

**United States Department of Labor
Employees' Compensation Appeals Board**

A.S., Appellant)	
)	
and)	Docket No. 17-0849
)	Issued: January 17, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Hartford, CT, Employer)	
)	

Appearances:
Stanley Sanders, for the appellant¹
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 March 6, 2017 appellant, through her representative, filed a timely appeal from a September 6, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP).

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.

Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.³

ISSUE

The issue is whether appellant has established an emotional condition in the performance of duty, as alleged.

On appeal appellant, through her representative, alleges that the denial of her claim was in error because the employing establishment did not take prompt, appropriate action to report a threat, and that the employing establishment did not perform a proper investigation with regard to the threat.⁴

FACTUAL HISTORY

On October 1, 2014 appellant's husband, who is also her union representative, filed a traumatic injury claim (Form CA-1) alleging that, on her behalf on that date, appellant, then a 56-year-old mail processor, suffered a psychological injury due to stress. Specifically, appellant had asked her supervisor if she could work "up front and was told [that] she could not" as another employee was working there. She became upset over the preferential treatment given to another employee. Appellant stopped work on October 1, 2014.

The employing establishment controverted the claim. In a statement dated October 6, 2014, its health and resource management specialist asserted that the claim involved an administrative matter which did not occur in the performance of appellant's duties. She also contended that the medical evidence of record was insufficient to establish appellant's claim.

In an undated statement M.S., a supervisor, indicated that, on October 1, 2014, shortly after 8:00 a.m., he had a conversation with appellant, who asked if she could work up front. He checked with M.P., appellant's supervisor, who indicated that she wanted appellant to work in the back. M.S. indicated that appellant stated that this was M.P.'s "way of getting her" because she did not like appellant. He indicated that he told appellant that she had to remain in the assigned area and work and that she could grieve the decision if she wanted. M.S. called the

² 5 U.S.C. § 8101 *et seq.*

³ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)(f). The 180th day following OWCP's September 6, 2016 merit decision, was Sunday, March 5, 2017. It is well established that, when a time limitation expires on a nonbusiness day, the limitation is extended to include the next business day. Therefore, appellant had until Monday, March 6, 2017 to file an appeal, rendering this appeal timely filed. *See* 20 C.F.R. § 501.3(f)(2); *M.H.*, Docket No. 13-1901 (issued January 8, 2014); *Debra McDavid*, 57 ECAB 149, 150 (2005).

⁴ Appellant submitted evidence on appeal that was not in the case record at the time of OWCP's September 6, 2016 decision. The Board's jurisdiction is limited to evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

union office, but no one answered. Appellant became upset and walked away from the work area and did not return.

In an undated statement, M.P. controverted appellant's traumatic injury claim. She alleged that this was not a traumatic injury. M.P. alleged that on October 1, 2014 appellant became angry, not ill, when she was told that she had to remain in her work area. She noted that at no time did appellant report to her supervisor that she was ill, dizzy, had blurred vision, or was short of breath.

In response to OWCP's queries, appellant submitted multiple statements setting forth various allegations. In these statements, she discussed numerous instances of conflict with coworker P.B. and M.P.

Appellant described herself as a whistleblower and indicated that she reported P.B. for throwing away first class mail. She alleged that, on August 4, 2014, she witnessed P.B. grab handfuls of mail, barely look at it, and throw it into waste hampers. Appellant contended that she and the supervisors found full trays of first class mail in waste hampers on August 4, 2014. She alleged that P.B. was not correctly verifying the mail. Appellant alleged that she wrote to supervisors on August 20, 2014 that P.B. was still not verifying the mail correctly, but they never addressed the problem.

Appellant also alleged that, on August 20, 2014, she went to M.P.'s office to ask her to get P.B. off the telephone, but that M.P. stated she was busy. She indicated that P.B. was saying a lot of disrespectful things about her and she did not want to hear it, but that M.P. kept saying that she was busy. Appellant stated that M.S. approached P.B. and told her to get off the telephone, but that P.B. waited until he left and then continued her call. Shortly, after this incident, P.B. went to see M.P. and was in her office for 20 minutes, as timed by appellant. Appellant then went to M.P.'s office, where she was having a conversation with P.B. and stated, "You're busy right?" She noted that she wanted them to know that she was watching them. Appellant stated after that, P.B. went back to her duty station and started throwing mail away without verifying it, got back on telephone, and loudly called appellant names, including a racially-charged name. She then called over S.J., a manager, who was passing by. According to appellant's statement of August 26, 2014, she asked P.B. why she came back to work instead of just quitting. Appellant admitted that she accused P.B. of not wanting to work and stated that she told P.B. that she was useless, good for nothing, and a loser. She told S.J. that P.B. was always trying to provoke her.

Appellant also alleged that on August 27, 2014 P.B. "threatened to kick [appellant's] ass" and verbally threatened her. She indicated that P.B. previously told her that her relative killed eight people at the company he worked at. Appellant noted that she became overwhelmed as she believed management was protecting P.B. and does not seem to care what she was going through. She also alleged that P.B. was on the cellphone all the time and that no one reprimanded her for it. M.P. was, therefore, not doing her job.

Appellant alleged that on October 1, 2014 she was in back room working on waste mail, but the area was not properly set up. She asked M.S. if she could work first class mail upfront,

but M.S. denied her request as M.P. had told him that she had to stay in the back to work third class mail. Appellant stated that this upset her.

By decision dated April 9, 2015, OWCP denied appellant's request for continuation of pay. It noted that her claim had been converted to an occupational disease claim because her alleged condition occurred over a period of time and not during one work shift as in the case of a traumatic injury.

On April 20, 2015 appellant requested an oral hearing before an OWCP hearing representative. Following a preliminary review, by decision dated June 11, 2015, the hearing representative found that the case was not in posture for decision as OWCP had not issued a final determination on whether appellant sustained an injury in the performance of duty under FECA. Therefore, a final determination on continuation of pay was set aside until a formal determination on entitlement to compensation benefits was issued.

In an employing establishment incident report, M.P. described an August 27, 2014 incident between appellant, and P.B., she stated that, on that date, appellant's husband called her and stated that P.B. was sitting next to his wife and harassing her, and that she better get over there. She sent S.J. to look into the situation. P.B. then came to M.P. and stated that appellant was harassing her, disputing handling of mail, and forcing her to work in a hostile work environment. M.P. stated that P.B. told her that she hoped the situation would not become physical and that she told her "that it better not." P.B. responded that she had no intention of doing anything and that she just wanted get the mail done. M.P. also indicated that S.J. had told her appellant alleged that P.B. had threatened her by stating that it was a good thing that she was working for the employing establishment "otherwise she would get her ass kicked." He also indicated that it was alleged that P.B. was on telephone singing about a 9 millimeter gun. P.B. denied the allegations. M.P. noted that, at that time, she determined that she would place P.B. on emergency suspension and she contacted the postal inspectors.

In a September 2, 2014 document entitled "Findings with Allegations," appellant's husband and union steward contested P.B.'s affidavit, contended that M.P. acted inappropriately, and asserted that appellant did not deserve the treatment she received in the workplace.

In a letter dated September 5, 2014, a postal inspector noted that, on August 27, 2014, postal inspectors were notified by appellant that she had been verbally threatened by her coworker, P.B. The postal inspector indicated that appellant stated that there was a disagreement with P.B. over mail and that P.B. made comments to appellant using the terms "kick that ass" and "9 [millimeter]." Appellant reported the incident to her supervisors. On August 27, 2014 the inspectors spoke with M.P. who indicated that P.B. had already been placed on emergency placement due to the employing establishment's 'zero tolerance policy.' When P.B. was contacted by the inspectors, she indicated that she did not want to speak about the incident until a prior complaint was resolved, but she did inform the inspector that she would submit an "affidavit of truth." In a September 2, 2014 affidavit, she alleged that she did not engage in any threatening behavior, but that it was appellant that engaged in such conduct. P.B. stated that, on that date, she was working on a postcon and was starting to work on a new postcon when appellant stated in a hostile manner "do n[o]t touch my postcon." She indicated that she did not

engage in an argument with appellant, but immediately went to supervisors S.J. and M.P. to discuss appellant's misconduct.

In a September 8, 2014 letter of warning to appellant, the employing establishment charged her with unacceptable conduct. The letter of warning indicated that on August 20, 2014 she was in a verbal altercation with another clerk working in the same area, P.B., in front of S.J. The letter alleged that appellant stated to P.B. "you don't do your job, you are a loser, you are a low life, you are good for nothing, and you were bad mouthing my husband the other day." P.B. also alleged that appellant called her a slut, and stated "do n[o]t work next to me your kissing M.P. ass" and "disrespecting my [f***in] husband." The postal inspector noted that, in a predisciplinary interview, appellant admitted calling P.B. a loser and good for nothing at that time, but that she called her a useless airhead and a punk on different days. She admitted telling P.B. to shut up twice. Appellant admitted saying to P.B. "why did you come back anyway" and "other people want your job." The letter informed her that her statements were unacceptable and demonstrated a lack of respect. The letter expressed a hope that it would impress upon appellant's the seriousness of her actions, hoped that future discipline will not be necessary, but indicated that future instances would result in more severe disciplinary action. Appellant refused to sign the letter.

In a June 21, 2016 decision with regard to appellant's grievance over her letter of warning, the arbitrator found that, while her behavior was not condoned, her conduct was precipitated by comments and actions of the coworker, and therefore the decision to take formal disciplinary action against her was inappropriate, especially where no disciplinary action was taken against her coworker. In reaching this decision, the arbitrator noted that appellant had been employed by the employing establishment for 29 years and that there was never any evidence that she engaged in conduct of a similar nature in the past and it was undisputed that she sought management help to deal with the behavior of P.B. The grievance was sustained and the employing establishment was ordered to rescind the letter of warning and replace it with a notification indicating that a discussion regarding the August 20, 2014 incident took place and that any future conduct of the same or similar nature could result in formal discipline.

On September 2, 2015 OWCP denied appellant's emotional condition claim, that she had not established a compensable factor of employment.

On October 1, 2015 appellant requested a telephonic hearing before an OWCP hearing representative. During the hearing held on June 20, 2016, she was represented by her husband. Appellant testified that she had worked for the employing establishment for 30 years, that she had issues with M.P. for most of her career, and that the incident of October 1, 2014 was the "last straw." She stated that on August 27, 2014 P.B. came over to the desk next to her and started taking coins out of mail and talking on the telephone. Appellant alleged that P.B. was told to work at a desk across the room from appellant and to leave her postcon mail alone when there was other mail to work from. She alleged that, after P.B. filled two hampers of mail, she started throwing mail "while getting smart" with her. Appellant alleged that she gave no response, but that P.B. continued to argue about the mail. She noted that she tried to work and reported the situation. Appellant was told to continue to ignore P.B. and that when the waste mail was finished to work the other mail. P.B. continued to work, but then stated "9 [millimeter]" and giggled. Appellant also claimed P.B. stated "ain't nobody scared of no

inspectors, but you, girl, please get a life,” and “you [a]re just an airhead, you can[no]t even fill out paperwork without your husband doing it.” She alleged that she went to find M.P. or S.J., but she was stopped by two people, who stated that she should tell inspectors of the threat. Appellant stated that M.P. would not listen to her, and that management took no action until after the threat, and that they still did not move P.B. She also described an incident when she heard P.B. talking loudly on the telephone calling her a racial slur. Appellant testified that P.B. called her an airhead and a punk. She further alleged that P.B. started singing and modifying the words to a popular song to include sexually explicit language. While P.B. sang she looked in appellant’s direction with a smirk, waiting for her to respond. Appellant stated that S.J. told them both that there would be no name calling. She discussed the October 1, 2014 incident when she was upset because she felt like nobody protected her against the harassment she suffered from P.B. and M.P.

Appellant’s treating psychologist, Dr. Norman Andrekus, a clinical psychologist, also testified during the hearing. He noted that when he first evaluated appellant on December 30, 2014 she felt extremely threatened by P.B. to the point where she felt that her life could be in danger or she could suffer physical harm due to her actions.

In a statement received by OWCP on July 27, 2016, M.P. stated that at 2:25 p.m. on August 20, 2014 she stopped by the union office and when she arrived appellant was sitting with her husband, who also served as appellant’s union representative, reviewing a document. She told him that employees had to be given a form to see their stewards and also had to receive permission to leave the work area. Later M.P. went back to her office and M.S. came in to bring an account on automation and they were discussing a few things when appellant knocked on door and came in. She told appellant that she was busy and appellant yelled at her to get “her” off telephone because “she” was annoying her. M.P. indicated that she asked M.S. to take care of it. A few minutes later P.B. came into her office and started talking about being told to get off the telephone. Appellant came in later and stated, “You’re busy, huh?” and walked out. P.B. then left the office, but returned later that day and alleged that appellant was out of control and that she was forced to work in a hostile work environment. She noted that S.J. indicated that he spoke with both women and that they had calmed down.

In an undated statement, received by OWCP on July 27, 2016, S.J. indicated that on August 20, 2016 at 2:45 p.m. M.P. instructed him that something was going on between P.B. and appellant. He walked towards their work area and appellant called him over and stated “I don’t want her working next to me, she is a trouble maker.” S.J. noted that P.B. responded, “I am here to do my job, you mind your own business.” Appellant then responded, “you don’t do your job, you are a loser, you are low life, you are good for nothing, and you were bad mouthing to my husband other day.” S.J. noted that he took them one by one to his office and told them to stay away from each other and assigned them two different jobs for this purpose. In a statement with regard to the August 27, 2016 incident, he stated at on that date at 10:50 a.m., appellant told him that she was looking for M.P., and that P.B. threatened to “kick her [a**]” and was singing in a loud voice “millimeter.” S.J. informed M.P., who told him to call P.B. and that she would be placed on emergency suspension for the threat.

By decision dated September 6, 2016, the hearing representative affirmed the September 2, 2015 decision, finding that appellant had not established a compensable factor of employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was caused in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

To establish a claim for an emotional condition in the performance of duty, an employee must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.

An occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift.⁸ Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.⁹ 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.¹⁰ 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.¹¹

As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.¹² In claims for a mental disability attributed to work-related

⁵ *Supra* note 2.

⁶ *Joe D. Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ 20 C.F.R. § 10.5(q).

⁹ *L.D.*, 58 ECAB 344 (2007).

¹⁰ *A.K.*, 58 ECAB 119 (2006).

¹¹ *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

¹² See *Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

stress, the claimant must submit factual evidence in support of his or her allegations of stress from harassment or a difficult working relationship. The claimant must specifically delineate those factors or incidents to which the emotional condition is attributed and submit supporting factual evidence verifying that the implicated work situations or incidents occurred as alleged. Vague or general allegations of perceived harassment, abuse, or difficulty arising in the employment are insufficient to give rise to compensability under FECA. Based on the evidence submitted by the claimant and the employing establishment, OWCP is then required to make factual findings which are reviewable by the Board. The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Board.¹³

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA.¹⁴ 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.¹⁵ 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.¹⁶

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the facts alleged or implicated by the employee did, in fact, occur.¹⁷ Mere perceptions of harassment or discrimination are not compensable under FECA.¹⁸ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.¹⁹ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.²⁰ Perceptions and feelings alone are not compensable. To establish entitlement for benefits, a claimant must establish a basis in fact for the claim by supporting his or her allegations with probative and reliable evidence.²¹

¹³ *D.S.*, Docket No. 15-0585 (issued July 11, 2016); *Paul Trotman-Hall*, 45 ECAB 229 (1993) (Groom, Alternate Member, concurring).

¹⁴ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹⁵ See *William H. Fortner*, 49 ECAB 324 (1998).

¹⁶ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁷ *K.W.*, 59 ECAB 271 (2007).

¹⁸ *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁹ *J.F.*, 59 ECAB 331 (2008).

²⁰ *G.S.*, Docket No. 09-0764 (issued December 18, 2009); *Ronald K. Jablanski*, 56 ECAB 616 (2005).

²¹ *L.M.*, Docket No. 13-0267 (issued November 15, 2013).

If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.²² 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.²³

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.²⁴

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of alleged employment factors. OWCP denied her claim because it determined that she had not established any compensable factors under FECA.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty as alleged.

The reaction to assigned work duties can be a compensable work factor. The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable.²⁵ Appellant has not alleged, however, that she sustained an emotional condition from the actual performance of her work duties. Rather, she has alleged stress from her interactions with her supervisor M.P., and coworker P.B.

Initially, on her claim form, appellant alleged that she experienced stress because her supervisor M.P. did not grant her request to work up front on October 1, 2014. While M.S. corroborated appellant's allegation that she wanted to work up front on that day, but was told by him that M.P. stated that she had to stay and work in the back, this allegation does not constitute a compensable factor of employment. The Board has held that a desire to work in a different position or environment is not a compensable factor of employment.²⁶

Appellant alleged that her stressful relationship with coworker P.B. was a compensable factor of employment. In describing their relationship appellant detailed specific incidents of conflict between the two, including repeated verbal altercations. Harassment by a coworker, if established as occurring and arising from the performance of work duties, can constitute a compensable work factor.²⁷ For harassment to give rise to compensable disability there must be

²² *David C. Lindsey, Jr.*, 56 ECAB 263 (2005); *supra* note 16.

²³ *Robert Breeden*, 57 ECAB 622 (2006).

²⁴ *I.J.*, 59 ECAB 408 (2008); *supra* note 6.

²⁵ *A.N.*, Docket No. 15-1220 (issued September 27, 2016); *Trudy A. Scott*, *supra* note 11.

²⁶ *D.D.*, Docket No. 17-0466 (issued June 6, 2017).

²⁷ *F.C.*, Docket No. 16-0091 (issued August 4, 2016).

evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable.²⁸ A claimant must substantiate allegations of harassment and discrimination with probative and reliable evidence.²⁹ Appellant's allegations regarding her interactions with P.B. were unsubstantiated as there are no witness statements of record which corroborate alleged harassing remarks made by P.B. towards appellant. As such, her allegations constitute mere perceptions or generally stated assertions which do not support her claim for an emotional condition.³⁰

Appellant further alleged that during the August 27, 2014 incident P.B. threatened her by saying that she was going to "kick [appellant's] ass" and used the words "9 millimeter." M.P. stated that both P.B. and appellant came to her with regard to the August 27, 2014 incident, and that P.B. denied that she had engaged in any threatening behavior, and expressed that she hoped the incident would not become physical. M.P. and S.J. confirmed that P.B. was placed on emergency suspension following this incident. Appellant alleged that management essentially condoned P.B.'s behavior and tolerated a hostile work environment. 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 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.³¹ The evidence of record substantiates that the employing establishment took immediate action to place P.B. on emergency placement due to its 'zero tolerance policy' as soon as appellant related the alleged threats to her supervisor. As such, appellant has not established error or abuse on the part of the employing establishment in this regard.

In so far as appellant has alleged that she disagrees with the employing establishment managers' handling of performance complaints against P.B., an employee's dissatisfaction with the way a supervisor performs duties or exercises discretion is not compensable absent error or abuse.³² To support such a claim, a claimant must establish a factual basis by providing probative and reliable evidence.³³ As appellant did not submit corroborating evidence establishing error or abuse of these instances, they do not constitute compensable employment factors.

Appellant has also alleged that the employing establishment erred in presenting her with a letter of warning. The record contains a June 21, 2016 decision of the expedited arbitration panel in which the arbitrator rescinded her letter of warning. The letter of warning had been issued to appellant for remarks she admitted making to P.B., which management determined were disrespectful. The arbitrators noted that, although appellant's behavior could not be

²⁸ *Doretha M. Belnavis*, 57 ECAB 311 (2006).

²⁹ *Robert Breeden*, 57 ECAB 622 (2006).

³⁰ *See supra* note 28.

³¹ *See C.G.*, Docket No. 15-0909 (issued April 15, 2016).

³² *Donney T. Drennon-Gala*, 56 ECAB 469 (2005); *Linda J. Edward-Delgado*, 55 ECAB 401 (2004).

³³ *See L.K.*, Docket No. 16-1311 (issued January 17, 2017).

condoned, it was precipitated by comments from P.B. Reactions to disciplinary matters, such as a letter of reprimand, also pertain to actions taken in an administrative capacity and are not compensable unless it is established the employing establishment erred or acted abusively.³⁴ The Board has held that a subsequent reduction or rescission of a disciplinary action by itself does not establish error or abuse.³⁵ Appellant has not submitted sufficient evidence to show that the September 8, 2014 letter of warning was issued in error and she admitted making the remarks to P.B. which were the subject of the letter of warning. Therefore, she has not established a compensable employment factor in this regard.³⁶

Accordingly, the Board finds that as appellant has not established a compensable factor of employment,³⁷ she has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty as alleged.³⁸

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, as alleged.

³⁴ *D.B.*, Docket No. 09-0390 (issued November 16, 2009).

³⁵ *Paul L. Stewart*, 54 ECAB 824 (2003); *Mary L. Brooks*, 46 ECAB 266, 274 (1994).

³⁶ *See Y.B.*, Docket No. 15-0909 (issued April 15, 2016).

³⁷ As appellant has not established any compensable factors, the Board need not consider the medical evidence of record. *Margaret S. Kryzcki*, 43 ECAB 496 (1992); *see also T.E.*, Docket No. 14-0582 (issued December 15, 2014).

³⁸ *See L.N.*, Docket No. 16-1815 (issued May 22, 2017).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 6, 2016 is affirmed.

Issued: January 17, 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