

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

A.O., Appellant)
and) Docket No. 16-1779
DEPARTMENT OF LABOR, OFFICE OF THE) Issued: November 22, 2017
ASSISTANT SECRETARY FOR)
ADMINISTRATION & MANAGEMENT,)
San Francisco, CA, Employer)
)

Appearances:

Appellant, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 7, 2016 appellant filed a timely appeal from an August 22, 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 to consider the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof to establish an emotional condition on October 30, 2014.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 3, 2014 appellant then a 48-year-old human resources specialist, filed a traumatic injury claim (Form CA-1) alleging that, on October 30, 2014, he experienced stress and anxiety due to a confrontation with his supervisor, S.C., which occurred in front of clients and coworkers. He alleged that S.C. approached his cubicle, while he was meeting with clients, in a hostile and aggressive manner including a loud tone of voice. S.C. was loud, rude, and unprofessional and she embarrassed and belittled appellant in front of his customers. On the reverse side of the claim form, she indicated that appellant's injury was caused by willful misconduct as he did not follow directives which were repeated to him five times. S.C. alleged that appellant refused to complete the work assignment each time in front of the client.

In a note dated November 6, 2014, Dr. Susan M. Fair, a licensed clinical psychologist, diagnosed severe anxiety and panic. She found that appellant was totally disabled through November 17, 2014. On November 13, 2014 Dr. Fair diagnosed panic attacks and intense acute anxiety that occurred at work on November 3, 2014 during an interaction with his manager. In a November 17, 2014 note, she indicated that the date of appellant's initial panic attack was October 30, 2014 rather than November 3, 2014.

In an e-mail dated October 30, 2014, R.H., a coworker, described the events of that date beginning at 9:30 a.m. She noted that appellant was meeting with two persons from the Bureau of Labor Statistics (BLS) and in front of these customers S.C. lectured appellant in a loud and antagonistic manner at his desk regarding his workload and priorities. R.H. opined that S.C. was very unprofessional and hostile, noting that S.C. informed appellant that he was responsible for multi-tasking to accomplish his workload. She alleged that S.C. escalated the situation so that the whole human resources division could hear the disturbance.

A.T., a coworker, provided an e-mail dated October 30, 2014 at 9:58 a.m. and noted that appellant was talking to a customer, explaining that there were delays with deliverables. S.C. intervened and explained that appellant needed to reprioritize his workload. He informed appellant that he had to get multiple priorities done when she had assigned specific priorities to him. Appellant tried to justify why certain items were not completed because of reassigned priorities which were outside his control. S.C. instructed appellant that it was his responsibility to complete his work. Appellant indicated that he was trying to complete his work, but could not when his priorities kept shifting. He also noted that there were multiple steps in the process of accession actions along with recruitment items. On November 3, 2014 A.T. asserted that S.C. used a firm, demanding, and hostile tone in front of customers. She alleged that the conversation escalated to the degree that she could hear it clearly from her desk.

In an e-mail dated November 5, 2014, N.G., one of appellant's BLS customers on October 30, 2014, confirmed that S.C. approached during the meeting and asked whether there was a problem. Appellant denied a problem and indicated that he was explaining to the customers why he was unable to work on their request because management kept scrambling his priorities. S.C. informed appellant that he could handle all the different issues and that he was to work eight hours and should be able to take care of everything in his procession. N.G. opined that S.C. scolded appellant like a young child. She further indicated that she had never experienced this behavior in a work environment. N.G. indicated that S.C.'s demeanor was

hostile, firm, and demanding. She further noted that S.C. called her to apologize and told her that she should have handled the situation differently.

Appellant contacted S.P., the other BLS client, with whom he met on October 30, 2014. S.P. indicated that he received a call and apology from L.D., the human resources officer, for the loud argument between supervisor and employee in a public area.

In December 18, 2014 letters, OWCP requested additional information from appellant and the employing establishment regarding the events of October 30, 2014, as well as additional medical evidence from him. It allowed him 30 days to respond.

Appellant provided a narrative statement on January 22, 2015, indicating that the meeting on October 30, 2014 was to address why N.G. and S.P.'s recruitment requests were taking an enormous amount of time to be reviewed and posted. He alleged that the discussion was about the priorities that he received from his supervisor. Appellant alleged that he was not aware of S.C.'s whereabouts until she asked in a loud, hostile, and antagonistic voice whether there was a problem. He asserted that S.C. repeatedly asked whether there was a problem and then began to criticize his work without allowing him to speak. S.C. informed him that, if he did not know how to prioritize, then she could do it for him. She noted that appellant had eight hours to complete his tasks and should be able to complete all of the tasks within the eight hours. S.C. stood in the entrance of his cubicle and spoke with a loud and hostile tone. She walked away, but then returned to continue to criticize and ridicule appellant about his work. Appellant filed an Equal Employment Opportunity (EEO) complaint. He was previously diagnosed with panic attacks in October 1999 and had utilized prescribed medication for anxiety.

S.C. submitted a narrative statement on February 2, 2015. She contended that her supervisor, L.D., telephoned her and directed her to go to appellant's cubicle to investigate appellant's raised voice. S.C. asserted that when she opened her door she could hear N.G. and appellant yelling at each other. N.G. yelled that she needed to have her new hires and that she could not believe that appellant could not provide this service to her. Appellant retorted that he could not get to her work because his supervisor gave him other priorities that he must first complete. S.C. entered the cubicle and asked if there was a problem. N.G. yelled that there was a problem, that she needed her new hires. She repeated appellant's allegation that he must complete other work first. S.C. directed appellant to have N.G.'s new hires by the date requested. Appellant asserted that he could not get N.G.'s work done because S.C. had given him priorities. She reviewed the priority he indicated and noted that it did not have a deadline, so that appellant could complete N.G.'s new hires by the date requested. Appellant disagreed. S.C. noted, "I stated to [appellant] again, you need to have the new hires done and this is a directive and you are here eight hours a day and you need to multi-task your work responsibilities and you need to bring the new hires aboard...." The disagreement with appellant repeated itself several times until S.C. left. She noted that her voice was raised because appellant had informed her that he suffered with hearing loss. S.C. asserted that her demeanor was calm, but that N.G. was very upset. S.C. further alleged that she was not properly informed of the meeting with appellant, N.G., and S.P. and should have been included in the meeting. S.C. alleged that she apologized to N.G. for appellant's conduct and behavior. She asserted that L.D. apologized to S.P., but not for S.C.'s behavior. S.C. noted that appellant was closely monitored for his work performance due to deficiencies discovered in July 2014.

On October 30, 2014 L.D. completed a narrative statement indicating that she heard raised voices during the claimed incident, one of which she recognized as appellant's. She telephoned S.C. and advised her that she may need to investigate. S.C. came to her office and informed her of the discussion regarding appellant's ability to complete N.G. and S.P.'s task. S.C. advised L.D. that she had instructed appellant that one of his priorities did not have a deadline and that he had to be able to multitask. L.D. asked whether the discussion with appellant took place in the common area. S.C. acknowledged that it had and L.D. then advised that discussions of that type should take place after customers had left and behind closed doors. L.D. suggested to S.C. that she could have taken the whole group to her office or to a conference room. L.D. noted that she contacted S.P. and informed him that the discussion should have been held behind closed doors with appellant. She indicated, "I apologized for the situation that they witnessed, but not [S.C.'s] behavior."

On October 30, 2014 S.C. provided appellant with written counseling regarding his failure to comply with deadlines and directives from October 6 through 29, 2014.

In a July 13, 2015 decision, OWCP denied appellant's traumatic emotional condition claim. It found that appellant had not substantiated a compensable employment factor as causing or contributing to his emotional condition. OWCP found that the interaction with S.C. on October 30, 2014 was an administrative action and that appellant had not established error or abuse on the part of S.C. It noted that there were no statements from A.T. or N.G.

On July 19, 2015 appellant requested an oral hearing from OWCP's Branch of Hearings and Review. In a letter dated September 2, 2015, appellant requested subpoenas for S.P., N.G., R.H., and A.T. By decision dated December 28, 2015, OWCP's hearing representative denied appellant's requests for subpoenas.

Appellant testified at the oral hearing on January 25, 2016. He asserted that, if L.D. could hear his voice, then S.C. should have been able to do so as her office was closer. Appellant also denied that he and N.G. yelled at each other. He denied informing S.C. that he had hearing loss. Appellant noted that he had a disability, but that it did not pertain to his hearing or mental state. He alleged that S.C. was "mimicking" his work, when he tried to do the best he could. Appellant indicated that S.C. first became a supervisor in June 2014. He noted that the meeting was impromptu and scheduled at N.G.'s request. Appellant alleged that he had not received counseling prior to the October 30, 2014 incident and had not received discipline based on the counseling letter. He noted that S.C. left the agency in 2015.

At the hearing, appellant submitted a January 21, 2016 statement from A.T. A.T. noted that her desk was 15 feet from appellant's and that appellant, N.G., and S.P. were having a meeting at appellant's desk on October 30, 2014. She indicated that the three parties were having a mutual conversation which appeared to be normal such that she could focus on her work. S.C. then began interjecting into appellant's conversation and her voice escalated such that A.T. could no longer hear appellant. She alleged that S.C. embarrassed appellant in front of the customer as S.C. spoke firmly with hostility, and with a raised voice. A.T. reported that S.C. made a one-way conversation by yelling at appellant and placing demands on him in front of customers and coworkers. She opined that S.C.'s conduct toward appellant was abusive and unprofessional as she belittled him, insulted his professionalism, and degraded his work ethic.

A.T. noted that she did not hear N.G. or S.P. raise their voices. She also noted that appellant had never asked her to speak up because of hearing loss.

N.G. also completed a January 22, 2016 statement. She reviewed and disagreed with many of S.C.'s allegations asserting that they were false. N.G. denied yelling at appellant and denied that he yelled at her on October 30, 2014. She also disagreed that appellant had "lashed" at her and that she "yelled" at S.C. N.G. noted that she and appellant merely responded "no" to S.C.'s query of whether there was a problem. She asserted that S.C. belittled and yelled at appellant. N.G. opined, "S.C. berated him with unnecessary yelling and condescending remarks, which in my opinion were abusive toward [appellant]. [S.C.] abused her authority as a supervisor. She demoralized [appellant] in front of us. I recalled thinking that I had never seen a supervisor/manager abuse an employee and in public in all of my 40 years in government service. [S.C.] used her authority to abuse [appellant]." N.G. disputed S.C.'s allegation that N.G. was upset with appellant and asserted that S.C. was solely responsible for the hostility and that she was abusive in the continuous belittling of appellant.

R.H., a coworker whose desk was located 10 feet from appellant's, submitted a January 23, 2016 statement regarding the events of October 30, 2014. She noted that appellant had a meeting with clients at his desk regarding the status of their recruitment. S.C. approached appellant's desk and began to loudly assert that he was required to complete all his work assignments in accordance with deadlines. R.H. opined that S.C. spoke in a loud, unprofessional, and demeaning manner. S.C. repeated herself several times and became visibly frustrated. She left the area. R.H. asserted that the conversation between appellant and N.G. was never loud or discordant. She noted that they spoke in a civil manner and at normal volumes for an office environment. R.H. also asserted that appellant did not throw paper or slam his desk as alleged by S.C. She alleged that appellant did not have noticeable hearing loss and that S.C. fabricated events to justify losing her temper and yelling at appellant.

By decision dated April 11, 2016, OWCP's hearing representative found L.D.'s statement credible regarding raised voices from appellant and N.G. despite the different assessments from appellant, N.G., R.H., and A.T. She determined that S.C. reported that she was asked by L.D. to intercede and that there was "no other credible assertion as to why she approached the discussion." OWCP's hearing representative noted that appellant was explaining to N.G. why he was unable to complete his work and that she therefore believed that voices were raised. She determined that witness statements supported that appellant argued with S.C. when she instructed him that he should be able to complete all his assignments on time as he was explaining and "justifying" his other priorities. OWCP's hearing representative noted, "I also am somewhat perplexed as to how he would have time to hold an 'excuse' meeting with BLS supervisors, but not have time to just complete the action they were requesting. I have to conclude that he held the meeting in order to keep the BLS supervisors from going to his management about why the action was n[o]t completed." She found that witnesses indicated that S.C. had no business interceding when she heard the claimant blaming her for his inability to complete the recruitment actions for BLS.

OWCP's hearing representative found:

"I have difficulty imagining a situation in private[-]sector employment where an employee would still have his job at the end of the day, after being overheard by his employer advising a customer that the reason she didn't have her product was because the employer didn't know how to manage his business. In the present case, the claimant was publicly engaging in negative comments about his management to external agency customers, and in front of his coworkers. Such behavior is unprofessional and very destructive to any organization. Thus I find his comments would warrant correction from a supervisor. I further find that the claimant then continued to escalate the interaction with his supervisor by continuing to argue with her over his assigned priorities. I find that under the circumstances, the claimant has not established that her response to him then rose to the level of error or abuse."

The hearing representative further found that subpoenas were not necessary and affirmed the July 13, 2015 OWCP denial.

Appellant requested reconsideration on June 2, 2016. He disagreed with OWCP's hearing representative's findings of facts regarding the volume of the conversation between N.G. and himself and noted that all, but two witnesses corroborated his version of events. Appellant also disagreed that he argued with S.C. as found by the hearing representative. He noted that his witnesses supported that S.C. directed him to complete N.G.'s work and that he was explaining and justifying why he could not complete the work for N.G. Appellant also disputed the hearing representative's determination that he held an "excuse" meeting with N.G. and S.P. He repeated that the meeting was unscheduled.

Appellant completed an additional narrative statement and asserted that neither he nor N.G. yelled during the October 30, 2014 meeting. He alleged that S.C. "barged in" to the meeting and spoke in a "condescending and hostile" manner. Appellant further asserted that S.C. belittled him and criticized his work in the presence of N.G. and S.P. He denied having hearing loss.

On May 6, 2016 S.P. responded to appellant's queries and advised that the October 30, 2014 meeting was unscheduled and impromptu organized by N.G. He reported that appellant did not yell at N.G., but that his voice was "a bit elevated" due to frustration at his workload and workload priorities. S.P. denied that N.G. yelled or raised her voice. Appellant explained that recent poor service was due to his manager's directions to prioritize other work.

Appellant submitted his statement, A.T.'s January 21, 2016 statement, R.H.'s January 23, 2016 statement, N.G.'s January 22, 2016 statement as well as reports from Dr. Fair.

By decision dated August 22, 2016, OWCP denied modification of its prior decisions, finding that appellant had not substantiated a compensable factor of employment as causing or contributing to his diagnosed emotional condition. It found that he had not established error or abuse in an administrative function.

LEGAL PRECEDENT

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*,² 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.³ 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.⁴ In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a person injury sustained in the performance of duty within the meaning of FECA. Thus disability is not covered when it results from an employee's fear of a reduction-in-force, nor is disability covered when it results from such factors as an employee's frustration in not being permitted to work in a particular environment or to hold a particular position.⁵

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.⁶ Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.⁷ A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an emotional condition on October 30, 2014.

² 28 ECAB 125 (1976).

³ See *Robert W. Johns*, 51 ECAB 136 (1999).

⁴ *Supra* note 2.

⁵ *Id.*

⁶ *Charles D. Edwards*, 55 ECAB 258 (2004).

⁷ *Kim Nguyen*, 53 ECAB 127 (2001). See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁸ *Roger Williams*, 52 ECAB 468 (2001).

Appellant has not attributed his emotional condition to the performance of his regular or specially assigned duties under *Cutler*.⁹ Rather he has alleged error or abuse by S.C. in the discussion on October 30, 2014. In *Thomas D. McEuen*,¹⁰ 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.¹¹

Verbal altercations and difficult relationships with supervisors/managers, when sufficiently detailed and supported by the record, may constitute compensable factors of employment.¹² However, this does not imply that every ostensibly abusive or threatening statement uttered in the workplace will give rise to coverage under FECA. For appellant to prevail on his claim, he must support his allegations with probative and reliable evidence.¹³ The Board has held that being spoken to in a loud or harsh tone does not in itself constitute verbal abuse or harassment.¹⁴

The Board finds that the record establishes that S.C. spoke to appellant in a loud or harsh tone. Appellant alleged that S.C. was loud, rude, and unprofessional, embarrassing and belittling him in front of his customers. Witnesses, N.G., A.T., and R.H., agreed that S.C. yelled at appellant. Furthermore, these witnesses variously described her tone as unprofessional, hostile, firm, demanding, and scolding. In *Carolyn S. Philpott*,¹⁵ the Board found that a loud discussion between a supervisor and the claimant on the workroom floor was not error or abuse. The Board noted that, despite the claimant's arguments that her supervisor should have spoken or reprimanded her in private, there was no evidence that the supervisor's remarks were unwarranted. Furthermore, the Board noted that the fact that the supervisor raised his voice during the course of conversation did not amount to verbal abuse as there was no evidence that he belittled the claimant. The Board finds that appellant has not established verbal abuse merely

⁹ *Supra* note 2.

¹⁰ *Thomas D. McEuen*, *supra* note 7.

¹¹ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹² *J.M.*, Docket No. 16-0717 (issued January 12, 2017); *L.M.*, Docket No. 13-267 (issued November 15, 2013).

¹³ *Y.J.*, Docket No. 15-1137 (issued October 4, 2016) (allegations of verbal abuse must be surrounded by specificity in order to more appropriately gauge the context in which they were made).

¹⁴ *Joe M. Hagewood*, 56 ECAB 479 (2005); *R.T.*, Docket No. 13-1665 (issued September 12, 2014).

¹⁵ 51 ECAB 175, 179 (1999); *Karen K. Levene*, 54 ECAB 671 (2003); *J.C.*, Docket No. 14-0299 (issued October 16, 2014).

because S.C. raised her voice on October 30, 2014 in the work area. To establish error or abuse by his supervisor in reprimanding him, he must prove more than a raised voice.¹⁶

The content of S.C.'s remarks on October 30, 2014 is agreed upon by S.C., appellant, and witnesses. S.C. noted, "I stated to [appellant] again, you need to have the new hires done and this is a directive and you are here eight hours a day and you need to multi-task your work responsibilities and you need to bring the new hires aboard...." He asserted that S.C. informed him that, if he could not prioritize, then she could do it for him. Appellant alleged that S.C. noted that appellant had eight hours to complete his tasks and should be able to complete them within the eight hours. A.T. indicated that S.C. explained that appellant needed to reprioritize his workload, and that he had to get multiple priorities done when she had assigned specific priorities to him. R.H. indicated that S.C. chastised appellant regarding his workload and priorities. N.G. related that S.C. informed appellant that he could handle all the different issues assigned him, that he was to work eight hours, and that he should be able to take care of his assignments. N.G. noted that S.C. instructed appellant that it was his responsibility to complete his work. The Board finds that these statements do not constitute verbal abuse. A claimant's own feeling or perception that a form of criticism by or disagreement with a supervisor is unjustified, inconvenient, or embarrassing, is self-generated and does not give rise to coverage under FECA absent evidence that the interaction was, in fact, erroneous or abusive.¹⁷ While the statements may have engendered offensive feelings, they did not sufficiently affect the conditions of employment so as to constitute a compensable factor.¹⁸ S.C. directed appellant in the method that she wished him to follow to complete his assigned work.

In *Sharon J. McIntosh*¹⁹ appellant's supervisor criticized her work ethic in a raised voice, which appellant contended was combative, abusive, and defamatory. The Board found that the appropriate analysis was whether the remarks were made in a situation of mutual accusation. In *R.K.*,²⁰ *N.G.*,²¹ and *Karen K. Levene*,²² the Board found that a stressful argument with a

¹⁶ *M.H.*, Docket No. 12-0130 (issued December 4, 2012); *J.R.*, Docket No. 11-0334 (issued October 26, 2011); *J.S.*, Docket No. 09-0442 (issued September 15, 2009); *David C. Lindsey*, 56 ECAB 263 (2005).

¹⁷ *Michael A. Deas*, 53 ECAB 208, 216 (2001).

¹⁸ *J.C.*, 58 ECAB 594 (2007); *Denis M. Dupor*, 51 ECAB 482 (2000) (supervisor used profanity in instructing the claimant to do his job, and apologized, but the claimant instigated shouting and escalated the verbal exchange, such that the Board did not find a compensable factor). *But see Ana L. Leishman*, Docket No. 95-2007 (issued July 3, 1997) (finding that a work-related argument between a supervisor and an employee was compensable when a coworker described the supervisor's actions as she "harassed and badgered [the employee] intentionally in a hostile manner").

¹⁹ Docket No. 94-1777 (issued August 28, 1996). *But see Marvetta J. Anderson*, Docket No. 94-1486 (issued April 23, 1996) (the Board found that a supervisor yelling at the claimant about job performance "what kind of supervisor are you, you can't even give a correct count" was a compensable factor).

²⁰ Docket No. 10-1989 (issued June 8, 2011) (the claimant responded to a question from his supervisor with "It's none of your business" and the supervisor yelled at him to leave the building or be removed).

²¹ Docket No. 10-0353 (issued January 21, 2011) (the Board found that without threats, yelling directives to get a life and that everything appellant was doing was going to get back to her, was not verbal abuse).

²² 54 ECAB 671 (2003).

supervisor over a claimant's work in which the supervisor spoke in a loud voice was not verbal abuse. Likewise, the Board finds that S.C.'s remarks do not constitute verbal abuse as the record supports mutual conflict as appellant was defending his inability to complete his work in a timely manner.²³ Furthermore, there is no allegation that S.C. called appellant degrading names,²⁴ threatened violence,²⁵ or used extensive profanity.²⁶ The Board therefore finds that appellant has not established verbal abuse on the part of S.C.

The Board further notes that the fact that appellant's supervisors apologized to N.G. and S.P. does not establish error or abuse on the part of the employing establishment. S.P. indicated that he received a call and apology from L.D., for the loud argument between S.C. and appellant in a public area. L.D. noted that she contacted S.P. and informed him that the discussion should have been held behind closed doors with appellant. She indicated, "I apologized for the situation that they witnessed, but not [S.C.'s] behavior." N.G. noted that S.C. called her to apologize and told her that she should have handled the situation differently. The Board has held that an apology does not support an admission of fault or wrongful actions.²⁷

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 has not met his burden of proof to establish an emotional condition on October 30, 2014.

²³ *Cyndia R. Harrill*, 55 ECAB 522 (2004) (the Board found that the statement "paybacks are a [b---]" by a supervisor was not compensable in the context of a joke after appellant was two hours late returning from work).

²⁴ *But see, Felix Flecha*, 52 ECAB 268 (2001) (evidence establishing derogatory epitaphs including "lazy spick" was a compensable factor); *Ruth S. Johnson*, 45 ECAB 237 (1994) (finding that a supervisor's comment that the claimant had the "brain cells of a bird" was a degrading comment resulting in coverage under FECA); *Kathryn E. Lunz*, Docket No. 00-2622 (September 5, 2001).

²⁵ *G.M.*, Docket No. 11-235 (issued October 5, 2011) (finding when that a witness corroborated that a coworker screamed at the claimant and approached her threatening violence, she had substantiated verbal abuse) *Linda D. King-Roberts*, Docket No. 94-1050 (issued April 22, 1996).

²⁶ *R.V.*, Docket No. 11-0054 (issued September 28, 2011) (the claimant substantiated that several coworker yelled profanities at him over the course of several days); *Diane Smith*, Docket No. 95-2039 (issued May 23, 1997) (the record established that a coworker yelled at the claimant and used profanity).

²⁷ *M.R.*, Docket No. 11-0980 (issued August 15, 2012).

ORDER

IT IS HEREBY ORDERED THAT the August 22, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 22, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board