

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

D.G., Appellant)	
)	
and)	Docket No. 17-0514
)	Issued: May 4, 2018
U.S. POSTAL SERVICE, EAST LIBERTY)	
STATION, East Liberty, PA, Employer)	
)	

Appearances:
Joseph J. Chester, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 3, 2017² appellant, through counsel, filed a timely appeal from a July 8, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the

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

² Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from July 8, 2016, the date of OWCP's last decision was January 4, 2017. Since using January 9, 2017, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is January 3, 2017, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.⁴

ISSUE

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

On appeal counsel contended that OWCP failed to follow the *William A. Couch*⁵ remand order from the Board, that the employing establishment failed to submit evidence contradicting appellant's allegations, and that there was no independent medical evaluation by OWCP.

FACTUAL HISTORY

This case has previously been before the Board. In its July 29, 2015 order,⁶ the Board set aside the July 30, 2014 merit decision and remanded the case for OWCP to consider all the evidence in the record. The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On June 25, 2013 appellant, then a 52-year-old manager of customer services, filed an occupational disease claim (Form CA-2) alleging that he developed shingles, nose bleeds, stress, anxiety, depression, nausea, high blood pressure, heart palpitations, insomnia, and poor concentration due to "cumulative stressful conditions" including administrative abuse by management. He noted that he first became aware of his condition on May 30, 2013 and first attributed his condition to his employment on that date.

Appellant provided a June 6, 2013 note from Dr. Howard P. Friday, a licensed clinical psychologist, who advised that appellant was totally disabled due to a mental health condition since May 31, 2013.

In a July 12, 2013 narrative statement, appellant noted working at the employing establishment for 31 years in a variety of jobs. He provided background information regarding stress-related claims due to work from 2000 through 2008. In 2008, appellant applied for his current position and filed an Equal Employment Opportunity (EEO) complaint regarding age discrimination practices. In 2008, he began working as a manager East Liberty, Pa. Appellant alleged that from 2008 through 2012 he was denied detail assignments and promotions. He asserted that younger candidates were selected despite his seniority and qualifications. Appellant alleged a discriminatory pattern with regard to age, gender, and retaliation for special details and

³ 5 U.S.C. § 8101 *et seq.*

⁴ Together with his appeal request, appellant, through counsel, submitted a timely request for oral argument pursuant to 20 C.F.R. § 501.5(b). By order dated May 9, 2017, the Board exercised its discretion and denied the request as appellant's arguments on appeal could be adequately addressed in a decision based on a review of the case as submitted on the record. *Order Denying Request for Oral Argument*, Docket No. 17-0514 (issued May 9, 2017).

⁵ 41 ECAB 548 (1990).

⁶ *Order Remanding Case*, Docket No. 15-0656 (issued July 29, 2015).

higher level promotions. L.H., a manager, recommended appellant for a detail assignment as a manager, in plant support, EAS-25, but his management denied this. C.S., a manager, requested appellant for a similar detail in November 2011, but management denied the detail explaining that appellant was needed in his job. Appellant alleged that he was pulled from detail assignments and put back at East Liberty Station because the acting managers had unacceptable performance or left the job. He asserted that he should not be kept from career developing opportunities, assignments, and details because of his excellent performance at the East Liberty Station.

Appellant alleged on May 15, 2012 he conducted street supervision with his supervisor, M.G., on a carrier, R.R. He and M.G. noted numerous time-wasting activities and directed R.R. in completing his duties. Appellant refused to comply with these directives twice. He and M.G. then informed R.R. that the discussion would continue at the employing establishment. After returning to the employing establishment, appellant received a telephone call from Postmaster J.M., who inquired if appellant had sworn at R.R. He denied the allegation. Later that day, manager M.P. removed appellant from his position due to 10 to 15 customer complaints regarding the interactions with R.R. Appellant was immediately detailed as an operational industrial engineer (OIE) in a different employing establishment location. He was then removed from the OIE position and “bounced around the district being placed anywhere that someone was needed for a task.” Appellant alleged that employing establishment procedures were not followed in these assignments. He was then assigned to a specific Christmas 2012 project in an OIE position. Appellant alleged that he was required to work 22 hours each Monday for “Monday Night Priority Processing” in December 2012.

Appellant interviewed for an opening in an EAS-23 OIE position, and L.H. selected him based on his qualifications, performance, merit, and experience. R.C., the district manager, did not approve appellant’s selection. Appellant asserted that L.H. informed him that this was due to his EEO activity. He alleged retaliation and discrimination. The employing establishment reposted EAS-23 OIE position and chose a different selecting official, R.J., a plant manager. Appellant asserted that the reposting and reassignment was not within the employing establishment protocol and procedures for selection process. He alleged that this was unlawful retaliatory and discriminatory practices as well as error by R.C. On February 29, 2013 appellant returned to his manager position at East Liberty Station. He interviewed for the reposted EAS-23 OIE position in March 2013. The employing establishment selected a different employee for this job on May 3, 2013. Appellant noted that he completed his industrial engineer education in 1983, while the selected employee graduated in 2009. He asserted that selecting a significantly less qualified candidate was “blatant ... unlawful retaliation and discrimination.” Appellant attributed his current physical and emotional conditions to this “wrong-doing.”

On June 15, 2013 M.M. witnessed appellant experience a nose bleed. He reported that appellant was upset over the selection process and listed appellant’s assertions of high blood pressure, headaches, and shingles. Appellant submitted a witness statement from V.N., dated June 16, 2013 which asserted that appellant was an enthusiastic and committed employee, but that “his usual lively attitude became lackluster” after he was denied promotion. In a June 19, 2013 statement, M.T., a friend, opined that appellant’s demeanor had changed and attributed this to appellant’s career.

In a July 8, 2013 statement, R.C., the district manager, disagreed with appellant's allegation about his lack of promotion. He disputed that appellant was denied promotion based on his EEO activity. R.C. asserted that he had no knowledge of appellant's prior EEO activities and did not discuss this with L.H. He alleged that the first posting was not awarded because L.H. did not follow proper procedures including interviewing candidates and receiving prior approval before discussing the selection with any candidate. R.C. reported "The posting was cancelled and not awarded since integrity of the process was compromised." The position was reposted in a different location to better serve the employing establishment. Appellant applied and was interviewed, but was not selected as he was not the most qualified candidate. R.C. asserted that the successful candidate was selected in accordance with the regulations governing the filling of nonbargaining unit positions. He further noted that appellant had not occupied a long-term OIE position for more than 15 years and had only a few short-term details in an OIE position. R.C. also noted that appellant's performance as the manager in the East Liberty Station was below the required levels.

In a July 15, 2013 letter, OWCP noted that appellant had two previous stress claims that it had denied.⁷ It requested additional factual and medical evidence in support of his claim and afforded him 30 days to respond. OWCP also requested additional information from the employing establishment on the same date.

K.P., the employing establishment's human resources manager, responded on August 12, 2013 and denied discriminating against appellant. He noted that there were numerous employee and customer complaints against appellant. K.P. also noted that appellant had received disciplinary and predisciplinary actions in 2010, 2011, and 2012.

On July 19, 2013 M.P. denied instructing appellant to perform street supervision on R.R. with M.G. and noted that she instructed him not to perform this street supervision. She noted that a customer submitted a statement supporting the carrier's allegation that appellant screamed and cursed at him on the street. M.P.'s superior instructed her to remove appellant as manager until the incident was investigated. She reported that appellant was moved several places throughout the investigation and worked for L.H. The completed investigation demonstrated no actual proof of the allegations and appellant returned to his position. M.P. denied that appellant returned due to unacceptable performance from his replacement, instead noting that the employing establishment was short-staffed with management personnel. The employing establishment provided a June 30, 2012 petition signed by more than 60 employees alleging that appellant created a hostile work environment and an imminent safety issue.

On August 1, 2013 Dr. Dawn M. Sarver, an osteopath, diagnosed malignant hypertension. She noted that appellant had a history of high blood pressure. Appellant believed that his high blood pressure was due to work stress and aggravation. Dr. Sarver noted that he had obsessive thoughts about the wrong doing at work with repetitive sentences.

Dr. Friday examined appellant on August 13, 2013 and diagnosed generalized anxiety disorder and major depressive disorder. He opined that appellant's adjustment problems were directly related to stress in appellant's work environment.

⁷ These other claims are not before the Board on the present appeal.

Appellant submitted an additional statement on August 13, 2013 and alleged that R.C. denied him a promotion with no valid reason following a valid selection process. He disagreed that policy dictated the denial of his promotion and noted that R.C. denied his promotion in December 2012 and that the employing establishment policy referenced by R.C. was not established until May 21, 2013. Appellant submitted a copy of the employing establishment's policy regarding vacancies dated May 21, 2013 which noted that all selections of OIE vacancies should be submitted to the area office. In a separate August 13, 2013 statement, he noted that this policy was made effective in January 2013, but not implemented until May 21, 2013 as a result of his claims. Appellant alleged that R.C. did not have permission to move the OIE position, but did so to change the selection official. He noted that he had over 4 years of details in engineering jobs within the past 15 years contrary to Robert Cintron's allegations.

On August 28, 2013 Dr. Sarver noted recurrent depression/adjustment disorder in context of work stressors. She diagnosed major depression, single episode.

In a September 27, 2013 decision, OWCP found that appellant had not established compensable work factors as a cause of his claimed conditions. Thus, appellant had not established an injury in the performance of duty. He requested an oral hearing from OWCP's Branch of Hearings and Review on October 4, 2013.

Dr. Friday found that appellant was totally disabled from work commencing May 31, 2013, until he allowed appellant to return to work on October 31, 2013. He recommended that appellant perform "a nonmanagement, support level position." Dr. Friday repeated these recommendations and restrictions on October 29, 2013.

Appellant testified during the oral hearing before an OWCP hearing representative on May 14, 2014. He noted that he returned to work on February 28, 2014. Appellant described the street observation of R.R. and asserted that M.P. assigned this activity. He noted that following R.R.'s false allegations he was removed from his position. Appellant was detailed for three months in the National Distribution Center (NDC) beginning in May 2012 and then assigned to six different jobs within four months from June to October 2012. He alleged that no other employees were ever moved this frequently. Appellant noted that he was disciplined due to the incident with M.P. and received a letter for improper conduct which was later expunged. Regarding his application for promotion in December 2012 as an OIE level 23, he noted that his prior position was a level 22 management status. Appellant noted that he was interviewed and selected by L.H., but R.C. did not agree to his selection. He testified that L.H. told him that R.C. did not want to promote him because of his EEO activities. Appellant filed an EEO complaint regarding the denial of promotion. He noted that the employing establishment reposted the position in February 2013, at a different location and with a different selecting official. Appellant interviewed for the job again, but the position was awarded to an individual with less than three years of experience while appellant had over 30 years of experience. He noted that after he was denied the promotion on May 5, 2013 he had a nervous breakdown.

Appellant stopped work on May 31, 2014 based on Dr. Friday's recommendation. He noted that he served acting engineer until February 2013, when R.C. returned him to his managerial position. Appellant alleged that, from February to May 2013, while he served as manager of customer service, M.P. harassed him with false statements and micro-management.

M.P. was in his building every day and stopped by unannounced. Appellant testified that he did not work from June to February 2014 and used sick leave. In October 2013, he requested reasonable accommodations which the employing establishment denied. Appellant disputed R.C.'s account of events regarding the denial of the OIE promotion. He noted receiving a letter of warning on October 10, 2013 for unsatisfactory attendance while he was using his accumulated sick leave. Appellant alleged that this was harassment. He further alleged that D.C., manager of labor, improperly wrote the letter of warning which should have been composed by M.P. Appellant alleged that D.C. forged M.P.'s electronic signature on October 4, 2013. He alleged that M.P. informed him that she did not want to send the letter of warning. Appellant noted that he believed that the letter of warning was removed from his personnel file. He testified that he was required to conduct street supervisions and that he had begun disciplinary processes on R.R. for his failure to make his return time.

Following the hearing, counsel submitted additional evidence. L.H. completed a statement dated October 7, 2013 and asserted that she followed proper procedures when she selected appellant for the OIE 23 position. She reported that there was no requirement at the time of the interview to have an area operational industrial engineer present for the interview and the initial selection process. L.H. noted, "All proper procedures were followed during the interview and initial selection process." She noted that appellant was not interested in downgrading to an OIE 21 position and noted that she was instructed to end his detail assignment to the industrial engineer position.

Appellant provided an October 4, 2013 letter with M.P.'s electronic signature indicating that she was investigating his unavailability for duty. M.P. directed him to attend an October 9, 2013 interview. Appellant received an October 10, 2013 letter of warning for unsatisfactory attendance signed by her. On November 8, 2013 he asked that the letter be immediately rescinded. In a November 14, 2013 letter, M.P. noted that she was investigating appellant's long-term and on-going unavailability for duty. She directed him to report for an administrative interview on November 20, 2013.

M.P. completed a statement on June 18, 2014 in response to appellant's testimony and denied visiting his duty station daily from February to May 2013. She noted that she did not need to announce her office visits to managers that she supervised.

D.C. reviewed the incident with R.R. in a statement dated June 18, 2014 and noted that once the evidence was gathered that there was insufficient proof to support charges of misconduct by appellant. He noted that M.P. instructed appellant not to perform street observations. D.C. noted that appellant was not entitled to verbal warnings prior to the letter of warning for failure to maintain regular attendance. He noted that he prompted and advised M.P. "to do her job, to enforce postal rules and finally begin to address [appellant's] ongoing unavailability for work." D.C. admitted that he drafted and sent the October 4, 2013 written warning under M.P.'s electronic signature which she later rescinded and issued another with an actual signature. He denied that any rules were broken by mailing a written warning under electronic signature.

K.P. responded to appellants' allegations during the hearing and noted that the employing establishment was justified in denying the selection of appellant for the OIE job as L.H. did not follow proper procedures. He noted that appellant had applied for 20 positions since 2012.

Appellant withdrew from 3, 6 were cancelled, and he was not selected for 11 of these positions. While on leave, he applied for and interviewed for six higher level positions.

Appellant submitted L.H.'s affidavit in his EEO claim. L.H. noted that she selected him for the OIE 23 position, and that two additional concurrences were required, the human resources manager, K.P., and the district manager, R.C. She reported that the district manager R.C., did not concur with appellant's selection. L.H. noted that the district manager noted that she could offer appellant an OIE 21 position, but as this was a downgrade appellant was not interested. She noted following employing establishment guidelines as she had been trained. L.H. notified appellant that the managers did not agree with her decision and told him that she did not know why. She noted that she was not aware of appellant's prior EEO activity when she selected him, but later became aware of it. L.H. noted, "The District Manager noted that the complainant had cost this organization too much money in EEOs and later the complainant stated to me that he had prior EEO activity...."

Appellant provided a memorandum dated December 17, 2012 from L.H. to R.C., which addressed the EAS-23 position and the recommendation of appellant for the position. L.H. reviewed the three other candidates and selected appellant based on his extensive project management skills and network distribution center experience. The human resources manager, K.P., denied the recommendation.

R.C. completed an EEO investigative affidavit and noted that comparative analysis did not support appellant's promotion and that appellant should not have been told that he was selected until the approval process was completed. He denied any knowledge of appellant's prior EEO activity. In response to the question of whether R.C. had made the statement that "complainant has cost this organization too much money in EEOs," R.C. replied, "[Appellant's] performance and the cost of moving him to other assignments were made in private to [L.H.] during a conversation at the NDC. [Appellant] had issued in previous assignments that resulted in poor performance issues. [Appellant] was currently detailed as a result of poor performance to the NDC. I was asking [L.H.] about his performance. We discussed the interview package. I noted [that] I had not seen the package and would have to review prior to approving."

In a July 30, 2014 decision, OWCP's hearing representative found that appellant had not established compensable employment factors and affirmed the denial of his claim.

Appellant appealed to the Board. In a July 29, 2015 decision, the Board found that OWCP's hearing representative failed to consider all the evidence submitted in reaching a decision. The Board remanded for a *de novo* decision.⁸

Following the Board's July 29, 2015 decision, OWCP issued a decision on September 8, 2015 and denied appellant's claim, finding that he had not established an employment factor in the performance of duty. It found that the OIE EAS-23 position posting and hiring was an administrative or personnel matter. OWCP further determined that appellant's reaction to not receiving the job was not compensable. Appellant, through counsel, requested an oral hearing on

⁸ *Supra* note 5.

October 6, 2015. Counsel subsequently requested a review of the written record in lieu of an oral hearing.

By decision dated July 8, 2016, an OWCP hearing representative affirmed the September 8, 2015 decision finding that appellant had not met his burden of proof to establish that he sustained an injury in the performance of duty. She determined that he had not established discrimination, harassment, abuse, or wrongdoing constituting a factor of employment. OWCP's hearing representative further determined that appellant had not established a compensable factor of employment and that OWCP was not required to consider the medical evidence.

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*, the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.⁹ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.¹⁰ 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.¹¹ In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a personal 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.¹²

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA.¹³ Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹⁴ A claimant must support his or her allegations with probative

⁹ 28 ECAB 125 (1976).

¹⁰ See *Robert W. Johns*, 51 ECAB 136 (1999).

¹¹ *Supra* note 8.

¹² *Id.*

¹³ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁴ *Kim Nguyen*, 53 ECAB 127 (2001). See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon*; 42 ECAB 566 (1991).

and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹⁵

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.¹⁶

ANALYSIS

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

Appellant has not attributed his emotional condition to difficulties in carrying out his employment duties and, therefore, has not implicated a compensable factor of employment under *Cutler*.¹⁷

Rather, appellant has attributed his emotional condition to administrative actions of the employing establishment which he asserted were erroneous. In *Thomas D. McEuen*,¹⁸ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA as such matters pertain to procedures and requirements of the employing establishment and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under FECA would attach if the facts surrounding the administrative or personnel action established error or abuse by employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated, and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁹

Appellant alleged that the employing establishment erred in removing him from his position pending an investigation regarding his interactions with R.R. Investigations are considered to be an administrative function of the employing establishment as they are not related to an employee's day-to-day duties or specially assigned duties or to a requirement of the employment. The employing establishment retains the right to investigate an employee if wrongdoing is suspected. An employee's disagreement with an investigation is not covered under

¹⁵ *Roger Williams*, 52 ECAB 468 (2001).

¹⁶ *E.C.*, Docket No. 15-1743 (issued September 8, 2016); *Alice M. Washington*, 46 ECAB 382 (1994).

¹⁷ *Supra* note 8.

¹⁸ *Supra* note 13.

¹⁹ *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

FECA, absent a showing of error of abuse on the part of the employing establishment.²⁰ As appellant has submitted no corroborating evidence supporting that the employing establishment erred in conducting an investigation regarding the events of May 15, 2012 and his interactions with R.R. which resulted in customer complaints, he has not established a compensable factor of employment with regard to this event.

Appellant also alleged that he was denied him unspecified promotions or assignments. He attributed his condition to his assignment to numerous positions from May through December 2012. Appellant asserted that the employing establishment did not establish its procedures in these assignments. He testified that he was assigned to six different positions within four months from June to October 2012. The denial of promotion or disagreement with assignments is not a compensable factor of employment as it is administrative in nature and does not arise from the employee's duties. Rather, it is considered self-generated as it amounts to frustration over not being able to hold a particular position or to work in a particular environment.²¹

Appellant alleged error or abuse by the employing establishment in regard to the denial of his promotion to the EAS-23 OIE position. He asserted that L.H. selected him based on his qualifications, but that R.C. did not approve his selection due to his EEO activities. Appellant also alleged that the employing establishment violated its procedures.

R.C. denied appellant's assertion that he declined to promote him to the EAS-23 OIE job as result of appellant's EEO activity. He also denied any knowledge of appellant's involvement with EEO complaints. R.C. indicated that appellant did not receive the promotion because L.H. had not followed proper procedures and the integrity of the process was compromised. K.P., the human resources manager, concurred that L.H. did not follow proper procedures.

L.H. asserted that she followed procedures in selecting appellant. Her affidavit included the assertion, "The District Manager [R.C.] noted that the complainant had cost this organization too much money in EEOs and later the complainant stated to me that he had prior EEO activity..." R.C. noted, "[Appellant's] performance and the cost of moving him to other assignments were made in private to [L.H.] during a conversation at the NDC. [He] had issues in previous assignments that resulted in poor performance issues. [Appellant] was currently detailed as a result of poor performance to the NDC. I was asking [L.H.] about his performance. We discussed the interview package. I noted [that] I had not seen the package and would have to review prior to approving."

The Board finds that appellant has not established a compensable factor with regard to the denial of promotion to the EAS-23 OIE position. While L.H. submitted a statement supporting her allegations, R.C. and K.P. offered an acceptable reason for denying appellant the promotion, that L.H. failed to follow proper procedures and that the needs of the service required the position in a different location. Appellant did not provide any independent or probative evidence to establish that the employing establishment erred or was abusive in the handling of his work

²⁰ *C.P.*, Docket No. 16-0018 (issued February 19, 2016); *K.W.*, 59 ECAB 271 (2007).

²¹ *J.M.*, Docket No. 16-0312 (issued June 22, 2016); *Martha L. Watson*, 46 ECAB 407, 418 (1995).

assignments.²² The Board does not find error or abuse in this action of the employing establishment.

Appellant alleged error or abuse in the letter of warning asserting that D.C. improperly wrote it using M.P.'s electronic signature. D.C. admitted writing the letter of warning, but denied that this action broke employing establishment rules. Disciplinary actions such as letters of warning are considered administrative actions.²³ Appellant did not provide any probative evidence to establish that D.C. erred or was abusive in issuing the letter of warning.²⁴

Appellant has also attributed his emotional condition to discrimination based on age and gender. He also alleged that M.P. harassed him from February to May 2013 by false statements and micromanagement. Appellant asserted harassment through the letter of warning. M.P. denied daily visits to his duty station from February to May 2013 and noted that she did not need to announce her office visits to her supervisees. The employing establishment denied that appellant was subjected to harassment or discrimination and he has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors. Appellant alleged that supervisors made statements and engaged in actions which he believed constituted harassment and discrimination, but he provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.²⁵ Thus, he has not established a compensable employment factor under FECA with respect to the claimed harassment and discrimination.

The Board finds that appellant has failed to establish a compensable factor under FECA. Consequently, appellant has not met his burden of proof to establish an injury in the performance of duty. Since no compensable factors of employment have been established, the Board will not consider the medical evidence of record.²⁶

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 his burden of proof to establish that he developed an emotional condition in the performance of duty.

²² *D.C.*, Docket No. 16-1870 (issued May 19, 2017).

²³ *L.R.*, Docket No. 14-1990 (issued January 17, 2015).

²⁴ *E.C.*, Docket No. 15-1743 (issued September 8, 2016).

²⁵ *J.T.*, Docket No. 16-1424 (issued March 7, 2017).

²⁶ *Supra* note 23; *A.K.*, 58 ECAB 119 (2006).

ORDER

IT IS HEREBY ORDERED THAT the July 8, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 4, 2018
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board