United States Department of Labor
Employees' Compensation Appeals Board

Y.B., Appellant	)	
and	)	**Docket No. 16-0193**
	)	**Issued: July 23, 2018**
DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION, MID-PACIFIC REGION, Sacramento, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 12, 2015 appellant filed a timely appeal from an October 29, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

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

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 9, 2012 appellant, then a 49-year-old program analyst,[2] filed an occupational disease claim (Form CA-2), alleging that on November 13, 2008 she developed an emotional condition due to factors of her federal employment, including two physical assaults that occurred in November 2008 and other job stress.[3] Specifically, she reported that she was struck by S.H., acting assistant regional director for support services, on November 13, 2008. Appellant thereafter became anxious, paranoid, stressed, fearful, and depressed. She asserted that M.D., a programs secretary, committed a second assault on November 19, 2008, which worsened her November 13, 2008 conditions. Appellant was diagnosed with major depression, post-traumatic stress disorder, anxiety disorder, anhedonia, and diverticulitis. She reported that she first became aware of her claimed conditions on November 13, 2008 and realized their relation to her federal employment on October 26, 2009.

In a narrative statement accompanying her Form CA-2, appellant alleged that she was struck by S.H. on November 13, 2008, causing bruising on her right upper arm. She reported that S.H. came to her work space and told her to move to an alternate work space. Appellant alleged that, while waiting with S.H. to sign out her new office key, S.H. hit her on her upper right arm, which left bruising. She also alleged that M.D. then shoved her on November 19, 2008 while at her workstation. Finally, appellant further alleged that employing establishment officials and coworkers continued to harass her until she left the employing establishment in February 2009.

The employing establishment conducted an administrative investigation in relation to the alleged incidents. These documents noted that appellant was first assigned as a supervisory contract specialist on October 25, 2007. On November 6, 2008 she was reassigned as a staff specialist as a result of her failure to satisfactorily complete her probationary period for the managerial position. The investigation found that appellant had not established a hostile workplace through the November 13 and 19, 2008 events. While appellant had alleged that S.H. violated her personal space and intentionally struck her on November 13, 2008, the investigation revealed that appellant and S.H. came within one foot of each other during an office key transaction on their own volition. The employing establishment found that this was not unreasonable. S.H. and four witnesses disputed appellant's allegations of deliberate contact, contending that any contact would have been minor, incidental, or accidental. As appellant's allegations of assault remained unsubstantiated, the investigation was closed. With regard to the November 19, 2008 incident involving allegations of shoving by M.D., the investigation found that the parties provided contradictory accounts and that there were no witnesses to the events. The employing establishment further noted that the witness capable of hearing the conversation reported only a civil conversation. Also, appellant, the witnesses, and M.D. all agreed that M.D. was friendly and business-like before, during and after the alleged incident. The employing

[2] Appellant began work as a program analyst with the Department of Defense, Defense Logistics Agency in Virginia on November 10, 2011. The facts of this case pertain to her work for the employing establishment in California before her move/promotion.

[3] Appellant has another emotional condition claim, File No. xxxxxx030, that is not before the Board in the present appeal. An appeal involving that claim is being adjudicated separately under Docket No. 16-0194.

establishment concluded that, "The mannerisms and behaviors demonstrated during the day of the alleged incident by M.D. are not consistent with an assault allegation." As it was unable to substantiate appellant's claims of assault, it closed the case.

In a March 13, 2012 development letter, OWCP informed appellant that additional evidence was required to establish she actually experienced the employment factors alleged. It afforded appellant 30 days for response. A similar letter, also dated March 13, 2012, was sent to the employing establishment, requesting additional evidence.

In response, appellant submitted a March 7, 2012 note from Dr. Timothy M. Sitts, a psychiatrist, diagnosing stress, depression, and anxiety due to a "difficult situation at work."

Appellant also provided a copy of an Equal Employment Opportunity (EEO) complaint, which noted that she was first hired by the employing establishment on November 11, 2007 and that she reported to her new duty station on November 14, 2007. She alleged that supervisor K.T. had created an intimidating and hostile work environment. Appellant advised that K.T. stated "for those employees you deem undesirable, make it as difficult as you can so they will leave." She asserted that K.T. changed travel requirements in her performance plan and individual development plan. Appellant further alleged that she was required to take supervisor training within the first year, but that K.T. denied her request for training on April 14 through 18, 2012 as it conflicted with a scheduled meeting. She noted that she had to take training within four months, but other new supervisors were allowed nine months or more. Appellant also alleged that K.T. prevented her from performing her job with changing requirements. She asserted that K.T. pressured her to downgrade to another position. Appellant alleged that K.T. scheduled her to attend two meetings on the same date two weeks after she arrived.

In her EEO complaint, appellant admitted that she overlooked the 20 percent travel requirement in the job announcement, but noted that other managers could send deputies for meetings, but not her. She alleged that K.T. sent e-mails to her at the end of the day or on the weekends which required quick responses. Appellant alleged that, in a meeting, K.T. asked why there was not a best actor award for drama and looked directly at her, causing an information technology manager to laugh. On February 21, 2008 she complained to J.D., the acting regional director, about on-going harassment based on disability, and he assured her that he would look into it. Appellant reported that she worked from 7:00 a.m. to 4:00 p.m. with 1 to 1.5 hours for lunch. She noted that she had a dependent sister who was 100 percent disabled due to a brain injury. Appellant had difficulty finding a caregiver for her sister who could legally administer medication and nutrition through a feeding tube. Until she could, she returned home from work at lunchtime to care for her sister, a distance of 80 miles round trip. Appellant once had to take her sister to a mandatory meeting because she had not found a nurse to care for her. K.T. e-mailed appellant on March 3, 2008 to inform her that she could not extend her lunch break in her regular schedule. She suggested that appellant use leave for any additional time needed. K.T. directed appellant to meet her travel obligations by February 5, 2008.

Documentation associated with her EEO complaint included the May 30, 2008 sworn testimony of J.D., who noted that, when interviewing for her position, appellant had advised that she had to care for her disabled sister, but was seeking a caretaker. She informed him of alleged harassment by her supervisor beginning November 14, 2007. J.D. testified that he permitted her

have a long lunch break to care for her sister. A week later, appellant informed him that she had experienced reprisal as she was being required to provide documentation supporting medical necessity.

K.S., supervisory procurement analyst, testified during the EEO proceeding, that she was present during one of appellant's interviews and that the 20 percent travel requirement was discussed. She noted that K.T. had a management style that was difficult for some as she would appear to reach a meeting of the minds, but then provide a completely different assessment shortly thereafter. Appellant opined that K.T.'s management style was the same regardless of the gender or race of those she supervised. K.S. reported her assessment of appellant's corrective action plan, noting that it was detailed and included 13 regional acquisition Management policies. She noted that her staff assessed the plan as well put together and provided a mechanism to undertake the corrective actions. K.S. also noted that appellant's staff was suffering because she was not at work as they were technically weak and required mentoring.

In EEO testimony, D.H., a contract specialist, noted that appellant was her second-line supervisor. She testified that K.T. instructed appellant to travel in front of her. D.H. testified that appellant's race and her care commitments may have been a factor in how she was being treated. She asserted that K.T. treated Caucasian employees better than African-American employees in two instances that she knew about.

In an EEO statement, K.B., an African-American female financial manager, noted that she had previously filed an EEO complaint against K.T. She also noted that K.T. had announced during a meeting that appellant had a disabled relative, and that appellant left staff meetings at 11:30 a.m. on Tuesdays to care for her sister. K.B. indicated that there was tension between appellant and K.T. and noted that appellant was singled out for criticism during the meetings. She reported that the question was asked during a meeting regarding handling employees that were undesirable or not working out and the response was "make it hard on them so that they all leave." K.B. was aware that appellant took long lunches to care for her sister and informed her that she was going to have to start using leave for this purpose.

L.T., a procurement technician and timekeeper, testified before an EEO investigator on July 28, 2008. Appellant was her second-line supervisor. L.T. was aware of appellant's sister's disability. Appellant's work schedule was 7:00 a.m. to 4:00 or 4:30 p.m. and she was required to work eight hours a day. L.T. testified that Human Resources requested appellant's time records from November 11, 2007 through March 15, 2008 and directed her not to inform appellant. The issue was that appellant entered both leave codes and Family Medical Leave Act (FMLA) on her time records. L.T. notified appellant of the request as appellant was her supervisor and because she was concerned that she had been directed not to notify appellant. She was concerned that appellant would lose pay due to the changes, but she maintained an annual leave balance. Appellant's leave was changed from FMLA to Family Friendly Leave.[4]

[4] In a March 27, 2008 e-mail, appellant noted that she had used the wrong type of leave to care for her sister and that her timesheets were amended to reflect a change in leave classification. In e-mails dated November 20 and 24, 2008, the employing establishment notified that her timesheet had been modified due to errors.

An EEO counselor's March 18, 2008 report included a summary of K.T.'s statement. She denied being aware that appellant spoke with J.D. on February 21, 2008 or that J.D. permitted her to take extended lunch breaks to care for her sister. K.T. was aware that appellant was associated with someone who had a disability, but she determined that appellant was not entitled to reasonable accommodation. She asserted that appellant was aware of the 20 percent travel requirement of her job, that she was required to take supervisory training, and that she required one-on-one mentoring. K.T. noted that appellant did not know enough about supervising others and was less experienced than those she supervised. She asserted that overnight travel was necessary for appellant's job. K.T. denied asserting that supervisors should make things difficult for undesirables so that they would leave. She also denied commenting about the best actor award, asserting that someone else made that comment in the context of a facilitator's discussion about the "drama triangle." K.T. asserted that appellant often took 1.5 hours for lunch and then left the building for a smoke break. She noted that appellant was allowed up to 60 minutes for lunch and that anything more had to be charged to leave.

Also in response to OWCP's March 13, 2012 development letter, appellant also provided copies of several e-mail exchanges between herself and K.T. On December 7, 2007 K.T. advised appellant of mandatory Monday and Tuesday morning meetings. Appellant responded and noted that she was unable to obtain care for her sister on those dates and asked if she could bring her sister along. In a January 11, 2008 e-mail, K.T. informed appellant that the employing establishment could not pay for her sister's room.

Appellant also submitted an e-mail exchange with K.T. regarding travel and work requirements in January and February 2008. On January 15, 2008 she noted her difficulties in obtaining care for her sister and indicated that she believed that she would be available to travel on or about March 17, 2008. In a January 22, 2008 e-mail, K.T. informed appellant that travel was a critical part of her job and that she would not be successful without traveling. She notified appellant that it was not appropriate to have lower-graded staff continually represent her division at management meetings. K.T. noted "the bottom line is that you cannot fulfill the requirements of this job without 20 percent travel." She directed appellant to meet her travel obligations, effective February 5, 2008. Appellant responded on January 24, 2008 and admitted that she had overlooked the 20 percent travel requirement on the job announcement.

In a February 7, 2008 e-mail, K.T. directed appellant to put a hold on any regional policies put in place since October 1, 2007. She noted that new policies and requirements needed to be developed in collaboration with area offices. On February 9 2008 K.T. e-mailed appellant and directed her to withdraw the regional policies she issued. Appellant provided K.T. with the finalized briefing paper on February 19, 2008. In a February 22, 2008 e-mail, she confirmed that she was to rewrite all 13 policies and prepare new drafting papers.

K.T. e-mailed appellant on February 25, 2008 regarding her scheduled training. She provided appellant's training priorities on February 26, 2008. On March 7, 2008 K.T. noted that appellant had requested 30 minutes a day of leave in conjunction with her lunch hour and noted that appellant was not considering a scheduled meeting. She opined that appellant's attendance was critical. In a March 12, 2008 draft e-mail, K.T. noted her concerns about appellant's repeated absences. She asserted that appellant's absences were adversely impacting others' personal lives and appellant's ability to lead her team. K.T. described the e-mail as a "warning

shot." She e-mailed appellant on March 19, 2008 and directed her to register for a conference and make hotel and flight reservations. Appellant noted that she could not fly with her coworkers as she had a scheduled medical procedure. On June 26, 2008 K.T. e-mailed appellant about her failure to attend a scheduled meeting. Appellant alleged that she was unable to succeed in all areas due to the number of meetings, mentoring, and mandated training scheduled.

On March 20, 2009 appellant provided additional information regarding her March 5, 2008 whistleblower complaint against K.T. She alleged that K.T. improperly allowed a nongovernmental contractor to sign government documents which obligated federal funding. Appellant further alleged that this activity violated Federal Acquisition Regulations which prohibited nongovernment entities to engage in inherently governmental activity.

A January 28, 2011 EEO decision found that K.T. had discriminated against V.R., an African-American female employee, based on color, race, age, sex, and because she considered her disabled. In a September 19, 2011 EEO decision, the EEO Administrative Judge did not find that appellant experienced discrimination, disparate treatment by K.T., retaliation by K.T. or the employing establishment, or harassment creating a hostile work environment.

On April 7, 2012 appellant provided a narrative statement wherein she repeated her EEO complaint assertions and described additional work factors. She noted that K.T. asked human resources and her assistant what they thought of the "warning shot." On March 27, 2008 K.T. directed human resources to unilaterally change her leave codes beginning January 2008 which placed her in leave-without-pay status. Appellant asserted that K.T. provided contradictory directions on training and disapproved her training requests. She alleged beginning February 26, 2008, K.T. began scheduling weekly development plan meetings. Appellant also noted that on one occasion K.T. scheduled meetings for eight hours straight, causing her stress.

Appellant alleged that K.T. sent e-mails at all hours seven days a week. She alleged that K.T. gave her an assignment on February 7, 2008 at 11:20 p.m. which was due on Saturday, February 9, 2008. Appellant completed this assignment, and K.T. requested a revision of a February 19, 2008 assignment on February 20, 2008 at 3:38 p.m., which required appellant to complete 13 additional papers by 2:30 p.m. on February 21, 2008. This required her to work all night. Appellant asserted that K.T. deliberately placed her in conflicting circumstances on June 6, 2008, a Friday, when she directed her to have a presentation with handouts prepared by Monday, June 9, 2008. She could not attend a teleconference due to this assignment. Appellant asserted that whenever she attempted to perform her duties, K.T. would either reprimand her in person or by e-mail. In August 2008, K.T. yelled at appellant and threatened her job. Appellant reported that in December 2007 she began addressing the problems with unauthorized obligations and revising the corrective action plan. K.T. berated appellant for this. On February 5, 2008 appellant became aware that the region was writing illegal personal services contracts. K.T. prevented appellant's efforts to stop that practice and appellant "blew the whistle" to the Government Accounting Office and Congress on March 5 and 7, 2008, respectively. Appellant alleged retaliatory harassment noting that K.T. scheduled weekly meetings during lunch when appellant needed to tend to her sister. She reiterated her allegations of assaults on November 13 and November 19, 2008. Appellant noted that, following the assaults, K.T. moved her into a conference room to work. She noted that coworkers were constantly looking in the windows and that she felt opened to ridicule from coworkers.

Appellant also provided a detailed chronology of events including her symptoms, her father's illness, and her EEO complaint.

By decision dated October 15, 2012, OWCP denied appellant's claim, finding that she had failed to substantiate the alleged employment factors which she believed caused or contributed to her emotional condition. It described these factors as: being under more stringent demands than other employees; being deliberately required to attend meetings and conferences which would interfere with her family situation; being inappropriately denied leave; discrimination and hostile treatment; and being given a negative performance appraisal.

On November 8, 2012 appellant requested an oral hearing from an OWCP's hearing representative. During the oral hearing held on November 12, 2014, she testified regarding K.T.'s continual changing of assignments and the requirement that she complete 13 memoranda within three days. Appellant also noted that K.T. provided her with a special assignment on a Friday night in August 2008 which K.T. wanted completed by Monday morning. K.T. asked whether appellant had completed the assignment, but would not allow her to brief it. Appellant felt that she had been given the assignment, but was not expected to complete it. She alleged severe micromanagement and asserted that working from K.T. was 14 months of "sheer hell." Appellant also provided testimony from a social worker, a friend, and her sister's caregiver. She provided medical evidence after the hearing.

By decision dated February 20, 2015, OWCP's hearing representative affirmed the October 15, 2012 decision, finding that appellant had not established a compensable factor of employment as she had not substantiated her allegations of error and abuse, harassment and discrimination, or assault.

Appellant requested reconsideration on August 13, 2015. She again asserted harassment by K.T.'s actions and the physical attacks. Appellant noted that an EEO Administrative Judge found that K.T. had harassed another employee and she alleged that K.T. used the same tactics against her. She advised that every time she tried to perform her duties she was verbally and emotionally battered. Appellant asserted that K.T. had abused her authority in thwarting her attempt to correct the illegal personal services contracts. She noted that travel requirements in her job caused her condition. Appellant also attributed her emotional condition to undue pressure to provide assignments in short-time periods, her performance appraisal, criticism, and verbal altercations.

In support of reconsideration, appellant resubmitted EEO documents from J.D., K.B., D.H., and K.S. She also resubmitted the EEO finding for V.R. Appellant also submitted EEO testimony from V.C., procurement analyst, who asserted that appellant was making positive changes in her office. She noted speaking with appellant's supervisee, D.K., 5 to 10 times when appellant was not available. V.C. reported that the section was less chaotic when appellant headed the section as there was little standardization.

D.T., the acquisition and financial assistance manager, also testified before the EEO Administrative Judge, noting that appellant was technically capable. She stated that appellant's submitted documents addressed all issues and were well constructed. D.T. testified that while appellant was technically capable, she was not there to do the day-to-day managing that needed

to be done. She noted that she contacted D.K., appellant's subordinate, because she could always reach her.

D.S., a procurement analyst, testified before the EEO judge that appellant was his direct supervisor and K.T. was his second-line supervisor. He felt that he was treated differently by K.T. based on his African-American race. D.S. opined that appellant did not communicate well with her staff and relied on her prior experience rather than researching the appropriate employing establishment regulations.

Appellant also provided her interim performance rating dated July 30, 2008, as well as her September 25, 2008 unsatisfactory supervisory assessment.

By decision dated October 29, 2015, OWCP denied modification of its prior decisions. It found that the EEO materials submitted on reconsideration did not mention any claim from or against appellant and that the discrimination findings involved another employee. OWCP also noted that her allegations about her supervisor did not establish error or abuse by the employing establishment.

LEGAL PRECEDENT

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*,[5] the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.[6] There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under FECA.[7] When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.[8] In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a person injury sustained in the performance of duty within the meaning of FECA. Thus, disability is not covered when it results from an employee's fear of a reduction-in-force, nor is disability covered when it results from such factors as an employee's frustration in not being permitted to work in a particular environment or to hold a particular position.[9]

[5] 28 ECAB 125 (1976).

[6] *Supra* note 1.

[7] *See Robert W. Johns*, 51 ECAB 136 (1999).

[8] *Supra* note 5.

[9] *Id.*

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.[10] 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.[11] A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.[12]

For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under FECA. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[13]

ANALYSIS

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

The Board notes that appellant has not attributed her emotional condition to difficulties in carrying out her employment duties and, therefore, has not implicated a compensable factor of employment under *Cutler*.[14]

Rather, appellant has attributed her emotional condition to administrative actions of the employing establishment which she asserted constituted error and abuse. In *Thomas D. McEuen*,[15] the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA as such matters pertain to procedures and requirements of the employing establishment and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under FECA would attach if the facts surrounding the administrative or personnel action established error or abuse by employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated, and not employment generated. In determining whether the employing

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

[11] *Kim Nguyen*, 53 ECAB 127 (2001). *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.,* 42 ECAB 566 (1991).

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

[13] *E.C.*, Docket No. 15-1743 (issued September 8, 2016); *Alice M. Washington*, 46 ECAB 382 (1994).

[14] *Supra* note 5.

[15] *Supra* note 12.

establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[16]

Appellant specifically alleged that management: (1) placed her under more stringent demands than other employees; (2) deliberately required her to attend meetings and conferences which would interfere with her family situation; (3) inappropriately denied her leave requests; (4) gave her a negative performance appraisal; and (5) set time constraints for assignment completion that were difficult to complete. The Board has held that disputes regarding leave,[17] assignment of work,[18] assessment of work performance,[19] change of workstation,[20] and training[21] are all administrative functions of the employing establishment and, absent error or abuse, a claimant's disagreement or dislike of such a managerial action is not compensable. The Board finds that, while appellant disagreed with the actions of her supervisor, K.T., she has not established error or abuse on the part of the employing establishment in regard to these activities.[22] Appellant has not submitted any evidence to substantiate that these management actions were anything more than an ordinary tension between a manager and an employee and are not sufficient to prove error and abuse.

As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim. In claims for an emotional condition attributed to work-related stress, 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 difficulty arising in the employment are insufficient to give rise to compensability under FECA. The primary reason for requiring factual evidence from the claimant in support of 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 OWCP and the Board.[23] Therefore, appellant has not established a compensable factor of employment in regard to these allegations.

Appellant also attributed her emotional condition to statements which she attributed to K.T. including an indication that appellant "deserved an acting award for drama" and that, "to rid yourself of certain employees, you should make work so difficult that they leave." Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the

[16] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[17] *See T.V.*, Docket No. 16-1519 (issued September 12, 2017); *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995).

[18] *See T.V., id.; Robert W. Johns, supra* note 7; *T.S.*, Docket No. 16-1470 (issued September 11, 2017).

[19] *See T.V., supra* note 17*; Elizabeth W. Esnil*, 46 ECAB 606 (1995).

[20] *R.V.*, Docket No. 16-0182 (issued June 15, 2017).

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

[22] *Linda J. Edwards-Delgado*, 55 ECAB 401, 405 (2004) (mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor).

[23] *Y.J.*, Docket No. 15-1137 (issued October 4, 2016); *L.L.*, Docket No. 14-1525 (issued July 7, 2015).

claimant and supported by the record, may constitute factors of employment. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.[24] The record does not substantiate that K.T. made these remarks. K.T. denied making the remarks and indicated that the first arose in a discussion of a "drama triangle." While a witness agreed that some version of the second remark was made, it was not clearly identified as to time, place, and speaker.[25] Thus, appellant has not established a compensable work factor in this regard.

Appellant also attributed her emotional condition to "assaults" by S.H. and M.D. Physical contact by a coworker may give rise to a compensable work factor, if the incident is established factually to have occurred as alleged.[26] The employing establishment and the Federal Protective Service each performed investigations and neither event was substantiated in the record. Without supportive evidence, appellant has not established that physical condition actually occurred.[27]

Appellant further alleged harassment and discrimination by K.T. with regard to the previously described events as well as appellant's whistleblowing activities. She asserted that K.T. treated her differently based on her protected class. Appellant submitted her EEO complaint, testimony of witnesses, and findings of the administrative judge. The judge in appellant's case, however, did not make a finding of harassment, retaliation, or discrimination. The EEO decision that appellant submitted in support of her allegations of harassment/ discrimination by K.T. involved V.R., a coworker, and did not pertain to appellant's EEO claim whatsoever. Moreover, the Board has held that the findings of other government agencies are not dispositive with regard to questions arising under FECA.[28] The witness statements submitted also do not support that K.T. treated appellant differently based on her race, her sister's disability, or any other protected class. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. As appellant has not supported her allegations of harassment and discrimination by K.T. with probative and reliable evidence, she has not established a compensable factor of employment in this regard.[29]

The Board finds that as appellant has not substantiated a compensable factor of employment, she has not met her burden of proof. Where a claimant has not established any compensable employment factors, the Board need not consider the medical evidence of record.[30]

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[24] *S.B.*, Docket No. 16-1522 (issued March 3, 2017); *Marguerite J. Toland*, 52 ECAB 294 (2001).

[25] *Y.J., supra* note 23.

[26] *Denise Y. McCollum*, 53 ECAB 647 (2002); *Helen Casillas*, 46 ECAB 1044 (1995).

[27] *See E.M.*, Docket No. 16-1695 (issued June 27, 2017) (finding that if physical contact is substantiated, then a compensable employment factor is established).

[28] *Ernest J. Malagrida*, 51 ECAB 287 (2000).

[29] *L.D.*, Docket No. 17-0693 (issued August 18, 2017).

[30] *A.K.*, 58 ECAB 119 (2006).

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 failed to meet her burden of proof to establish an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the October 29, 2015 decision of the Office of Workers' Compensation Programs is affirmed.[31]

Issued: July 23, 2018
Washington, DC

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

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

[31] Colleen Duffy Kiko, Judge, participated in the original decision, but was no longer a member of the Board effective December 11, 2017.