United States Department of Labor
Employees' Compensation Appeals Board

Y.B., Appellant	)	
and	)	**Docket No. 16-0194**
	)	**Issued: July 24, 2018**
DEPARTMENT OF DEFENSE, DEFENSE LOGISTICS AGENCY, Fort Belvoir, VA, 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 over the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish an aggravation of a preexisting emotional condition due to factors of her federal employment.

FACTUAL HISTORY

On November 21, 2012 appellant, then a 50-year-old program analyst, filed an occupational disease claim (Form CA-2) alleging that she developed an aggravation of her preexisting post-traumatic stress disorder (PTSD), major depression, anxiety, and panic disorder.

[1] 5 U.S.C. § 8101 *et seq.*

She attributed her condition to a meeting on March 26, 2012 with her supervisor and two male coworkers. Appellant alleged that she was subjected to verbal intimidation, yelling, and "close proximity tactics." On July 26, 2012 she had a confrontation with a coworker. Appellant's supervisor noted that appellant returned to work the following day and continued her duties but she refused to execute certain duties including certification of contractor invoices.

Appellant, in a November 21, 2012 statement accompanying her Form CA-2, noted that she teleworked four days a week as a reasonable accommodation for her PTSD, anxiety disorder, panic disorder, major depression, degenerative disc disease, and chronic fatigue syndrome with cognitive impairment. Her job duties included serving as the contracting officers' representative (COR) for program office contracts. Appellant's supervisor, M.S., directed appellant to come into the office on March 26, 2012 to discuss invoice approvals in person. On that date, appellant overheard a coworker and assigned work lead, S.D., informing appellant's supervisor that all of the information appellant provided was "nothing but smoke and mirrors and this was [sh*t]." Shortly after the meeting began, S.D. and D.H. along with coworkers began raising their voices and yelling at appellant in response to her attempted explanation of the contractual, regulatory, and legal aspects of not approving a particular invoice. Appellant asserted that S.D.'s voice was angry, brusque, and intimidating. S.D. reached over and touched her arm and appellant had a flashback of an earlier incident of workplace violence. Appellant asked, "Please don't touch me." She alleged that this aggravated her underlying PTSD, anxiety and panic disorders.

Appellant asserted that she had almost constant panic attacks on March 27, 2012 at work as S.D. worked directly across from her. She told M.S. that she felt unsafe sandwiched between S.D. and D.H. On March 28, 2012 M.S. verbally threatened her. Appellant stopped work for three weeks based on her doctor's orders, and when she returned to work she requested to be moved away from S.D. M.S. could not find a suitable workspace, and constantly pressured appellant from May 7, 2012 to come into the employing establishment on her telework days. Appellant was hospitalized on June 6, 2012 for chest pain and high blood pressure which she attributed to harassment, intimidation, and work stress. On July 26, 2012 she reported to M.S. that S.D. angrily appeared in the opening of her workspace "in a physically confrontational stance" and prevented her from exiting. Appellant had asked him if it "was necessary to talk over my cube [to a coworker] on the other side of me versus walking over to speak to him."

Appellant, M.S., her second line supervisor, K.F., and B.B., met and agreed that S.D. should move based on safety concerns, noise, and the effects on her medical condition. On August 1, 2012 the employing establishment reversed this decision, and offered appellant two workspace options. Appellant asserted that neither option was medically suitable. She stopped work on August 16, 2012 and returned on October 30, 2012 working part time from home only.

In a development letter dated December 14, 2012, OWCP informed appellant that the evidence submitted was insufficient to establish her emotional condition claim and advised her of the type of factual and medical evidence required. It attached a questionnaire for her completion and requested that she provide additional factual and medical evidence, including a report from a qualified physician containing a medical diagnosis and an opinion supported by a medical explanation regarding the cause of her emotional condition. In a similar letter of even date, OWCP requested additional information from the employing establishment, including comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations, as

well as information on the duties and physical requirements of appellant's job. OWCP afforded both appellant and the employing establishment 30 days to provide the requested information.

Appellant responded to OWCP's request and submitted a December 20, 2011 memorandum in which M.S. agreed to appellant's accommodation request to telework four days a week, that S.D., appellant's assigned work lead, would not be present during counseling, although another witness would be present, and that appellant could wear headphones for noise suppression. M.S. informed appellant that she was no longer the COR for contracts and that her assigned work would concern contracting documentation. M.S. approved appellant's telework documents on January 5, 2012 and indicated that her day in the office should be every Thursday. Appellant agreed to daily e-mails when she worked for the day.

Appellant also submitted a series of e-mails dated March 9, 13, and 14, 2012 between herself, S.D., and M.S. regarding proper invoices. S.D. opined that the invoices submitted by T.A., a contractor, was sufficient while appellant advised that she was not comfortable certifying such invoices as all the information was not included. Appellant was adamant that T.A.'s invoices were improper. They disagreed on the interpretation of the provision involved. S.D. repeatedly asked appellant to process them. Appellant included M.S. on the e-mail correspondence and opined that the invoices needed to be rejected, corrected, and resubmitted. M.S. directed her not to reject them.

In a March 20, 2012 e-mail exchange, M.S. requested that appellant report to the employing establishment. Appellant declined, noting that she needed to use leave to care for her sister. M.S. requested that she provide in writing her reasons for rejecting the invoices. He directed appellant to report to the employing establishment four days a week because they were four months behind in paying invoices. On March 21, 2012 appellant asked if M.S. was revoking her reasonable accommodation and advised that she was required to follow the regulations in completing her job. M.S. responded that he had overstepped his authority in agreeing that she could telework four days a week and noted that, if the work was not accomplished, she would have to come into the employing establishment until the matter was resolved.

In a March 27, 2012 e-mail, appellant informed M.S. that she no longer felt safe as S.D. made her tense and she was afraid to turn her back to him. M.S. noted that, while both appellant and S.D. raised their voices in the meeting, there was no threatening situation.

On the morning of March 28, 2012, appellant and M.S. engaged in another e-mail exchange about novation agreements and payments due contractors. M.S. directed appellant to approve invoices before an approved novation agreement at 12:27 p.m. At 2:07 p.m., on March 28, 2012, M.S. noted that appellant had properly rejected three invoices due to lack of proper shipment number, but advised that the line of accounting was not required for future invoices. M.S. also noted that General Services Administration (GSA) found that the absence of a novation agreement was not an appropriate reason to reject an invoice. In an e-mail sent on March 28, 2012 at 3:49 p.m., K.B., a contracting officer, instructed appellant that the invoices should not be submitted until the novation agreement was signed. Appellant requested to telework on Wednesday, March 28, 2012 and M.S. agreed.

In a March 29, 2012 e-mail, appellant informed M.S. that she felt that she had no choice, but to come into the employing establishment based on his March 20, 2012 e-mail. She noted that he was aware of her PTSD and that he chose to create an environment to use close proximity tactics to coerce her to disregard regulatory requirements and approve invoices that were improper. Appellant protested being placed between S.D. and D.H. noting the raised voices and S.D.'s touch. She alleged that M.S. threatened personnel action if she did not approve the invoices, that she was intimidated, and that the contracting officer had instructed her that a signed novation agreement was necessary. Appellant alleged reprisal.

Appellant provided a series of August 1, 2012 e-mails between herself, an Equal Employment Opportunity (EEO) counselor, and M.S. regarding her prospectively separating her from S.D. M.S. informed appellant that S.D. did not want to move his duty station and proposed other options. Appellant asserted that alternative locations would not work due to noise. She alleged that the reversal of S.D.'s move allowed him to intimidate her, talk over her head, and implied that her concerns did not matter. Appellant alleged that the employing establishment was attempting to back her into a corner. She denied yelling, but noted that she was using her headphones at the time.

Dr. Kusuma K. Nanduri, an internist, diagnosed tension headaches and acute stress on April 17, 2012. Appellant also provided evidence from a social worker.

Appellant provided additional factual information on January 11 and 12, 2013. She noted her prior claim for an emotional condition arising from her work in 2008.[2] Appellant repeated her prior allegations about the March 26, 2012 meeting with S.D. and D.H. M.S. and S.D. questioned her knowledge and judgment. Appellant also attributed her condition to work noise, alleging "constant chatter" of coworkers. She noted that the employing establishment initially agreed to move S.D., but reversed that decision and offered her additional workstation locations. She asserted that the offered locations were not medically appropriate. After appellant's return to work on October 30, 2012, M.S. continually pressured her to come into the employing establishment. Appellant asserted that he took her Blackberry, and that he continued to instruct her to interact with S.D. M.S. berated her due to her cognitive impairment noting that she was a GS-14, but was only completing GS-9 level work.

Appellant provided her telework request and approval form which indicated that telework was provided as reasonable accommodation for her preexisting medical conditions. The agreement indicated that appellant would telework four days a week and that she would report to the employing establishment on Thursdays.

Appellant submitted transcripts of appellant's March 26, 2012 meeting with M.S. and S.D. as well as the March 28, 2012 meeting between M.S., appellant, and other female coworkers. During the March 26, 2012 meeting M.S. and S.D were of the opinion that the invoices should be paid. M.S. stated, "I [a]m happy to do a memo to say this is why we need to pay these. If not, they can go to see [appellant's second line supervisor, K.F.] you and I [wi]ll have to meet with him and explain why this is until we have somebody else approving invoices." When appellant left the meeting to gather documents, S.D. stated, "All this is smoke and mirrors

[2] The 2008 claim, File No. xxxxxx936, is not before the Board in this appeal. An appeal involving that claim is proceeding separately before the Board under Docket No. 16-0193.

because she still has n[o]t listed them item by item. This is wrong and it [i]s all this [sh*t] that [i]s why I have been trying to get her to do one at a time." S.D. forcefully informed appellant that she was not a contracting officer and that she was working in the program office. Appellant noted that she was hired for her contracting knowledge. She asked that S.D. not touch her. M.S. stated on the March 28, 2012 transcript, "Okay, on this one, I [a]m not going to push -- I [a]m not going to push this out -- out, and we will discuss that on perhaps a personnel action, but there is not motivation not to --…. So by what … GSA has said that this is not a reason not to pay them."

Appellant provided e-mails from M.S. dated December 27, 2012 which noted that appellant was a GS-14 and indicated that he was concerned with her progress and effort on the assigned task. M.S. noted that the assigned task was a simple one which he would expect at GS-9 to accomplish. Appellant responded to M.S. on December 28, 2012 and requested that he answer her questions. She noted that she was aware that she was a GS-14, but informed M.S. that she had a cognitive impairment and medical conditions that, when exacerbated, impacted her focus, concentration, and memory. On December 28, 2012 M.S. directed appellant to perform the assigned task. He noted, "I have directed you for the past week for you to resume some of your previous duties and you have not complied. I will seek assistance from the agency on the next steps."

Appellant provided her December 31, 2012 performance rating, which was "fully successful." In the appraisal, M.S. noted that since appellant's return to work in October 2012, her performance had degraded and he was spending additional time providing guidance. He noted that appellant was using her subject matter expertise to impede office operations, that appellant questioned everything, and she did not speak to or acknowledge others. He further noted that appellant was not reviewing invoices in a timely, efficient, or effective manner.

By letter dated January 30, 2013, the employing establishment controverted appellant's claim based on fact of injury and performance of duty, and submitted additional evidence. On January 21, 2013 M.S. responded to appellant's allegations and noted that, regarding the March meeting, appellant did not stay in her seat and was moving around. He asserted that, while appellant raised her voice, S.D. tried to speak over her, but was not yelling, and neither he nor D.H. raised their voices. M.S. asserted that appellant could not articulate her argument of why the invoices should not be paid. He disagreed with appellant's assertion that her telework for four days a week was due to her medical condition. M.S. noted that appellant had teleworked two days a week since November 2009. He noted that he attempted to help appellant to move her workstation due to her allegation that she felt unsafe near S.D. and D.H. M.S. denied verbally threatening appellant, but noted that his supervisor informed him that he had overstepped his authority by granting appellant four days per week of telework.

S.D. denied appellant's allegations that he made earthy remarks, that he yelled at her, or that he touched her during the March 2012 meeting. He noted that appellant rarely spoke to him or other employees and did not engage in social exchanges. S.D. agreed that he declined to move when asked as he was comfortable where he was.

In a June 13, 2012 memorandum, employing establishment representative B.B., noted that Deputy Program Executive Officer K.F. had appointed her to investigate appellant's assertion that she felt unsafe in close proximity to S.D. She noted that appellant was given the

opportunity to move to one of five different locations, but deemed none of them suitable. B.B. opined that appellant and S.D. both raised their voices in the March 26, 2012 meeting, but that there was no yelling. She further noted that appellant did not demonstratively feel threatened or ask to discontinue the meeting. B.B. noted, "No one observed [appellant] saying to [S.D.] don't touch me or [make] dirty looks toward her."

In a March 1, 2013 decision, OWCP denied appellant's emotional condition claim, finding that she had not substantiated a compensable employment factor. On March 20, 2013 appellant requested an oral hearing before an OWCP hearing representative which was scheduled for July 10, 2013. Appellant missed the scheduled hearing but contacted OWCP's hearing representative who indicated that he would conduct a review of the written record.

Appellant continued to submit evidence. She provided the transcripts of April 26, 2012 and May 3, 2012 meetings with M.S regarding her reaction to S.D. M.S. proposed to move appellant far from S.D. and she agreed to this. The transcript of a June 14, 2012 meeting between appellant, M.S., and D.M., her new first line supervisor, included a discussion of her telework agreement for four days a week, which M.S. noted he had inappropriately approved.

In the transcript of a July 26, 2012 meeting with M.S. regarding the interaction with S.D., appellant reported that S.D. carried on a conversation over her head. She stated that she left her work area for 30 minutes, but every time she returned to her work area the conversation continued. Appellant asked if the conversation was necessary and S.D. puffed up his chest and looked angry. S.D. instructed appellant that, if something was bothering her, she should say something about it, but not yell. Appellant denied yelling, but noted that her earphones were on, so it was possible that her voice was louder than she realized. She noted using earphones to block out the noise from the office. Appellant also noted that M.S. had discussed moving her workspace, but that the offered alternatives were not better. K.F. proposed that appellant move to S.D.'s current workspace and that another coworker move to her current space, which appellant believed would result in two cubes between her and S.D. Appellant was agreeable to this proposal.

Appellant provided a statement asserting that her efforts to perform her regular job duties of reviewing, seeking correction, and approving invoices in 48 to 72 hours caused severe stress. She was afraid that she would not complete the invoices in time and that, if she found a problem, she would be asked to ignore it and break regulations. Appellant noted that her supervisor and two coworkers pressured her to approve invoices that did not include proper backup documentation. She also attributed her condition to the special assignment of reviewing three task orders on a large contract, as she experienced stress compiling, verifying, checking, and cross-referencing over 200 fund citations and contract line items and invoices.

Appellant alleged on January 9, 2013 that M.S. forced her to remain at work when her physician opined that she was medically disabled to attend her appraisal meeting. She noted that he provided negative written comments regarding her performance. Appellant alleged that M.S. changed or falsified her time card by deleting 40 hours and entering 16 hours. She asserted that he improperly used the last four digits of her social security number on her leave slip. Appellant alleged that she was required to work outside her medical restrictions as she was required to come into the employing establishment up to four days a week. She alleged that M.S. berated her for asking questions in spite of her cognitive impairment.

On September 26, 2013 OWCP's hearing representative set aside the March 1, 2013 decision, finding that appellant had provided additional factual evidence which the employing establishment must address including the accuracy of the transcripts. He remanded the claim for additional development by OWCP and a new decision on the merits.

In a letter dated January 28, 2014, OWCP requested that the employing establishment review the transcripts provided by appellant. On February 28, 2014 the employing establishment noted that appellant provided transcripts from meetings with her supervisors and asserted that these supported that it had made efforts to accommodate appellant.

In a March 6, 2014 decision, OWCP denied appellant's claim, finding that she had not substantiated a compensable factor of employment. On March 26, 2014 appellant requested an oral hearing from an OWCP hearing representative.[3] She asserted that she had provided recordings of the meeting in March 2012 which established that S.D. yelled.

Appellant testified during the October 16, 2014 oral hearing. She noted that her job duties required her to approve invoices within 48 to 72 hours. Appellant noted that the invoices from a particular contractor were improper and she was being pressured by her boss to approve them. She testified that her boss threatened a personnel action when she refused to certify the improper invoices. This situation reached a head on March 26, 2012. Following that meeting the contracting officer for the contract opined that the invoice could not be approved without a novation agreement. Appellant stopped work on April 4, 2012 and when she returned on April 26, 2012 she was no longer approving invoices although she remained in the same procurement analyst job. She received a special assignment instead. Appellant described the alleged intimidation of March 26, 2012. Her social worker also testified.

Following the oral hearing, appellant submitted her time sheets from June, July, and August 2013. She submitted a signed affidavit from H.D., her timekeeper, who noted that appellant submitted a timesheet for 54 hours from July 1 through July 10, 2013. Appellant's new supervisor, D.M., directed H.D. to revise her timesheet in accordance with an agreement which limited appellant to 16 hours of telework in a pay period. Appellant submitted an e-mail in which she disagreed with the timesheet changes and refused to sign the amended timesheet on July 10, 2013. She also provided e-mails dated August 7, 2013 in which D.M. directed appellant to correct her timesheet, and H.D. to remove the time submitted.

On January 6, 2015 OWCP's hearing representative affirmed the March 6, 2014 decision.

Appellant requested reconsideration on June 29, 2015. She provided a Notification of Personnel Action dated February 6, 2015 which indicated that she was removed due to absence without leave. Appellant provided selections of testimony in her case before the Merit Systems Protection Board (MSPB). On May 19, 2015 B.B. testified about the interactions of S.D. with another subordinate, M.S. She noted that S.D. received a letter of counseling and was placed on probation. Appellant provided testimony from D.H. before MSPB on May 27, 2015. D.H. testified that he had a confrontation with S.D. after he received an employee award. He recounted that S.D. raised his voice and became defensive. The employing establishment

[3] Appellant requested subpoenas for three witnesses on May 21, 2014. In an October 1, 2014 decision, Hearings and Review denied the request for subpoenas.

arranged an intervention between S.D. and D.H. and afterwards they conversed on a weekly basis. M.S. testified before the MSPB on May 22 and 29, 2015 and noted that S.D. received a letter of counseling and was placed on probation. He noted that appellant approached him with a concern about S.D. and recalled approximately five other such situations. M.S. also discussed the events with Ms. M.S. which led to a formal counseling letter to S.D. Appellant provided the testimony of K.F. before the MSPB on June 2, 2015. K.F. discussed the interactions of S.D. with coworkers, but did not mention appellant.

In an October 29, 2015 decision, OWCP denied the claim finding that the evidence on reconsideration did not describe any incident involving appellant. It concluded that appellant had not submitted evidence substantiating the factors of employment as alleged.

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*,[4] the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.[5] There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under FECA.[6] 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.[7] 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.[8]

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.[9] 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

[4] 28 ECAB 125 (1976).

[5] 5 U.S.C. §§ 8101-8193.

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

[7] *Cutler*, *supra* note 4.

[8] *Id.*

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

employment factor.[10] 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.[11]

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.[12]

ANALYSIS

Appellant has attributed her emotional condition to a variety of factors, including difficulties in carrying out her regularly and specially assigned duties. She attributed her emotional condition to the special assignment of reviewing three task orders on a large contract. Appellant claimed that she experienced stress compiling, verifying, checking, and cross-referencing over 200 fund citations and contract line items and invoices. The Board finds that appellant has not provided sufficient evidence to substantiate this special assignment. While appellant has submitted a series of e-mails between herself, M.S., and D.M. in December 2012 and January 2013 addressing her assignments, the Board is unable to ascertain when or if appellant reviewed a large contract and 200 fund citations. For this reason, the Board finds that appellant has not established a factor under *Cutler* in regard to this allegation.[13]

Appellant also described her regularly assigned job duties as reviewing, seeking correction, and approving invoices within 48 to 72 hours. The Board finds that appellant has not provided her position description and has not established that her regular and specially assigned duties provided a time limitation for approving invoices. Appellant noted that she was afraid that she would not be able to complete the invoices in time and that, if she found a problem, her supervisor would ask her to ignore it and break regulations. The Board has held that reactions to a supervisor's instructions in and of itself would not be compensable under *Cutler*.[14] Appellant did not sufficiently substantiate her prescribed duties under *Cutler*, and the work instructions regarding the approval or disapproval of invoices must be evaluated under *Thomas D. McEuen*,[15]

In *McEuen* 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

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

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

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

[13] *T.S.*, Docket No. 16-1470 (issued September 11, 2017).

[14] *Robert Knoke*, 51 ECAB 319 (2000).

[15] *Supra* note 10.

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

With regard to appellant's allegation that she feared erroneous or abusive instructions regarding the disposition of invoices, she has submitted no evidence that her supervisor acted unreasonably in directing her to dispose of invoices. M.S. provided varying instructions *via* e-mail regarding the disposition of invoices. On March 28, 2012 he agreed with appellant regarding invoices with improper shipment numbers, but also instructed her to approve of an invoice without a novation agreement. While there is a contradictory e-mail from K.B regarding the missing novation agreement invoice, appellant has not provided the specific legal provisions or otherwise substantiated that M.S.'s directive to approve this invoice rose to the level of error or abuse such that he acted unreasonably in issuing his directive.[17]

Other allegations of administrative actions which she asserted constituted error and abuse included the assignment of work by M.S. and D.M, the number of days she could telework, the fact that M.S. did not offer her a new workspace that she found suitable, the retraction of her blackberry, changes to her timesheets, and the comments on her performance appraisal. The Board has held that disputes regarding leave,[18] assignment of work,[19] assessment of work performance,[20] and determinations regarding telework[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 supervisors, she has not established error or abuse on the part of the employing establishment in regard to these activities. Appellant has not submitted evidence substantiating that the employing establishment erred in the matters.

Appellant further asserted that M.S. threatened her with a personnel action on March 28, 2012 and that he berated her for failing to complete work commensurate with her grade level. Assigning work and monitoring performance are administrative functions of a supervisor.[22] The manner in which a supervisor exercises his/her discretion falls outside FECA's coverage. This

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

[17] *See A.K.*, Docket No. 07-2270 (issued April 16, 2008); *Kim Ngyen*, 53 ECAB 127 (2001) (one example of conflicting instructions did not establish error or abuse by a supervisor).

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

[19] *Robert W. Johns*, 51 ECAB 137 (1999); *T.V., id.*

[20] *Elizabeth W. Esnil*, 46 ECAB 606 (1995); *T.V., supra* note 18.

[21] *T.V., supra* note 18.

[22] *N.D.*, Docket No. 16-0823 (issued August 18, 2017); *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).

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.[23] Appellant has not provided evidence to corroborate that M.S. acted unreasonably in these matters and the Board finds that appellant has not established error or abuse by M.S. in this regard.

Appellant also attributed her emotional condition to interactions with S.D. on March 26, and June 26, 2012. She provided transcripts describing the March 26, 2012 meeting which indicated that S.D. and appellant spoke over each other and that S.D. derided appellant's opinion with crude language as well as noting it was "smoke and mirrors." The transcript also indicated that appellant asked the S.D. not to touch her. However, the employing establishment provided memoranda from B.B. and M.S. which found no inappropriate actions by S.D. Witnesses present at the March 26, 2012 meeting denied that S.D. touched appellant and disagreed that he yelled. Verbal altercations and difficult relationships with supervisors and coworkers, when sufficiently detailed by the 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] Additionally, physical contact by a coworker or supervisor may give rise to a compensable work factor, if the incident is established factually to have occurred as alleged.[25] The Board finds that appellant has not substantiated verbal nor physical abuse by S.D. on March 26, 2012. The Board further finds that appellant has not established inappropriate actions by S.D. on June 26, 2012. While she asserted that S.D. was angry with her, appellant did not provide any witness statements or other corroborating evidence that his behavior was threatening or hostile. She admitted that S.D. did not yell and merely requested that she speak up when inactions were troubling her.

Appellant also asserted that the above described actions were harassment, discrimination, and intimidation by M.S., D.M., and S.D. The employing establishment denied these allegations. The Board finds that appellant has not established anything more than the mere perceptions of harassment or discrimination which are not compensable. Appellant failed to establish a basis in fact for her claims of harassment and discrimination by supporting her allegations with probative and reliable evidence.[26]

The Board finds that appellant has not substantiated a compensable factor of employment. Where a claimant has not established any compensable employment factors, the Board need not consider the medical evidence of record.[27]

[23] *Linda J. Edwards-Delgado,* 55 ECAB 401, 405 (2004); *N.D., id.*

[24] *Marguerite J. Toland,* 52 ECAB 294 (2001).

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

[26] *L.D.,* Docket No. 17-0693 (issued August 18, 2017); *see supra* note 12.

[27] *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 arising from her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated October 29, 2015 is affirmed.[28]

Issued: July 24, 2018
Washington, DC

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

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

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