



## **FACTUAL HISTORY**

On May 12, 2016 appellant, then a 52-year-old support services clerk, filed a traumatic injury claim (Form CA-1) alleging that, on March 25, 2016, her supervisor sent her an e-calendar appointment request for a meeting to be held on March 28, 2016. This caused her to develop high anxiety, nausea, and headaches over the weekend in anticipation of the meeting. Appellant sought medical treatment on March 28, 2016. She stopped work on March 28, 2016 and returned to work on May 2, 2016. The employing establishment controverted the claim, asserting that appellant was not injured in the performance of duty.

Appellant submitted an April 5, 2016 certificate from a social worker who noted that appellant's condition began on March 29, 2016. She presented with a depressed mood, anxiety, panic attacks, and impaired focus and was unable to work. On March 29, 2016 the social worker indicated that appellant was disabled from work until May 2, 2016.

In a May 23, 2016 development letter, OWCP requested that appellant submit additional evidence, including a detailed description of the work incidents that contributed to her claimed injury. It also requested that the employing establishment comment on the accuracy of all submitted statements.

Appellant submitted a June 21, 2016 narrative statement and asserted that she was the subject of retaliation and harassment by employing establishment management. She asserted that, since September 2015, she was singled out and treated unfairly by her supervisory, Acting Director L.G. when he began serving on September 3, 2015. Appellant advised that, on September 24, 2015, L.G. began threatening her with negative comments about her work and had made false accusations. L.G. also held impromptu meetings which began as "observation meetings," but quickly changed to performance counseling meetings. Appellant alleged that L.G. caused her stress, humiliation, and often yelled at her during meetings in the presence of others. On November 19, 2015 L.G. proposed a notice of suspension for failing to follow instructions. Appellant alleged that on January 4, 2016 L.G. issued her a negative mid-year performance evaluation and accused her of sending abusive e-mails. On March 28, 2016 she had a panic attack and on March 29, 2016 she was placed on medical leave. Appellant noted that during this period she was diagnosed with generalized anxiety disorder and panic attacks. She alleged that she continued to work in a hostile work environment where her work was sabotaged, leave requests were denied, medical documentation was not processed timely, and available programs were not discussed with her.<sup>2</sup>

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<sup>2</sup> Appellant previously filed an occupational disease claim (Form CA-2) alleging that on November 19, 2015 she developed an emotional condition causally related to her federal employment duties, OWCP File No. xxxxxx589. That claim was denied by OWCP. Appellant filed a notice of traumatic injury (Form CA-1) alleging that she sustained an emotional condition on March 21, 2016 causally related to her work duties, OWCP File No. xxxxxx418. This claim was denied by OWCP. Appellant filed an occupational disease claim (Form CA-2) alleging that on November 19, 2015 she developed an emotional condition causally related to her employment duties, OWCP File No. xxxxxx582. That claim was also denied by OWCP. Appellant filed an occupational disease claim (Form CA-2) alleging that she developed an emotional condition on March 21, 2016 causally related to her work duties, OWCP File No. xxxxxx583. That claim was also denied by OWCP. Appellant's prior claims are not presently before the Board.

In an explanation of the Form CA-1, appellant alleged that on March 21, 2016 L.G. called her into an unscheduled meeting and presented a performance counseling memorandum dated March 21, 2016 which stated that he was giving her 30 days to improve performance. She alleged that L.G. intimidated her and singled her out. Appellant asserted that he sabotaged her work by holding onto documents, not signing documents timely, and interfered with normal operations of the mission by telling employees not to work with her in a team setting. She advised that L.G.'s threats of termination were intensifying and he never offered her a plan to improve. Appellant indicated that on March 28, 2016 she had a panic attack and left work early. She also submitted articles on disability retirement with psychiatric conditions and on emotional reaction claims under FECA.

On March 28, 2016 Dr. Felix W. Amoa-Bonsu, Board-certified in emergency medicine, treated appellant for panic disorder. In a work status report dated March 28, 2016, he diagnosed panic disorder and placed appellant off work from March 28 to 29, 2016.

Appellant was treated by Dr. Kweli A. Moyo, a Board-certified psychiatrist, on March 25 and April 14, 2016, for anxiety associated with depression. He indicated that appellant reported being ill since March 29, 2016 and was disabled until May 2, 2016. In treatment forms dated April 14 and June 20, 2016, Dr. Moyo diagnosed generalized anxiety disorder and panic attacks. Appellant also submitted additional treatment records from a social worker.

By decision dated June 30, 2016, OWCP denied appellant's claim as she failed to establish that she sustained an emotional condition in the performance of duty.

On July 15, 2016 appellant requested reconsideration. She submitted a witness statement from R.E., a coworker, dated September 24, 2015, who noted that he was in his office when appellant was passing and he heard L.G. call her name in a loud harsh tone. L.G. asked appellant about travel vouchers and stated that she was abusive with e-mails.

Appellant submitted documents relating to Equal Employment Opportunity (EEO) complaints she filed that pertain to events that occurred before March 28, 2016. This included an interrogatory from A.M., a coworker, dated March 15, 2016; an interview with L.G. on October 27, 2015; a telephone interview with M.L. on November 2, 2015; and a telephone interview with R.E. on November 4, 2015. An October 27, 2015 EEO interview with L.G. revealed that his primary concern with appellant was her performance. He noted speaking to her on numerous occasions about the need for a working relationship. L.G. provided appellant with a performance counseling memorandum in early October noting his concerns that her reports were late, they contained too many errors, and she sent too many e-mails. He indicated that when he became the Service Center Director he sat down with her to discuss his expectations and advised that he had no intention of being confrontational and tried to be direct with appellant about things that needed to improve. L.G. indicated that he relied on the information she provided in the end-of-year report to provide information to others and the report was incorrect. He indicated that this was the second year in a row that the end-of-year report had problems. L.G. denied yelling at appellant. With regard to appellant's allegation that she was not allowed to telework, he explained

that appellant could get an *ad hoc* telework agreement if she gave him a checklist and took the requisite course. However, appellant had not completed these tasks.<sup>3</sup>

OWCP also received additional medical records. Appellant was treated by Dr. Moyo from February 29 to May 6, 2016 for work stress. On March 4, 2013 Dr. Yohannes Belachew, a Board-certified internist, saw appellant for stress and depression. In reports from November 25 to 30, 2015, he diagnosed depressive disorder, anxiety, hypothyroidism, and hypertension. On January 14 and April 9, 2015 appellant was seen by Dr. Gregory Haley, a Board-certified psychiatrist, for major depressive disorder. In an August 19, 2016 report, Dr. Anne Purcell, an employing establishment program consultant, noted that appellant's EEO complaint was pending and there had been no findings or conclusions regarding her allegation. Appellant also submitted additional records from social workers.

By decision dated March 8, 2017, OWCP denied modification of its June 30, 2016 decision. It indicated that appellant filed separate emotional condition claims regarding the allegations unrelated to the claimed March 28, 2016 employment incident.<sup>4</sup>

On March 31, 2017 appellant requested reconsideration. She reiterated her allegations that she developed job-related stress as a result of her supervisor, L.G. constantly screaming at her, belittling her in front of others, verbally abusing her, and creating a hostile work environment. Appellant advised that she was performing her job duties to the best of her abilities. She alleged that she experienced emotional and physical stress as a result of being abused and bullied by L.G. Appellant indicated that as a result of job-related stress she requested leave under the Family and Medical Leave Act (FMLA) for four hours each day for medical care which was approved by headquarters for FMLA, but declined by L.G. as a punitive measure.

By decision dated April 12, 2017, OWCP denied appellant's request for reconsideration as the evidence submitted was insufficient to warrant a merit review.

### **LEGAL PRECEDENT -- ISSUE 1**

To establish an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused

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<sup>3</sup> Appellant submitted a September 24, 2015 statement from M.L. who was present at the performance appraisal with L.G. M.L. noted that L.G. described the meeting as a discussion to help appellant improve her performance. L.G. indicated that a shipment of coffee and creamer was incorrectly delivered to the office and appellant did not immediately correct the problem, but blamed others. He advised appellant that she did not properly prepare the Imaging Report and he completed the report and submitted it himself. L.G. further advised that there was a failure to timely resolve an intern's logging of leave. M.L. indicated that L.G. noted that appellant sent excessive e-mails and she did not approve travel in a timely manner.

<sup>4</sup> *Supra* note 2.

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.<sup>5</sup>

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*,<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.<sup>9</sup>

Where a claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.<sup>10</sup> Personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>11</sup> 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 her frustration from not being permitted to work in a particular environment, or to hold a particular position.<sup>12</sup>

### **ANALYSIS -- ISSUE 1**

Appellant alleged that she sustained an emotional condition as a result of an incident on March 25, 2016 when her supervisor sent her an e-calendar appointment request for a meeting held on March 28, 2016. She claimed this caused her to develop high anxiety, nausea, and headaches in anticipation of the meeting. OWCP denied appellant's emotional condition claim, finding that she had not established any compensable employment factors. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.

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<sup>5</sup> *George H. Clark*, 56 ECAB 162 (2004).

<sup>6</sup> 28 ECAB 125 (1976).

<sup>7</sup> *See Robert W. Johns*, 51 ECAB 137 (1999).

<sup>8</sup> *Supra* note 6.

<sup>9</sup> *J.F.*, 59 ECAB 331 (2008).

<sup>10</sup> *M.D.*, 59 ECAB 211 (2007).

<sup>11</sup> *Roger Williams*, 52 ECAB 468 (2001).

<sup>12</sup> *See supra* note 6.

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 her work duties. However, appellant provided insufficient corroborating evidence to support this allegation. She did not specify particular duties during specific time periods, particularly the period March 25 to 28, 2016 upon which her traumatic injury claim is based, to which she attributed her claimed emotional condition. The evidence of record does not support this allegation. Appellant has not established a compensable employment factor in this regard. She 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*.<sup>13</sup>

Appellant's other allegations relate to administrative and personnel actions. In *Thomas D. McEuen*,<sup>14</sup> 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.<sup>15</sup>

Appellant alleged that, on March 25, 2016, her supervisor, L.G. sent her an e-calendar appointment requesting a meeting be held the following Monday. She asserted that she developed high anxiety. Appellant also asserted that, following this, leave requests were unfairly denied. The Board finds that such actions relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, and do not fall within the coverage of FECA.<sup>16</sup> Although the handling of disciplinary actions, evaluations, and leave requests, the assignment of work duties, and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.<sup>17</sup> However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has to examine whether the employing establishment acted reasonably.<sup>18</sup> The

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<sup>13</sup> See *supra* note 6.

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

<sup>15</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>16</sup> See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

<sup>17</sup> *Id.*

<sup>18</sup> See *supra* note 15.

Board finds that the evidence of record is insufficient to establish that the employing establishment erred or acted abusively in the matter related to the incident or incidents that occurred on or about March 25 to 28, 2016.

Appellant submitted a September 24, 2015 statement from M.L. who indicated that he was present at a performance appraisal with appellant in which L.G. indicated that he was trying to get appellant to improve her work performance. On October 27, 2015 L.G. indicated that his primary concern with appellant was her performance and noted speaking to her on numerous occasions about the need to have a working relationship. These statements relate to matters that predate the alleged March 25 to 28, 2016 incidents and are irrelevant to the issue before the Board.<sup>19</sup> Furthermore, the Board has held that issues of work scheduling pertain to appellant's desire to work in a particular environment and does not constitute compensable factors of employment.<sup>20</sup>

Regarding appellant's general allegation that she developed stress due to insecurity about maintaining her position, the Board has previously held that a claimant's job insecurity is not a compensable factor of employment under FECA.<sup>21</sup> 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 filed an EEO complaint based on discrimination on the bases of sex, age, and retaliation for EEO conduct. However, grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.<sup>22</sup> In this case, the EEO complaints appear to relate to incidents that occurred prior to the current allegation and claim before the Board and therefore have no bearing on the present claim.<sup>23</sup> Additionally, appellant has not otherwise provided a final decision from any such complaints or grievances that pertain to her allegations regarding the incident or incidents that occurred on or about March 25 to 28, 2016. Thus, the evidence regarding the EEO matter does not establish a compensable employment factor under FECA.

Appellant also generally alleged that the employing establishment's actions concerning the identified incidents were in retaliation, harassment, or punitive. She asserted that she was singled out and treated unfairly by management. 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.<sup>24</sup> 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 compensable

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<sup>19</sup> See *T.F.*, Docket No. 12-0439 (issued August 20, 2012) (where appellant raised concerns about matters that predated allegations made in her claim, they had no bearing on her current claim for compensation).

<sup>20</sup> *F.K.*, Docket No. 17-0179 (issued July 11, 2017).

<sup>21</sup> See *Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

<sup>22</sup> *James E. Norris*, 52 ECAB 93 (2000).

<sup>23</sup> *Supra* note 19.

<sup>24</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

under FECA.<sup>25</sup> The evidence fails to support appellant's claim for harassment as a cause for her emotional condition with regard to the incident or incidents that occurred on or about March 25 to 28, 2016. As noted, statements provided by appellant predate the matters pertaining to the present claim and are irrelevant to the issue before the Board.<sup>26</sup> General allegations of harassment are insufficient<sup>27</sup> and in this case appellant has not submitted sufficient evidence to establish disparate treatment by her supervisor with regard to the incident or incidents occurring from March 25 to 28, 2016.<sup>28</sup> 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.<sup>29</sup> The Board finds that there is no evidence presented to substantiate appellant's allegations of retaliation or harassment. 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.<sup>30</sup>

On appeal appellant reiterated her allegations that she developed job-related stress as a result of L.G.'s abusive behavior. She asserts that she submitted sufficient evidence to establish that she sustained an emotional condition in the performance of duty. As explained above, appellant has not established her claim for an emotional condition as she has not attributed her claimed condition to any compensable employment factors.

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.

### **LEGAL PRECEDENT -- ISSUE 2**

Under section 8128(a) of FECA,<sup>31</sup> OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(3) of the implementing federal regulations, which provides that a claimant may obtain

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<sup>25</sup> *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).

<sup>26</sup> See *supra* note 19.

<sup>27</sup> See *Paul Trotman-Hall*, 45 ECAB 229 (1993).

<sup>28</sup> 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).

<sup>29</sup> 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).

<sup>30</sup> 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).

<sup>31</sup> 5 U.S.C. § 8128(a).



review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence which:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law;  
or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”<sup>32</sup>

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.<sup>33</sup>

### **ANALYSIS -- ISSUE 2**

OWCP denied appellant’s emotional condition claim because she had failed to establish any compensable employment factors. Thereafter, it denied appellant’s reconsideration request.

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of the claim. In her request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She submitted a statement dated March 22, 2015 and reiterated her allegations that she developed job-related stress as a result of her supervisor, L.G. constantly screaming at her, belittling her in front of others, verbally abusing her, and creating a hostile work environment. Appellant advised that she was performing her job duties to the best of her abilities. These assertions do not show a legal error by OWCP or a new and relevant legal argument. Furthermore, the assertions are similar to arguments previously made by appellant. The Board has held that evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.<sup>34</sup>

The underlying issue in this case is whether appellant submitted sufficient evidence to establish that her claimed condition is causally related to any compensable employment factors. This is a factual issue which must be addressed by relevant new factual evidence.<sup>35</sup> However, appellant did not submit any new and relevant factual evidence in support of her claim.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or

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<sup>32</sup> 20 C.F.R. § 10.606(b)(3).

<sup>33</sup> *Id.* at § 10.608(b).

<sup>34</sup> *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>35</sup> *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

submit relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish an emotional condition in the performance of duty. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 12 and March 8, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 24, 2018  
Washington, DC

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

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

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