

from her managers was causing her stress and aggravating her myalgia. Appellant advised that she had an ongoing Equal Employment Opportunity (EEO) case. She indicated that she first became aware of her emotional condition and related it to her federal employment on December 29, 2016. Appellant did not stop work.

In support of her claim, appellant submitted leave bank forms and a December 30, 2016 e-mail message to her temporary supervisor, M.O., indicating that she had been experiencing stress, scrutiny, and harassment at work and attempted to work from home, but was unable to use her reasonable accommodation and forced to take medical leave until January 9, 2017.

In an August 18, 2016 report, Dr. Suzanne Slonim, a Board-certified radiologist, advised that appellant had uterine fibroids causing severe pelvic pain and anemia. After treatment of the fibroids, appellant would have severe pain, nausea, fever, and require narcotic medication. Dr. Slonim opined that appellant would be disabled from work for one week and may require a second week of working from home. After two weeks, appellant would be capable of returning to full-time work. On August 31, 2016 Dr. Slonim indicated on a prescription note that appellant underwent a “medical procedure” on August 26, 2016. She advised that appellant would be on restricted activity and unable to return to work until September 12, 2016.

In reports dated December 5 and 12, 2016, Dr. Sumana Gangi, a Board-certified endocrinologist, indicated that appellant was seen for a medical condition and then released to work on December 6 and 13, 2016, respectively. In an October 21, 2016 report, he indicated that appellant was very stressed from work and had undergone a procedure for fibroids. Appellant had broken out in a rash on her face, gained 11 pounds, and presented with intermittent fatigue. Dr. Gangi noted that she denied weight loss, myalgia, and joint pains.

In an e-mail message dated December 27, 2016, M.O. stated that she had reviewed appellant’s request to telework until January 9, 2017 and had serious concerns that it would inhibit her ability to perform several of the nonportable essential functions of her job, such as acting as the initial contact for the organization, processing and coding mail, answering telephones, preparing, printing, and mailing correspondence, and making copies, among other duties.

Appellant submitted documentation related to her EEO case, including a statement of claims that her previous supervisor, J.S., had failed to provide an adequate reasonable accommodation since December 2015, placed additional restrictions on her use of telework on March 21, 2016, excluded her from social activities on April 1, 2016, excluded her from knowing about work-related information on April 5, 2016, approved an ineffective interim accommodation that required her to request episodic flexiplace each time she needed to telework due to her health issues on March 29, 2016, questioned what she would be working on while teleworking on March 31, 2016, and required her to take leave when portable work was available on June 10, 2016.

In a December 16, 2016 e-mail correspondence, appellant indicated that she was working on an affidavit that needed to be completed by Tuesday, December 20, 2016 and M.O. replied that she was happy to grant her official time to review her work product during work hours, but could not grant her comp time to do this work over the weekend. The supervisor further indicated that if appellant did not feel that she could accomplish the work product review in addition to her other

duties during working hours and still meet the December 20, 2016 deadline, she could either request an extension or they could discuss which of her work duties they could de-prioritize on Monday and Tuesday in order to meet her deadline.

In a December 27, 2016 e-mail message, M.O. stated that appellant had requested up to 10 hours to review the affidavit over the weekend of December 17 to 18, 2016 so she assumed she had the affidavit to review. She indicated that they had a conversation on Monday, December 19, 2016 about work priorities and appellant told her that they were focusing on her core work duties on Monday and planned to work on the affidavit review on Tuesday. Then appellant left work early on Tuesday and took leave for the rest of the week. M.O. stated that once appellant received the affidavit, she would be happy to give appellant the time she needed to review it, stating "Just let me know ahead of time so I know what you [a]re working on." On December 27, 2016 appellant replied that she was not approved to work on the EEO that weekend so she only took one hour to work on the investigation because she did not have M.O.'s approval. M.O. stated that when she disapproved appellant's request for comp time, she told her that she would be happy to grant her official time during work hours. She further indicated that if there was some work that appellant still needed to do on the EEO matter, she was willing to grant appellant official time to work on it while she was teleworking that week.

In a December 28, 2016 e-mail message, appellant stated that per her doctor's letter previously submitted to M.O. regarding her reasonable accommodation due to her serious health issues related to her disabilities to work from home because she should not operate a vehicle, she would be submitting a leave request from December 28, 2016 to January 9, 2017 due to serious health issues and stress-related issues because of continued harassment and bullying type of behavior from previous and current managers.

In a second December 28, 2016 e-mail message, appellant stated that she had worked for the employing establishment since December 1, 2014 after which she was transferred from another agency as a Schedule A disabled employee. After one year of employment, she requested reasonable accommodation because her health issues had changed and she participated in mediation because the agency failed to provide an adequate accommodation and disregarded the deadlines to respond to the reasonable accommodation. After the mediation, she was transferred to another division because her medical conditions were getting worse. Appellant reiterated that she was dealing with harassing, intimidating, bullying, and disparate treatment and discriminating behavior from her supervisors and filed a formal EEO complaint.

On December 29, 2016 Dr. Valerie Peterson, a Board-certified family practitioner, diagnosed severe anxiety and stress. She reported that appellant was not able to focus or multi-task at work and advised that she needed to be at home. Dr. Peterson opined that appellant would be capable of returning to the workplace on January 9, 2017.

In a supervisory statement dated February 1, 2017, M.O. indicated that she became appellant's temporary supervisor on October 31, 2016 and approved her telework requests, time and leave, and assisted with prioritizing her assignments and working as the go-between of her and her supervisor of record. She stated that she had approved appellant's leave request for December 28, 2016 to January 9, 2017. On Friday, December 16, 2016 appellant requested to work over the weekend of December 17 to 18, 2016, which were her regular days off. She

requested to be compensated *via* compensatory time during this time period and the purpose of the request was to review a work product related to her EEO complaint. Being unaware of any policy, rule, or regulation that permitted such a request, M.O. denied appellant's request and offered her the alternative of using more official time during her regular tour of duty. Appellant then asked if she could be approved to work official time on Monday, December 19, 2016 to review the work product and M.O. approved her request.

By development letter dated February 22, 2017, OWCP advised appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries.

In response, appellant submitted a position description and resubmitted e-mail correspondence dated December 16 to 28, 2016.

Appellant further submitted a December 28, 2016 e-mail to M.O. stating the following, "I will not go back and forward with you on anymore issues you are very intimidating to me."

In a January 26, 2017 e-mail message, M.O. stated that she was following up to their discussion last Thursday, January 19, 2017 where appellant offered to withdraw her EEO complaints in exchange for a grade increase to GS-11 doing special assistant-type work for her in the Air Enforcement branch in addition to continuing to do her administrative Water Enforcement branch work. The supervisor informed appellant that she had been advised to tell her that because she was in a formal process, any negotiations about a settlement must be done within the parameters of that process.

In an undated statement, M.O. indicated that appellant reported December 29, 2016 as the date she first became aware of her emotional condition and that time period was actually a time of reduced work demands due to the fact that most of the branch employees for whom appellant provided administrative support were out of the office on holiday leave. Appellant had been granted a reasonable accommodation to enable her to work from home during periodic and unplanned flare-ups of a physical condition which M.O. supported. The supervisor stated that during the time period in question there was no staffing shortage and workload decreased due to the number of staff on holiday leave. Appellant's performance for the fiscal year 2016 and prior met or exceeded expectations. Since she was placed under M.O.'s temporary supervision appellant was counseled regarding behavioral concerns and professional demeanor in the workplace after reports that she had been unprofessional with an employee at the Cincinnati Human Resources Shared Service Center office. In January 2017, M.O. met with appellant to gather the facts around a meeting she had with senior management to discuss work projects that she was not assigned to. Appellant attended a meeting she had not been authorized nor asked to attend and M.O. wanted to understand how that workplace issue came to pass. The supervisor noted that the meeting took place in January 2017 after she originally asked appellant for a discussion in December 2016.

By decision dated March 27, 2017, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish an emotional condition arising from a compensable factor of employment. It found that appellant alleged the following employment factors: (1) that she was not able to focus at work due to work-related stress relating to her EEO complaints; (2) she had been off and on leave for long periods of time due to these injuries; and (3) behavior from her

managers was causing stress, which was aggravating her myalgia. OWCP found that the alleged incidents did not occur because appellant was off work due to her personal-related medical condition. It further found no evidence to establish harassment, bullying, or intimidation by the employing establishment. OWCP noted that the e-mail correspondence between appellant and her supervisor who requested information regarding work product while teleworking was within the realm of administrative procedures.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.² On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment, or to hold a particular position.³

To the extent that disputes and incidents alleged as constituting harassment by coworkers are established as occurring and arising from a claimant's performance of his or her regular duties, these could constitute employment factors.⁴ 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 under FECA.⁵

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.⁶ However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.⁷ 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.⁸

² 5 U.S.C. § 8101 *et seq.*; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *See Gregorio E. Conde*, 52 ECAB 410 (2001).

⁴ *See David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁵ *See Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

⁶ *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

⁷ *See William H. Fortner*, 49 ECAB 324 (1998).

⁸ *See Ruth S. Johnson*, 46 ECAB 237 (1994).

A claimant has the burden of establishing 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.⁹ This burden includes the submission of a detailed description of the employment factors or conditions, which 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.¹⁰

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 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 factors of employment and may not be considered.¹¹ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. 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.¹²

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. OWCP denied her emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA. The Board notes that appellant's allegations do not pertain to her regular or specially assigned duties under *Cutler*.¹³ Rather, she has alleged that she was not able to focus at work due to work-related stress relating to her EEO complaints, she had been off and on leave for long periods of time due to these injuries, and behavior from her managers was causing stress, which was aggravating her myalgia.

The Board has long held that grievances and EEO complaints by themselves do not establish that workplace harassment or unfair treatment occurred.¹⁴ The Board finds that the employing establishment's report of investigation of appellant's previous supervisor, J.S., is not a finding of harassment. In the absence of such a finding, the evidence of record is insufficient to discharge appellant's burden of proof to substantiate her allegations of harassment in the workplace.

⁹ See *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹⁰ See *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹¹ See *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹² *Id.*

¹³ See *Lillian Cutler*, *supra* note 2.

¹⁴ See *Parley A. Clement*, 48 ECAB 302 (1997).

For harassment to give rise to compensability under FECA there must be evidence that harassment did, in fact, occur. Mere perceptions of harassment are not compensable under FECA.¹⁵ The Board has recognized the compensability of verbal altercations or abuse when sufficiently detailed by the claimant and supported by the record. This does not imply, however, that every statement uttered in the workplace will give rise to compensability.¹⁶ In this case, OWCP found that appellant was not subjected to any harassment and did not submit any evidence substantiating her allegations. Specifically, there is no evidence substantiating any derogatory remarks made by M.O. to appellant. On the contrary, the record establishes that M.O. had a conversation with appellant on December 19, 2016 about work priorities and appellant told her that they were focusing on her core work duties on Monday and planned to work on the EEO affidavit review on Tuesday. M.O. further indicated that if there was some work that she still needed to do on the EEO matter, she was willing to grant appellant official time to work on it while she was teleworking that week. However, appellant left work early on Tuesday and took leave for the rest of the week.

The record does not contain witness statements corroborating appellant's narrative statements regarding the allegedly harassing, bullying, or intimidating behavior. The evidence of record, therefore, is insufficient to establish that any of the alleged incidents rose to the level of verbal abuse or otherwise constituted a compensable work factor.¹⁷ The Board finds no evidence substantiating appellant's contention that she was harassed by M.O.

Because appellant has not presented sufficient evidence that she was harassed by her supervisors, she has failed to identify a compensable work factor.¹⁸ Thus, she has not met her burden of proof to establish a claim.¹⁹

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

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an emotional condition in the performance of duty, as alleged.

¹⁵ See *supra* note 5.

¹⁶ See *David C. Lindsey*, 56 ECAB 263 (2005). The mere fact that a supervisor or employee may raise his or her voice during the course of an argument does not warrant a finding of verbal abuse. *Joe M. Hagewood*, 56 ECAB 479 (2005).

¹⁷ See *J.J.*, Docket No. 07-2014 (issued January 24, 2008).

¹⁸ See *H.C.*, Docket No. 12-457 (issued October 19, 2012).

¹⁹ As appellant has not established a compensable employment factor, the Board need not address the medical evidence of record. *Marlon Vera*, 54 ECAB 834 (2003).

ORDER

IT IS HEREBY ORDERED THAT the March 27, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 28, 2018
Washington, DC

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

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

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