the employing establishment for review and comments.

In a narrative statement dated May 2, 2015, appellant reiterated her allegations. She also submitted a copy of her work schedule from October 7 to November 3, 2012. Appellant also submitted an October 9, 2014 report from Dr. Marshall who treated her for symptoms of anxiety and depression related to her job and difficulties working due to her shoulder injury. Also provided were reports from Dr. Huff noting her shoulder status and work restrictions.

The employing establishment submitted an April 28, 2015 statement from C.B., Chief of Ambulatory Care Nursing, who noted that appellant worked in the medicine specialty clinics prior to maximum medical improvement (MMI) and was granted her light-duty requests while working in her department. C.B. indicated that appellant requested to work full-time multiple times, but her status was part-time so her hours were not extended. She noted that appellant was issued limited-duty assignments which she accepted.

The employing establishment also submitted a May 1, 2015 statement from C.D., a nurse manager, who noted that proper procedure required a nurse to notify the charge nurse when they would be off the unit for any length of time so another nurse could be assigned to care for patients during the absence. C.D. indicated that appellant was not told that she could not leave the unit to go to her scheduled appointments at any time, nor was she told that she would have to find her own coverage. She advised appellant that she could attend her scheduled appointments, but that she simply had to notify the charge nurse prior to leaving the unit so her patients could be cared for during her absence. C.D. indicated that this was normal procedure when any nurse was absent from the unit for periods of time.

In a May 1, 2015 statement, S.H., a nurse manager, advised that the light-duty job offered to appellant on October 12, 2012 was accepted and signed by her and she was in total agreement. Appellant's restrictions stated that when she needed help lifting over 10 pounds she would seek help from the other staff. S.H. disagreed with appellant's allegation that the Form CA-2 was prepared incorrectly and indicated that OWCP would notify S.H. if the forms were not properly prepared.

In a May 5, 2015 letter, D.D. contended that at no time was appellant precluded from attending physical therapy. She provided copies of timecards and noted that appellant was a part-time employee who worked 24 hours a week and would have had ample time outside of her tour of duty to attend appointments. D.D. noted that it was appellant's standard practice to

voluntarily work hours in excess of her part-time status, which the employing establishment disallowed due to her orthopedic injury. She further explained it was the manager's responsibility to ensure coverage in the work area which was critical in not disrupting patient care. D.D. addressed the October 12, 2012 limited-duty assignment which was provided on appellant's date of injury and advised that the employing establishment provided work based on the physician's recommendation and also took into consideration management's right to assign work. She acknowledged the list of jobs for which appellant applied within the employing establishment and explained that she applied through competitive promotion as all candidates must. D.D. addressed appellant's reference to having to file another claim for a new injury on May 8, 2015 which was denied and the bills subsequently became appellant's responsibility. She explained that appellant was advised by e-mail to submit medical bills to her private insurance and contended that any stress related to this issue was not associated with the work environment.

D.D. explained that a permanent position could not be offered for a condition which was considered temporary. She advised that changes in limited-duty assignments were necessary based on the treating physician's recommendations or when a particular assignment had concluded. D.D. indicated that the employing establishment followed FECA requirements and the protection of appellant's nursing license which included required competencies. Appellant was responsible for answering to a minimum of two managers during a limited-duty assignment. D.D. reiterated that appellant had remained on light-duty for over three years and the employing establishment made every attempt to provide meaningful work within her profession which sometimes required shift rotation. She emphasized at no time was appellant pressured into signing a limited-duty assignment and all work was in accordance with procedures and medical restrictions.

An April 28, 2015 statement from C.B. noted granting appellant's light-duty requests in the medicine specialty clinics. She noted that appellant had made multiple requests to work full time, but her hours were not extended.

In a May 1, 2015 statement, J.P., a clinical nurse leader, indicated that P.G. inquired as to whether she had any duties that could be performed by a light-duty registered nurse. She indicated that, after a discussion of appellant's status as a part-time employee, management did not alter her work schedule so as not to cause any scheduling issues for her.

In a decision dated September 9, 2015, OWCP denied appellant's claim finding that she had not established any compensable employment factors.

On September 16, 2015 appellant, through counsel, requested an oral hearing which was held on May 17, 2016.

The employing establishment submitted a July 15, 2016 letter from D.D. who advised that appellant had not sought reasonable accommodations within the medical center until after her claim had been denied by OWCP, and exercised this option, as would any injured worker who was not entitled to FECA benefits or someone with a nonwork-related condition. D.D. advised that each limited-duty assignment provided to appellant was based on the physical limitations and the functions were within the scope of her profession as a nurse. Regarding appellant's allegations of lack of training, D.D. explained that because she was a licensed

professional, the employing establishment made every attempt to ensure the work performed was meaningful as she was considered highly skilled and competent. She acknowledged that appellant did hold several limited-duty assignments, but emphasized the assignment of work was a management right, exercised based on the needs of the facility and the imposed medical restrictions. D.D. explained that the employing establishment did not move forward with a permanent job offer until the injured worker had reached MMI and noted that the employing establishment accommodated both injuries based on the medical restrictions provided. She contended at no time was appellant asked to work outside her restrictions. D.D. advised that during the course of appellant's light-duty status from 2012 to 2014, the employing establishment provided meaningful work and she performed many essential functions within the scope of her job. She stated that although appellant held several limited-duty assignments this was not meant to be retaliation or harassment. D.D. contended that appellant's claims of delayed submission of paperwork by the employing establishment were false and without merit. She provided specific timelines as to when claims were received, signed by the supervisor, and submitted to OWCP.

Regarding appellant's statements that her shifts were changed out of retaliation, D.D. explained it was not uncommon for shifts to be changed when a registered nurse was injured because of staffing shortages and the necessity to make certain all injured workers were provided work within their physical limitations. While it was unfortunate that appellant felt she was tossed around to different units, the employing establishment was simply providing light-duty work throughout the medical units where needed. With regard to appellant's contention that she was denied jobs for which she applied, D.D. explained that applications were reviewed according to the OPM guidelines and the process was very competitive. D.D. reiterated that appellant's allegations that she was not allowed to attend medical appointments and physical therapy were false and indicated her timecards reflected her work schedule allowing more than adequate time since she was a part-time employee. Regarding appellant being told that she could not leave work early, D.D. explained that, pursuant to attendance regulations, supervisors could not allow employees to simply leave without submitting an appropriate leave request. D.D. addressed appellant's fear of not being able to fulfill the essential elements of the job, contending that she was not required to fulfill work within the full function of the entire position as she was working in a limited-duty position.

In a decision dated July 29, 2016, an OWCP hearing representative affirmed the September 9, 2015 decision.

LEGAL PRECEDENT

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

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

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁵ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.⁶ When an employee experiences emotional stress in carrying out his or her employment duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁷ Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.⁸ Where a claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.⁹ Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹⁰ On the other hand the disability is not covered where 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.¹¹

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. OWCP denied appellant's emotional condition claim because she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.

Appellant has attributed her emotional condition to performing her regular or specially assigned duties of her position. She generally alleged that she was concerned about her ability to perform the duties of her limited-duty assignments. However appellant provided insufficient corroborating evidence to support this general allegation. She did not specify particular duties during specific time periods to which she attributed her claimed emotional condition. Appellant also alleged that her limited-duty assignments did not meet her medical restrictions or that she was worked outside her restrictions. The Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if the record

⁵ 28 ECAB 125 (1976).

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

⁷ *Supra* note 5.

⁸ *J.F.*, 59 ECAB 331 (2008).

⁹ *M.D.*, 59 ECAB 211 (2007).

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

¹¹ See *supra* note 5.

substantiates such activity.¹² However, D.D. advised that at no time was appellant asked to work outside her restrictions. She explained that the employing establishment sought to provide meaningful work and she performed many essential functions within the scope of her job as the light-duty jobs consisted of various registered nurse duties. No evidence was submitted to substantiate that the limited-duty assignments did not meet appellant's restrictions or that she worked outside her restrictions. The evidence supports that the employing establishment made every effort to comply with appellant's restrictions.

Appellant did not otherwise attribute her emotional condition to performing a specific regular or specially assigned duty in her job. Therefore, she has not established a compensable factor under *Cutler*.¹³

Appellant made several allegations related to administrative and personnel actions. In *Thomas D. McEuen*,¹⁴ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA as such matters pertain to procedures and requirements of the employing establishment and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under FECA would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁵

Appellant alleged that she had at least seven limited-duty assignments as a result of a work-related shoulder injury on October 12, 2012 and some of these assignments required changes in shifts, supervisors, units, and nursing-related duties. The Board notes that the assignment of work is an administrative function¹⁶ and not a work factor and is not compensable absent a showing of error or abuse. The manner in which a supervisor exercises his or her discretion falls outside the ambit of FECA. Absent evidence of error or abuse, appellant's mere disagreement or dislike of a managerial action is not compensable.¹⁷ The Board finds that appellant has not offered sufficient evidence to establish error or abuse regarding her work assignments or that the employing establishment acted unreasonably. D.D. explained that

¹² *Phillip L. Barnes*, 55 ECAB 426, 437 (2004).

¹³ *See supra* note 5.

¹⁴ *See* 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

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

¹⁶ *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

¹⁷ *See Barbara J. Latham*, 53 ECAB 316 (2002); *see also Peter D. Butt Jr.*, 56 ECAB 117 (2004) (allegations such as improperly assigned work duties, which relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties do not fall within the coverage of FECA); *L.S.*, 58 ECAB 249 (2006) (the fact that management changed an employee's work schedule does not bring the claim within the scope of workers' compensation; the employee must submit proof that management changed her schedule in error).

changes in appellant's limited-duty assignments were necessary based on the treating physician's recommendations. She indicated that the employing establishment followed FECA requirements and the requirements necessary for protection of the claimant's license. D.D. noted that appellant remained on light duty for over three years and the employing establishment made every attempt to provide her meaningful work within her profession as a nurse which sometimes required shift rotation. The employing establishment has either denied appellant's allegations or explained the reasons for its actions in these administrative matters. Appellant did not provide any independent or probative evidence to establish that the employing establishment erred or was abusive in the handling of her work assignments.

Appellant alleged that the employing establishment did not provide training to perform the limited-duty assignments and she was concerned about her ability to perform the duties. These allegations relate to administrative or personnel matters unrelated to appellant's regular or specially assigned work duties.¹⁸ Appellant did not provide details of what training she sought that was denied.¹⁹ The employing establishment contended the assignments were nursing duties for which appellant was already trained. D.D. indicated that the employing establishment made every attempt to ensure the work performed was meaningful as she was considered highly skilled and competent. Appellant did not submit any evidence, to show that the employing establishment committed error or abuse with respect to training, support, or work assignment matters. The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under FECA.²⁰ As such, appellant has not established a compensable employment factor with respect to these administrative matters.

Appellant alleged that she applied for 17 jobs for which she was not selected. The Board has held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under FECA, as they do not involve appellant's ability to perform her regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.²¹ D.D. acknowledged the list of jobs appellant applied for within the employing establishment and explained that she applied through competitive promotion as all candidates must. She explained that applications were reviewed according to OPM guidelines and the process was very competitive. The employing establishment has explained the reasons for its actions in these administrative matters. Appellant failed to submit any independent evidence to establish that the employing establishment was found in error in its selection procedures. She has not established a compensable factor of employment in this regard.

¹⁸ *Brian H. Derrick*, 51 ECAB 417, 421 (2000).

¹⁹ *See Ernest St. Pierre*, 51 ECAB 623, 625 (2000) (appellant contended that he was not given training but he did not provide details of what training was sought or denied; even if training were denied, he would have to show error or abuse with regard to the denial).

²⁰ *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

²¹ *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

Appellant alleged that she requested reasonable accommodations and that she was not offered a permanent job. As noted above, denials by an employing establishment of a request for a different job, promotion, or transfer are not compensable factors of employment under FECA, as they do not involve appellant's ability to perform her regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.²² D.D. noted that a permanent job offer was not made because appellant's injury-related condition was temporary, and it was only after her traumatic injury claim was denied and her condition was no longer considered work related that she requested reasonable accommodation. No other evidence was submitted to show the employing establishment was found in error or abusive in handling this administrative matter.

Regarding her allegation that she developed stress due to insecurity about maintaining her nursing position, the Board has previously held that a claimant's job insecurity is not a compensable factor of employment under FECA.²³ D.D. indicated that appellant was not required to fulfill work within the full function of the entire position as she was working in a limited-duty position. As such, appellant has not established a compensable factor of employment with respect to the administrative matters of denial of promotions, a different or permanent job, or request for reasonable accommodation.

Appellant alleged that she was a part-time employee and was not allowed to work additional hours following her traumatic injury. While appellant asserted that the number of hours she worked was not medically restricted, the employing establishment contended that allowing additional hours did not facilitate healing and it was a practice for injured workers to work normal hours until released. D.D. noted it was appellant's standard practice to work hours in excess of her part-time status on a voluntary basis, which the employing establishment disallowed due to her orthopedic injury. The Board has held that an employee's dissatisfaction with work under load constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under FECA.²⁴ No other independent evidence was presented to establish the employing establishment was found in or acted unreasonably in disallowing overtime hours.

Appellant alleged that she had issues regarding payment of medical bills related to a separate traumatic injury claim. She also alleged that the employing establishment untimely filed, mishandled claim forms, or made false statements. D.D. indicated that appellant filed a claim for a new injury on May 8, 2013 which was subsequently denied and the bills became appellant's responsibility. She explained that appellant was advised by e-mail to submit medical bills to her private insurance for payment and contended that any stress related to this issue was not associated with the work environment. Although the handling of a compensation claim is generally related to the employment, it is an administrative function of the employing establishment and not a duty of the employee and thus not compensable absent evidence of error

²² *Id.*

²³ *See Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

²⁴ *See supra* note 20.

or abuse by the employing establishment.²⁵ The Board has generally found that the development of any condition related to such matters would not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially-assigned duties.²⁶

Appellant alleged that the employing establishment forced her to sign an illegal document on October 12, 2012 and was required to give appellant two weeks' notice prior to a change in her limited-duty assignment. D.D. indicated that the October 12, 2012 limited-duty assignment was based on the physician's recommendation, also taking into consideration management's right to assign work. She indicated that at no time was appellant pressured into signing a limited-duty assignment and all work was in accordance with procedures and medical restrictions. Similarly, S.H. indicated that appellant was in total agreement with the October 12, 2012 limited-duty assignment and signed off on the job. It is not factually substantiated that the employing establishment forced appellant to sign an illegal document on October 12, 2012 or that the employing establishment was required to give the two weeks' notice prior to a change in her limited-duty assignment. No further evidence was presented to corroborate these allegations. Appellant has not established a compensable employment factor in this matter.

Appellant alleged that the employing establishment denied her leave requests or that she was unable to attend physical therapy appointments as prescribed. The Board notes that the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employing establishment and not duties of the employee.²⁷ The Board finds that the employing establishment acted reasonably in this administrative matter. D.D. contended at no time was appellant precluded from attending physical therapy. She provided copies of timecards and noted that appellant was a part-time employee and worked 24 hours per week and would have had ample time outside of her tour of duty to attend appointments. C.D. indicated that appellant was not told that she could not leave the unit or go to her scheduled appointments, rather, she was advised that she could attend her scheduled appointments, but would need to notify the charge nurse prior to leaving the unit, which was the normal procedure. The factual evidence does not substantiate that the employing establishment unreasonably denied appellant leave or that she was unable to attend physical therapy appointments as prescribed. Appellant did not provide any outside evidence to substantiate this assertion and the employing establishment denied this allegation.

Appellant alleged that the employing establishment's actions concerning the identified incidents were in retaliation, harassment, or punitive. To the extent that incidents alleged as constituting harassment or a hostile environment by a manager are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.²⁸ However, for harassment to give rise to a compensable disability under FECA, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not

²⁵ *Terry L. Ross*, 53 ECAB 570, 577 (2002).

²⁶ *George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

²⁷ *See Judy Kahn*, 53 ECAB 321 (2002).

²⁸ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

compensable under FECA.²⁹ The evidence fails to support appellant's claim for harassment as a cause for her emotional condition. D.D. explained it was not uncommon for shifts to be changed when a registered nurse was injured because of staffing shortages and the necessity to make certain all injured workers were provided work within their physical limitations. She indicated that, while it was unfortunate appellant felt she was tossed around to different units, the employing establishment was simply providing light-duty work throughout the medical units where needed. D.D. denied that changing limited-duty assignments was done to harass appellant, rather, she indicated that the employing establishment provided work where it was available. General allegations of harassment are not sufficient³⁰ and in this case appellant has not submitted sufficient evidence to establish disparate treatment by her supervisor.³¹ Although appellant alleged that her supervisor harassed and engaged in actions which she believed constituted harassment, she provided no corroborating evidence to establish her allegations.³² The Board finds that there is no evidence presented to substantiate appellant's allegations that any of the employing establishment's actions concerning the identified incidents were in retaliation, harassment, or punitive. Appellant has not established a compensable work factor with respect to the claimed harassment.

Consequently, appellant has not established her claim for an emotional condition as she has not attributed her claimed condition to any compensable employment factors.³³

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

CONCLUSION

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

²⁹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991). See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

³⁰ See *Paul Trotman-Hall*, 45 ECAB 229 (1993).

³¹ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

³² See *William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

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

ORDER

IT IS HEREBY ORDERED THAT the July 29, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 19, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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