United States Department of Labor
Employees' Compensation Appeals Board

T.V., Appellant	)	
and	)	**Docket No. 16-1519**
	)	**Issued: September 12, 2017**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS BENEFITS ADMINISTRATION, Indianapolis, IN, Employer	)	

Appearances:
Anthony D. Rufatto, Esq., for the appellant[1]
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 July 21, 2016 appellant, through counsel, filed a timely appeal from a January 25, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant met his burden of proof to establish an emotional condition in the performance of duty causally related to factors of his federal employment.

FACTUAL HISTORY

On April 28, 2015 appellant, then a 32-year-old rating veterans' service representative filed an occupational disease claim (Form CA-2) alleging an aggravation of his service-related panic disorder, social anxiety disorder, migraine headaches, depression, and insomnia due to a hostile work environment. He noted that his emotional condition became so aggravated that he became incapacitated for work.

In an April 27, 2015 treatment note, Susie Nottingham, a nurse practitioner, diagnosed panic disorder and anxiety but noted that appellant could return to work on May 18, 2015.

By letter dated May 27, 2015, OWCP advised appellant that the evidence submitted was insufficient to establish his emotional condition claim. It requested that he respond to the attached questionnaire in order to substantiate the factual elements of his claim and submit medical evidence from a physician to establish a diagnosed condition causally related to his employment. Appellant was afforded 30 days to submit this evidence. A similar letter was sent to the employing establishment. No additional evidence was received.

OWCP denied appellant's emotional condition claim in a decision dated July 21, 2015. It determined that appellant had failed to provide a factual basis for his claim because he had not responded to OWCP's factual development questionnaire. OWCP also found that appellant had failed to submit sufficient medical evidence to establish a diagnosed condition causally related to factors of his federal employment.

On November 3, 2015 OWCP received appellant's request for reconsideration. Counsel indicated that appellant would be providing additional medical evidence and documents to support his reconsideration request.

On December 4, 2015 OWCP received a form dated July 14, 2015 wherein Christy Duxan, a nurse practitioner, indicated that appellant was unable to work from July 14 to September 30, 2015 due to anxiety, depression, and lack of concentration and motivation.

OWCP also received an October 21, 2015 report from Dr. James J. Gatto, a Board-certified family practitioner, who reported that it was medically necessary for appellant to telework as a reasonable accommodation because he was unable to perform the essential job duties on site at work more than one day per week due to service-connected disabilities of panic disorder, social anxiety disorder, and depression. Dr. Gatto explained that appellant's conditions were caused and exacerbated by his working conditions.

On December 4, 2015 OWCP received appellant's response to OWCP's development questionnaire. Appellant indicated that he was diagnosed with panic disorder with agoraphobia, anxiety, depression, and insomnia secondary to his service-connected disabilities. He explained that his condition of panic disorder caused him to not adjust well to any type of change in his

environment, loud or unexpected noises, or other unexpected events. Appellant reported that he performed best at the workplace in a quiet, isolated area with fewer distractions and less chaos. He noted that he also did better in an environment where rules and expectations were clearly delineated, procedures were followed in a regular, routine fashion, and there was some sense of consistency and stability to his chain of command and work product requirements. Appellant described what he experienced during a panic attack.

Appellant related that in May 2014 he began working at the employing establishment's Indianapolis Regional office and was placed on the training team. He mentioned that K.S. was his first-line supervisor until July 2015. Appellant alleged that around October 2014 J.P., a coworker who was a coach but not his supervisor, came into his cubicle with a box and sternly told him that he needed to immediately pack his belongings and leave the building because he was fired. He indicated that he immediately experienced a panic attack.

Another incident involving J.P. allegedly occurred in April 2015. Appellant alleged that J.P. sent him a distasteful e-mail, which directed him to engage in work action that contradicted the instructions provided by T.D., the Veterans' Service Center manager. He asserted that J.P. became verbally abusive toward him, raised his voice, and rudely informed him that he should do whatever he was told immediately without question. Appellant noted that when he was getting ready to leave the office, J.P. angrily confronted him at his cubicle and told him to "fix" the case. He noted that he panicked at the way J.P. angrily invaded his work space and yelled at him in front of all of his colleagues. Appellant informed K.S. that he wanted to file a formal complaint against J.P., and J.P. then confronted appellant about this matter and ordered him to a meeting. Appellant related that, at the meeting, J.P. accused appellant of disrespecting him and alluded that any continued "disrespect" would warrant some form of formal reprimand, suspension, and/or dismissal. He reported that at the end of this tense meeting he experienced another severe panic attack in the office, broke down in hysterical tears, and sobbed uncontrollably.

Appellant explained that during the same period C.C., another coach who was also his immediate supervisor on the training team, was also harassing and threatening him. He described an incident in March 2015 when C.C. came up behind him and said "If I were a sniper, you'd be dead." Appellant asserted that, even after C.C. was not his immediate supervisor, C.C. continued to single him out for hostile, inappropriate contact, monitor his workload queue, confront him about ratings he was completing, made snide comments about him, and routinely denigrated him in front of his peer. He reported that C.C. threatened that appellant was in a "dangerous" situation if he did not do what C.C. wanted him to do at work. Appellant indicated that, although K.S. instructed. C.C. to stop directly approaching appellant and to bring any workplace issues to her attention, appellant continued to experience hostility from C.C. and J.P. when K.S. left the office on maternity leave. Appellant noted that C.C. and J.P. continued to threaten and coerce him.

Appellant also claimed that the continued conflicts further exacerbated his panic disorder and required him to take Family and Medical Leave Act (FMLA) leave from April to July 2015. He alleged that, before he returned to the office from his FMLA leave, he made a reasonable accommodation request to telework full time. Appellant explained that, when he met with K.S. about the accommodation request, she informed him that everyone in management knew all

about the incidents with J.P. He noted that his request was initially granted but then denied. Appellant was offered a "quiet" office space on the 6th floor of the federal building to accommodate his medical conditions, but appellant contended that the space was still loud. He explained that he was constantly on high alert due to the unexpected noises that startled him and caused him to panic.

In an undated statement received by OWCP on December 10, 2015, appellant indicated that he was attempting to obtain a witness statement from T.D., a union representative, about his meeting with J.P. He also noted that he had filed an Equal Employment Opportunity (EEO) complaint regarding his complaints of a hostile work environment, disability discrimination, failure to accommodate, and reprisal. Appellant related that his complaint was still in the informal stage of mediation and that he could file a formal complaint on or about January 9, 2016 if the matter was not resolved *via* mediation. He noted that he was enclosing relevant documentation. Appellant explained that, because of the hostile work environment and failure to accommodate, he had not been able to work and now his financial situation had caused him significant stress and created difficulties in his ability to take care of his son.

Appellant submitted an October 15, 2015 letter from an EEO counselor, which indicated that appellant had filed a claim for reasonable accommodation.

On December 10, 2015 OWCP received a November 3, 2015 letter from the employing establishment to appellant. In this letter J.P. informed appellant that he had been absent from duty for 549.5 hours during the past 12 months. He noted that appellant's level of absence was unacceptable and hampered the service he should provide to veterans. Appellant was instructed to report for duty immediately. J.P. advised appellant that failure to do so may result in disciplinary action.

On January 19, 2016 OWCP received the employing establishment's response to appellant's reconsideration request. In a letter dated January 15, 2016, O.F., a human resource specialist for the employing establishment, indicated that on April 17, 2014 appellant started work at the employing establishment. On May 8, 2014 appellant was selected through merit promotion for a rating veteran service representative position and received another promotion in May 2015 due to successful performance. O.F. indicated that on or about April 28, 2015 appellant filed a Form CA-2 for panic disorder, social anxiety disorder, migraine headaches, depression, and insomnia allegedly due to a hostile work environment. She pointed out that appellant had not reported any claim of a hostile work environment prior to filing his Form CA-2. O.F. reported that on April 24, 2015 appellant engaged in the reasonable accommodation process and the employing establishment provided appellant with some accommodations to assist with the performance of his duties. She indicated that appellant was also granted leave-without-pay (LWOP) status pursuant to FMLA for the period July 14 through August 31, 2015 and again from September 1 through 30, 2015. O.F. noted that appellant requested to telework from home up to four days per week as part of reasonable accommodation. She related that even though appellant could be accommodated in the employing establishment's office, the employing establishment considered appellant's request. O.F. noted that on October 7, 2015 appellant reported a new address of Lake Mills, WI. She explained that the employing establishment did not find it reasonable to fulfill appellant's request to telework up to four days per week. O.F. explained that, even though the employing establishment attempted to accommodate appellant in

the office, he failed to report to his duty station to perform the essential functions of his position. She related that appellant currently was refusing to report to work unless he was allowed to work from home five days per week from his current address of record.

The employing establishment submitted appellant's resume, Form SF-50, and timecards from April 27, 2015 to present. It also submitted appellant's request for LWOP and his request to telework full time. In a May 11, 2015 memorandum and establishment accommodation decision, the employing establishment approved appellant's request for intermittent LWOP and FMLA leave for the period February 28, 2015 through February 27, 2016 and for modified breaks in order to accommodate his episodic flare ups associated with his anxiety, depression, panic disorder, and migraine headaches.

An employing establishment memorandum dated August 27, 2015 demonstrated that appellant had exhausted his 480 hours of LWOP entitlement under the FMLA effective August 31, 2015. The employing establishment noted that it was granting additional LWOP for the period September 1 through 30, 2015 as a reasonable accommodation since appellant's physician had indicated that he would be incapacitated for duty until September 30, 2015. Appellant was advised that he was scheduled to return to duty effective October 1, 2015.

Appellant requested an additional 200 hours of LWOP in an October 15, 2015 handwritten note. An October 19, 2015 memorandum from the employing establishment established that appellant's request for LWOP was denied because he had exhausted his 480 hours of LWOP under the FMLA.

In a January 7, 2016 statement, J.P. described the October 2014 incident. He explained that as he walked by appellant's cubicle another employee handed him a box and told him to give it to appellant. J.P. gave the box to appellant and told appellant that another employee had handed him the box to give to appellant. He noted that appellant and the other employees laughed so he assumed that it was a joke. J.P. left the box with appellant and walked away.

J.P. also contended that he never sent appellant a distasteful e-mail, engaged in verbally abusive behavior, nor raised his voice in a rude demeanor toward appellant regarding his work. J.P. explained that when appellant did not respond to his e-mail requesting him to pull his rating on a specific claim, he went to appellant's cubicle to speak to him. Appellant was wearing earphones and appellant told J.P. in a loud tone that if he had anything to say to appellant he needed to speak with K.S. J.P. noted that he later informed K.S. of what happened. When K.S. looked into the matter, she advised appellant by e-mail that the rating needed to be corrected. Regarding the meeting with appellant, J.P. reported that on April 27, 2015 he met with appellant and a union representative to discuss appellant's behavior of disrespectful conduct towards supervisors and failure to follow directives. He related that he read from the master agreement about the possible outcomes if appellant's behavior persisted. J.P. noted that appellant apologized for the miscommunication and agreed to fix the errors. He explained that he did not have any direct contact with appellant about the verbal counselling meeting.

After K.S. went on maternity leave, J.P. took over the core team, but at that time appellant was already on FMLA leave. He related that he responded to appellant's requests for leave and reasonable accommodation only by e-mail. J.P. indicated that when appellant returned

from sick leave on October 10, 2015 J.P. was informed that appellant's reasonable accommodation request had been approved, so he began to make arrangements to accommodate appellant's request. He noted that he did not realize that appellant had relocated to Wisconsin.

In an e-mail thread dated from April 23, 2015, J.P. informed appellant that a specific claim did not appear ready for a rating decision, provided an explanation for his conclusion, and requested that appellant pull back his rating. Another e-mail by K.S. further indicated why appellant should pull back his rating on a specific claim and requested that appellant follow instructions. J.P. alleged that appellant failed to follow his instruction and displayed disrespectful conduct towards a supervisor.

M.S., the Director of Human Resources for the employing establishment, also provided an e-mail dated January 12, 2016 about appellant's claim. He explained that on October 15, 2015 he met with appellant to discuss appellant's request for a hardship transfer to Wisconsin and for a reasonable accommodation. M.S. noted that he informed appellant that he would consider his requests and advised him that according to the master agreement the definition of telework required working at home up to eight days in a pay period with two days in the office. He reported that subsequent to the meeting, he submitted appellant's requests through the district office, but appellant's requests were subsequently denied.

In a January 13, 2016 statement, K.S. explained that from approximately March to October 2015 she was appellant's immediate supervisor. She related that appellant was transferred from the training team to the core team in March 2015. K.S. reported that on or about April 23, 2015 J.P. informed her that he believed appellant needed to make a correction to a rating decision. K.S. related that she met with appellant in person to discuss the situation and explained that appellant had no recall of any specifics regarding the conversation J.P. had with appellant. She indicated that she looked at the case in question and informed appellant that the rating decision needed correction as his decision was premature. K.S. explained that during their conversation appellant expressed concern about the way he received feedback and work directive at the Veterans' Service Center as opposed to when he was on the training team. She informed him that he would be receiving feedback from several supervisors given the nature of how work flowed in the Veterans' Service Center. K.S. further reported that she spoke with C.C. about appellant's work and informed him that if there were any further issues or concerns about appellant's work to bring the issues directly to her. K.S. indicated that she went on maternity leave from June 3 to October 5, 2015 and J.P. was assigned as the supervisor in her absence. She related that she returned to the office on October 5, 2015 and appellant was out of the office beginning October 12, 2015.

In a decision dated January 25, 2016, OWCP affirmed the July 21, 2015 decision with modification. It accepted that appellant had established that the employing establishment denied his various requests for leave, full-time telework, and hardship relocation and that appellant was diagnosed with panic disorder, anxiety, and depression, however, it found that appellant had not established that these factors constituted compensable factors of employment. OWCP also found that appellant had not substantiated that he was harassed at work.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.[3] There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation.[4] 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 under FECA. Where the injury or illness results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employing establishment or by the nature of the work, the injury or illness comes within the coverage of FECA.[6] On the other hand, when an injury or illness results from an employee's feelings of job insecurity *per se*, fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or hold a particular position, unhappiness with doing work, or frustration in not given the work desired or hold a particular position, such injury or illness falls outside FECA's coverage because they are found not to have arisen out of employment.[7]

An employee has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.[8] This burden includes the submission of a detailed description of the employment factors or conditions which he or she believes caused or adversely affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.[9]

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 work 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 compensable factors of employment and may not be considered.[10] If an employee does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim. The claim must be supported by probative

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[3] *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

[4] *A.K.*, 58 ECAB 119 (2006); *David Apgar*, 57 ECAB 137 (2005).

[5] 28 ECAB 125 (1976).

[6] *Cutler, id.*; *see also Trudy A. Scott*, 52 ECAB 309 (2001).

[7] *William E. Seare*, 47 ECAB 663 (1996).

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

[9] *Effie O. Morris*, 44 ECAB 470, 473-474 (1993).

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

evidence.[11] If a compensable factor of employment is substantiated, OWCP must base its decision on an analysis of the medical evidence.[12]

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regularly or specially assigned work duties of the employee and are not covered under FECA.[13] 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.[14] 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.[15]

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from the employee's performance of his or her regular duties, these could constitute employment factors.[16] However, for harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence which established that the alleged harassment or discrimination implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations that the harassment occurred with probative and reliable evidence.[17] With regard to emotional claims arising under FECA, the term harassment as applied by the Board is not the equivalent of harassment as defined or implemented by other employing establishments, such as the Equal Employment Opportunity Commission, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers compensation under FECA, the term harassment is synonyms, as generally defined with persistent disturbance, torment or persecution, *i.e.* mistreatment by coemployees or workers. Mere perceptions and feelings of harassment will not support an award of compensation.[18]

ANALYSIS

Appellant alleged that he sustained an aggravation of his service-connected panic disorder, social anxiety disorder, migraine headaches, depression, and insomnia due to a hostile

[11] *Charles E. McAndrews,* 55 ECAB 711 (2004).

[12] *Norma L. Blank,* 43 ECAB 384, 389-90 (1992).

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

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

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

[16] *David W. Shirey,* 42 ECAB 783, 795-96 (1991).

[17] *James E. Norris,* 52 ECAB 93 (2000).

[18] *Beverly R. Jones,* 55 ECAB 411 (2004); *Jack Hopkins, Jr.,* 42 ECAB 818, 827 (1991).

work environment. He has not alleged that his condition was due to any specific job duties under *Cutler*. Instead, appellant has alleged that he worked in a hostile work environment and was the victim of harassment by his supervisors.

As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of FECA.[19] The Board has held that disputes regarding leave,[20] assignment of work,[21] assessment of work performance,[22] a change in a duty shift,[23] are all administrative functions of the employing establishment and, absent error or abuse, a claimant's disagreement or dislike of such a managerial action are not compensable.[24] Absent evidence establishing error or abuse, a claimant's disagreement or dislike of such a managerial action is not a compensable factor of employment.[25]

The Board finds that appellant has failed to establish error or abuse in the handling of his various requests for LWOP. On the contrary, a memorandum dated October 19, 2015 from the employing establishment explained that appellant's request was denied because he had exhausted 480 hours of LWOP. Another memorandum by the employing establishment dated August 27, 2015 revealed that appellant had used up all of his 480 hours of LWOP entitlement under the FMLA. Nonetheless, it granted appellant additional LWOP from September 1 to 30, 2015 as additional accommodation. The Board finds no evidence that demonstrated that management's handling of his request for additional LWOP was arbitrary or unfair.[26] There is nothing in the record to substantiate error or abuse in these administrative matters.

The record also fails to establish error or abuse in the denial of appellant's request to telework full time. In a letter dated January 15, 2016, O.F. explained that the employing establishment had considered appellant's request to telework full time but determined that relocating appellant's office within the employing establishment was an appropriate accommodation. The employing establishment also noted that appellant had moved his residence from Indiana to Wisconsin. M.S. also provided an e-mail dated January 12, 2016, which noted that he had advised appellant that, pursuant to the master agreement, the definition of telework required working at home up to eight days with two days in the office per pay period. He noted that he would still consider appellant's request but it was later denied.

[19] *Supra* note 13.

[20] *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995).

[21] *Robert W. Johns*, 51 ECAB 137 (1999).

[22] *Elizabeth W. Esnil*, 46 ECAB 606 (1995).

[23] *Peggy R. Lee*, 46 ECAB 527 (1995).

[24] *Roger Williams*, 52 ECAB 468 (2001).

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

[26] *See M.H.*, Docket No. 15-0478 (issued July 1, 2016).

Appellant has not established that management committed error or abuse with respect to the denial of his request to telework full time from Wisconsin.[27]

Appellant also alleged that harassment and threatening behavior by various supervisors created a hostile work environment. He explained that in October 2014 J.P. played a practical joke on him. He related that J.P. brought a box to his cubicle desk and told him to pack up his things because he was fired. Appellant noted that he consequently experienced a panic attack. In a January 7, 2016 statement, J.P. corroborated that in October 2014 he handed appellant a box while appellant was in his cubicle. He denied informing appellant that he was being fired. J.P. explained that another employee had given him the box to give to appellant and he simply handed him the box. There are no other corroborating witness statements to support appellant's version of the incident. Appellant, therefore, has not substantiated that this event occurred as alleged.

Appellant also asserted that in April 2015 J.P. sent him a "nasty" e-mail and requested that he change his rating on a case even though it had contradicted what his manager had instructed him to do. Appellant reported that J.P. accosted him in his cubicle to "fix" the rating and became verbally abusive towards him. He further noted that J.P. ordered him to attend a meeting where he warned appellant that continued disrespectful behavior would require formal reprimand. Appellant indicated that after the meeting he experienced another severe panic attack in the office. J.P., however, denied that his e-mails were distasteful or that he spoke to appellant in a verbally abusive manner. He provided the e-mail thread dated April 23, 2015 where he asked appellant to change a rating decision. Nothing in the e-mail is abusive. J.P. further denied that he threatened appellant in the meeting but merely read to appellant from the master agreement. The Board finds that the facts of the case do not support the specific incidents of verbal abuse or threats. Appellant provided no corroborating evidence or witness statements to support his version of the events.[28]

Along with J.P., appellant also claimed that another coach, C.C., harassed and threatened him at work. He mentioned an incident in March 2015 when C.C. told him: "If I were a sniper, you'd be dead." Appellant reported another incident when C.C. threatened him that he was in a "dangerous" situation if he did follow C.C.'s instructions. He asserted that C.C. singled him out for hostile, inappropriate contact, monitored his workload queue, confronted him about ratings he was completing, made snide comments about him, and routinely denigrated him in front of his peers. To establish entitlement to benefits, however, a claimant must establish a factual basis for the claim by supporting his allegations with probative and reliable evidence.[29] The Board finds that appellant has not provided any corroborating evidence to verify his allegations regarding C.C. Thus, appellant has not established a compensable employment factor under FECA with respect to his alleged harassment and discrimination.[30]

[27] *See P.V.*, Docket No. 15-0740 (issued June 14, 2016).

[28] *See D.S.*, Docket No. 15-0411 (issued September 10, 2015); *Judy L. Kahn*, 53 ECAB 321 (2002).

[29] *F.H.*, Docket No. 13-294 (issued April 12, 2013).

[30] *See R.V.*, Docket No. 16-0182 (issued June 15, 2016).

On appeal counsel contends that the employing establishment abused its discretion in denying appellant's request to telework as it allowed dozens of other rating veterans service representatives to telework, has a past practice of permitting telework from non-Indiana locations, has a current practice of supporting telework arrangement of a Detroit Regional Office representative who worked full time for Detroit out of the Indianapolis office, and has permitted appellant to telework from Wisconsin without incident. As noted above, however, the Board will examine the factual evidence of record to determine whether the employing establishment has erred or acted abusively.[31] As previously explained, there is no evidence of error or abuse surrounding the employing establishment's handling of appellant's request to telework. For the foregoing reasons, appellant has not established any compensable employment factors under FECA and, therefore, has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

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 did not meet his burden of proof to establish an emotional condition causally related to factors of his federal employment.

[31] *Supra* note 15.

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2016 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 12, 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