

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

<b>M.R., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 18-0304</b>
	)	<b>Issued: November 13, 2018</b>
<b>DEPARTMENT OF THE ARMY, RESERVES</b>	)	
<b>COMMAND, Fort McCoy, WI, Employer</b>	)	
	)	

*Appearances:*  
*Frederick M. Neiswender, Esq., for the appellant<sup>1</sup>*  
*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 November 27, 2017 appellant, through counsel, filed a timely appeal from an August 30, 2017 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 the 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 met her burden of proof to establish an emotional condition in the performance of duty.

## FACTUAL HISTORY

On December 9, 2015 appellant, then a 55-year-old civilian unit administrator technician and a staff sergeant (SSG) with the U.S. Army Reserves, filed a traumatic injury claim (Form CA-1)<sup>3</sup> alleging that she sustained an emotional condition on or about March 18, 2015 when Captain R.P., her military unit commander<sup>4</sup> ordered that she undergo a psychiatric evaluation in the performance of duty. She alleged that she was diagnosed with a psychiatric condition which led to workplace discrimination and the termination of her civilian military employment.

In a November 11, 2015 sworn statement, appellant indicated that when she accepted her civilian position in December 2012, the Labor Management Employee Regulations (LMER) required that the unit administrator also be a member of the same military unit. She noted that this requirement changed in 2014. Appellant alleged that she was subjected to a personally motivated attack and privacy intrusion from Captain R.P., when he abused his military authority by ordering her to undergo a Command Directed Mental Health Examination (CDMHE). She opined that the Mental Health Review Board erroneously determined that she had a psychiatric condition. Appellant claimed that she was subjected to discrimination and unfair treatment in her civilian position because of the military finding that she had a psychiatric condition. This included being denied a promotion, and ultimately being terminated from her civilian unit administrator technician position.

Appellant described the timeline of events as follows: On February 4, 2015 Lieutenant K.W., Command Executive Officer and second-line civilian supervisor, stated that there was an impending reduction of force affecting 20 positions. On February 17, 2015 appellant was directed by Second Lieutenant P.S. to not speak to members of the 915<sup>th</sup> unit while in her civilian employment.<sup>5</sup> On February 20, 2015 she was referred for consideration of promotion to a GS-7 position under Captain R.P.

From February 21 to March 15, 2015, she was assigned to attend annual military training at Fort Hunter-Liggett in California. When she arrived at the military training, Second Lieutenant P.S. attempted to have her sign civilian performance counseling and made vague allegations that she had not adequately performed her duties as a civilian unit administrator technician. On February 26, 2015 she was examined at a local hospital emergency room and deemed healthy. On February 28, 2015 appellant again refused to sign Second Lieutenant P.S.' request for counseling.

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<sup>3</sup> The Board notes that in its initial denial of appellant's claim on June 2, 2016, OWCP informed appellant that her claim was being developed and analyzed as an occupational disease claim.

<sup>4</sup> As the military unit commander, Captain R.P. was the unit administrator and senior rater for appellant's civilian position.

<sup>5</sup> On February 20, 2015 Second Lieutenant P.S. counseled appellant for failure to follow and utilize the chain of command in her capacity as a staff sergeant in the 298<sup>th</sup> SMC.

Within hours, Lieutenant P.S. was advised that appellant would be returning to Pennsylvania, her home station. The next day she received a copy of a sick call slip from Captain T.S. which indicated that appellant was “having mental issues and was unable to perform as a soldier.” Captain T.S. recommended that the Command order a CDMHE.<sup>6</sup> On March 7, 2015 Captain R.P. referred her to a CDMHE.<sup>7</sup> On March 13, 2015 R.S., appellant’s civilian supervisor at the 316<sup>th</sup>, commenced a request for orders ordering her to attend a CDMHE.<sup>8</sup> On March 18, 2015, under official military orders, appellant was sent to Keller Army Hospital in West Point, New York for a medical evaluation. She was diagnosed with a delusional disorder and a military medical profile was created. After 16 days, appellant returned to Pennsylvania.

On April 8, 2015 local police were directed to detain her at the request of Captain R.P, on the basis that she had “mental health issues” and had made threats to local hospital personnel. Appellant alleged that local police were also called by the Army Reserve on two other occasions based complaints of “mental health issues.” On July 1, 2015 she was removed from the workplace and placed on administrative leave, subject to the findings of a misconduct investigation. On November 2, 2015 appellant was separated from civilian federal employment based on conduct unbecoming to a soldier.

Evidence submitted with appellant’s claim included: a May 12, 2015 developmental counseling form from Captain R.P. pertaining to the release of sensitive military information; additional statements/graphics from appellant alleging a conflict of interest and retaliation; an August 27, 2015 complaint against Dr. Hadley Osran, a military psychiatrist; and a November 24, 2015 report from Daisi Eyerly, a licensed social worker, which diagnosed appellant with acute stress disorder, depression, and generalized anxiety disorder due to the military’s persecution of her character and loss of livelihood.

In a December 31, 2015 development letter, OWCP advised appellant of the deficiencies in her claim. It requested additional factual and medical evidence and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the requested information.

Evidence relating to appellant’s removal from annual training at Fort Hunter-Liggett due to behavior issues, and referral to and attendance at a March 18, 2015 CDMHE was received. Appellant also submitted narrative statements pertaining to counseling she received in a military capacity, her treatment by U.S. Army physicians, and allegedly falsified or improperly altered military medical records.

In a March 10, 2015 e-mail, Lieutenant K.M., appellant’s second-level civilian supervisor, advised appellant that, as a civilian employee, she must either report to work or be on an approved leave of absence or she would be considered absent without leave (AWOL).

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<sup>6</sup> The file contains a copy of the March 1, 2015 sick slip.

<sup>7</sup> On March 6, 2015 Captain R.P. referred appellant for a mental health evaluation due to her refusal to follow her chain of command and disobeying direct orders to do so during annual training. Other reasons were cited.

<sup>8</sup> R.S. is also K.M.’s supervisor. Both R.S. and K.M. are appellant’s civilian supervisors. A copy of the March 13, 2015 Request for Orders signed by R.S. is of record.

In a March 20, 2015 interview, Captain R.P. stated that he was aware that appellant was referred for the GS-7 position, but he chose not to interview appellant for the position. Captain R.P. also stated that he was within his rights to inform civilian supervisor Lieutenant K.M. of appellant's appointment under the Military Command Exception and Disclosure Personal Health Information of Armed Forces Personnel and denied that her privacy rights were violated.

On April 8, 2015 the Pennsylvania Police Department conducted a welfare check of appellant.

On April 15, 2015 Captain R.P. counseled appellant for failure to comply with his March 26, 2015 policy for civilian employees for daily back-briefs. He noted that while appellant had acknowledged receipt of his new policy on March 27, 2015, she was on leave. As this was appellant's first day back, he advised that the counseling statement was a reminder of his policy.

On April 21, 2015 the Inspector General (IG) referred appellant's complaint of whistleblower reprisal to the Secretary of the Army IG.<sup>9</sup>

In a May 12, 2015 letter, civilian supervisor, Lieutenant K.M. stated that appellant was ordered home early on March 3, 2015 from training at Fort Hunter-Liggett due to behavior issues. The decision to have appellant return to Pennsylvania was made by Captains R.S. and R.P. Appellant was then ordered to attend a medical evaluation at West Point, New York.

In a May 27, 2015 letter, Colonel L.D., commanding officer at West Point, barred appellant from West Point because she continued to "harass and alarm" health care providers at Keller Hospital.

In a June 29, 2015 statement, appellant alleged that a Command Sergeant-Major of the Army Reserve made false reports to the local police that she was making threats.

In a June 30, 2015 memorandum, Lieutenant Colonel K.W., 316<sup>th</sup> Executive Officer, placed appellant on administrative leave (paid nonduty) status. Appellant was not to enter the employing establishment facility or any other facility controlled by the 316<sup>th</sup> Expeditionary Sustainment Command pending an investigation into potential misconduct.

In a July 10, 2015 e-mail, civilian supervisor, Lieutenant K.M. stated that appellant was not interviewed for the GS-7 position based on her current performance with the unit. He noted that the selection process was handled by Captain R.P. and himself. Evidence pertaining to the position included: copies of another individual's application for the position; a March 11, 2015 listing of recommended and nonrecommended people; and a February 12, 2015 e-mail from appellant objecting to the selection of another service member for the position. An undated partial investigation report noted that both Captain R.P. and Lieutenant K.M had indicated that appellant was not considered for the job as she could not handle any more workload.

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<sup>9</sup> On April 26, 2015 appellant filed a claim with the Merit Systems Protection Board (MSPB) alleging that Captain R.P. abused his authority and created a hostile environment. She alleged that she had to take time off for stress and was denied leave in effort to defend herself. Appellant also alleged that she was being forced out of her military and dual status positions.

In a July 24, 2015 e-mail, Lieutenant Colonel J.K. stated that the administrative actions taken to date were due to the initial diagnosis from appellant's CDMHE and her misconduct during her attempts to compel the Command to vacate the diagnosis. Lieutenant Colonel J.K. recommended that appellant seek treatment instead of making false accusations and engaging in misconduct -- both punishable under the Uniform Code of Military Justice (UCMJ).

On October 1, 2015 Lieutenant Colonel J.K. recommended that appellant be separated from the U.S. Army Reserve under "other than honorable conditions."

In an October 1, 2015 statement, civilian supervisor, Lieutenant K.M. denied any role in the decision to place appellant on administrative leave, and ban her from all 316<sup>th</sup> ESC buildings. He opined that it was done for security concerns.

In an October 5, 2015 statement, Lieutenant Colonel K.W. indicated that from March 20 until May/June, 2015, appellant sent extensive amounts of harassing text messages, e-mails, and voicemails to various employees which were often extremely accusatory and harassing, bordering on threatening in nature. He indicated that he made the decision to place her on administrative leave as he wanted to limit her access to the building and computers as she was displaying erratic behavior and sending inappropriate e-mails. Lieutenant Colonel K.W. stated that neither Captain R.P. nor Lieutenant K.M. had played any role in the decision to place appellant on administrative leave.

On November 2, 2015 appellant requested that the Army remove an investigating officer for the complaint filed with the IG, alleging a conflict of interest.

In a January 9, 2015 report, Yvonne B. Reedy, Ph.D., a licensed psychologist, diagnosed post-traumatic stress disorder. She indicated that appellant was forced to a CDMHE on March 18, 2015 which was then used to fire her and push her out of the military.

By decision dated June 1, 2016, OWCP denied appellant's emotional condition claim as there were no compensable employment factors. It found that while it was accepted that appellant was removed from annual training at Fort Hunter-Liggett in California and sent for a CDMHE, which she attended on March 18, 2015 in West Point, NY, this was not a compensable factor of employment. It also found that there was no evidence that management had blocked appellant from competing for the GS-7 position/promotion within her civilian unit.

On June 30, 2016 appellant, through counsel, requested an oral hearing before an OWCP hearing representative.

Prior to the hearing, appellant submitted a November 10, 2015 report from Lieutenant J.F., a surgeon, which found that appellant was in the line of duty (active duty at annual training) when she developed delusional disorder, persecutory in nature, and adjustment disorder with anxiety and depressed mood, which Dr. Osman, a military psychiatrist, had diagnosed. Lieutenant J.F., noted that appellant did not have a psychiatric diagnosis prior to the events from mid-February through March 2015 at Fort Hunter-Liggett. He noted that her symptoms had escalated when she was returned from active duty and was sent for a CDMHE.

A telephonic hearing was held on February 6, 2017. Appellant testified that Lieutenant R.S. was her immediate civilian supervisor, followed by Captains R.P. and R.M. Appellant stated that Lieutenant R.S. as well as Captains R.P. and R.S. had arranged for her medical evaluation at West Point and subsequently ordered her banned from the Clearfield Army Reserve facility. She alleged that the CDMHE was ordered as retaliation for her complaints about the Army's plans to reduce the number of civilian technicians in the Army Reserves and not being selected for the GS-7 position. She also alleged that Army Reserve officers improperly called the police to her home based on false accusations of misconduct. Appellant stated that a hearing was pending for the Equal Employment Opportunity (EEO) complaints filed in both her civilian and military positions. She also had filed an IG complaint of whistleblower/reprisal against Captains R.P. and R.S. and Lieutenant R.S. for harassment, which the IG closed, but she wished to be reopened. Appellant also requested that an investigating officer be removed due to a conflict of interest as he had harassed her. She testified that she was terminated from civilian employment in October 2015 and that the Army was trying to remove her from the Army Reserve. Counsel indicated that appellant had filed an appeal of the medical review board findings.

In a February 22, 2017 statement, appellant argued that she was improperly found unfit for military service based on false accusations by Army Reserve members and civilian supervisors. She repeated her allegations as to the medical review board, the actions by her military and civilian supervisors, and the GS-7 selection process.

Additional evidence received included: an April 8, 2015 report from the Dubois City police, which noted that a welfare check was conducted on appellant. It indicated that the matter was cleared and closed.

On April 26, 2015 appellant appealed to the MSPB regarding the order to be examined by the Army medical review board.

In a May 4, 2015 letter, appellant complained regarding her examination and treatment at Keller Army Hospital.

In a June 29, 2015 report, Officer M.D. of the Dubois Police Department stated that a Sergeant Major of the Army Reserve had requested a welfare check of appellant. He noted that appellant may be dealing with mental health issues and it was unclear whether her comments were a threat or that she was taking legal action against her chain of command. Officer M.D. noted that he was unable to contact appellant in person. However, by telephone, appellant had advised that she did not need any assistance.

On January 22, 2017 appellant submitted an application to correct her military record due to workplace discrimination.

In correspondence between March 2015 and February 14, 2017, appellant requested that the IG issue a favorable decision regarding her whistleblower complaint and facilitate her transfer to a different command.

By decision dated March 10, 2017, an OWCP hearing representative affirmed OWCP's June 1, 2016 decision, finding that appellant had not established a compensable employment factor. The hearing representative found that the events that occurred at Fort Hunter-Liggett, the

CDMHE, and the examination/treatment at Keller Army Hospital were not covered under FECA as they had occurred in connection with appellant's active military service. The hearing representative further found that there was no evidence that appellant was subjected to discrimination, harassment, or other mistreatment relating to her allegations that she was barred from the West Point and Clearfield Army Reserve facilities, falsely accused of misconduct, improperly subjected to welfare checks by the local police at the request of the Army Reserve, and denied promotion.

On June 19, 2017 appellant requested reconsideration. In support of her request, she submitted a 10-page letter dated May 29, 2017 and a June 9, 2017 Formal Physical Evaluation Board (PEB) Proceedings, which recommended permanent (military) disability retirement.

In the 10-page letter, appellant repeated her allegations of mistreatment by her supervisors in her civilian position. She also expressed displeasure over the manner in which the March 10, 2017 hearing was conducted.

By decision dated August 30, 2017, OWCP denied modification of its prior decision. It found that allegations alone were insufficient to establish a factual basis for an emotional condition claim. OWCP noted that, as the evidence of record did not establish a compensable factor of employment, the medical evidence would not be considered.

### **LEGAL PRECEDENT**

To establish an emotional condition causally related to factors of a claimant's federal employment, he or she must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing the emotional condition is causally related to the identified compensable employment factors.<sup>10</sup>

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 his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>11</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 or her frustration from not being permitted to work in a particular environment, or to hold a particular position.<sup>12</sup>

In cases of dual status (civilian and military member) employees, where the military determines that an injury occurred in the line of duty, such injury is deemed referable to military

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<sup>10</sup> See *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>11</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>12</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

service and is not covered under FECA.<sup>13</sup> The issue becomes whether the employee's disabling emotional condition was precipitated or aggravated by the conditions of the civilian employment.<sup>14</sup>

An employee's emotional reaction to administrative or personnel matters generally falls outside FECA's scope.<sup>15</sup> Although related to the employment, administrative and personnel matters are functions of the employer rather than the regular or specially assigned duties of the employee.<sup>16</sup> However, to the extent 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.<sup>17</sup>

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his or her regular duties, these could constitute employment factors.<sup>18</sup> However, 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.<sup>19</sup>

Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.<sup>20</sup> When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter, OWCP must base its decision on an analysis of the medical evidence.<sup>21</sup>

### ANALYSIS

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>13</sup> *Jerry C. Gilliam*, 39 ECAB 1003 (1988) (Army member/civilian unit administrator injured in the line of duty not covered under FECA); *Patrick O'Hara*, 34 ECAB 493 (1982) (an injury resulting solely from active duty in the military reserve is not sufficiently related to an employee's civilian employment to be covered by FECA, even if appellant's civilian employment requires that he belong in the military).

<sup>14</sup> *Walter E. Yow*, 32, ECAB 1079 (1981).

<sup>15</sup> *Andrew J. Sheppard*, 53 ECAB 170, 171 (2001); *Matilda R. Wyatt*, 52 ECAB 421, 423 (2001).

<sup>16</sup> *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005).

<sup>17</sup> *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>18</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *supra* note 10.

<sup>19</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>20</sup> *See supra* note 10.

<sup>21</sup> *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).



With regard to her civilian employment, the Board notes that appellant's claim does not directly relate to her regular or specially assigned duties under *Lillian Cutler*.<sup>22</sup> Rather, appellant primarily claimed that she was subjected to reprisal, discrimination, harassment, or other mistreatment.

Appellant, a dual status employee (*i.e.*, both a civilian employee and military service member), alleged that she sustained an emotional condition after she was ordered in her military capacity to undergo a CDMHE. She indicated that the Mental Health Review Board erroneously determined that she had a psychiatric condition. Appellant alleged that, upon the military discovering that she had a psychiatric condition, she was subjected to discrimination and unfair treatment in her civilian position. The Board notes that the events that occurred while appellant was at Fort Hunter-Liggett (*i.e.*, the order that she undergo a CDMHE and examination/treatment at Keller Army Hospital) occurred in the line of duty during active military service and, thus, are not covered under FECA.<sup>23</sup>

Regarding the allegations of administrative error or abuse, appellant alleged that she received April 15 and May 12, 2015 counseling from Captain R.P. as well as instructions from K.M. regarding reporting to work or being on approved leave of absence. 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, and not compensable absent evidence of error or abuse.<sup>24</sup> The Board finds that the employing establishment acted reasonably in this administrative matter. 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>25</sup> Appellant has presented no corroborating evidence to support that the employing establishment acted unreasonably in these administrative matters.

Appellant also alleged that she was falsely accused of misconduct and placed on administrative leave pending an investigation, and improperly subjected to welfare checks from the police department at the request of the employing establishment. She did not submit supporting evidence, such as the final finding of a formal grievance or complaint showing that the actions taken by management officials were improper or unreasonable in light of her reported behavior. Thus, the evidence of record is insufficient to establish error or abuse with respect to these administrative and personnel matters.<sup>26</sup>

The Board further notes that appellant has not submitted evidence showing that she was subjected to harassment by being placed on administrative leave and subjected to welfare checks from the PA police department at the request of the employing establishment. The Board has held

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<sup>22</sup> See *supra* note 11.

<sup>23</sup> See *supra* note 11.

<sup>24</sup> See *A.L.*, Docket No. 17-0368 (issued June 20, 2018).

<sup>25</sup> *Id.*

<sup>26</sup> *Supra* note 15.

that unfounded perceptions of harassment do not constitute a compensable employment factor.<sup>27</sup> Mere perceptions are not compensable under FECA and harassment can constitute a factor of employment if it is shown that harassment actually occurred.<sup>28</sup> While appellant has filed grievances and EEO complaints, there is no final decision showing that disparate treatment actually occurred.<sup>29</sup> Appellant has not established a compensable employment factor with respect to the claimed harassment.<sup>30</sup>

Appellant alleged that her supervisor and management obstructed her promotion to a GS-7 position and that her employment was ultimately terminated. Absent evidence of error or abuse of discretion, matters related to hiring and firing are not compensable.<sup>31</sup> The evidence of record reveals that appellant was not granted an interview for the GS-7 position based on her current performance with the unit. This is supported by the March 11, 2015 listing of competitors for the position, where appellant was not recommended due to her current performance, and the undated partial investigation report, which noted that both Captain R.P. and Lieutenant K.M. indicated that appellant was not considered for the job as she could not handle any more workload. As there is no evidence of error or abuse in management's failure to promote appellant to the GS-7 position, she has not established an emotional condition in the performance of duty.<sup>32</sup> Additionally, the Board has held that when employees become emotionally upset over not receiving an anticipated promotion, "the resulting disability does not have such a relationship to the employee's assigned duties as to be regarded as arising from the employment."<sup>33</sup> With regard to the termination of her employment, appellant has not submitted any evidence to establish error or abuse in this personnel action.<sup>34</sup>

For these reasons, the Board finds that appellant has not established a compensable employment factor. In light of the Board's finding on the factual aspect of her case, it is unnecessary to consider the medical evidence of record.<sup>35</sup>

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<sup>27</sup> See *F.K.*, Docket No. 17-0179 (issued July 11, 2017).

<sup>28</sup> *Id.*

<sup>29</sup> *Supra* note 16.

<sup>30</sup> See generally *C.T.*, Docket No. 08-2160 (issued May 7, 2009) (finding that some statements may be considered abusive and constitute a compensable factor of employment, but that not every statement uttered in the workplace will be covered by FECA).

<sup>31</sup> *C.S.*, 58 ECAB 137 (2006).

<sup>32</sup> *W.D.*, Docket No. 13-1522 (issued November 14, 2013).

<sup>33</sup> See *supra* note 11.

<sup>34</sup> *Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>35</sup> *Garry M. Carlo*, *supra* note 21.

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 her federal employment duties.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 30, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 13, 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