

ISSUE

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

FACTUAL HISTORY

On July 21, 2015 appellant, then a 52-year-old registered nurse (RN), filed an occupational disease claim (Form CA-2) alleging that he developed severe anxiety, depression, and panic attacks with sweating, heart palpitations, chest pain, insomnia, an inability to focus, and difficulty concentrating and recalling information due to repeated and ongoing harassment and a hostile and retaliatory work environment. He stopped work on July 13, 2015.

In a July 13, 2015 narrative statement, appellant identified employment incidents to which he attributed his emotional condition. He explained that, in November 2013, a new manager pulled him from his department, took his peripherally inserted central catheter (PICC) program from him, and moved him to another work area. Appellant was required to perform work duties that caused repeated torque to his back and resulted in an accepted work-related herniated disc with acute nerve compression.³ He related that he was given a limited-duty position as a van driver, a position he found to be humiliating. Appellant noted that his pay was not cut, but he was humiliated on a daily basis as he was forced to shuttle colleagues, coworkers, and administrative staff with whom he had worked closely. He explained that he applied for a nurse position after the employing establishment decided to restart the PICC program. Appellant claimed that although he had started the PICC program and was the most qualified for the position, he did not get the job. Six months later appellant was investigated by the employing establishment's Administrative Investigation Board (AIB) because he had interviewed for the PICC nurse position. He was accused of lying about his disability to obtain his limited-duty position. The investigation found, however, that appellant did not lie or mislead anyone about his physical condition or limitations.

In an August 13, 2015 letter, counsel provided an addendum to appellant's formal complaint of discrimination and retaliation. This addendum alleged additional incidents that occurred at work. In a June 29, 2015 letter, Y.T., an employing establishment federal workers' compensation specialist, advised OWCP that appellant was the subject of an investigation initiated by the AIB. Counsel contended that Y.T.'s letter violated appellant's privacy/confidentiality under provisions of the employing establishment's directive and handbook. It was also noted that the AIB's May 6, 2015 investigative report concluded that the allegations made against appellant in the report of contact (ROC) were unsubstantiated. In a memorandum decision dated May 6, 2015, the AIB recommended that the allegation regarding appellant's light-duty assignment should be dismissed with no further action. It found that he followed established procedures in filing his Form CA-1. On July 24, 2015 the employing establishment offered appellant a limited-duty position back in Medical Procedures Unit (MPU) under the supervision of T.W., a manager, and A.S., associate chief of nurses, who he had named in his original complaint as key management officials that discriminated against him for the past one and one-half years. On July 30, 2015 A.S.

³ Appellant has four prior claims, including an occupational disease claim (Form CA-2) in which OWCP accepted that he sustained a herniated disc right at L4-5 on January 15, 2014. OWCP assigned that claim File No. xxxxxx827.

informed appellant that she expected him to report to MPU on the following day. At that time, his treating physician had placed him off work as a result of his ongoing medical issues.

In an August 31, 2015 letter, appellant claimed that harassment and retaliation by his supervisors had not stopped. He asserted that his request for leave under the Family and Medical Leave Act (FMLA) was denied and he was charged absent without leave (AWOL) and reassigned back to the direct work area of two supervisors against whom he had previously filed an Equal Employment Opportunity (EEO) complaint.

OWCP, by development letter dated October 8, 2015, notified appellant of the deficiencies in his claim. It afforded him 30 days to respond to its questionnaire and submit additional medical evidence. In a separate letter dated October 8, 2015, OWCP requested that the employing establishment respond to appellant's allegations.

In a November 3, 2015 response, Y.T. noted that Interventional Radiology (IR) nurses, including appellant, were realigned under "Medicine Service" on November 17, 2013. Y.T. noted, however, that appellant remained in IR to orient an MPU nurse to the radiology department. On December 6, 2013 appellant began orienting the MPU/Endoscopy department. Y.T. indicated that appellant and the other IR nurses were removed from IR and PICC line insertions at the request of upper management as they failed to complete nurse documentation and did not properly give moderate sedation to patients. The IR nurses were placed in orientation in MPU to ensure that they received proper training on moderate sedation. Y.T. contended that appellant's reaction to the reorganization or procedural changes was not in the performance of duty.

Y.T. denied that false ROC were placed in appellant's file. She noted that he had been reprimanded and written up. Y.T. indicated that the ROC were statements from interview panel members that included their recollections about statements appellant made during an interview regarding his work-related limitations due to his accepted back condition under OWCP File No. xxxxxx827. She noted the determination that there was no wrongdoing or abuse by either appellant or the employing establishment. Y.T. further noted that appellant was reprimanded for failure to follow instructions and habitual tardiness. Appellant was instructed not to insert any more PICC lines or peripheral IVs for the in-patient side of the hospital because he failed to keep up with his RN competencies. However, he inserted an extend dwell IV catheter. After receiving complaints that he failed to provide moderate sedation to patients, appellant was placed in orientation in the MPU to receive proper training on this matter. He filed a complaint requesting that he be placed back into rotation in IR, be allowed to rotate on-call duties with other employees, and be made whole, but he subsequently withdrew the complaint before a decision was made because he filed an EEO complaint.

Y.T. maintained that appellant was offered a limited-duty assignment to drive a shuttle van in transportation service because his supervisor had difficulty assigning him a position within his physical limitations in the employing service. She noted that his position and pay were not affected by this assignment and that he responded favorably when his supervisor offered him this assignment. Appellant later sent an e-mail to his supervisor requesting that she follow up about the job offer. Y.T. contended that the job offer met appellant's physical limitations during his recovery from a work-related injury. She related that he had not been given a permanent job offer

as the medical evidence provided did not indicate that he had permanent limitations or that he had reached maximum medical improvement.

Y.T. asserted that the information contained in the investigative report and submission of the report to OWCP did not violate appellant's privacy as determined by an employing establishment privacy officer. She maintained that the released information related to his work capacity in his claim assigned File No. xxxxxx827. In addition, Y.T. maintained that OWCP federal regulations required the employing establishment to submit all relevant and probative factual and medical evidence in its possession. She noted that on June 23, 2015 appellant provided her with the AIB investigative report and specifically requested that she place the report in his file and send it to OWCP.

Y.T. claimed that while appellant's allegations of discrimination, retaliation, and harassment were accepted for investigation by the Equal Employment Opportunity Commission (EEOC), it had not issued a supportive decision. In addition, she claimed that the medical evidence submitted was insufficient to establish an emotional condition and resultant total disability causally related to his employment.

On November 8, 2015 OWCP received appellant's October 28, 2015 response to its development questionnaire. Appellant described additional incidents of discrimination and retaliation by the employing establishment. Specifically, on October 22, 2015 T.W. notified appellant that his FMLA leave had expired and that he had to return to work. A.S. informed him on October 23, 2015 that he was AWOL because he had not returned to work. Appellant maintained that he was under his physician's care and that on October 16, 2015 he faxed a physician's note, which held him off work through November 23, 2015. He indicated that receipt of the fax was confirmed, yet T.W. and A.S. requested that he return to work on the above-noted dates. Appellant alleged that other employees under a physician's care were not required to return to work. On October 22, 2015 the employing establishment human resources office advised him about the procedure to follow since he no longer had remaining FMLA leave hours. Appellant related that he had been off work for more than two months as a result of continued harassment and retaliation at work. He requested a hearing concerning his EEO complaint of which an investigation had been completed. Appellant indicated that there were no situations in his personal life that contributed to or caused his current condition. He listed his hobbies and maintained that he had no prior emotional conditions or treatment, including medications, hospitalizations, or counseling.

Appellant submitted a letter dated November 8, 2015 from his wife. His wife noted that she had retired from the employing establishment in November 2014. She attributed appellant's emotional condition to incidents of discrimination, harassment, and retaliation at work.

Appellant also submitted an April 23, 2014 proficiency report which indicated that he received a highly satisfactory rating, an October 29, 2015 accommodation request determination form in which A.S. denied his request for accommodation as the medical documentation submitted did not support his request, and a September 25, 2015 letter in which the employing establishment advised him of his rights concerning an EEO complaint.

Medical reports dated March 30, 2014 through November 6, 2015 again indicated that appellant had stress, panic disorder, major depressive disorder, and anxiety and addressed his work capacity and restrictions.

On November 13, 2015 T.W. responded to OWCP's development questionnaire. She provided a timeline of events. On November 17, 2013 IR nurses, including appellant, were reassigned to medicine service. Appellant worked in IR through December 3, 2013. On December 6, 2013 he began orienting to the MPU/Endoscopy department. Appellant was subsequently removed from IR & PICC line insertions based on direct orders from the chief of staff due to numerous complaints/concerns that he did not correctly complete RN documentation procedures or provide moderate sedation correctly to patients. Appellant arrived late to work on multiple occasions from December 6, 2013 through January 6, 2014. On March 5, 2014 appellant was 20 minutes late for work and was marked AWOL based on earlier counseling. On March 14, 2014 T.W. received a report that appellant was not engaged in a procedure room. He did not anticipate the needs of a physician and had to be asked to do things such as putting a grounding pad on a patient. In addition, appellant barely spoke to the patient. After bringing patients to post operation, he returned to the procedure room and sat down instead of bringing the next patient into the operating room. A team leader told appellant that this was unacceptable and that he needed to be more proactive on getting the next case into the room. On two different occasions appellant told a team leader that he could not take care of a patient because he knew the patient. When this occurred a second time, the team leader asked the patient whether he or she was uncomfortable with appellant participating in his or her care. The patient responded that it was fine. On March 25, 2014 the employing establishment proposed to issue appellant a reprimand. On April 16, 2014 the employing establishment issued another letter of proposed reprimand.

Medical reports dated August 13 to September 17, 2015 reiterated appellant's diagnoses of depression and anxiety and his work capacity and restrictions.

On December 3, 2015 appellant notified OWCP that although he had returned to work, he had been charged AWOL. He contended that his current supervisor and human resources office failed to accommodate his physician's restrictions.

By letter dated January 7, 2016, OWCP requested that appellant review the employing establishment's November 3, 2015 statement and provide comments. In a separate letter dated January 7, 2016, it requested that the employing establishment review appellant's October 28, 2015 statement and provide comments. OWCP afforded both appellant and the employing establishment 20 days in which to respond.

An additional letter dated January 10, 2016 from appellant's wife was received. She again noted that the employing establishment refused to accommodate appellant's physical restriction of being placed under different supervision upon his return to work on November 24, 2015. She contended that appellant was harassed by T.W. and A.S. on a daily basis for two weeks.

By letter dated January 20, 2016, Y.T. responded to OWCP's January 7, 2016 letter. Regarding appellant's allegation that being notified on October 22 and 23, 2015 that his FMLA leave had expired and told to report to work was discriminatory and retaliatory in nature, Y.T. related that FMLA policy was followed for appellant and other employees. She noted that all

employees were required to submit documentation to support FMLA and there was a standard number of hours allowed for employees eligible for FMLA. Y.T. maintained that appellant's FMLA leave had expired and he was appropriately notified. She indicated that appellant did not call in or report for duty as instructed and he was sent an AWOL e-mail on October 23, 2015. On October 26, 2015 his supervisor sent an e-mail advising him to disregard the October 23, 2015 e-mail as he had submitted paperwork and was approved for leave without pay (LWOP) until November 23, 2015. Y.T. related that the AWOL charges were removed immediately, without delay. She also related that the employing establishment had no knowledge of his wife's letter and, therefore, it was unable to comment on the statements contained in that letter. Regarding appellant's EEO complaints, Y.T. alleged that he complained of harassment by his supervisor whenever he had an attendance issue, such as overuse of his allotment of FMLA leave or his duty status notes expired. She submitted copies of the October 23 and 26, 2015 e-mails from A.S. regarding appellant's placement and removal from AWOL status.

By letter dated January 23, 2016, appellant responded to Y.T.'s November 3, 2015 letter. Appellant claimed that Y.T.'s reasons why he and D.L., a RN, were reassigned from IR to MPU were false. He maintained that the reassignment occurred because D.L. had a personal relationship with D.B., radiology department manager. Appellant also claimed that Y.T.'s statements regarding the ROC dated January 14 and 16 and February 14, 2014, authored by A.S. and T.W., and used as the basis for issuance of the April 16, 2014 proposed reprimand letter were inaccurate. He asserted that the ROC were not presented to him for review and signature as required by the union agreement. Regarding issuance the April 16, 2014 proposed reprimand letter, appellant maintained that there was no national certification for placing PICC lines, he had the credentials and competencies to place such lines, and he had not seen any documentation relating a complaint that he did not provide moderate sedation to patients. Regarding being charged AWOL on January 21 and 29 and March 5, 2014, appellant contended that he produced telephone records indicating that he was going to be late for work. He claimed that he had compensatory time to cover his late arrivals. Appellant again contended that being assigned to work as a shuttle van driver was a form of punishment and harassment by management as he requested accommodation for his back condition. Appellant disagreed with Y.T.'s statement that he was transferred from transportation service back to the MPU because transportation service could no longer use him. He maintained that he could still be used in transportation service and that his reassignment back to the MPU was in retaliation for filing an EEO complaint and his work-related back injury. Appellant further maintained that he did not object to Y.T. providing documentation to OWCP, but he claimed that she withheld the AIB findings associated with the ROC in her June 29, 2015 letter to OWCP.

Appellant submitted statements from several coworkers, dated March 30, 2014, January 23, 25, 26, 2016, which addressed his RN work duties in MPU and IR, ability to successfully perform these duties, and his humiliation while working as a shuttle van driver. These included a January 23, 2016 letter from D.L. who noted that she and appellant always kept up with current rules, complied with hospital policy, wrote polices of their own for the department, maintained current credentials, and completed their competencies to provide critical care for all patients including Intensive Care Unit (ICU), Surgical Intensive Care Unit (SICU), and Emergency Room (ER) patients. She asserted that there were no complaints that she and appellant refused to sedate patients. In addition, they were never reprimanded for refusing to sedate patients. D.L. related that she and appellant went to the MPU due to a conflict of interest for IR management.

The radiology manager felt that it was better to have a nurse manager over D.L. and appellant. D.L. understood that appellant was going to return to IR following completion of his orientation to MPU. In a January 25, 2016 e-mail, K.B. related his belief that appellant was being cross-trained in MPU and then he would return to his IR position. In a January 22, 2015 letter, D.J., who worked in the transportation department, assured appellant that his department did not request appellant's reassignment and that appellant could still be used as a shuttle van driver due to a lack of support from volunteer drivers. He noted that appellant worked in the department from September 2014 to July 22, 2015.

E-mails dated July 14, 29, 2015 between appellant and Manager T.W. indicated that appellant's request for LWOP while awaiting a response regarding his OWCP claim was denied and that he was charged AWOL. T.W. explained that she had not received authorization from OWCP for his absences. She advised appellant to immediately notify her if he had a serious medical condition/illness that may qualify his absence under FMLA.

OWCP also received a January 16, 2014 ROC, which referred to a discussion wherein A.S. and T.W. informed appellant that his competency and certification for PICC lines had expired. He was instructed to not perform PICC line or IV insertions. The February 14, 2014 ROC referred to a discussion wherein T.W. indicated that appellant started an extended length catheter in a patient on that day after he had been removed from performing this task as of January 16, 2014.

By decision dated March 24, 2016, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that his alleged emotional condition occurred in the performance of duty. Specifically, it found that he had not established compensable factors of employment.

By letter dated April 15, 2016, appellant, through counsel, requested a telephone hearing before an OWCP hearing representative regarding the March 24, 2016 decision.

Several letters were received from the employing establishment. In a February 9, 2016 letter, the employing establishment proposed to discharge appellant from employment as a RN due to his unauthorized AWOL from November 24 through December 7, 2015, insubordination, and conduct unbecoming of a federal employee.

By letter dated December 22, 2016, Y.T. reviewed the hearing transcript from the December 7, 2016 telephone hearing and related that, contrary to counsel's assertion that appellant feared or had a perception that he was unable to properly perform his job, appellant had never related such fear. Y.T. asserted that there was no evidence to support counsel's subjective contention that it was not uncommon for the employing establishment to retaliate against people who seemed to rock the boat. She denied that appellant's reassignment to a van driver position was a retaliatory action. Y.T. explained that he was reassigned to this position to accommodate his work restrictions and meet the employing establishment's needs. She noted that although a manager had the right to assign duties, she asked appellant if he would be interested in the position and he responded that he was interested. Y.T. noted that he even initiated an e-mail to his manager reminding her to follow up on the position.

By decision dated February 2, 2017, an OWCP hearing representative affirmed the March 24, 2016 decision. She found that appellant had not established any compensable employment factors.

LEGAL PRECEDENT

A claimant has the burden of proof to establish by the weight of the reliable, probative and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by factors of his or her federal employment.⁴ To establish an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the diagnosed emotional condition.⁵

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.⁶ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.⁷

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.⁸ 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.⁹ 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.¹⁰

⁴ *Pamela R. Rice*, 38 ECAB 838 (1987).

⁵ *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁶ *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁸ *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

⁹ *See William H. Fortner*, 49 ECAB 324 (1998).

¹⁰ *Ruth S. Johnson*, 46 ECAB 237 (1994).

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.¹¹ 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.¹²

ANALYSIS

The Board finds that appellant has not established an emotional condition in the performance of duty.

Appellant alleged that he sustained an emotional condition as a result of several employment incidents and factors. OWCP denied the emotional condition claim, finding that he had not established compensable employment factors. The Board must initially review whether these alleged incidents and conditions of employment are compensable employment factors under FECA. The Board notes that appellant's allegations do not pertain to his regular or specially assigned duties under *Cutler*.¹³ Rather, appellant has alleged error and abuse in administrative matters and discrimination, retaliation, and harassment on the part of his supervisors. In *Thomas D. McEuen*,¹⁴ 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 relationship 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.¹⁵

Appellant has attributed his emotional condition to actions of the employing establishment, including that in November 2013 he was removed from his department and the PICC program he had created was taken away from him, he was wrongly reassigned to the MPU department in

¹¹ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹² *Id.*

¹³ *See supra* note 6. Appellant has not alleged that he was unable to perform the duties of his assigned positions, he submitted an April 23, 2014 proficiency report which indicated he had received a highly satisfactory rating. He also continued to claim that he was removed or reassigned from positions for which he was highly qualified.

¹⁴ *Supra* note 8.

¹⁵ *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

January 2014, then to the transportation department from September 2014 to July 22, 2015, and back to MPU on July 24, 2015. The Board has long held that disputes regarding reassignment,¹⁶ the assignment of work,¹⁷ frustration from not being permitted to work in a particular environment or to hold a particular position,¹⁸ are administrative or personnel matters and can only be considered compensable work factors if there is probative evidence of error or abuse.¹⁹

Regarding appellant's reassignment to MPU, Y.T. and T.W. explained that appellant and other IR nurses were reassigned from IR to MPU and removed from PICC line insertions because they failed to complete nurse documentation to give moderate sedation to patients. She noted that IR nurses were placed in MPU to ensure that they received proper training on moderate sedation. While D.L., in a January 23, 2016 letter related that she and appellant, among other things, maintained their current credentials and completed their competencies to provide critical care for all patients including ICU, SICU and ER patients, she did not submit documents related to appellant's credentials and completed competencies. Regarding appellant's reassignment to the transportation department as a shuttle van driver, Y.T. indicated that his supervisor had difficulty assigning him a position within his physical limitations. She noted that appellant accepted the position and later sent her an e-mail asking her to follow-up on the job offer. In a January 22, 2015 letter, D.J., appellant's coworker from the transportation department, merely advised that his department did not request appellant's reassignment to MPU and that appellant could still be used as a shuttle van driver due to a lack of support from volunteer drivers. This evidence does not establish error or abuse on the part of the employing establishment in reassigning appellant back to MPU. Regarding the assignment of work, statements from appellant's coworkers merely described appellant's work duties and his successful completion of these duties. This evidence did not indicate error or abuse by the employing establishment in assigning appellant's employment duties. The Board therefore finds that the evidence of record is insufficient to substantiate error or abuse on behalf of the employing establishment in assigning and reassigning appellant's employment duties.²⁰

Appellant alleged that he was investigated by the AIB due to an allegation that he had lied about his disability to obtain a limited-duty position. The employing establishment retains the right to investigate an employee if wrongdoing is suspected or as part of the evaluation process.²¹ Regarding this investigation, AIB, in a May 6, 2015 decision found that appellant did not make conflicting statements to justify obtaining a light-duty assignment and recommended that all allegations regarding this matter should be dismissed with no further action. It found that he followed established procedures in filing his Form CA-1, his physician had not released him to return to full-duty work, and he freely admitted to informing interview panel members during an

¹⁶ *James W. Griffin*, 45 ECAB 774 (1994).

¹⁷ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *Beverly R. Jones*, 55 ECAB 411, 416 (2004).

¹⁸ *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

¹⁹ *Charles D. Edwards*, 55 ECAB 258 (2004).

²⁰ *See supra* note 18.

²¹ *Jeral R. Gray*, 57 ECAB 611 (2006).

interview process that he was currently on limited-duty assignment and that he would ask his physician about the timeframe for the removal of his restrictions. Appellant has not established error or abuse in this investigation.²²

Regarding disciplinary actions taken against appellant, Y.T. noted that the ROC placed in appellant's file were statements from the interview panel containing their recollections of statements made during the AIB investigation. She further noted that the letters of reprimand were issued after appellant inserted PICC lines or peripheral IVS for the in-patient side of the hospital while he was instructed not to do so. T.W. noted that another disciplinary action was initiated because appellant was not fully engaged in the procedure room, he did not properly anticipate the needs of the physician and had to be asked to perform certain duties. In addition, he barely spoke to a patient, failed to bring a patient out of the operating room, and refused to care for a patient on two occasions. The Board has previously explained that coverage under FECA would attach if the facts surrounding the disciplinary actions 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.²³ Again, appellant has not submitted any evidence of error or abuse in these disciplinary actions.

Appellant has also alleged harassment regarding leave issues. He related that he was charged AWOL for being late for work and failing to report to work. Appellant contended that he submitted telephone records indicating that he was going to be late for work on January 21 and 29 and March 5, 2014, but this evidence is not contained the record. Although the employing establishment charged appellant AWOL on October 23, 2015, this error was corrected on October 26, 2015 after appellant submitted the paperwork and was approved for LWOP. Y.T. related that the AWOL charge was removed immediately, without delay. Appellant has not established error or abuse regarding these leave issues.²⁴

While appellant also alleged that FMLA leave was improperly denied, Y.T. indicated that appellant's request for FMLA leave was denied because he did not submit supportive medical documentation. Y.T. maintained that procedures regarding this matter were properly followed and that appellant was notified that his FMLA leave had expired. Appellant has presented no corroborating evidence to support that the employing establishment erred or acted abusively in this matter.²⁵

Regarding the dissemination of appellant's private information to OWCP, Y.T. maintained that OWCP regulations required the employing establishment to submit all relevant and probative factual and medical evidence in its possession. She also maintained that on June 23, 2015 appellant requested that she place the AIB investigative report in her file and send a copy of the report to

²² *F.M.*, Docket No. 16-1504 (issued June 26, 2017); *G.S.*, Docket No. 09-0764 (issued December 18, 2009).

²³ *See S.S.*, Docket No. 17-0959 (issued June 26 2018).

²⁴ *E.M.*, Docket No. 16, 1695 (issued July 27, 2017); *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995).

²⁵ *See E.A.*, Docket No. 08-051 (issued May 20, 2008).

OWCP. Appellant has therefore not established error or abuse in the dissemination of private information.²⁶

Appellant further attributed his emotional condition to discrimination, retaliation, and harassment by T.W. and Y.T. with regard to the previously described administrative matters as well as appellant's filing of an EEO complaint. He asserted that after he filed his EEO complaint, management repeatedly harassed and retaliated against him. However, for harassment to give rise to a compensable disability under FECA, there must be evidence that harassment did in fact occur. A claimant must establish a factual basis for his or her allegations that discrimination occurred with probative and reliable evidence.²⁷ Mere perceptions of harassment are not compensable under FECA.²⁸ EEOC complaints in and of themselves do not establish harassment, discrimination or retaliation.²⁹ The Board finds that appellant has not established a compensable factor of employment under FECA.

As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record.³⁰

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 an emotional condition in the performance of duty.

²⁶ See *G.R.*, Docket No. 15-0052 (issued September 22, 2017).

²⁷ See *G.S.*, Docket No. 09-0764 (issued December 18, 2009).

²⁸ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991). See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

²⁹ *K.B.*, Docket No. 17-0277 (issued March 16, 2018).

³⁰ *A.K.*, 58 ECAB 119 (2006).

ORDER

IT IS HEREBY ORDERED THAT the February 2, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 19, 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