



## **FACTUAL HISTORY**

On January 6, 2015 appellant, then a 34-year-old IT specialist, filed an occupational disease claim (Form CA-2) alleging an emotional condition as a result of a stressful and hostile work environment. She alleged that her supervisors embarrassed her in front of coworkers and indicated that the incidents occurred between June 19, 2011 and May 1, 2013. Appellant first became aware of her condition on June 19, 2011 and first attributed it to her federal employment on May 1, 2013. She stopped work on November 26, 2014.

In a November 25, 2014 statement, B.O., appellant's former supervisor, noted that he departed for a new position on October 5, 2014. Before departing, appellant's work attendance was interrupted by an increasing, but not yet unacceptable level of doctor's appointments and sick leave. She reported that her ability to concentrate on work tasks and analysis was impacted by the need to address more frequent health issues. B.O. indicated that he allowed adjustments to her work hours and allowed unscheduled annual and sick leave. Appellant reported experiencing an emotional shutdown. He noted that additional accommodations were provided to relocate her desk to another area of the office so as not to have her back to others. The employing establishment submitted a job description for an IT specialist.

Appellant was treated by Dr. Bhushit Dixit, a Board-certified psychiatrist, on December 1 and 19, 2014, for major depression, anxiety, post-traumatic stress, and possible bipolar illness. She indicated that appellant was unable to function at work.

In a January 5, 2015 supplemental statement to the CA-2, appellant indicated that during the time of her employment with the agency she began to experience anxiety immediately. She indicated that her position as an IT Customer Support Representative was for the entire Command Group, IT personnel that were in the field, and the backup IT support for the Command Group. Appellant asserted that the time sensitive nature of all requests was related to her stress and anxiety. She indicated that her workload consisted of acting as one of the Educational Technology Services COR's, IT Customer Support, she was responsible for coordinating and hosting the quarterly G-6 meetings held for technicians, and she was the primary hand-receipt holder for the ETS equipment which encompassed over 3000 pieces of IT equipment. Appellant asserted that the workload had become too much for one person. She noted that management assigned a couple of soldiers to assist her, but with their appointments and constant days out she felt like she was pulled thin.

On January 13, 2015 OWCP asked appellant to submit additional evidence, including a detailed description of the work incidents that contributed to her claimed illness. It requested that the employing establishment comment on the accuracy of all statements.

In response to OWCP's letter, appellant alleged that during a trip to Tampa, Florida, to attend a conference, she was sexually assaulted by director, D.T. She provided a travel itinerary which indicated that she arrived in Tampa on August 21, 2011 and departed on August 26, 2011.

Appellant submitted additional evidence, including a January 21, 2015 statement, indicating that B.O. would frequently take out his anger and frustration on her and yell at her in

front of people. She described incidents involving a new coworker, B.P., who was hired to assist in the telephone control section. Appellant was responsible for setting up her computer and accounts. On February 4, 2014 she indicated that she became overwhelmed when assisting B.P., who experienced difficulty logging on to her e-mail account. Appellant asserted that she immediately put in a work order to correct the problem. She alleged that B.O. and her coworker, D.B., tried to assist, but they began to get agitated and “began to feed off one another’s discontent and began to get confrontational about the problem.” Appellant reported throwing up her hands and yelling to the director, D.T., to assist in resolving B.P.’s computer problems. She indicated that she felt like her back was against the wall with everyone surrounding her. Appellant reported shutting down mentally and informing D.T. that she had to leave work because she could not contain herself. She indicated that D.T. agreed and she was on leave for three days to regroup.

Appellant provided an August 5, 2014 e-mail to her superiors in which she described a work incident on the previous day that caused stress. She related that C.S., a Department of Transportation (DOT) employee and coworker, came to her office around 3:00 p.m. indicating that temporary DOT personnel could not obtain visitor accounts. Appellant reported taking her to B.O.’s office to rectify the matter, but C.S. talked over those present, including W.G., acting deputy director. The matter continued the next morning when C.S. again talked over appellant as appellant tried to explain the procedure for visitor accounts. Appellant related that C.S. interrupted her and in an elevated voice stated “What I am trying to tell you.”

Appellant described another stressful work incident that occurred on November 18, 2014 when she informed D.T., the Director, that she would use sick leave the following day because her son was ill. She indicated that she left that day to take him fever medications and his condition was not improving. Appellant alleged that D.T. tried to give her a “guilt trip” over using a sick day because he suggested her husband stay with her son.

On February 6, 2015 OWCP asked the employing establishment to comment on the statements provided by appellant.

Appellant submitted an undated witness statement from B.R.P., a coworker, who noticed that during the prior six months appellant had difficulty in her work environment. B.R.P. indicated that her superiors consistently overloaded her with work that should have been divided among other employees. Another witness statement from C.J., a coworker, indicated that appellant’s workload was stressful and she provided support for many units outside of customer support. C.J. noted that appellant was a hard worker and always completed the mission. Appellant also provided additional evidence from Dr. Dixit.

The employing establishment submitted a February 24, 2015 statement from B.O., who indicated that the agency operated at a high tempo and while there were times of raised stress levels for all, it was not “intense.” B.O. noted that appellant acknowledged that she brought increased stress on herself by wanting everything to be perfect. He noted that management accommodated appellant to make her more at ease in her work environment. Examples included changing her work location, providing additional assistance from other employees when possible, reducing her workload, adjusting her work hours to ensure she worked 40-hour work

weeks, and accommodating medical appointments. B.O. indicated that, while the agency needed more staffing, it was successful in obtaining assistance for the office in a couple of areas. He indicated that even though additional individuals were not added to appellant's area of responsibility, some of her support functions and tasks were shared with others to reduce her workload. B.O. advised that appellant was an exceptional performer of the assigned tasks and objectives that were consistently relayed to her through ongoing informal and formal meetings and counseling.

B.O. turned over supervision of his employees to D.T. and W.G., and discussed with them appellant's ongoing issues and how she could be assisted, knowing she was also being medically treated. He addressed the incident in which B.P. had computer problems and indicated that the discussions among the technicians were to seek a resolution. There was no intent to infer that anyone's skills, capabilities, or integrity was being questioned. B.O. believed appellant's feelings were self-induced. He asserted that appellant's reaction to the incident, jumping up and hollering to D.T. and having a closed door meeting with D.T., was out of hand. D.T.'s decision to allow appellant to depart the employing establishment early on that day was not relayed to him. He noted that appellant had an increasing tendency to escalate issues. B.O. indicated that everyone tried to accommodate appellant due to her having numerous financial, personal, and health issues. He further noted that it was his responsibility to assign, monitor, and track tasks, provide assistance where possible/feasible, and to hold employees accountable for their work, and the timeliness of that work product. Appellant, like all other employees, was held to that standard, but as with other employees she was encouraged to seek guidance or adjustment in suspense dates when needed. B.O. informed his employees that, although they had a lot on their plate, they could not accomplish everything at one time, but had to prioritize based on the mission at hand and to remain flexible to assist or be assisted by others when needed. He advised that he never intended to give appellant the impression that she should be scared or walk on egg shells around him. B.O. asserted that no one was mistreated or retaliated against because they complained about a perceived injustice or disagreed with a supervisor. He reported accommodating and listening to employee issues or disagreements.

The employing establishment submitted a February 25, 2015 statement from W.G., who addressed the August 5, 2014 incident between appellant and C.S. and indicated that the discussion was not contentious or one sided. W.G. noted that C.S. expressed her opinions and concerns and listened, but she did not believe the conversation was hostile. On August 6, 2014 C.S. indicated that she had attempted to discuss a work-related issue with appellant. She stated that the misunderstanding would not affect further interactions. W.G. reported discussing with appellant that differences of opinions or approach to situations were not necessarily personal attacks or indications that your performance was less than expected. He noted that appellant's performance was always at a very acceptable level.

Appellant submitted a March 20, 2015 sworn statement prepared for a separate workplace investigation. She reported that in 2011 she was assaulted during a conference in Tampa, FL, when she was sharing a room with A.C., an administrator, and D.T. Appellant indicated that D.T. fostered inappropriate touching and would give long intimate hugs and massages. She indicated that she never told D.T. that his conduct was unwelcome. Appellant reported that A.C. coached her on several occasions to respond to questioning during the

investigation so as not to hurt D.T. She submitted a follow-up statement dated April 6, 2015 and reported that A.C. informed her that they could lose their jobs if the investigators learned that she stayed with D.T. during the Tampa trip. Appellant indicated that during this time she was pregnant, very stressed, and scared from the coaching and coercing of A.C. and D.T. and remained silent about her allegations against D.T.

In a sworn statement dated April 8, 2015, M.F., a coworker, noted being coached and coerced by A.C. on how to respond to investigators questions during two work investigations. A.C. allegedly asked M.F. to cover for her and D.T. regarding accommodations for a staff trip to Florida in which she shared a room with D.T. and appellant.

By decision dated June 16, 2015, OWCP denied appellant's claim for an emotional condition as the evidence submitted failed to establish that the events occurred as alleged.

On March 25, 2016 appellant, through counsel, requested reconsideration. She submitted a September 4, 2015 Equal Employment Opportunity (EEO) settlement agreement regarding her complaint against the employing establishment. The agreement noted that the agency did not admit that it or any agency official or employee violated any federal law, state law, or regulation. The agency agreed to pay the complainant \$25,000.00 as compensatory damages including attorney's fees, and directed D.T. to not contact appellant so long as they were assigned to different directorates. Appellant agreed to withdraw the formal EEO complaint with prejudice and not institute any further legal or administrative appeals concerning the issues in the EEO complaint.

Appellant submitted a Department of Veterans Affairs notice which provided a disability rating of 80 percent due to post-traumatic stress disorder with history of depression. She also submitted a certificate of release or discharge from active military duty, earnings and leave statements dated October 15 and 29, 2015, and notifications of personnel action (SF-50) for leave without pay and return to work. Also submitted were November 22, 2014 to March 30, 2015 treatment notes from Dr. Dixit.

By decision dated August 5, 2016, OWCP denied modification of the decision dated June 16, 2015, finding that appellant had not established any compensable work factors.

### **LEGAL PRECEDENT**

To establish an emotional condition in the performance of duty, appellant 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 the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.<sup>3</sup>

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<sup>3</sup> *George H. Clark*, 56 ECAB 162 (2004).

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*,<sup>4</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under FECA.<sup>5</sup> 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.<sup>6</sup> Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.<sup>7</sup> Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.<sup>8</sup> Personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>9</sup> On the other hand the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>10</sup>

Physical contact arising in the course of employment, if substantiated by the evidence of record, may support an award of compensation if the medical evidence establishes that a condition was thereby caused or aggravated.<sup>11</sup>

### ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. OWCP denied appellant's emotional condition claim because she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.

Appellant has attributed her emotional condition to performing her regular or specially assigned duties of her position. She alleged that she began to experience anxiety immediately and to feel overwhelmed when she initially began working in the unit in 2011. Appellant

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<sup>4</sup> 28 ECAB 125 (1976).

<sup>5</sup> See *Robert W. Johns*, 51 ECAB 137 (1999).

<sup>6</sup> *Supra* note 4.

<sup>7</sup> *J.F.*, 59 ECAB 331 (2008).

<sup>8</sup> *M.D.*, 59 ECAB 211 (2007).

<sup>9</sup> *Roger Williams*, 52 ECAB 468 (2001).

<sup>10</sup> See *supra* note 4.

<sup>11</sup> *Alton L. White*, 42 ECAB 666 (1991).

generally alleged that she was overworked and understaffed. In a January 5, 2015 statement, she noted the scope of her job responsibilities and asserted that the time sensitive nature of her work was considerably related to her stress and anxiety. Appellant indicated that she was responsible for coordinating and hosting the quarterly G-6 meetings held for technicians, and she was the primary hand-receipt holder for the ETS equipment which encompassed over 3,000 pieces of IT equipment. She alleged that the workload had become too much for one person. Appellant noted that management assigned a couple of soldiers to assist her, but with their appointments and constant days out she felt like she was pulled thin. However, she provided insufficient corroborating evidence to establish that she was overworked or of specific duties or requirements at particular times to which she attributed her condition.

In support of her claim appellant submitted a statement from B.R.P., a coworker, who noticed over the past six months that she was having difficulty in her work environment. B.R.P. noted that appellant was consistently overloaded with work that should have been divided among others. A statement from C.J., another coworker, noted appellant's workload was stressful and she provided support for many units outside of customer support. These general statements from colleagues attesting that appellant worked hard and provided support for many units are insufficient to establish that she was overworked. There were no specific dates or times provided where appellant was understaffed and the employing establishment has denied such allegations.<sup>12</sup>

The employing establishment submitted a February 24, 2015 statement from B.O., who disputed that appellant was overworked or understaffed. Although he indicated that his agency generally needed more staffing, it was successful in obtaining some assistance. B.O. indicated that some of appellant's support functions and tasks were shared with others to reduce her workload. Thus, to the extent that appellant alleged overwork,<sup>13</sup> this is not established by the evidence. Furthermore, she did not otherwise attribute her emotional condition to performing a specific regular or specially assigned duty in her job. Therefore, appellant has not established a compensable factor under *Cutler*.<sup>14</sup>

Appellant made several allegations related to administrative and personnel actions. In *Thomas D. McEuen*,<sup>15</sup> 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 factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional

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<sup>12</sup> See *Y.J.*, Docket No 15-1137 (issued October 4, 2016) (appellant did not provide the requisite detail regarding specific dates and the duties she performed, which allegedly overwhelmed her, to establish that her assigned work caused her stress).

<sup>13</sup> The Board has held that overwork, as substantiated by sufficient factual information to support the claimant's account of events, may be a compensable factor of employment. *Bobbie D. Daly*, 53 ECAB 691 (2002).

<sup>14</sup> *Supra* note 4.

<sup>15</sup> See 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

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.<sup>16</sup>

Appellant alleged that on November 18, 2014 she informed D.T. by e-mail that she would use sick leave the following day to care for a sick child. She alleged that D.T. was trying to give her a “guilt trip” when he suggested that her husband could stay with her son. The Board notes that the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>17</sup> The Board finds that the employing establishment acted reasonably in this administrative matter. There is no evidence that D.T. denied appellant’s leave request or acted unreasonably. The Board recognizes that a supervisor or manager must be allowed to perform his or her duties and that, in performing such duties, employees will at times dislike actions taken.<sup>18</sup> Appellant has presented no corroborating evidence to support that the employing establishment acted unreasonably in this administrative matter.

Appellant further attributed her condition to harassment and a hostile work environment. To the extent that incidents alleged as constituting harassment or a hostile environment by a manager are established as occurring and arising from appellant’s performance of her regular duties, these could constitute employment factors.<sup>19</sup> However, for harassment to give rise to a compensable disability under FECA, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under FECA.<sup>20</sup>

Appellant alleged that during a trip to Tampa, Florida, to attend a conference she was sexually assaulted by Director, D.T. She provided a travel itinerary which indicated that she arrived in Tampa on August 21, 2011 and departed on August 26, 2011. However, appellant did not submit any evidence that corroborates her allegation that her director sexually assaulted her. She has produced no statement from a witness who can substantiate her charges. Appellant submitted a statement from M.F., a coworker, who reported being asked by A.C. to cover for her and D.T. during a staff trip to Florida in which she shared rooms with D.T. and appellant. However, M.F. did not indicate that appellant was sexually assaulted during this trip. Appellant also submitted a September 4, 2015 EEO settlement agreement asserting that this supported her allegation that she was assaulted by D.T. The Board notes that grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.<sup>21</sup> The settlement agreement noted that the employing establishment did not admit any wrongdoing by it

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<sup>16</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>17</sup> See *Judy Kahn*, 53 ECAB 321 (2002).

<sup>18</sup> See *Michael A. Deas*, 53 ECAB 208 (2001).

<sup>19</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>20</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991). See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

<sup>21</sup> *James E. Norris*, 52 ECAB 93 (2000).

or any employee. Although it agreed to pay the complainant \$25,000.00 as compensatory damages and directed D.T. to not contact appellant, there is no corroboration of a sexual assault or admission of other error by the employing establishment regarding that trip. Appellant did not provide sufficient evidence to substantiate this assertion.

Appellant also alleged that B.O. harassed and screamed at her in front of other employees. The Board has also recognized the compensability of verbal abuse and threats in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.<sup>22</sup>

Appellant described an incident when appellant was responsible for setting up B.P.'s computer on February 4, 2014. She indicated that when B.P. had difficulty logging on to her e-mail account B.O. and another coworker, D.B., began to get agitated and "began to feed off one another's discontent and began to get confrontational about the problem." Appellant reported that she had to leave work because of this confrontation. The evidence fails to support appellant's claim for harassment or verbal abuse. B.O. denied that he harassed appellant or acted inappropriately. Rather, he noted that appellant was provided assistive accommodations in her work environment. B.O. addressed the incident with B.P. and noted brainstorming with the technicians for different causes and possible fixes to the problem. He further indicated that no one intended to infer that anyone's skills, capabilities, or personal integrity was being questioned. The factual evidence fails to support appellant's claim that she was harassed or verbally abused in this matter.

Appellant also alleged that on August 5, 2014 while attempting to assist C.S. obtain visitor accounts for temporary personnel, C.S. interrupted her and spoke to her in an elevated voice stating "What I am trying to tell you." The Board finds that the evidence does not support any specific incidents of verbal abuse or threats. Appellant provided no corroborating evidence to establish any specific incidents.<sup>23</sup> With regard to her allegation that C.S. spoke to her in an elevated voice she failed to provide any evidence to substantiate this assertion and the employing establishment denied this allegation. On February 25, 2015 W.G., indicated that appellant and C.S. had a discussion which was not contentious or one sided. C.S. expressed her opinions and concerns, but she did not believe the conversation was a hostile interaction. W.G. noted that there were differences of opinions and approaches to situations which were not personal attacks or indications that her performance was substandard. The Board finds that the evidence does not support any specific incidents of verbal abuse or threats.<sup>24</sup>

Appellant also made general allegations of harassment and verbal abuse. The Board notes that general allegations of harassment are not sufficient<sup>25</sup> and in this case appellant has not

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<sup>22</sup> An administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>23</sup> See *William P. George*, 43 ECAB 1159 (1992).

<sup>24</sup> See *Joe M. Hagewood*, 56 ECAB 479 (2005).

<sup>25</sup> See *Paul Trotman-Hall*, 45 ECAB 229 (1993).

submitted sufficient evidence to establish disparate treatment by the employer.<sup>26</sup> Likewise, appellant's general allegations about being screamed at are not specific as to the time or place of any claimed verbal abuse.<sup>27</sup> These general allegations do not rise to the level of a compensable factor of employment.

Appellant submitted a VA notice that indicated her overall disability rating of 80 percent due to post-traumatic stress disorder with history of depression. However, this document is insufficient to establish entitlement to benefits under FECA for an emotional condition as the Board has held that entitlement to benefits under another act does not establish entitlement to benefits under FECA.<sup>28</sup> The Board has noted that there are different standards for medical proof on the question of disability for FECA and VA.<sup>29</sup>

Consequently, appellant has not established her claim for an emotional condition as she has not attributed her claimed condition to any compensable employment factors.<sup>30</sup>

On appeal appellant reiterated her allegations, asserting that she has established her emotional condition claim. As explained above, she has not established her claim for an emotional condition as she has not established any compensable employment factors.

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

### CONCLUSION

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

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<sup>26</sup> See *Joel Parker, Sr.*, *supra* note 20 (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

<sup>27</sup> See *supra* note 24 (without a detailed description of the specific statements made, a compensable employment factor was not established; the mere fact a supervisor or employee may raise his voice during the course of a conversation does not warrant a finding of verbal abuse).

<sup>28</sup> *Freddie Mosley*, 54 ECAB 255 (2002).

<sup>29</sup> *Daniel Deparini*, 44 ECAB 657 (1993).

<sup>30</sup> As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 5, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 20, 2018  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

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