

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

S.S., Appellant	)	
	)	
and	)	Docket No. 17-0959
	)	Issued: June 26, 2018
DEPARTMENT OF VETERANS AFFAIRS,	)	
CENTRAL ARKANSAS VETERANS	)	
HEALTHCARE SYSTEM, Little Rock, AK,	)	
Employer	)	
	)	

*Appearances:* *Case Submitted on the Record*  
*Debra Hauser, Esq.,* for the appellant<sup>1</sup>  
*Office of Solicitor,* for the Director

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On March 31, 2017 appellant, through counsel, filed a timely appeal from a December 14, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty.

## FACTUAL HISTORY

On January 20, 2016 appellant, then a 33-year-old registered nurse, filed an occupational disease claim (Form CA-2) alleging that she sustained post-traumatic stress disorder (PTSD), depression, anxiety, stress, insomnia, ovarian cysts, and fibroids causally related to her federal employment. She attributed her condition to taking care of patients with physical and mental problems, being exposed to violence and threats, and a hostile work environment. Appellant first became aware of her condition and its relationship to her federal employment on November 19, 2014. Her supervisor related that on November 11, 2015 appellant was reassigned from the emergency room (ER) to the nursing service office and media office.

In a January 12, 2016 statement, appellant related that she began to work as an ER nurse in September 2012. She had difficulties beginning November 2014 due to work duties and had to withdraw from a Master's program due to anxiety and depression. Appellant noted working with veterans who had physical and mental conditions. She attributed her stress to exposure to "patient abuse, physically, and mentally." Appellant asserted that management harassed, bullied, and discriminated against her which worsened her condition. In 2014, a patient with PTSD and schizophrenia informed her that he wanted to die and later committed suicide. Appellant wondered if she could have done more to help the patient. She related:

"They come to the ER yelling, kicking, spitting, fighting, in hand cuffs, threatening to kill themselves or kill someone else, is it a cry for help or something else, who knows but am I the one to judge. I can hear the screams and cry out for help in my sleep. I suffer from nightmares due to caring for patients with PTSD and other mental problems such as schizophrenia."

Appellant described her physical problems caused by stress, including grinding her teeth, an abnormal menstrual cycle, cysts, and fibroids. She asserted that, on May 13, 2014, a veteran with PTSD and schizophrenia cornered her in a triage room after he had "stabbed another man to death." Appellant related that she was "his triage nurse, the very next person he saw after committing this gruesome crime. He visits me in my nightmares often."

Appellant further asserted that she was bullied because she was the only African-American nurse in the ER for three years. In 2015, another nurse abused an African American man and she did not intervene. The man threatened to kill the nurse who verbally abused him and appellant wondered if he was also going to shoot her. She reported the incident to her supervisor, but was too nervous to provide a written statement. Appellant's coworkers allegedly made false allegations. In 2014, appellant was injured when a patient pushed a coworker onto her ankle. She advised that many patients had problems with drugs and were upset, disrespectful, and violent if "they do not get what they want and when they want it." Appellant also remembered a patient who died alone of cancer.

On January 25, 2016 the employing establishment controverted appellant's claim, asserting that she had not substantiated her allegations of wrongdoing or harassment and also had not submitted medical evidence in support of her claim.

OWCP, in a development letter dated February 16, 2016, requested that appellant provide additional factual and medical evidence.

By decision dated March 22, 2016, OWCP denied appellant's emotional condition claim. It found that she had not established any compensable factors of employment, noting that she had not responded to its request for additional information.<sup>3</sup>

On March 23, 2016 appellant submitted additional evidence. In a March 15, 2016 statement, she related working 12-hour shifts three or four times a week and on each shift would see five or more suicidal patients. Appellant advised that the patient who trapped her in the triage room was brought in by the police covered with dirt and "cursing, fighting, biting, and kicking," which made it a "regular day in the ER." She related, "Seeing this type of behavior every day all day does something to a person, mentally and physically." Appellant noted injuring an ankle when a patient pushed a coworker who fell onto her ankle. She related being harassed, bullied, and discriminated against, noting that an African American manager hired her, and coworkers asked if she was going to be that manager's "snitch." Appellant received frequent, unfounded requests for information (RFIs). She asserted that another nurse bullied her and verbally abused an African American patient, who looked at her for assistance, but she did nothing. The patient threatened to kill the other nurse while looking at both of them. Appellant told her supervisor what happened, but did not provide a written statement. Appellant also noted that coworkers called a physician from India a "little brown man."

In July 2015, appellant received a disciplinary action for failing to take a patient's complete vital signs on January 21, 2015 and subsequently lost her scholarship, but a white coworker did the same thing and kept her scholarship. Management also accused her of sleeping at work. In 2014, appellant was upset after a patient who sought help at the ER committed suicide. She noted that as an ER nurse she was expected to treat patients with psychiatric conditions. Patients, especially those on drugs or with mental conditions, often threatened to kill all of them, but did not threaten appellant specifically. Appellant related having extensive exposure to violence at work and patients who were combative secondary to delirium, dementia, or psychiatric disorders.

On February 3, 2014 management accused appellant of "making out with an [employing establishment] police officer." She overheard coworkers talking about it in a restaurant. The supposed incident occurred when appellant's husband was talking to her as they sat in their vehicle. A police officer, L.S., asked her husband to move the car because an ambulance was arriving. Both appellant and the police officer, who was black, received RFIs.

Appellant's father died from cancer in October 2012 at the same time she was treating a dying cancer patient. She advised that seeing death frequently "does something to a person (mentally) and it began to get harder and harder for me." Appellant described other medical

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<sup>3</sup> Counsel advised on March 16, 2016 that she was attaching supporting evidence. However, there was no evidence accompanying the correspondence.

conditions, including ovarian cysts and fibroids, which she believed were caused or aggravated by stress.<sup>4</sup>

Regarding the accusation about appellant and a police officer, on February 3, 2014, a supervisor issued appellant an RFI about an incident that occurred when she was engaged in “actions of a sexual nature” with an employing establishment police officer in the parking lot while on duty. In an e-mail dated February 20, 2014, R.K., a union representative, indicated that there were still rumors that appellant and a police officer had engaged in inappropriate sexual behavior. He noted that the police had proven the rumor was unfounded, but that it continued to spread.

In a March 2, 2015 memorandum, L.S., the police officer who was the other subject of the rumor, related that on February 11, 2014 a coworker told him that he had heard that he and appellant had engaged in sexual misconduct. He noted that an investigation proved that this allegation was unfounded. L.S. expressed concern that this was an attempt to denigrate his character or that of the other party and related, “It is in my opinion that the [ER] staff is deliberately spreading false and derogatory statements of which fall under the premise of defamation of character as all that is being purported is false information.”

On March 3, 2016 S.M., a coworker, advised that appellant complained to her about stress and her treatment at work.

In a March 11, 2016 statement, A.H., a coworker, described incidents in the ER that she considered discrimination. She related that appellant was the first black registered nurse in ER and that the other nurses would not care for her patients. A.H. maintained that appellant received the most critical patients and that she was injured when another nurse angered a patient. Coworkers gossiped and complained about appellant and tried to have her removed.

E.M., a coworker, in an undated statement received by OWCP on March 23, 2016, related that the ER at the hospital was “a very fast paced, stressful environment. A large number of veterans see[n] in the ER present with large number of suicidal/homicidal chief complaints. It is not uncommon for staff members in the ER to be physically and verbally assaulted by patients. Due to these highly stressful situations, there are times when the atmosphere in the ER is very hostile and unpleasant to work throughout the shift.” E.M. advised that, on October 15, 2015, appellant was upset about discrimination in the ER.

Appellant received numerous RFI’s from supervisors regarding matters such as leaving the ER, being wrapped in a blanket, and patient care.

T.M., a coworker, provided an undated statement, received by OWCP on March 28, 2016, in which she related that she heard a rumor that appellant was involved with an ER security guard. C.S., another coworker, provided an undated statement indicating that management knew a nurse had made false allegations regarding appellant and others. K.N., a medical clerk, advised that coworkers on appellant’s ER shift disliked her, refused to help her with patients, and whispered derogatory comments about her under their breath. Other nurses stated that appellant was a snitch for the nurse manager and spread a rumor about her and a police officer in a parking lot. K.N. and

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<sup>4</sup> Appellant also provided supporting medical evidence.

appellant both witnessed a nurse speaking in an inappropriate way to a patient, but appellant was afraid of retaliation if she gave a statement regarding the incident.

On April 19, 2016 counsel requested reconsideration. She asserted that appellant established an emotional condition due to dealing with violent and dying patients, which was a reaction arising from the performance of her job duties under *Lillian Cutler*.<sup>5</sup> Counsel further asserted that appellant established harassment from being falsely accused of sexual misconduct with a police officer while at work. She argued that the medical evidence established that appellant sustained an emotional condition due to compensable employment factors.

Appellant submitted additional evidence with her request for reconsideration, including incident report case numbers indicating that on June 20, 2014 a patient allegedly threatened harm to an ER staff member, and on December 7, 2014 a patient assaulted an ER staff member causing injury. She submitted an April 14, 2014 letter, in which she advised J.G., a supervisor, that she felt hostility as an African American working in the ER, noting that coworkers asked if she was a “snitch” and indicated that she heard offensive racial comments, including about the presidential election and cases currently in the news. Appellant also noted that other nurses referred to a physician as a “little brown man.” One nurse stated that she was more black than appellant because appellant did not eat chicken or barbeque, which she found “blatant stereotyping.” Appellant alleged that she got RFIs based on unsupported rumors.

On April 14, 2014 the employing establishment denied appellant’s Step 2 grievance after finding that there was no evidence management violated articles of a contract. The employing establishment advised that a fact-finding did not substantiate allegations that she had engaged in sexual misconduct with a police officer on duty.

On March 19, 2015 a nurse advised that appellant was sitting at a nurse station on March 14, 2015 wrapped in a blanket with her eyes closed. After a fact finding, on June 8, 2015 the employing establishment found that she was sitting wrapped in a blanket apparently asleep at the nurses’ station and that two of her patients did not receive proper monitoring of their vital signs. It issued a reprimand on November 8, 2015.

In a February 27, 2016 e-mail, R.K. indicated that management issued appellant several RFIs in February 2014, one of which involved a claim that she was in a car with a police officer. He related that he reported to her supervisor as an eyewitness that she was in a vehicle with her husband and not a police officer, but the rumors continued. R.K. related that management made no effort to squelch the false rumors.

In an e-mail dated May 19, 2014, received by OWCP on April 19, 2016, appellant advised management that at night on May 13, 2014 she was working at a computer in the triage room with the door open and that when she looked up a “highly agitated” patient, who was a murder suspect, was standing over her. She recommended that the doors to the triage stay closed.

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<sup>5</sup> 28 ECAB 125 (1976).

OWCP, by letter dated October 20, 2016, requested that the employing establishment provide comments from a supervisor with knowledge of the accuracy of appellant's contentions. It further asked for a copy of her position description.

The position description for a registered nurse provided that the "incumbent may occasionally be exposed to patients who are combative secondary to delirium, dementia, or psychiatric disorders."

In a November 3, 2016 statement, L.D., an acting nurse manager, disagreed that appellant withdrew from a Master's program due to stress and anxiety, noting that the withdrawal occurred after a March 30, 2015 disciplinary action. She advised that she did not know if appellant had complained about exposure to physical or mental abuse by patients. L.D. indicated that she had a work injury on January 14, 2014, but did not identify how the injury occurred. She related that the employing establishment confirmed "that the complainant[s] timing of allegations immediately followed unfounded allegations of unprofessional behavior filed against her on March 3, 2014" and that she submitted an April 14, 2014 e-mail about concerns with stress due to her work environment. Management responded by providing cultural sensitivity training. L.D. advised that appellant's harassment and bullying allegations were vague and could not be substantiated. She noted that about 5 to 10 percent of ER visits were for mental health treatment and quoted the position description about exposure to combative patients. It was noted that on May 13, 2014 appellant had not been enclosed in a triage room with a patient because there were two doors. After the incident, management installed locking doors. L.D. confirmed that in 2015 management investigated allegations that a nurse verbally abused an African American veteran, but that appellant did not "validate what she witnessed. Based on other statements received, progressive disciplinary action was taken." She maintained that management investigated all violations of procedures with RFIs, noting that it issued 222 RFIs to ER staff in 2015 and 130 RFIs to ER staff in 2016. Regarding the death of a patient, L.D. advised that appellant received a letter of admonishment on March 30, 2015 when appellant failed to obtain a complete assessment of a patient in her care and the patient coded upon transfer. She performed her job duties in a satisfactory manner until November 11, 2015, when her physician opined that she could not work in patient care. L.D. listed the dates appellant received verbal counseling regarding leave issues and performance issues.

By decision dated December 14, 2016, OWCP denied modification of its March 22, 2016 decision. It found that appellant had not established any compensable employment factors.

On appeal counsel maintains that appellant has established an emotional condition in the performance of duty. She questions why OWCP accepted a statement from L.D., who had only acted as a supervisor for two months and had no actual knowledge of the alleged incidents. Counsel asserts that it was the "very core of performing [appellant's] job duties that contributed to her conditions...." She notes that, caring for volatile patients was part of her work duties, she had to withdraw from a Master's program, and that RFIs contributed to her stress performing her employment duties. Counsel also maintains that she was falsely accused of acting improperly with

a police officer, a compensable work factor under *William Groner*.<sup>6</sup> She further asserts that the medical evidence supports appellant's claim.

### **LEGAL PRECEDENT**

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>7</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 her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>8</sup>

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.<sup>9</sup> However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.<sup>10</sup> In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.<sup>11</sup>

For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.<sup>12</sup> A claimant must establish a factual basis for her allegations with probative and reliable evidence. Grievances and Equal Employment Opportunity complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.<sup>13</sup> The issue is whether the claimant has submitted sufficient evidence under FECA to establish a factual basis for the claim by supporting his or her allegations with

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<sup>6</sup> Docket No. 04-0628 (issued September 2, 2004). In *Groner*, the Board found that a disciplinary action was based, in part, on a false allegation and that the false allegation constituted a compensable work factor.

<sup>7</sup> *Supra* note 2; *Trudy A. Scott*, 52 ECAB 309 (2001); *supra* note 5.

<sup>8</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>9</sup> See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *reaff'd on recon.*, 42 ECAB 556 (1991); *Thomas D. McEuen*, 41 ECAB 387 (1990).

<sup>10</sup> See *William H. Fortner*, 49 ECAB 324 (1998).

<sup>11</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>12</sup> See *Michael Ewanichak*, 48 ECAB 364 (1997).

<sup>13</sup> See *Charles D. Edwards*, 55 ECAB 258 (2004); *Parley A. Clement*, 48 ECAB 302 (1997).

probative and reliable evidence.<sup>14</sup> The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by OWCP and the Board.<sup>15</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>16</sup> If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.<sup>17</sup>

### ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. OWCP denied her emotional condition claim as she had not established any compensable employment factors. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.

Appellant primarily attributed her condition to prolonged exposure to patient abuse, both physically and mentally. As part of her federal employment, she dealt with mentally ill, abusive, suicidal, and drug-addicted patients. In 2014, a patient told appellant that he wanted to die and subsequently committed suicide. Schizophrenic patients and patients with PTSD would arrive at the ER screaming, spitting, and threatening bodily harm. On May 13, 2014 a patient who had recently killed someone stood over appellant in the triage room. Usually, around five patients per shift were suicidal and some patients came in kicking and biting. Many patients were addicted to drugs and were upsetting, disrespectful, and sometimes violent. One patient pushed a coworker onto appellant, injuring her ankle. Appellant maintained that she reacted adversely from repeatedly witnessing violent and hostile behavior, and also experienced sadness dealing with dying patients.

The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable.<sup>18</sup> Appellant's job duties, as set forth in the position description provided by the employing establishment, included caring for combative

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<sup>14</sup> See *James E. Norris*, 52 ECAB 93 (2000).

<sup>15</sup> *Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>16</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>17</sup> *Id.*

<sup>18</sup> *Trudy A. Scott*, 52 ECAB 309 (2001).



patients who may be mentally ill, delirious, or demented. E.M., in a March 23, 2016 statement, confirmed that many patients had suicidal or homicidal complaints and verbally or physically abused the staff in the ER. Where a claimed disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to an imposed employment requirement, the disability comes within the coverage of FECA.<sup>19</sup> As appellant attributed her emotional condition to exposure to mental and physical abuse by patients in the course of her employment duties, she has identified a compensable employment factor under FECA.

Appellant also attributed her stress to receiving numerous RFIs, disciplinary action, and losing her scholarship for a Master's program. In *Thomas D. McEuen*,<sup>20</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 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 a statement dated November 3, 2016, L.D. provided a list of disciplinary actions issued to appellant and noted that all staff received numerous RFIs to evaluate violations of procedure. She indicated that appellant received verbal counseling for leave and performance issues and a March 30, 2015 letter of admonishment for failing to perform a complete patient assessment. Appellant has not submitted any evidence corroborating her allegation that she wrongfully received disciplinary action, RFIs, or the loss of her scholarship and thus has not established error or abuse by the employing establishment with respect to these matters.<sup>21</sup>

Appellant additionally contended that she experienced harassment and discrimination by management and coworkers. Harassment and discrimination by supervisors and coworkers, if established as occurring and arising from the performance of work duties, can constitute a compensable work factor.<sup>22</sup> A claimant, however, must substantiate allegations of harassment and discrimination with probative and reliable evidence.<sup>23</sup>

Appellant maintained that she was bullied and discriminated against due to her race and witnessed a racial incident where another nurse verbally abused an African American patient. She alleged that coworkers asked if she was a "snitch" because a black manager hired her. Appellant notified her supervisor on April 14, 2014 that she heard offensive racial comments while at work. On March 11, 2016 A.H. indicated that other nurses did not assist her with nursing care. Another coworker, K.N., indicated that appellant's coworker did not like her, would not help her, made

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<sup>19</sup> *Robert Bartlett*, 51 ECAB 664 (2000); *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>20</sup> See *Thomas D. McEuen*, *supra* note 9.

<sup>21</sup> See *L.M.*, Docket No. 15-0854 (issued June 22, 2015).

<sup>22</sup> *T.G.*, 58 ECAB 189 (2006); *Doretha M. Belnavis*, 57 ECAB 311 (2006).

<sup>23</sup> *C.W.*, 58 ECAB 137 (2006); *Robert Breeden*, 57 ECAB 622 (2006).

disparaging comments, and stated that she was a snitch. In her November 3, 2016 statement, L.D. related that management had responded to appellant's April 14, 2014 e-mail, indicating that they provided cultural sensitivity training to the staff at meetings. She also confirmed that progressive discipline was taken regarding the contention that a nurse verbally abused an African American veteran. The witness statements provide support for appellant's contention that she was referred to as a snitch and that a nurse abused an African American veteran. As appellant has established her allegations of harassment and discrimination with reliable and probative evidence, she has a compensable work factor.<sup>24</sup>

Appellant further alleged that she was falsely accused of sexual misconduct with L.S., a police officer, in the parking lot of the employing establishment. She maintained that she was sitting in a vehicle with her husband rather than L.S. On February 3, 2014 a supervisor requested that appellant complete a RFI about an incident that occurred when she engaged in sexual acts with a police officer in the parking lot during her work shift. L.S., on March 2, 2015, noted that an investigation revealed that he was not in the car with her, but that rumors continued. He asserted that the ER staff was deliberately spreading false statements. Other coworkers provided statements confirming hearing that appellant and a police officer were in a vehicle together. R.K., in a February 27, 2016 e-mail, indicated that he witnessed her in the car with her husband rather than L.S., noting that management had not tried to stop the false allegation. L.D., in a November 3, 2016 statement, generally indicated that "unfounded allegations of unprofessional behavior" were made against appellant on March 3, 2014. Appellant has factually established her assertion that she was falsely accused of sexual misconduct with a coworker and that her coworkers spread false statements about the alleged misconduct. Accordingly, the Board finds that appellant has established harassment and discrimination in being falsely accused of sexual misconduct.<sup>25</sup>

Appellant has established as compensable work factors that she experienced stress due to prolonged exposure to physical and mental abuse by patients during the performance of her regular work duties under *Cutler* and that she experienced harassment and discrimination. As OWCP found that there were no compensable employment factors, it did not analyze or develop the medical evidence. The case will be remanded to OWCP for this purpose.<sup>26</sup> Following this and such further development as OWCP deems necessary, it should issue an appropriate decision.

### **CONCLUSION**

The Board finds that the case is not in posture for decision.

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<sup>24</sup> See *K.B.*, Docket No. 11-0384 (issued April 6, 2012).

<sup>25</sup> See generally *I.D.*, Docket No. 16-0581 (issued December 12, 2016) (where the Board found that a claimant established sexual harassment when a coworker released a video of her of a sexual nature to coworkers).

<sup>26</sup> See *Robert Bartlett*, 51 ECAB 664 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 14, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: June 26, 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