United States Department of Labor
Employees' Compensation Appeals Board

G.M., Appellant	)	
and	)	**Docket No. 17-1469**
	)	**Issued: April 2, 2018**
DEPARTMENT OF LABOR, WAGE & HOUR DIVISION, Chicago, IL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 21, 2017 appellant, through counsel, filed a timely appeal from a May 30, 2017 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 her burden of proof to establish an emotional condition in the performance of duty causally related to compensable factors of her federal employment.

On appeal counsel asserts that the May 30, 2017 decision is contrary to fact and law.

FACTUAL HISTORY

On July 31, 2015 appellant, then a 45-year-old wage and hour investigator working part-time modified duty, filed a traumatic injury claim (Form CA-1), alleging that at 9:30 a.m. on July 29, 2015, she felt chest pain as she was working at her desk. Appellant's supervisor, N.H., indicated on the claim form that at approximately 10:00 a.m. an information technology (IT) contractor and I.W., the director of operations, were at appellant's desk, and that at approximately 10:05 a.m., appellant told the director that she was not feeling well and was going to the building's nurse. She advised on the form that the employing establishment was controverting the claim.

A brief emergency department note dated July 29, 2015 included a diagnosis of chest pain. It advised that she was to follow-up with her primary care physician.

On an attending physician's report (Form CA-20) dated August 17, 2015 Dr. Kaihua Kevin Lai, an attending Board-certified internist, noted a date of injury of July 28, 2015. He advised that appellant was seen in follow-up for neck and shoulder pain, referred appellant to a psychiatrist, and advised that she was totally disabled.

By letter dated September 3, 2015, OWCP informed appellant of the type of evidence needed to establish her claim. It afforded her 30 days to submit the requested information.

Appellant subsequently submitted a City of Chicago Emergency Medical System's report, dated July 29, 2015, which indicated that appellant was transported for breathing problems and chest pain. Electrocardiogram (EKG) studies performed en route to the hospital were normal. An emergency department report indicated that appellant was admitted at 11:24 a.m. on July 29, 2015 and discharged at 2:03 p.m. on July 30, 2015. On admission, Dr. Sara M. Hock, Board-certified in emergency medicine, noted complaints of chest pain, left shoulder and neck pain, and a history that, following an argument at work, appellant developed severe chest pain radiating into the left arm with worsening chronic left shoulder pain and shortness of breath, diaphoresis, nausea, and lightheadedness. Physical examination demonstrated no acute changes. Two EKG studies were negative. A cardiac stress test was normal. Dr. Nadim Hafez, Board-certified in emergency medicine, listed discharge diagnoses of other chest pain, unspecified essential hypertension, unspecified hyperlipidemia, Type II diabetes, shortness of breath, nausea, dizziness, and giddiness. He advised that there was no evidence of an immediate life-threatening or surgical condition.

On August 11, 2015 appellant e-mailed her supervisor N.H., relating that she had been taken from work by ambulance to the emergency room on July 29, 2015. She stated that I.W.

was at her desk, and that she told I.W. she was not feeling well and was going to the medical unit where the nurse examined her and decided to call an ambulance. Appellant indicated that she was awaiting treatment and had not been given a return-to-work date.

In an October 18, 2015 narrative statement, appellant alleged that hostile working conditions and disparate treatment, especially since N.H. became her supervisor, aggravated her medical conditions and employment injuries. She asserted that N.H. had threatened her since September 19, 2013 when N.H. clarified her intent to fire appellant. Appellant listed 2013 and 2014 performance appraisals when N.J. rated her "needs to improve," failure to address requests for reasonable accommodations, and an ergonomic assessment as causing her emotional condition. She noted that on April 16, 2015 N.H. had tried to amend a limited-duty assignment for appellant's case, OWCP File No. xxxxxx390.[3] Appellant referenced a June 16, 2015 mid-year evaluation meeting where N.H. told her she was failing all standards, noting that N.H. refused her request for union representation at the meeting.

As to the events of July 29, 2015, appellant indicated that, because she had been threatened with disciplinary action if she failed to complete employment duties, she was in communication with the IT department to resolve issues and, because N.H. refused to give appellant assistance, she contacted I.W. who came to appellant's desk where they discussed N.H.'s failure to provide reasonable accommodations. Appellant indicated that she became extremely anxious with a rapid heartbeat and shortness of breath and left to go to the medical unit and was then transported to a hospital emergency department. She noted that she had filed numerous grievances and Equal Employment Opportunity (EEO) claims that were pending. Appellant concluded that the development of her emotional condition had been continual and culminated with the July 29, 2015 incident. She submitted evidence regarding several EEO claims.

In a June 17, 2014 treatment note, Dr. Lai noted seeing appellant for sharp chest pain and left arm pain. He discussed examination findings and noted that an EKG was normal. Dr. Lai diagnosed chest pain, chest wall strain, and anxiety disorder. On November 2, 2015 he noted seeing appellant for evaluation of anxiety and panic attack secondary to job stress caused by hostile treatment at work since 2011 when she was assigned a new supervisor. Dr. Lai indicated that appellant was treated with medication in 2011. He diagnosed anxiety as an acute reaction to exceptional stress, and work-related stress. Dr. Lai advised that appellant's symptoms were triggered and aggravated by stress at work, noting that she had no prior panic attack in the past. He concluded that appellant should remain off work. On January 4, 2016 Dr. Lai recommended psychiatric evaluation. In a January 13, 2016 treatment note, he advised that appellant had numerous medical issues, and was feeling more stressed, with anxiety and depression, due to her chronic back pain, neck pain, knee pain, difficulty ambulating, and inability to work.

[3] The record indicates that appellant has two other FECA claims. One is an accepted claim, adjudicated under File No. xxxxxx390. Under that claim, appellant has a pending Board appeal of a January 20, 2017 OWCP decision, assigned Docket No. 17-1004. That appeal will be adjudicated separately. Appellant also has a claim, adjudicated under File No. xxxxxx524. Under that claim, appellant has a pending Board appeal of a February 7, 2017 OWCP decision, denying appellant's claim, assigned Docket No. 17-1738. That appeal will also be adjudicated separately.

In February 12 to March 18, 2016 progress notes, Patricia Merriman, Ph.D., a clinical psychologist, noted seeing appellant for pain management and psychological adjustment to work stress. Appellant struggled with anxiety and distress resulting from pain and related stressors. She diagnosed panic disorder without agoraphobia. On May 20, 2016 Dr. Merriman noted first seeing appellant on February 5, 2016 when she reported that, following a panic attack at work on July 29, 2015, she was taken to an emergency room and thereafter began medical leave. Appellant related that she had a prior history of anxiety which was managed with medication until the onset of hostile work conditions, which stemmed from a 2014 work injury and failure to provide accommodations which led to the panic attack. Dr. Merriman described appellant's treatment and recommended psychiatric evaluation.

In an undated statement, I.W. disputed appellant's October 15, 2015 statement. She noted that appellant attributed the July 29, 2015 incident to long-term anxiety caused by her supervisor, her inability to complete tasks because she had not received reasonable accommodations, and hostile work conditions and disparate treatment. I.W. indicated that she received no e-mail from appellant about accommodation and that she did not state that N.H. should have provided accommodation. She related that on July 29, 2015, K.S., an IT specialist, came to her office to report that appellant informed him her printer was not working, although he had already fixed it. I.W. and K.S. then went to appellant's work area to ascertain the problem and, upon arrival, appellant asked her about a footrest and keyboard which she was supposed to have. She indicated that she told her to contact R.U., the safety officer, about this. I.W. indicated that appellant asked if she needed to be there while K.S. inspected her printer connections and was told no, and appellant indicated she was going to the medical unit. She indicated that appellant did not appear to be in distress, did not request to be escorted, left at about 10:15 a.m., and, according to the medical unit's sign in log, arrived there at 10:45 a.m. I.W. noted that at 10:27 a.m. appellant called OWCP regarding File No. xxxxxx390.[4] She advised that appellant was reprimanded on July 13, 2015, and also received a proposed suspension on October 19, 2015 for failure to complete assignments. I.W. noted that, in a grievance response to the letter of reprimand, appellant indicated that she was unable to do her work because she did not receive reasonable accommodations to her work space. She indicated that appellant had received multiple responses to her accommodation request, including an April 2, 2015 ergonomic assessment of her workstation conducted by R.U., the regional occupational health specialist, and that on April 14, 2015, a workers' compensation nurse case manager conducted a worksite visit and determined that appellant could perform her duties with the exception of top drawer filing. I.W. also noted that on May 20, 2015 appellant's attending physician returned appellant to full duty under File No. xxxxxx390. She advised that all accommodations were addressed, noting that appellant was furnished an electric stapler, electric two-hole punch, headset, document holder, headset, footrest, and ergonomic mouse.

I.W. forwarded an April 6, 2015 memorandum from R.U. to appellant which described an April 2, 2015 ergonomic assessment of appellant's workplace. It described recommendations. Also forwarded was a November 12, 2015 grievance denial from N.H. to appellant.[5] N.H. explained that appellant, who was working four hours daily, was required to work between the

[4] *Id*.

[5] The grievance was filed in response to a letter of reprimand.

hours of 8:00 a.m. and 4:00 p.m. because the quality of her work was well below an effective level, and those were the hours when N.H. had the greatest opportunity to provide guidance and feedback. N.H. also responded to appellant's grievance that reasonable accommodations had not been provided that would enable her to do her work. She noted that appellant had been assigned 12 files to review and provide notes. N.H. was not required to pull case files, to use a computer, or a telephone to review these applications. She indicated that appellant had not submitted one reviewed application. N.H. also noted that appellant was informed that a meeting would be held on a weekly basis to discuss appellant's assignments, to begin on June 10, 2015 at 10:30 a.m., and that appellant was verbally reminded of this at 7:38 a.m. that day, but she did not report for the meeting at the scheduled time or request that it be rescheduled.

In a July 13, 2016 decision, OWCP denied appellant's claim because the evidence of record failed to establish that appellant experienced the alleged events or employment factors.

Appellant, through counsel, timely requested a hearing with OWCP's Branch of Hearings and Review and submitted additional evidence. In a July 8, 2016 report, Dr. Joseph Beck, a Board-certified psychiatrist, noted that appellant met the criteria for post-traumatic stress disorder (PTSD) due to work-related stress. He indicated that she perceived prejudicial treatment from management, including her supervisor. Dr. Beck also diagnosed major depression, recurrent, moderate. On September 21, 2016 he advised that appellant's condition required that all work be performed at home because her current work environment exacerbated her PTSD symptoms. On an attending physician's report (Form CA-20) dated March 3, 2017, Dr. Beck noted that appellant reported that she had been injured at work in 2015. He diagnosed PTSD and checked a form box marked "yes," indicating that it was employment related, noting that appellant reported that she was threatened at work which exacerbated her PTSD symptoms. Dr. Beck advised that she was totally disabled.[6]

On September 6, 2016 Dr. Merriman reiterated her findings and conclusions.

On February 24, 2017 appellant filed a notice of recurrence (Form CA-2a) indicating that a recurrence occurred on February 23, 2017 when the employing establishment would not recognize her medical restrictions under File No. xxxxxx390 and failed to furnish recommended ergonomic equipment. N.H. noted on the claim form that, under File No. xxxxxx390, appellant's physician returned her to full duty on May 21, 2015. She continued that appellant had an additional claim, File No. xxxxxx524, which had been denied by OWCP.[7]

During the hearing, held on March 14, 2017, appellant testified that when she returned to limited duty on March 30, 2015 following an employment injury, N.H. did not furnish ergonomic equipment and ignored her e-mails. She stated that on July 29, 2015, in response to an e-mail, I.W. came to observe her workstation. Appellant noted that, while they were talking, she began having chest and left arm pain and shortness of breath. She told I.W. that she was going to the medical unit. Appellant maintained that she immediately went to the medical unit,

[6] Appellant also submitted a January 13, 2015 report from Dr. Mitchell J. Weiss, a chiropractor, who noted her complaints of head, neck, arm and leg and ear pain since a November 2014 employment injury.

[7] *Supra* note 3.

but had to wait, and while waiting called OWCP about another claim. She explained that she had filed a third claim for a July 17, 2015 injury that occurred when she was adjusting her chair. Appellant testified that she began taking anxiety medication in November 2012 due to an incident with her supervisor, and that she continued to take medication. She stated that it felt like she was arguing with I.W. on July 29, 2015 because her needs were not being met by the employer and she was becoming frustrated. Appellant also testified that a February 23, 2017 incident caused a panic attack. She stated that she had been threatened by a coworker who screamed at her, told her she would "get her," and made a threatening pistol-like gesture with her hand. Counsel maintained that this was an occupational disease claim, not a traumatic injury claim.

By letter dated March 15, 2017, OWCP informed appellant that as her claim had been denied under File No. xxxxxx039, there could be no claim for recurrence.

Subsequent to the hearing appellant submitted a March 3, 2017 treatment note in which Dr. Beck advised that appellant's PTSD had deteriorated.

The record includes February 22, 2017 employing establishment decision regarding appellant's reasonable accommodation request sent to appellant by N.H. This included 55 accommodation requests made by appellant, 18 medical restriction requests, and requests by Dr. Merriman and Dr. Beck that appellant be allowed to work from home. N.H. advised that appellant would not be allowed to change her supervisor, that she had the right to union representation for any meetings that were disciplinary in nature or could lead to discipline, that she was expected to report for full duty on February 27, 2017 on a regular schedule and would be held to the position standards regarding caseload, would not be allowed open-ended and indefinite absences from work for various medical appointments, and her request to telework was denied. She noted that additional ergonomic equipment would be provided. N.H. explained that appellant had required significant close supervision prior to her absences, that the EEO office found no jobs matching appellant's search criteria for a different position, and that the decision had been reviewed by the Civil Rights Center and the Counsel for Labor Relations in the Solicitor's office. Appellant was informed that she could file an EEO complaint.

Appellant submitted a number of e-mails dated March 27, 2015 to February 10, 2017. These addressed her requests for reasonable accommodations including the ability to telework, her assertion that she had not been furnished ergonomic modifications, and employing establishment efforts regarding furnishing her with ergonomic modifications.

In a February 24, 2017 e-mail, appellant alleged that the previous day she was threatened by a coworker, L.G., who sat next to her and this made appellant feel intimidated and unsafe at work. She requested that the incident be investigated and appropriate measures taken to ensure a safe workplace environment that was free from threats and intimidation. Appellant further requested that she be provided a private work space during the investigation where she would not encounter LG. and, if no such space was available, that she be allowed to telework until the situation was resolved. She indicated that she had reported the incident as soon as it happened.

W.V., Deputy Director of Operations, submitted an undated response to appellant's hearing testimony. He indicated that on July 29, 2015 I.W. went to appellant's workstation, not

at her request, but because K.S. from IT came to I.W.'s office as appellant was having telephone and computer connection problems. I.W. then accompanied K.S. to appellant's workstation. W.V. maintained that appellant had not asked I.W. to observe her workstation and, when appellant asked I.W. about ergonomic equipment, I.W. told her that her contact was R.U. He indicated that I.W. did not observe appellant having breathing problems and after observing K.S. work on appellant's computer cables, appellant informed I.W. that she was going to the health unit to see what they could do for her. I.W. did not tell appellant not to ask for help from others and would not classify the discussion she had with appellant that day as an argument. She noted that on July 29, 2015 appellant left her workstation at approximately 10:15 and did not log into the medical unit until 10:44. As to the February 23, 2017 incident, I.W. indicated that appellant had filed an EEO complaint that was under investigation and noted that, as appellant was not working at that time, she had not been interviewed. She advised that witnesses reported that the conversation was not hostile and that the coworker spoke to appellant professionally and in a nonthreatening manner. In an attached e-mail dated May 7, 2015, N.H. noted that an electric stapler and electric two-hole punch were given to appellant that morning. In an e-mail dated July 29, 2015, K.S. noted that he was able to get appellant on the network, but that the telephone had to be reset or replaced. He indicated that he was researching the issue.

Appellant provided an undated narrative statement in which she disagreed with some of W.V.'s assertions. She indicated that I.W. was copied on many e-mails about the failure to furnish ergonomic modifications, and that when she received the electric stapler and two-hole punch, she could not plug them into floor cables and was told by N.H. that she could not ask for help. Appellant noted that she then called K.S. for assistance. She indicated that on July 29, 2015 she became frustrated during her discussion with I.W. about her concerns. Appellant noted that she had an accepted work injury on November 20, 2014, when she stopped work, and returned to modified duty on March 30, 2015. After the ergonomic assessment by R.U. on April 2, 2015, she had difficulty receiving the recommended equipment and help with recommended modifications to her workstation. Appellant was continually harassed by N.H. who also inappropriately tried to amend her modified-duty assignment. She also indicated that she had problems regarding her time sheet and was improperly denied leave without pay when she began working four hours daily which, she maintained, was per her doctor's instructions, and was also inappropriately given a notice of reprimand. Appellant further indicated that she had another traumatic injury claim due to a July 17, 2015 injury that occurred when she was adjusting her office chair and became entangled with her telephone cord. Regarding the February 23, 2017 incident, she indicated that she received a call from a private employer who reported that L.G., the coworker, had not returned any of her calls and that she needed a return call. Appellant related that she sent N.H. a memorandum describing the employer's complaint, which N.H. shared with L.G. who then came to appellant's desk and threatened her.

In support of her concerns, appellant attached a March 31, 2016 e-mail from R.U. in which he informed her of the medical evidence needed regarding her accepted claim. In e-mails dated May 10, 29, and June 4, 2015 from appellant to N.H., appellant discussed her concerns about mid-year and annual reviews, the delay in authorizing ergonomic equipment. Additional e-mails pertained to work assignments, leave requests, her ergonomic assessment and equipment provided, a voicemail message in which appellant assigned assistance to coworkers and N.H.'s response to not assign work to others, appellant's disagreement with a medical management nurse's assessment, and appellant's disagreement with R.U. about her limited-duty assignment in

April 2015. Appellant additionally submitted a June 3, 2015 letter in which N.H. informed her that her request for four hours of LWOP daily was denied. A copy of the July 13, 2015 notice of official reprimand for failure to follow instructions and providing incorrect information was also included.

In a May 30, 2017 decision, an OWCP hearing representative noted that the claim would be adjudicated as an occupational disease claim. She denied the claim, however, finding ground that appellant had not established any compensable factors of employment. The hearing representative found that many of the claimed factors were administrative in nature and no error or abuse on the part of employing establishment management has been shown. She further found that the record did not establish that appellant was harassed by N.H. or other management officials, and that her reasonable accommodation requests had been addressed properly. As to the events of July 29, 2015, the hearing representative found that the evidence of record did not support appellant's description of the events. She also found that appellant submitted insufficient evidence to support that the February 23, 2017 incident occurred as alleged.

LEGAL PRECEDENT

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her stress-related condition.[8] If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.[9] When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.[10]

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*,[11] 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.[12] 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

[8] *Leslie C. Moore*, 52 ECAB 132 (2000).

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

[10] *Id.*

[11] 28 ECAB 125 (1976).

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

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.[13] Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[14] Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.[15] Personal perceptions alone are insufficient to establish an employment-related emotional condition.[16]

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.[17] 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.[18]

For harassment or discrimination to give rise to a compensable disability, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations that the harassment occurred with probative and reliable evidence.[19] 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 agencies, such as the EEO, 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 synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by co-employees or coworkers. Mere perceptions and feelings of harassment will not support an award of compensation.[20]

ANALYSIS

The Board finds that appellant has not established an employment-related emotional condition in the performance of duty because she has not established a compensable factor of employment.

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[13] *Lillian Cutler, supra* note 11.

[14] *J.F.*, 59 ECAB 331 (2008).

[15] *M.D.*, 59 ECAB 211 (2007).

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

[17] *Charles D. Edwards*, 55 ECAB 258 (2004).

[18] *Kim Nguyen*, 53 ECAB 127 (2001).

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

[20] *Beverly R. Jones*, 55 ECAB 411 (2004).

Appellant has not alleged that her emotional condition was due to any specific job duties as in *Cutler*. Rather, she has alleged that the employing establishment inappropriately rated her, disciplined her, refused union representation, did not properly complete time sheets, failed to furnish ergonomic equipment, and improperly denied reasonable accommodation. Appellant further alleged that she was harassed, especially by N.H., and worked in a hostile work environment. She specifically described incidents that occurred on July 29, 2015 and February 23, 2017 as causing her diagnosed depression and PTSD.

As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of FECA.[21] The Board has long held that disputes regarding discipline and performance appraisals are administrative functions of the employer and, absent error or abuse, are not compensable. Allegations that the employing establishment engaged in improper disciplinary actions and issued unfair performance evaluations, improperly assigned work duties relate to administrative or personnel matters, unrelated to regular or specially assigned work duties and do not fall within the coverage of FECA. Although the handling of disciplinary actions, evaluations and leave requests, the assignment of work duties, and the monitoring of work activities are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[22]

As to her assertion that she was not provided with ergonomic modifications, the record indicates that an ergonomic assessment was done by R.U. on April 2, 2015, and appellant was furnished with an electric stapler, electric two-hole punch, headset, document holder, headset, footrest, and ergonomic mouse. Likewise, N.H. explained in the February 22, 2017 decision why appellant's request for 55 reasonable accommodations was denied. The Board finds no evidence to demonstrate that management's handling of this request for accommodations was arbitrary or unfair.[23] There is no evidence of record to support error or abuse in either of these matters.

The Board also finds that the claimed incident of July 29, 2015 did not occur as alleged. While appellant alleged that a discussion with I.W. that day about reasonable accommodations caused chest pain, I.W. explained that she and an IT specialist went to appellant's workstation and she told them she wanted to go to the health unit. The record also supports that appellant delayed in signing in the health unit and called OWCP in the interim regarding another claim. Although she was taken to an emergency room, two EKGs done while there were negative, and a cardiac stress test was normal. There is no evidence to support that the meeting on July 29, 2015 was anything more than a meeting about appellant's computer problems. Mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent evidence of error or abuse.[24]

[21] *Carolyn S. Philpott*, 51 ECAB 175 (1999).

[22] *Peter D. Butt*, 56 ECAB 117 (2004).

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

[24] *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

As to the February 23, 2017 incident, the Board has recognized that verbal threats when sufficiently detailed by the claimant and supported by evidence, may constitute compensable employment factors.[25] Appellant has not established with corroborating evidence that L.G. threatened her on February 23, 2017 and the employing establishment denied that it happened as alleged by appellant. The factual aspects of a claimed threat must be established in order to show a compensable employment factor.[26] As appellant submitted no supportive evidence regarding this claimed incident, it is not compensable.

Regarding appellant's perception of harassment and retaliation by employing establishment management, generally, complaints about the manner in which a supervisor performs his or her duties or the manner in which a supervisor exercises his or her discretion fall, as a rule, outside the scope of coverage provided by FECA. This principle recognizes that a supervisor or manager in general must be allowed to perform his or her duties and employees will, at times, dislike the actions taken.[27] Here again, the record contains no evidence that any employing establishment supervisor or manager treated appellant in a disrespectful manner. Error or abuse in discharging management duties has not been established. This allegation is not compensable.[28] Appellant submitted no corroborating evidence to establish harassment.

As noted perceptions of harassment or discrimination are not compensable under FECA. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.[29] Although appellant submitted evidence indicating that she had filed grievances and EEO complaints, the record does not contain an EEO decision, and the grievance denial included reasonable responses to each of her allegations. She provided no other evidence substantiating that disparate treatment. Appellant has not established a factual basis for her claim of harassment by probative and reliable evidence.[30]

Thus, appellant has not established any compensable employment factors under FECA and, therefore, has not met her burden of proof to establish that she sustained an emotional or stress-related condition in the performance of duty. As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record.[31]

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.

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[25] *T.G.*, 58 ECAB 189 (2006).

[26] *M.J.*, Docket No. 16-0695 (issued September 16, 2016).

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

[28] *Id.*

[29] *Supra* note 19.

[30] *See Robert Breeden*, 57 ECAB 622 (2006).

[31] *Katherine A. Berg*, 54 ECAB 262 (2002).

CONCLUSION

The Board finds that appellant has not established an emotional condition in the performance of duty causally related to compensable factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the May 30, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 2, 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