

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

V.R., Appellant	)	
	)	
and	)	Docket No. 18-1179
	)	Issued: June 11, 2019
DEPARTMENT OF THE TREASURY,	)	
INTERNAL REVENUE SERVICE, Houston, TX,	)	
Employer	)	
	)	

Appearances:  
Appellant, *pro se*  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

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

**JURISDICTION**

On May 18, 2018 appellant filed a timely appeal from February 12 and May 10, 2018 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether OWCP has met its burden of proof to rescind acceptance of appellant's June 24, 2015 emotional condition claim; and (2) whether appellant has met her burden

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

of proof to establish an emotional condition in the performance of duty causally related to factors of her federal employment.

### **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances of the case as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On June 24, 2015 appellant, then a 55-year-old bankruptcy specialist, filed a notice of recurrence (Form CA-2a) claiming disability under OWCP File No. xxxxxx575 due to her accepted emotional condition.<sup>4</sup> On the claim form she indicated that she was able to cope until January 11, 2015 when an acting manager, S.S., who was detailed to her group relentlessly subjected her to unwarranted disciplinary actions and threats of termination. Appellant maintained that this intensified in February 2015 when a new territory manager M.C. was appointed. She did not stop work at that time and began utilizing extended medical leave on July 15, 2015.

In a July 10, 2015 report, Dr. Jonathan Morris, an attending psychologist, noted that appellant was first seen on June 19, 2015 suffering from a range of stress-induced psychophysiological symptoms. He diagnosed major depression, moderate, recurrent, and generalized anxiety disorder and indicated that she had abnormalities on electrocardiogram, and recommended that she not work.

In a development letter dated August 3, 2015, OWCP advised appellant of the medical and factual evidence needed to substantiate her recurrence claim and attached a questionnaire for completion. It afforded her 30 days to submit the requested evidence.

On August 5, 2015 appellant responded and related that shortly after M.C. reported as territory manager in February 2015 she became the subject of an unwarranted five-day proposal of suspension based on false statements by S.S., her supervisor, who accused appellant of bullying and harassing her and the employees in her group. She noted that she had worked 12 miles away from her main group for the past three years, and had no interaction with those employees, but had been accused of harassing and bullying those employees. Appellant indicated that S.S. threatened to lower her performance rating, that she was the only Grade 12 employee assigned Grade 9 inventory, and that since she had been on Family and Medical Leave Act since July 15, 2015, S.S. had threatened her with being absent without leave (AWOL), and that the ongoing harassment caused an abnormal electrocardiogram such that her psychologist recommended a precautionary period of recuperation. On the questionnaire, she indicated that after she "returned to work on October 7, 2009" [sic], she had continually been subjected to harassment, that she had filed seven

---

<sup>3</sup> *Order Remanding Case*, Docket No. 16-1167 (issued December 22, 2016).

<sup>4</sup> Under OWCP File No. xxxxxx575, OWCP accepted appellant's December 2, 2008 occupational disease claim (Form CA-2a) for major depression, recurrent episode, moderate, and generalized anxiety disorder. Appellant stopped work on November 7, 2008 and returned to full duty on October 7, 2010.

Equal Employment Opportunity Commission (EEOC) complaints that were pending, and recently her symptoms had escalated.

In correspondence forwarded to OWCP on August 11, 2015, the employing establishment maintained that, based on appellant's assertions, this could be a new claim rather than a recurrence. The record also contains a February 4, 2015 memorandum from S.S. to appellant relative to unacceptable behavior at a January 28, 2014 monthly group meeting when she became confrontational and insubordinate. It was noted that appellant participated by telephone.

On July 1, 2015 Dr. Disha Poonia, Board-certified in family medicine, noted seeing appellant for a history of stress, depression, and intermittent palpitations. She recommended cardiac testing and referral to a psychiatrist.

In correspondence dated October 5, 2015, OWCP informed appellant that, based on her description of the circumstances that prompted her filing the recurrence claim, she was actually claiming a new occupational disease. It advised that a new case file had been created, assigned File No. xxxxxx163. OWCP has administratively combined File No. xxxxxx163 and xxxxxx575, with File No. xxxxxx575 serving as the master file.

Appellant thereafter submitted additional evidence including e-mails dated May 5 to November 3, 2015 that included correspondence with the union regarding her EEOC claims, her complaints about work assignments, leave requests, an inappropriate "scan" placed on her computer, and an attempt to return to work in October 2015. She also submitted, a February 24, 2015 performance appraisal, and included statements from coworkers concerning the January 28, 2015 telephone conference. Each coworker indicated that appellant had merely questioned S.S. about procedures in a normal tone during the conference.

The employing establishment subsequently controverted the claim. In a November 20, 2015 letter, M.C., insolvency program manager, countered each of appellant's recitation of facts and allegations. She noted that appellant had returned to work on October 7, 2010, not October 7, 2009 and that, even though she worked in another location away from her group, she interacted with them during group meetings and other business-related activities. M.C. also indicated that appellant was scheduled to give an oral response to a March 18, 2015 proposed suspension, but as she had not returned to work, it had not been scheduled. She explained that appellant's workload was commensurate with her grade and position and comparable to other Grade 12 employees in the territory, noting that management assigned lower-graded work to Grade 12 employees to balance the inventory and to ensure that Grade 12 employees had a sufficient workload. M.C. indicated that appellant was absent from August 8 to October 7, 2012 due to a chronic sinus condition, and as well as June 15 and 16, July 1, 8, 9, and 15, 2015 and continuing. She advised that appellant reported for work without her manager's knowledge on October 29, 2015, after being told she was not authorized to return without clearance from the Department of Health and Human Services (HHS) Federal Occupational Health (FOH) unit, noting that FOH had determined on October 7, 2015 that appellant could not return to work for the foreseeable future.

The employing establishment also forwarded a series of e-mails sent by appellant dated July 14 to November 23, 2015, regarding her application for Family and Medical Leave Act (FMLA), and regarding a return to work in October 2015.

In an e-mail dated October 16, 2015, appellant indicated that even though she had not been released by her physician to return to work, due to the delay by OWCP in processing her claim and the fact that she had no more leave, she was forced to return to the harassment and hostile work environment until a decision was made by OWCP.

In an October 26, 2015 report, Dr. Morris noted that appellant had not been fit to work due to the psychophysiological impact of workplace stressors but that, due to financial concerns, he was releasing her to return to work until November 6, 2015 when her workers' compensation case should be resolved. He indicated that her return to work was contingent upon restrictions that she continue to work at the Gessner location, that she not receive e-mails from S.S. unless they were directed to her entire work group, that due consideration be given to the side effects of her medication when assigning her work, and that she be allowed to participate in group meetings by teleconference only.

S.S. wrote appellant on October 29, 2015, noting that on October 7, 2015 FOH determined she could not return to work, and that by his October 26, 2015, Dr. Morris did not indicate that the conditions that made her unable to work had resolved and placed untenable conditions regarding any return to work. She advised that his letter would be provided to FOH for review and until such time FOH indicated that she was fit for duty, she should not return to work.

By decision dated December 4, 2015, OWCP denied the claim, finding that appellant had not identified any compensable factors of employment.

On December 21, 2015 appellant requested reconsideration.

In a November 24, 2015 report, Dr. Neal L. Presant, Board-certified in family medicine and a consultant with FOH, indicated that he had reviewed appellant's request to return to work with certain accommodations provided by Dr. Morris on October 28, 2015. He advised that, based on the temporary and highly conditional return to work recommended by Dr. Morris, appellant was apparently still in a very fragile state. Dr. Presant opined that, based on these restrictions, it did not appear that she was medically able to work productively and recommended that she not return to work until her condition improved.

In a December 10, 2015 report, Dr. Morris indicated that appellant was better able to cope with work-related stress and could return to work while continuing to be under his care.

In correspondence dated February 9, 2016, M.C. responded to the reconsideration request. She again countered each of appellant's responses on appellant's August 15, 2015 questionnaire. M.C. indicated that appellant returned to work on December 18, 2015 but that, due to her long medical absence, no final decision had been made regarding the March 18, 2015 proposed five-day suspension.

Appellant thereafter submitted a February 15, 2016 letter regarding an EEOC claim, and a February 23, 2016 reconsideration of denial of a reasonable accommodation request for reassignment.

By decision dated March 25, 2016, OWCP denied modification of its December 4, 2015 decision. It found the evidence submitted was insufficient to substantiate a compensable factor of employment.

Following OWCP's March 25, 2016 decision, appellant submitted additional evidence to OWCP. This included memoranda and e-mails regarding her request to have her attorney, a union representative, and/or an armed escort attend a meeting with her regarding a taxpayer's rights being violated through disclosure.<sup>5</sup> Additional e-mails concerned appellant's claim of harassment by a coworker D.J., regarding her assignment of cases, and her EEOC claim, a list of case assignments, and a March 9, 2016 memorandum from S.S. to appellant regarding her failure to follow a directive or refusal to perform an assigned task.

On May 16, 2016 appellant appealed OWCP's December 4, 2015 and March 25, 2016 merit decisions to the Board.

By order dated December 22, 2016, the Board remanded the case to OWCP for further development, including a statement from appellant describing in detail the employment conditions or incidents she believed contributed to her emotional condition claimed in 2015, to be followed by a *de novo* decision.<sup>6</sup>

Appellant thereafter submitted additional information regarding an EEOC claim including a statement of allegations of harassment, a January 11, 2017 reasonable accommodation request that was denied,<sup>7</sup> and e-mails alleging incidents of harassment, copies of employing establishment anti-harassment policies.

By letter dated January 23, 2017, OWCP noted the Board's December 22, 2016 order. It advised appellant to submit a statement describing in detail the employment condition or incidents she believed contributed to the emotional condition claimed in 2015 and to complete an enclosed questionnaire.

In correspondence dated February 3, 2017, appellant noted that she had forwarded a statement on January 9, 2017. She attached a signed statement of certification, and e-mails dated January 11 to January 25, 2017 regarding the denial of her request for reasonable accommodation. Appellant also forwarded two February 3, 2017 statements from coworkers who were supportive of appellant's allegations of harassment by S.S. S.F. indicated that she worked with appellant at the Gessner Street location and maintained that appellant was harassed by management. P.S., also a coworker, indicated that appellant had been harassed. She described problems during a teleconference in February 2015, alleging that S.S. became hostile to appellant. P.S. further maintained that appellant had been harassed by S.S. for two years and this had made appellant mentally and physically ill.

---

<sup>5</sup> The requests were denied by management, the union president, and a special agent regarding her request for armed escort.

<sup>6</sup> *Supra* note 3.

<sup>7</sup> Appellant requested to be reassigned to a different management chain.

On February 21, 2017 the employing establishment denied appellant's request for reasonable accommodation.

Appellant forwarded a December 17, 2015 report in which Dr. Morris noted that appellant's ability to function efficiently and effectively was undermined by working in a hostile environment. He included an explanation of the stress cycle and advised that appellant could return to work, if she was assigned to another chain of command.

In correspondence dated June 7, 2017, the employing establishment controverted appellant's emotional condition claim. It attached copies of appellant's January 11, 2017 reasonable accommodation request and its denial, a November 20, 2015 memorandum in which M.C. indicated that efforts to accommodate appellant's medical restrictions were unsuccessful.

On November 2, 2017 OWCP accepted major depressive disorder, recurrent, moderate, and generalized anxiety disorder. It indicated that an October 8, 2015 EEOC decision of record ruled in appellant's favor, indicating that the employing establishment had been proven wrong and that the medical evidence of record supported causal relationship. A memorandum to file dated November 2, 2017 indicated that the claim was accepted, based on Dr. Morris' December 17, 2015 report in which he related that appellant's emotional condition was due to the accepted compensable employment factor.

In correspondence dated December 5, 2017, D.S., a senior attorney with the employing establishment, notified OWCP that the November 2, 2017 decision in which appellant's claim was accepted was incorrectly based on a nonexistent judicial finding in appellant's favor by the EEOC. She further asserted that appellant failed to establish a compensable employment factor. In an attached signed affidavit, D.S. indicated that since October 2008 she had represented the employing establishment in numerous litigation matters initiated by appellant. She advised that the November 2, 2017 acceptance of appellant's claim, adjudicated under OWCP File No. xxxxxx163, was accepted on an erroneous belief that a final EEOC ruling was entered in appellant's favor when, in fact, the matter was still pending and awaiting a hearing before the EEOC. D.S. noted that appellant currently had eight pending EEOC complaints, filed from 2007 to 2016, some of which had been consolidated, and that the employing establishment had fully and vigorously defended against each claim. She discussed some specific allegations and indicated that in appellant's EEOC complaints she had alleged that virtually every permanent or acting manager, every permanent or acting territory manager, and every senior manager and executive who had been in her chain of command in the past decade had subjected her to harassment and a hostile work environment. Counsel continued that on September 23, 2015 the employing establishment had filed a Motion for Summary Judgment in an attempt to get a 2014 EEOC complaint resolved, and that on October 8, 2015 appellant's attorney filed a response, setting forth its position with regard to appellant's 2014 complaint. D.S. noted that this had not led to a ruling in appellant's favor and could not be used to conclude that the employing establishment was proven wrong, as stated and concluded by OWCP in its November 2, 2017 decision. She concluded that, as there had been no final decisions or rulings by the EEOC in the 2014 complaint or in any other of appellant's complaints pending before EEOC, OWCP erred in its reliance on appellant's response to the Motion for Summary Judgment and, thus the acceptance should be rescinded.

By letter dated December 28, 2017, OWCP advised appellant that it proposed to rescind its November 2, 2017 acceptance for generalized anxiety disorder and major depressive disorder. It discussed appellant's claimed factors of employment and found that none was compensable. OWCP further noted that it had erred because the EEOC document relied on in its acceptance was not a final decision.

In correspondence dated January 3, 2018, appellant disagreed with the proposed rescission. She submitted evidence previously of record, a Step 2 response by M.C. to a 2016 EEOC claim, and documents relied on for her annual appraisal. Appellant attached EEOC decisions dated October 31, 2006 and September 30, 2008, an August 9, 2013 second step grievance response in which remedy was granted, and August 2017 evaluations.<sup>8</sup>

By decision dated February 12, 2018, OWCP rescinded acceptance of appellant's claim for major depressive disorder, recurrent, and generalized anxiety disorder, effective December 28, 2017. It found that she failed to establish a compensable factor of employment and that it erred in its November 2, 2017 decision, noting new evidence had been received on December 5, 2017 indicating that there was no final EEOC decision dated October 18, 2015.

On February 26, 2018 appellant requested reconsideration. She noted her previously accepted claim (OWCP File No. xxxxxx575) and maintained that OWCP erred in rescinding its November 2, 2017 acceptance. Appellant also submitted evidence regarding a 2016 EEOC claim, a February 14, 2018 request to file an EEOC complaint of reprisal, and e-mail correspondence dated February 23, 2018 addressed to D.S., counsel for the employing establishment. She continued to submit evidence including e-mails dated January 3 to March 12, 2018 regarding her attempt to obtain EEOC documents she alleged the employing establishment submitted to OWCP, an April 13, 2017 EEOC order rescinding a March 14, 2017 protective order and granting the employing establishment's motion for protective order, and evidence regarding a new EEOC complaint filed in March 2018.

By merit decision dated May 10, 2018, OWCP denied modification of the February 12, 2018 decision. It found that she had not submitted sufficient evidence to establish a compensable factor of employment and denied her emotional condition claim.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8128 of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his or her own motion or on application.<sup>9</sup> The Board has upheld OWCP's authority under this section to reopen a claim at any time on its own motion and, where supported by the evidence, set aside or modify a prior decision and issue a new

---

<sup>8</sup> The two EEOC decisions are regarding appellant's 2008 claim, adjudicated by OWCP under File No. xxxxxx575, and accepted for major depression, recurrent episode, moderate, and generalized anxiety disorder. The August 9, 2013 grievance was with regard to appellant's annual performance appraisal for the period February 1, 2012 to January 31, 2013 wherein two elements were raised from meets to exceeds.

<sup>9</sup> 5 U.S.C. § 8128.

decision.<sup>10</sup> The Board has noted, however, that the power to annul an award is not arbitrary and that an award for compensation can only be set aside in the manner provided by the compensation statute.<sup>11</sup>

Workers' compensation authorities generally recognize that compensation awards may be corrected, in the discretion of the compensation agency and in conformity with statutory provision, where there is good cause for so doing, such as mistake or fraud. Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits. This also holds true where OWCP later decides that it erroneously accepted a claim.<sup>12</sup>

OWCP bears the burden of justifying rescission of acceptance on the basis of new evidence, legal argument and/or rationale.<sup>13</sup> Probative and substantial positive evidence or sufficient legal argument must establish that the original determination was erroneous. OWCP must also provide a clear explanation of the rationale for rescission.<sup>14</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP met its burden of proof to rescind acceptance of appellant's June 24, 2015 emotional condition claim.<sup>15</sup>

OWCP accepted this emotional condition claim on November 2, 2017 finding that an October 8, 2015 EEOC decision had ruled in appellant's favor and had found error by the employing establishment. In its February 12, 2018, it rescinded acceptance of appellant's emotional condition claim, finding that she failed to establish a compensable factor of employment and that it erred in its previous November 2, 2017 decision. OWCP noted that new evidence had been received on December 5, 2017 indicating that there was in fact no final EEOC decision dated October 18, 2015. A search of the evidence of record finds no final EEOC decision dated October 18, 2015. Therefore, the basis for accepting appellant's June 24, 2015 claim was premised on a nonexistent EEOC decision which allegedly found that the employing establishment had erred. As such, the Board finds that OWCP met its burden of proof to rescind acceptance of appellant's June 24, 2015 claim.<sup>16</sup>

---

<sup>10</sup> See *W.H.*, Docket No. 17-1390 (issued April 23, 2018); *John W. Graves*, 52 ECAB 160 (2000); 20 C.F.R. § 10.610

<sup>11</sup> *D.W.*, Docket No. 17-1535 (issued February 12, 2018); *Delphia Y. Jackson*, 55 ECAB 373 (2004).

<sup>12</sup> See *V.C.*, 59 ECAB 137 (2007).

<sup>13</sup> See *L.G.*, Docket No. 17-0124 (issued May 1, 2018); *John W. Graves*, *supra* note 10.

<sup>14</sup> *W.H.*, *supra* note 10.

<sup>15</sup> See *L.M.*, Docket No. 16-1539 (issued April 3, 2017).

<sup>16</sup> *D.W.*, *supra* note 11.



## LEGAL PRECEDENT -- ISSUE 2

To establish an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.<sup>17</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,<sup>18</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under FECA.<sup>19</sup> When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.<sup>20</sup> Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.<sup>21</sup> Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.<sup>22</sup> Personal perceptions alone are insufficient to establish an employment-related emotional condition, and disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>23</sup>

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.<sup>24</sup> Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its

---

<sup>17</sup> *C.V.*, Docket No. 18-0580 (issued September 17, 2018).

<sup>18</sup> 28 ECAB 125 (1976).

<sup>19</sup> See *G.M.*, Docket No. 17-1469 (issued April 2, 2018); *Robert W. Johns*, 51 ECAB 137 (1999).

<sup>20</sup> *Lillian Cutler*, *supra* note 18.

<sup>21</sup> *A.C.*, Docket No. 18-0507 (issued November 26, 2018).

<sup>22</sup> *G.R.*, Docket No. 18-0893 (issued November 21, 2018).

<sup>23</sup> *Supra* note 21.

<sup>24</sup> *Supra* note 17.

administrative or personnel responsibilities, such action will be considered a compensable employment factor.<sup>25</sup>

For harassment or discrimination to give rise to a compensable disability, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations that the harassment occurred with probative and reliable evidence.<sup>26</sup> With regard to emotional claims arising under FECA, the term “harassment” as applied by the Board is not the equivalent of “harassment” as defined or implemented by other agencies, such as the EEO, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers’ compensation under FECA, the term “harassment” is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by co-employees or coworkers. Mere perceptions and feelings of harassment will not support an award of compensation.<sup>27</sup>

### **ANALYSIS -- ISSUE 2**

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

Appellant’s allegation that she was unfairly assigned Grade 9 work, concerns the performance of her regular or specially assigned duties under *Lillian Cutler*.<sup>28</sup> However, M.C. explained that appellant’s workload was commensurate with her grade and position and comparable to other Grade 12 employees in the territory, noting that management assigned lower graded work to Grade 12 employees to balance the inventory and to ensure that Grade 12 employees had a sufficient workload. Appellant submitted no evidence to substantiate her allegations of increased workload. Without evidence substantiating these allegations, appellant has not met her burden of proof to establish a compensable factor of employment under *Cutler*.<sup>29</sup>

Appellant also attributed her emotional condition to additional actions of the employing establishment. In *Thomas D. McEuen*,<sup>30</sup> the Board held that an employee’s emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA as such matters pertain to procedures and requirements of the employing establishment and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under FECA would attach if the facts surrounding the administrative or personnel action established error or abuse by employing establishment superiors in dealing

---

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

<sup>26</sup> *G.R.*, Docket No. 18-0893 (issued November 21, 2018); *James E. Norris*, 52 ECAB 93 (2000).

<sup>27</sup> *G.R.*, *id.*; *Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>28</sup> *Supra* note 18.

<sup>29</sup> *See G.G.*, Docket No. 18-0432 (issued February 12, 2019).

<sup>30</sup> 41 ECAB 387 (1990), *reaff’d on recon*, 42 ECAB 566 (1991).

with the claimant. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>31</sup>

As to appellant's complaints regarding perceived unfair discipline, including an unwarranted five-day suspension, M.C. indicated on February 9, 2016 that the proposed suspension was never finalized. Appellant also referenced a February 2015 letter of counseling regarding insubordinate behavior in a January 28, 2014 telephone conference headed by S.S. While appellant submitted statements from two coworkers who indicated that appellant had merely questioned S.S. about procedures in a normal tone, the coworkers, however, did not indicate that they participated in the teleconference. These statements are insufficient to establish error or abuse as to this specific act of counseling. The Board finds that appellant did not provide any independent or probative evidence to establish that the employing establishment erred or was abusive in issuing any discipline.<sup>32</sup>

Appellant also complained about her attempt to return to work in October 2015. However, Dr. Presant, a physician with FOH, indicated that based on the highly conditional restrictions provided by Dr. Morris, appellant's attending psychologist, appellant was apparently still in a very fragile state, and it did not appear that she was medically able to work productively. The employing establishment, thus, acted reasonably in not allowing her to return to work in October 2015.<sup>33</sup>

As to appellant's complaint of harassment by S.S. and other employing establishment managers, the Board has found that an employee's complaints concerning the manner in which a supervisor performs his or her duties as a supervisor, or in the manner in which a supervisor exercises his or her supervisory discretion fall, as a rule, outside the scope of coverage provided by FECA. This principle recognizes that a supervisor or manager in general must be allowed to perform his or her duties, and that employees will at times dislike the actions taken, but mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.<sup>34</sup>

Perceptions of harassment or discrimination are not compensable under FECA. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.<sup>35</sup> While appellant submitted a statement from S.F., a coworker, S.F. merely maintained that appellant was harassed and did not describe specific instances of harassment. P.S., another coworker, indicated that S.S. became hostile to appellant in a February 2015 teleconference. She, however, not sufficiently describe the alleged incident or any other specific harassment by the employing establishment. The Board finds these statements insufficient to establish a persistent disturbance, torment or persecution, *i.e.*, mistreatment by employing establishment management.

---

<sup>31</sup> See *Y.B.*, Docket No. 16-0193 (issued July 23, 2018).

<sup>32</sup> See *B.Y.*, Docket No. 17-1822 (issued January 18, 2019).

<sup>33</sup> *Id.*

<sup>34</sup> See *G.G.*, *supra* note 29.

<sup>35</sup> *G.M.*, Docket No. 17-1469 (issued April 2, 2008).

Appellant, therefore has not established a factual basis for her claim of harassment by probative and reliable evidence.<sup>36</sup>

Thus, contrary to her assertions on appeal, appellant has not established a compensable employment factor under FECA and, therefore, has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty. As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record.<sup>37</sup>

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 OWCP met its burden of proof to rescind its November 2, 2017 acceptance of appellant's emotional condition claim. The Board further finds that appellant has not met her burden of proof to establish an emotional condition in the performance of duty.

---

<sup>36</sup> *Id.*

<sup>37</sup> *C.V., supra* note 17.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 10 and February 12, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 11, 2019  
Washington, DC

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

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

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