

ISSUE

The issue is whether appellant met her burden of proof to establish an emotional condition in the performance of duty.

FACTUAL HISTORY

On September 13, 2013 appellant, then a 37-year-old secretary, filed an occupational disease claim (Form CA-2) alleging that she developed major depression, stress, anxiety, and obsessive-compulsive disorder (OCD) due to factors of her federal employment. She indicated that she first became aware of her illness on May 15, 1999, and first realized that her condition was caused or aggravated by factors of her federal employment on May 16, 2013. Appellant stated that her condition was caused by the employing establishment forcing her to work in close proximity to a coworker, A.P., an individual against whom she had previously sought a protective order. She indicated that she provided the employing establishment with documentation of all orders that had been issued with respect to A.P. Appellant further indicated that he had threatened her safety using a deadly weapon and had brought weapons to work, both of which were contrary to the employing establishment's policy. She claimed to have reported the gun/weapon incident to the employing establishment and upon investigation a weapon was found in A.P.'s vehicle. Nonetheless, the employing establishment reportedly forced appellant to work in close proximity to him. Appellant claimed to have repeatedly voiced her concerns to the employing establishment, which they either did not respond to or totally disregarded.

In a September 16, 2013 statement, appellant indicated that she was initially diagnosed with major depression in May 1999 following the death of her then-fiancé, the father of her unborn son. She was 38 weeks' pregnant and a member of the armed services when her fiancé was killed in a car accident while stationed in Germany. In December 1999, appellant received an honorable discharge from the Army and since then her depression progressed. She also developed additional illnesses including anxiety and obsessive compulsive disorder (OCD). Appellant further stated that having to deal with A.P., severely aggravated her condition(s). She also indicated that her psychiatrist and psychologist had previously removed her from work for a two-month period in 2011.

In her statement, appellant provided a chronology of workplace events dating back to April 2012, which reportedly caused or contributed to her diagnosed emotional condition. First, she noted that she began dating her coworker, A.P., in 2010 and their romantic involvement ended in April 2012. On June 14, 2012 appellant informed the associate warden that she had been physically and mentally abused by a coworker, A.P., who she had previously dated. She indicated that she felt the need to report the history of abuse to management as they worked in close proximity together. Appellant alleged that A.P. began harassing her at work and she was fearful of him. She indicated that he would not leave her alone until someone intervened. Appellant noted that on May 1, 2012 A.P. came in and accused her of talking about him and ruining his reputation and threatened her that, if she did not keep her mouth shut, he would come to her office to confront her again. She explained that on May 8, 2012 she was walking around the compound behind A.P. when he spoke and she acknowledged the other employee. Appellant indicated that he then stopped by her office and said "Really? You were gonna walk by and not

speak.” She explained that she did feel the need to interrupt their conversation to speak and that it was not that serious.

Appellant indicated that, on June 15, 2012, a threat assessment team met with her and she divulged the history of abuse, which included that he had brandished a weapon in her home. She noted that the associate warden and the union vice president, D.B., asked her if she thought the weapon might be on the premises, but she did not know for sure. Appellant explained that his vehicle was searched and a weapon was found, at which time the employing establishment decided to separate her from him. She noted that she was placed at one location and he remained at the present location.

On June 18, 2012 appellant filed a police report in reference to past assaults and was granted an emergency protective order on June 21, 2012. Subsequently, she was granted a no contact order on September 7, 2012 for a year. Appellant noted that in May 2013 she was returned to the original location at the employing establishment, as her new supervisor wanted his secretary nearby. She expressed her concern to her supervisors. Appellant indicated that her supervisors believed she was stronger and enough time had elapsed such that there was a “cooling off” period. She explained that A.P. was instructed to use the “psychology door” and not the “chapel door.” Appellant explained that she felt she did not have a choice in the matter and agreed to the move. She noted that A.P.’s office was right around the corner from hers. Appellant indicated that she did not feel safe when she was alone in the chapel and she would lock her door when she was alone. Furthermore, she did not feel comfortable using the department restroom, which was across from his office. Therefore, appellant would go to another department to use the restroom to avoid him.

Appellant listed dates from May 15 to August 16, 2013 where she had glimpses of A.P., walked past him, or where he walked near her or in the vicinity of her and used the chapel door, water fountain, or crossed her path either on foot or in his vehicle. On June 20, 2013 she was in her car and noticed that A.P. was in his car, and he waited until she got closer to cut in front of her. Appellant argued that allowing her to work near A.P. created a hostile work environment and that her condition was caused by being forced to work in close proximity with him. In an August 16, 2013 e-mail exchange with the associate warden, appellant noted that A.P. was still using the chapel door in religious services and it caused her to feel undue stress and anxiety.

OWCP also received a September 24, 2013 report from Dr. Linda E. Scott, a licensed clinical psychologist. Dr. Scott noted that she had treated appellant since March 4, 2009 for stress that she endured that was related to mistreatment and harassment by her colleague and coworker, A.P.⁴ She diagnosed mood disorder not otherwise specified (NOS) and anxiety

⁴ Dr. Scott provided several treatment notes for appellant which placed her off work. They included May 6 and 10, 2011 treatment notes. In a June 10, 2011 report, Dr. Scott noted that she had treated appellant for depression since March 4, 2009. She advised that appellant’s depression was significantly exacerbated by job stress as well as the mental abuse she endured in a very dysfunctional relationship. Dr. Scott noted that appellant was out of work since May 6, 2011, on medical leave due to depression, but she had benefited from the relief from job stress and would return to work this summer. She indicated that appellant was seeking other employment to reduce the level of job stress and noted that she might be eligible for transfer. Dr. Scott noted that appellant’s current job as “quite stressful for her and negatively impacted the management of her depression.” In a June 14, 2011 treatment note, she noted that appellant needed additional time off from work to recover. Dr. Scott placed appellant off work until July 5, 2011 and advised that she could return to her full-time job duties.

disorder NOS. Dr. Scott explained that the primary focus of their sessions was the abusive relationship she had with her coworker, A.P., whom she dated for a time. The instances of harassment included: that he continued to verbally abuse her; that he would come to her work station for no legitimate reason and say things to upset her; that he would use the chapel door, a door he was not supposed to use, and continued to contact her. Dr. Scott explained that appellant experience significant stress related to contact with A.P. and recommended moving appellant away from him.

By letters dated November 15, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish her claim and requested additional supportive factual and medical evidence. Additional evidence was also requested from the employing establishment.

In a December 5, 2013 supplemental statement, appellant noted further incidents of interactions with A.P. outside her door and near the water fountain on June 14, 18, 20, 26, July 1, August 15, September 5 and 23, and October 1 and 31, 2013. She elaborated on a particular incident that occurred on November 20, 2013 where he walked behind her near the “Sally Port entry” and explained that she was so upset by the time she got to her office that she began to cry and her heart was pounding so she reported the incident to the associate warden. Appellant also indicated that she provided a copy of the no contact order to the employing establishment on September 7, 2012. However, she believed the employing establishment totally disregarded the cause of the no contact order by placing her in close proximity of A.P.

Appellant argued that the employing establishment swept these issues under the rug and she came to work every day in fear. She also indicated that she slept less than four hours a night out of fear, anxiety, and sometimes panic attacks, which occasionally required emergency medical treatment. Appellant indicated that she had filed an Equal Employment Opportunity (EEO) complaint related to the working conditions in her claim, which was not resolved. She denied that she recently experienced stress in her personal life and she did not have any hobbies and was not employed by anyone else. Appellant indicated that her claimed condition was due to being forced to work with an individual that the employing establishment knew posed a deliberate threat to her. She explained that she sought counseling for depression, anxiety, stemming from the abusive relationship with her coworker, and counseling in reference to both the abusive relationship as well as the depression stemming from the death of her fiancé.

In an October 8, 2013 statement, L.W., a nurse and coworker, indicated that on that date he witnessed, A.P. walk into the front lobby to greet another staff member within arm’s reach of appellant.

In a November 14, 2013 statement, Chaplain K.A., indicated that on September 2012 he became aware of a court-ordered no contact and protective injunction intended to separate appellant from a certain employee in the department of psychology. He explained that appellant was subsequently assigned to another facility. K.A. explained that he was aware that contacts had been made between the two while he was around and that appellant specified the emotional impact it had on her.

In a December 10, 2013 report, Dr. Scott noted that appellant was applying for federal workers’ compensation due to the stress she had endured due to mistreatment and harassment

from another employee. She explained that the primary focus was an abusive relationship with her coworker, whom she dated for a time. Dr. Scott related that appellant indicated that he would come to her workstation for no legitimate reason and say things to upset her. She advised that A.P. continued to seek her out at the workplace, despite the fact that he had no work-related reason to do so and he continued to use a door that he was told not to use by management. Dr. Scott explained that appellant was fearful that he would try to turn others against her as he reportedly tried to talk with various friends and coworkers. She diagnosed mood disorder NOS and anxiety disorder NOS. Dr. Scott opined that there was a direct relationship between appellant's anxiety and depression and his continued behaviors. She requested that appellant be moved to a different workstation or telework. Dr. Scott also suggested that A.P. be instructed not to contact appellant.

On December 14, 2013 OWCP received a letter from the employing establishment controverting the claim. They explained that on June 14, 2012 appellant reported that she had experienced repeated physical assaults and verbal abuse that had escalated over time from A.P. The employing establishment explained that at that time no events had occurred at the workplace. It was noted that appellant feared reprisal from him due to verbal communications that were now occurring in the workplace. The employing establishment noted that on June 15, 2012 a threat assessment team met and it was discovered that appellant and A.P. were involved in an "unhealthy relationship" and he had subjected her to "physical, mental, and emotional abuse." Appellant explained that the relationship ended in November 2011 and he had approached her at work on several occasions. It was noted that she referenced two events and this was investigated to determine if it qualified as workplace violence. The information obtained from appellant revealed that this was a personal relationship and that she denied ever being physically harmed by A.P. while at work. The threat assessment team recommended that appellant utilize the Employee Assistance Program (EAP), pursue legal action, and that she be separated from A.P. to ensure her safety and well-being. It was agreed that appellant would be relocated "from the Medium to the Low for a cool down period." Regarding the physical requirements of the job, the employing establishment indicated that they were minimal and there was no deviation from the official description. It was noted that while appellant claimed detrimental work factors existed, the employing establishment indicated that there were no staffing shortages that affected her workload or extra demands. Furthermore, both clerical positions were occupied. Regarding her work performance, the employing establishment noted that appellant consistently exceeded her level. They provided a position description.

On December 31, 2013 counsel provided OWCP with a copy of the no contact order.

In a February 24, 2014 statement, appellant clarified the date of an incident in her narrative should be May 2013 as opposed to May 2012, for the date that her condition was exacerbated. She indicated that this was the date that she was forced to work in an environment around A.P.

OWCP also received a June 27, 2012 affidavit from appellant describing her relationship with A.P., his threat using a weapon, and a June 28, 2012 memorandum related to a court proceeding against him which resulted in an emergency protective order. On June 25, 2012 appellant was granted a preliminary protective order, which he appealed on July 9, 2012. In a July 2, 2012 memorandum, the employing establishment granted appellant her request to move

to another facility. In an August 20, 2013 memorandum, appellant provided the employing establishment with a copy of a no contact order with A.P. She expressed her concern that she was working in close proximity, had to use the restroom which was near him, and exclaimed she did not wish to work near him and be subjected to a hostile work environment. Appellant provided an October 15, 2013 statement from a witness who saw A.P. on October 8, 2013 walk in the front lobby and speak to another individual who was standing next to appellant. In an October 17, 2013 statement, she noted that A.P. invaded her personal space on October 8, 2013. OWCP also received a copy of a September 14, 2012 arrest warrant for A.P.

By decision dated April 11, 2014, OWCP denied appellant's claim. It found that she had not established the factual component of her claim. OWCP found that there were no accepted events that were factors of employment. It accepted events that were not compensable factors of employment. They included: that on June 14, 2012 a threat assessment was made by the employing establishment and her request to work at another location was granted. OWCP found that this was an administrative action with regard to being in close proximity to A.P. It also found that in May 2013, appellant's new supervisor returned her to the original location and she expressed concern that this was done before her no contact order had expired. OWCP found that several incidents did not occur. They included that A.P. on several occasions would exit through the chapel door so she could see him; also the incident on June 20, 2013 that involved A.P. driving his car and waiting till she got closer to cross the road. OWCP found that there were no witness statements that would prove his closeness was nothing more than a coincidence, as they both worked in the same location.

On November 3, 2014 appellant requested reconsideration. She argued that the employing establishment disregarded the no contact order when it moved her from the low facility to the medium facility, where A.P. worked. Furthermore, appellant argued that she had established her claim and the employing establishment committed error or abuse by ignoring the order.

In an August 20, 2013 e-mail, appellant noted that she was informed that the no contact order did not apply to her work. In a September 9, 2013 e-mail, appellant informed human resources that the no contact order in effect from September 7, 2012 to September 6, 2013 had expired. In a December 4, 2013 e-mail from appellant to the employing establishment, appellant noted that A.P. was standing behind her and near her in the Sally Port where she walked the same route.

OWCP also received EEO interrogatories from E.W., the warden. Mr. Wilson responded that he was unaware that appellant had a mental condition or a disability and denied engaging in reprisal or discriminating against appellant. He confirmed that a threat assessment was made in 2012 and appellant was moved to the low facility. Mr. Wilson also explained that it was not his decision to move appellant back to the medium facility in May 2013 and explained that her immediate supervisor, the chaplain discussed the situation with her and she agreed to the move. He also explained that he was unaware of the no contact order being invalid within the institution and he denied making the decision to move appellant back to the medium facility. Furthermore, Mr. Wilson denied being aware of the coworker utilizing the chapel door or walking behind appellant. He indicated that he took no action because he was unaware of the situation, nor was he aware of any instruction being made to the coworker for failing to follow instructions, and

thus no discipline was made. Mr. Wilson denied being aware that the coworker went out of his way to come within close proximity of appellant and he further denied being informed by appellant that the conduct was unwelcome. He indicated that he was unaware of the alleged unwelcome conduct. Furthermore, there were no other allegations made by others towards the coworker. Regarding moving the coworker, Mr. Wilson explained that he was unaware of any harassment, so he could not make a “pre-decided action plan for a situation in which he was unaware of.” He reiterated that he was unaware of the alleged harassment by the coworker or any previous relationships.

OWCP also received an April 18, 2014 EEO affidavit from A.W., a physician and coworker. A.W. indicated that she worked with appellant and was near the coworker. She believed he was going out of his way to intimidate appellant and referred to an instance when he came from his office and used the bathroom door, instead of going out the psychology door, which was the same distance. Dr. Weissman noted that she was surprised he was allowed to stay with a gun charge. However, she had not witnessed any threats to appellant and that she did not see him do anything when he walked by appellant’s station. Dr. Weissman also noted that she e-mailed “SIS” and her acting Chief when the coworker had walked by appellant’s office, as she knew he was not supposed to do that.

OWCP also received an April 18, 2014 affidavit from L.W., a nurse and coworker, and an April 22, 2014 affidavit from S.S., a correctional officer. They both confirmed that on October 8, 2013 they witnessed A.P. shake the hand of another staff member in close vicinity to appellant.

OWCP also received a copy of a January 16, 2013 memorandum from P.D., appellant’s local union president, to E.W. He informed E.W. that appellant was being moved and that violated her working conditions.

On November 20, 2014 counsel requested reconsideration. She argued that the evidence showed that the employing establishment had knowledge and a copy of the no contact order. Counsel argued that the employing establishment was not following the order as directed. A copy of e-mail correspondence dated September 6 and October 10, 2013 revealed conversations with human resources regarding how to deal with a no contact order.

In a March 6, 2014 e-mail, appellant indicated that, after she used the bathroom, she placed her keys in the chapel door and she was confronted by A.P., who looked at her in an intimidating manner and gave her a scowl. She noted that she became uncomfortable and exclaimed that it was “quite disturbing” that she would have to come in contact with him.

By decision dated January 29, 2015, OWCP denied modification of the prior decision. It found that counsel only reiterated prior statements. Furthermore, the allegations were a result of a personal relationship with a colleague and which was imported into the workplace.

On September 11, 2015 counsel requested reconsideration. She argued that OWCP erred in its prior decision and disregarded a judicial no contact order. Counsel further argued that the employing establishment’s actions were unreasonable. She argued that the employing establishment acted recklessly and in disregard for appellant’s safety by requiring her to work

within 25 feet of A.P. despite being apprised of the no contact order. Counsel argued that A.P. used the chapel door more than in emergencies and the employing establishment never took action. She argued that when the employing establishment moved appellant back to close vicinity with A.P., it committed error, as they did not comply with the judicial order. Counsel argued that the employing establishment ignored the order after deeming that a “cooling off period” was sufficient to separate the two. She noted that appellant continued to indicate that A.P. was deliberately engaging in interactions with her.

OWCP received copies of e-mails. In an August 16, 2013 e-mail, appellant pointed out that A.P. was still using the chapel door to come in and out on a regular, consistent, and frequent basis. She explained that it was so frequent that she would like to know what could be done to alleviate the numerous incidents where he left his department to come through the chapel door. In a September 5, 2013 e-mail, the human resource manager addressed appellant’s concerns with regard to being in close proximity with A.P. and noted that, if the contacts were frequent, they might consider moving her. In a September 6, 2013 e-mail, a coworker of appellant noted that she had called her to inform her that A.P. continued to walk through her area and it made her uncomfortable. In an October 10, 2013 e-mail, the employing establishment human resource manager, noted that the warden had a copy. In an October 17, 2013 e-mail, appellant indicated that A.P., on a specific date not mentioned, intentionally stood between her and another staffer to “give them a pound.”

By decision dated December 21, 2015, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

To establish that she sustained an emotional condition causally related to factors of his or her federal employment, an employee must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to the condition; (2) rationalized medical evidence establishing an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified, compensable employment factors.⁵

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to one’s employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the purview of workers’ compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.⁶ However, disability is not compensable when it results from factors such as an employee’s fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.⁷

⁵ See *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁶ *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁷ *Lillian Cutler, id.*

An employee's emotional reaction to administrative or personnel matters generally falls outside FECA's scope.⁸ Although related to the employment, administrative and personnel matters are functions of the employer rather than the regular or specially assigned duties of the employee.⁹ However, to the extent 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.¹⁰

Assigning work and monitoring performance are administrative functions of a supervisor.¹¹ The manner in which a supervisor exercises his or her discretion falls outside FECA's coverage. This principle recognizes that supervisors must be allowed to perform their duties and at times employees will disagree with their supervisor's actions. Mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor.¹²

To the extent that incidents alleged as constituting harassment or a hostile work environment are established as occurring and arising from an employee's performance of her regular duties, these could constitute employment factors.¹³ For harassment to give rise to a compensable disability under FECA there must be evidence that harassment did in fact occur.¹⁴ Allegations of harassment must be substantiated by reliable and probative evidence.¹⁵ Mere perceptions of harassment are not compensable.¹⁶

When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter, OWCP must base its decision on an analysis of the medical evidence.¹⁷

⁸ *Andrew J. Sheppard*, 53 ECAB 170, 171 (2001); *Matilda R. Wyatt*, 52 ECAB 421, 423 (2001).

⁹ *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005).

¹⁰ *Id.*

¹¹ *Donney T. Drennon-Gala*, 56 ECAB 469, 475 (2005); *Beverly R. Jones*, 55 ECAB 411, 416 (2004); *Charles D. Edwards*, 55 ECAB 258, 270 (2004).

¹² *Linda J. Edwards-Delgado*, 55 ECAB 401, 405 (2004).

¹³ *P.T.*, Docket No. 14-2011 (issued February 5, 2015); *see also David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁴ *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

¹⁵ *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991).

¹⁶ *Supra* note 14.

¹⁷ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

ANALYSIS

Appellant filed an occupational disease claim (Form CA-2) for major depression, stress, anxiety, and OCD, which she attributed to being forced to work in close proximity to a coworker who she previously dated and had sought a protective order. OWCP denied appellant's emotional condition claim finding that she had not established a compensable employment factor. The Board must review whether the alleged incidents and conditions of employment are covered employment factors under the terms of FECA.

Appellant has not attributed her emotional condition to the regular or specially assigned duties of her position as a secretary. Therefore, she has not alleged a compensable factor under *Cutler*.¹⁸

Appellant also made several allegations related to administrative and personnel actions. In *Thomas D. McEuen*,¹⁹ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under FECA would attach if the 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 related. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.²⁰

The Board initially notes that all of appellant's arguments stem from being placed in close proximity with a coworker, who she had a personal relationship with outside the work environment. Appellant's arguments that she sustained a stress-related condition arose from the deterioration of the nonemployment situation. None of her arguments pertain to matters related to her work duties. The Board finds that the conflict was imported into the workplace and cannot be considered to have arisen in the performance of duty.²¹

For example, appellant argued that management ignored a no contact order and did not take appropriate disciplinary action toward A.P. However, these allegations are therefore essentially that management erred or acted abusively in discharging its administrative or personnel functions. However, as noted above, the employing establishment did not have a basis for work-related disciplinary action. The crux of appellant's claim is that the employing establishment violated the no contact order when she was moved from the medium facility to the

¹⁸ *Supra* note 7.

¹⁹ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

²⁰ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

²¹ See *Brenton A. Burbank*, 53 ECAB 279 (2002) (where the Board found that an altercation arising from a traffic dispute while appellant and a coworker were on their way to work was a personal dispute imported into the workplace and, therefore, was not a compensable factor of employment).

low facility, in close proximity to A.P. in May 2013. However, the employing establishment's actions were supportive of appellant despite the matter not being work related. The Board notes that the employing establishment immediately formed a threat assessment team on June 14, 2012, upon being informed of the personal relationship, when a gun was found in A.P.'s vehicle. The employing establishment confirmed that she was never physically harmed or threatened by A.P. at work. The threat assessment team recommended that appellant utilize the EAP, pursue legal action, and it separated appellant and A.P. to ensure her safety and well-being. Furthermore, out of an abundance of caution, she was moved to the medium facility. The record reflects that she worked without incident at the medium facility until May 2013, when her new supervisor requested that she be moved to the low facility, as he wished his secretary to be nearby. While appellant was initially concerned, as the no contact order had not expired, the employing establishment noted that it appeared things had "cooled off" and she agreed to the move. Furthermore, she was informed that he would use a different entrance and that she would have limited contact. The record reflects that while appellant listed many instances of him walking through the door, these appear to be A.P. going about his business.

Counsel provided e-mail correspondence dated September 6 and October 10, 2013 in which the employing establishment discussed how to deal with a no contact order based on a personal relationship. However, this does not support error or abuse. The Board again notes that the no contact order arose out of a personal matter between appellant and her coworker, and the record shows that the employing establishment tried to accommodate her. Furthermore, other than filling in no contact, the order does not specify anything with regard to her work environment. For example, what type of contact, or how many feet away, *etc.* The employing establishment indicated that appellant should pursue her legal options as appellant was trying to request the employer to enforce a court order for a personal matter. It confirmed that he did not threaten her and there were no witnessed events of harassment. While appellant was concerned that he was in close proximity, the Board notes that he was not "contacting her" as he was merely at work. The record does not contain any evidence that he was threatening her or confronting her.

Appellant also referred to incidents in which he would exit deliberately so she could see him. However, she would obviously see him if they worked in close proximity. The employing establishment confirmed that he had not engaged in threats towards her at work. While appellant referred to a June 20, 2013 incident when she was in her car, the specifics are unknown and it does not appear that she was at work or how this would be considered work related. The Board notes that the witnessed event on October 8, 2013 merely showed that he shook the hand of a coworker in the lobby while she was nearby. Furthermore, the order expired on September 6, 2013, thus it does not show error or abuse.

The Board finds that the evidence of record does not establish that the administrative and personnel actions taken by management in this case were in error and are, therefore, not considered compensable factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under FECA, unless there is evidence that the employing establishment acted unreasonably.²²

²² See *Alfred Arts*, 45 ECAB 530 n.8 at 543-44 (1994).

To the extent that she disagreed with how management dealt with the situation, this did not arise to a compensable factor of employment. The Board again notes that the no contact order stemmed from a personal relationship outside work and there was no evidence that any threats or incidents occurred at work towards appellant. Again, appellant argues that management allowed the coworker to violate the no contact order. However, the record reflects that this is not the case and the employing establishment moved appellant to the medium facility until she was needed back at the low facility by her new supervisor in May 2013 and she agreed to return. The employing establishment accommodated appellant and as noted, found that a sufficient cooling off period had occurred. Furthermore, appellant also was advised that he would be using another entrance and she would have limited contact. The record reflects that while their offices may have been in close proximity, A.P. had not done anything other than show up for his regular work. Appellant has not suggested that he confronted her or engaged in anything other than eye contact upon passing or being in the same place by coincidence of working at the same employing establishment. The Board therefore, finds that the employing establishment took reasonable actions and acted appropriately.²³

Regarding appellant's assertion that she was forced to work in a hostile work environment, and she disproved of the way the employing establishment handled the personal matter, the Board finds that this did not rise to the level of a compensable act. As such, her allegations constitute mere perceptions or generally stated assertions of dissatisfaction with a superior at work, which do not support her claim for an emotional disability.²⁴

For harassment to give rise to a compensable disability there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.²⁵ Appellant has not shown anything other than A.P. showing up for work and having an office near hers.

The Board further notes that the mere fact that appellant filed an EEO compliant and/or grievance does not establish that she was subjected to workplace harassment or that unfair treatment occurred.²⁶

As the above analysis demonstrates, appellant has not established a compensable employment factor. Moreover, she did not specifically implicate her regular or specially assigned duties as a factor in her claimed emotional condition. Because appellant failed to establish a compensable factor of employment, OWCP properly denied her claim without addressing the medical evidence of record.²⁷

²³ *Id.*

²⁴ See *Debbie J. Hobbs*, 43 ECAB 135 (1999).

²⁵ *Bonnie Goodman*, 50 ECAB 139 (1998); *John Polito*, 50 ECAB 347 (1991); *Sandra Davis*, 50 ECAB 450 (1999); *George Patrick Semonco*, 50 ECAB 552 (1999).

²⁶ *Charles D. Edwards*, 55 ECAB 258, 266 (2004).

²⁷ *Garry M. Carlo*, *supra* note 17.

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 established that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the December 21, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 14, 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