United States Department of Labor
Employees' Compensation Appeals Board

B.G., widow of M.G., Appellant	)	
and	)	**Docket No. 18-1080**
	)	**Issued: March 26, 2019**
DEPARTMENT OF THE AIR FORCE, SPACE & MISSILE SYSTEMS CENTER, El Segundo, CA, Employer	)	

Appearances:
Steven E. Brown, Esq., for the appellant[1]
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 May 3, 2018 appellant, through counsel, filed a timely appeal from a February 26, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish entitlement to survivor benefits due to the deceased employee's suicide.

FACTUAL HISTORY

On April 25, 2017 appellant, the employee's widow, filed a claim for compensation by widow, widower, and/or children (Form CA-5) for survivor benefits in her capacity as wife of the deceased employee. She noted the nature of injury which caused death as "suicide" and listed a date of death as August 28, 2014. An unsigned Official Superior's Report of Employee's Death (Form CA-6) also noted a date of death as August 28, 2014 and description of the injury as "unknown."

A notification of personnel action (Form SF-50) indicated that the employee worked in the Information Technology (IT) department for the employing establishment. The record reveals that, in 2010, the employee was appointed as the designated Information Systems Security Manager (ISSM). He was subsequently relieved of his role as ISSM and was counseled on his work performance. In 2012 the employee was reinstated to the ISSM role.

OWCP received a 32-page memorandum of expert findings by D.B., a licensed private investigator, along with various records, reports, documents, and photographs that he had reviewed. The memorandum provided a timeline of events leading up to the employee's death. In March 2014, Lieutenant Colonel (LTC) D.K. learned that the employee had started unsubstantiated rumors about his supervisor, Special Security Officer (SSO) A.P.'s, financial non-disclosures. It indicated that concerns were also raised regarding the employee's work performance. LTC D.K. informed the employee of a pending investigation and potential disciplinary action. The memorandum noted that, from March 10 to 18, 2014, the employee was off work on sick and personal leave. On March 18, 2014 he attempted suicide and was hospitalized from March 18 to April 29, 2014. The employee was subsequently diagnosed with moderate recurrent major depression and received psychiatric help. On April 30, 2014 he returned to part-time modified duty, working four hours per day. On Thursday, May 1, 2014 LTC D.K. informed the employee that the investigation was complete and advised him of an upcoming meeting on Monday, May 5, 2014 in order to discuss potential disciplinary action. The employee asked LTC D.K. if he could disclose the results of the investigation and potential discipline, but LTC D.K. informed the employee that he could not discuss the results of the investigation. The memorandum noted that Friday, May 2, 2014, was the employee's regular day off.

The memorandum further indicated that, when the employee did not report to work on Monday, May 5, 2014 and was not at home when appellant returned from work, she attempted to locate him. When appellant was unable to reach him by cell phone or otherwise locate him, she filed a missing person's report that evening. The memorandum noted that on May 9, 2014 the employee's vehicle was found abandoned in a public area. It reported that on May 11, 2014 appellant found a handwritten note dated May 5, 2014 and signed by the employee in their trust papers, which stated: "[Appellant] shall get all upon my death ... Don't forget AF life insurance." The memorandum related that on August 28, 2014 the employee's remains were found in a remote location, approximately two miles from the location of his abandoned vehicle. The remains were

not positively identified as the employee until September 17, 2014. The memorandum noted that foul play was not suspected as there were no suspicious circumstances.

The memorandum also provided a detailed summary of the employee's medical history. It noted that the employee had been treated for anxiety in 1993, for depression in 2006 when his biological father died, and for depression in 2011 when his mother died. The memorandum noted that according to the employee's March 2014 hospitalization records, he was receiving treatment for depression with suicide attempt. The employee had reported problems with his boss, a toxic work environment, being under investigation, and work written reprimands as attributing to his depression. The memorandum indicated that, after four weeks of group therapy, the employee was discharged with a good prognosis. It related that he no longer had suicide ideation, but he did not want to return to work and was exploring options to maximize retirement benefits.

The record also contained the employee's suicide letter from his March 2014 suicide attempt. The employee described the depression he suffered from after both of his parents died. He also related that he found out recently that he was under investigation at work and guessed that it was for something that SSO A.P. "cooked up." The employee also provided a history about his time with the employing establishment and with SSO A.P. He explained that around June 2010, SSO A.P. had been promoted over him to a GS-13 level position. The employee indicated that soon after her promotion, SSO A.P. asked him for a general appraisal of the situation within his department. He informed her that he did not have nearly enough staff and that they seemed to have a problem with constant turnover. The employee explained that he needed more staff because the users of their system had grown 600 percent from 60 to almost 360 users. He also pointed out that they had more reporting requirements and were in charge of a video teleconferencing system. The employee also described that in September 2011 he took two months of Family and Medical Leave Act (FMLA) leave to care for his ill mother, who eventually died. He noted that she left him a sizable inheritance and that he disclosed the financial information to SSO A.P. as is required for someone with his security clearance. The employee related that when he saw SSO A.P., after he returned to work, the first thing she said was "I guess your give a s*** factor just went out the window."

The memorandum concluded that "Upon discharge from therapy and return to full-time work status, [the employee's] disappearance and suicide were the result of his toxic workplace environment created by his superiors." It explained that he was subject to conduct by his superiors that was severe or pervasive enough to create a work environment that a reasonable person would consider to be intimidating, hostile, or abusive. The memorandum reported that the employee's initial suicide attempt and consequential hospitalization and outpatient group therapy, followed by his disappearance and suicide, were "materially and substantially aggravated by the workplace conditions created by his superiors."

The record also contains an extensive case file from the Air Force Office of Special Investigations,[3] which included various investigative reports, e-mails, personnel records, statements, internal memorandums, medical reports, interview notes, and other documents,

[3] The Board notes that large portions of the documents, specifically names and other personal identifiable information (PII) have been redacted. The lack of PII makes it difficult to identify which people the documents are about.

regarding the investigation into the facts and circumstances surrounding the employee's disappearance and death and the unauthorized media found in his desk after his death. The case file contained various reports of investigative activity dated September 19, 2014 to May 29, 2015. The reports indicated that on February 24, 2014 the employee received an oral admonishment based on delays in accomplishing assigned work and failure to carry out assigned work. On March 4, 2014 he was issued a "Letter of Investigation." The reports also indicated that the employee had performance issues at work, struggled to keep up with a high workload, and had a difficult relationship with his supervisors at work.

In a statement dated October 10, 2014, appellant related that around 2010 the employee began to express concerns to her about a large increase in the amount of work. She indicated that from 2010 to 2014 he became increasingly frustrated with work. Appellant described how the employee took care of his sick mother from June to September 2011 before she died. She reported that he suffered from depression after his mother passed away and also felt like his supervisors at work were not being supportive. Appellant also asserted that SSO A.P. had violated the employee's privacy by disclosing to other coworkers that he obtained a sizable inheritance after his mother passed away. She indicated that on March 4, 2014 he was informed that there was a pending investigation about him. On March 18, 2014 appellant came home from work and found the employee passed out in the kitchen floor. She reported that, after the March 2014 suicide attempt, he attended a work-related stress program for six weeks and returned to part-time modified-duty work on April 30, 2014. Appellant explained that because the employee's work situation did not improve, they decided that the employee should officially resign his position. She related that at approximately 11:30 a.m. on May 5, 2014 the employee informed her that he had resigned from his position. Appellant reported that when she returned home from work and the employee was not there, she attempted to locate him. She alleged that, according to telephone records, the employee called the employing establishment 29 times on May 5, 2014. Appellant noted that one of her biggest questions is what did LTC D.K. say to the employee that made him disappear.

By letter dated June 1, 2017, the employing establishment controverted appellant's claim. It contended that there was no conclusive cause of death because the employee's alleged suicide was not confirmed by the evidence. The employing establishment also asserted that there was no medical documentation to establish that the employee's disappearance and subsequent death was causally related to his employment. It further alleged that there was no compensable factor of employment.

By development letter dated August 22, 2017, OWCP advised appellant that it required additional medical evidence to establish that the employee's death was causally related to factors of his federal employment. It requested that she submit a medical report providing a history of the disease which caused or aggravated the employee's condition resulting in death, a diagnosis of the disease, and an opinion on the relationship of the disease and death to factors of his federal employment. OWCP also requested that appellant describe what specific employment factors she believed resulted in his death.

Appellant responded to OWCP's development letter on September 18, 2017. She related that, based on the recommendation of the employee's doctor, he decided to return to work part time on April 30, 2014. Appellant indicated that, after the employee returned to work, he told her

that LTC D.K. would not give him information about the March 2014 investigation. She explained that she and the employee decided that he would resign from his position. Appellant again described the events from May 1 to 5, 2014 leading up to the employee's disappearance. She also detailed her attempts to contact LTC D.K. after the employee's disappearance in order to gain more information about the toxic work environment and why the employee may have disappeared.

OWCP also received a forensic psychological evaluation report by Dr. Seth Bricklin, a clinical psychologist, dated August 9, 2017. Dr. Bricklin explained that appellant had contacted him to determine whether incidents at the employee's work were a cause or contributing factor in his suicide. He provided a summary of his interviews with various individuals, including D.B., the private investigator, appellant, and the employee's coworkers. Dr. Bricklin noted that in an interview, K.W., the employee's former coworker and personal friend, related that after SSO A.P. was promoted over the employee, the employee complained of being overworked. Furthermore, Dr. Bricklin recounted that G.C., the employee's former coworker, had noted that the employee was overwhelmed by his job. G.C. explained that the employee's IT department had three people, but after two months, there were only two individuals working.

Dr. Bricklin also reviewed the employee's psychiatric and medical treatment records. He noted diagnoses of major depressive disorder, recurrent heart condition, and other problems related to employment. Dr. Bricklin reported that the employee became clinically depressed after he returned to work from being on leave to care for his mother. He explained that the employee realized that the only option that would allow him to maintain his dignity would be to retire with a clean record. Dr. Bricklin reported that once the employee believed that he was going to be disciplined, or possibly fired, suicide became the only option. He concluded that the employee's suicide was a result of "a diagnosis of [m]ajor [d]epression and that the cause of his depression was directly related to stress due to mistreatment at work."

In an October 25, 2017 letter to OWCP, the employing establishment noted that it was responding to OWCP's August 22, 2017 development letter. It related that the employee was at work on Thursday, May 1, 2014, when LTC D.K. spoke with the employee and asked to see him on Monday, May 5, 2014 to discuss the results of the investigation. The employing establishment explained that at the time of the May 1, 2014 conversation, LTC D.K. had decided that he would impose a Letter of Reprimand on the employee. It reported that, on May 5, 2014, the employee called LTC D.K. and asked if he needed to bring a lawyer to his meeting and LTC D.K. told him no. The employee also asked LTC D.K. if the issue would go away if he resigned and LTC D.K. told him that he could not answer that question. He then asked what the results of the investigation were and LTC D.K. informed him that he could not give him the results over the telephone. The employing establishment related:

> "The manner in which [LTC D.K.] chose to handle this notification may be inconsistent with advice offered during training for [employing establishment] supervisors. A more prudent approach would typically be to refrain from communicating troubling information at the end of the workweek so that the employee is not left alone over the weekend assuming a worst case outcome without any emotional support being available. This consideration would be especially important when dealing with an employee who has been undergoing treatment for

depression after a failed suicide attempt. *See Suicide Prevention Program,* paragraphs 2.29.1&3 and 3.1.6, 6 October 2014, as amended."

The memorandum also reported that on June 1, 2015 General S.G., the prior commander at the employing establishment, served a Notice of Proposed Reprimand on LTC D.K., which faulted him for major security lapses within his organization and also for his treatment of the employee. It included an excerpt from the letter to LTC D.K.:

> "You exercised questionable judgment and leadership with respect to your treatment of subordinates…. When [the employee] returned from sick leave on Thursday, May 1, 2014, you informed him that the investigation was complete and that you would apprise him of the results on the following Monday, since Friday, May 2, 2014, was [the employee's] regularly scheduled day off. Despite [the employee's] recent mental health treatment and his subsequent questions to you about whether the matter could be resolved by his submitting his resignation, you failed to take steps to show your concern for his well-being, deepened his anxiety, and failed to arrange any other support for him. [The employee] did not report for duty the following Monday and subsequently disappeared."

General S.G. further noted:

> "I am disturbed by the apparent lack of sufficient concern and empathy for an employee who was known to be suffering from stress. You failed to take aggressive steps to execute as a wingman to demonstrate your concern for the well-being of an employee who had just returned from receiving medical treatment. You also failed to arrange for support for [the employee] from others in the unit or from the many helping agencies on the installation. In the future, I expect you to exercise better judgment in supporting personnel subject to your authority."

By decision dated February 26, 2018, OWCP denied appellant's claim for survivor benefits finding that she had failed to establish a compensable factor of employment that could have caused an emotional condition that led to the employee's suicide in May 2014. It specifically noted that a letter of proposed reprimand to LTC D.K., regarding his dealings with the employee, was insufficient to establish error or abuse and was therefore insufficient to establish that the employee's death resulted from his employment.

LEGAL PRECEDENT

A claimant for survivor benefits has the burden of proving by the weight of the reliable, probative, and substantial evidence that the employee's death was causally related to his or her

employment.[4] To establish his or her claim that a deceased employee sustained stress in the performance of duty, which precipitated his or her death, a claimant must submit the following:

> (1) Factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his or her condition;
>
> (2) Rationalized medical evidence establishing that his or her death was due to or aggravated by an emotional reaction; and
>
> (3) Rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her death.[5]

Appellant has the burden of proof to establish by a preponderance of the reliable, probative, and substantial evidence the existence of a causal relationship between the employee's death by suicide and factors of his or her federal employment.[6] The suicide itself must arise out of the employee's assigned duties to such an extent as to be regarded as arising out of and in the course of employment.[7] In determining whether an employee's suicide is causally related to factors of his or her employment, OWCP has adopted the chain of causation test.[8]

The Federal (FECA) Procedure Manual explains that not all suicide claims are precluded by 5 U.S.C. § 8102(a)(2)[9] and provides, compensation can be paid if the job-related injury (or disease) and its consequences directly resulted in the employee's domination by a disturbance of the mind and loss of normal judgment which, in an unbroken chain, resulted in suicide.[10] The emphasis is on a showing of genuine brain derangement of psychosis, as distinguished from mere melancholy, discouragement, or other sane condition such as depression.[11] Under the chain of causation test, OWCP's procedures provide that, if the injury and its consequences directly resulted in a mental disturbance, or physical condition which produced a compulsion to commit suicide, and disabled the employee from exercising sound discretion or judgement so as to control that compulsion, then the test is satisfied and the suicide is compensable.[12] OWCP's procedures add

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[4] *L.R. (E.R.),* 58 ECAB 369 (2007).

[5] *See Martha L. Watson*, 46 ECAB 407 (1995).

[6] *Rosita Mahana (Wayne Mahana),* 53 ECAB 503 (2002).

[7] *Id.*

[8] *Id.*

[9] Section 8102(a)(2) of FECA precludes payment of compensation for disability or death sustained in the performance of duty where the injury or death is caused by the employee's intention to bring about the injury or death of himself, herself, or another. *See* 5 U.S.C. § 8102(a)(2).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.15 (September 1995).

[11] A. Larson, *The Law of Workers' Compensation* § 38.01 (2016).

[12] *See supra* note 10 at Chapter 2.804.15(b)(2).

that, for the suicide to be compensable, the chain of causation from the injury to the suicide must be unbroken.[13]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.[14] In the case of *Lillian Cutler*,[15] the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition under FECA. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the concept or coverage under FECA.[16] Where the claimed condition 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 condition comes within the coverage of FECA.[17] On the other hand, when an injury or illness results from an employee's feelings of job insecurity *per se*, fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or hold a particular position, unhappiness with doing work, or frustration in not given the work desired or hold a particular position, such injury or illness falls outside FECA's coverage because they are found not to have arisen out of employment.[18]

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from the employee's performance of his or her regular duties, these could constitute employment factors.[19] 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.[20] A claimant must establish a factual basis for his or her allegations that the harassment occurred with probative and reliable evidence. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.[21] With regard to emotional claims arising under FECA, the term harassment as applied by the Board is not equivalent of harassment as defined or implemented by other employing establishments, such as the Equal Employment Opportunity Commission, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers' compensation under

[13] *Id.* at Chapter 2.804.15(b)(3).

[14] *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

[15] 28 ECAB 125 (1976).

[16] *A.K.*, 58 ECAB 119 (2006); *David Apgar*, 57 ECAB 137 (2005).

[17] *L.S.*, Docket No. 16-0769 (issued July 11, 2016).

[18] *William E. Seare*, 47 ECAB 663 (1996).

[19] *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

[20] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[21] *James E. Norris*, 52 ECAB 93 (2000).

FECA, the term harassment is synonyms, as generally defined with persistent disturbance, torment, or persecution, *i.e.*, mistreatment by coemployees or workers.[22]

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regularly or specially assigned work duties of the employee and are not covered under FECA.[23] 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.[24] 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.[25]

In cases involving emotional or stress-related 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 work 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 compensable factors of employment and may not be considered.[26] If an employee does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim. The claim must be supported by probative evidence.[27] If a compensable factor of employment is substantiated, OWCP must base its decision on an analysis of the medical evidence.[28]

ANALYSIS

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

The Board finds that appellant has established overwork as a compensable employment factor. Overwork, when substantiated by sufficient factual corroboration, may constitute a compensable factor of employment.[29] Appellant submitted evidence which reveals that the employee had alleged, prior to his death, that he was suffering from stress at work due to an increased workload. In the employee's March 2014 suicide letter he related that he had informed

[22] *Beverly R. Jones*, 55 ECAB 411 (2004); *supra* note 20.

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

[24] *William H. Fortner*, 49 ECAB 324 (1998).

[25] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[26] *Dennis J. Balogh*, 52 ECAB 232 (2001).

[27] *Charles E. McAndrews*, 55 ECAB 711 (2004).

[28] *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[29] *See I.P.*, Docket No. 17-1178 (issued June 12, 2018); *Bobbie D. Daly*, 53 ECAB 691 (2002).

his supervisor that he was understaffed because their system's users had grown 600 percent from 60 to almost 360 users. The employing establishment has not contested the assertion that the system had grown in the manner the employee had indicated prior to his death. The employee also indicated that he had more reporting requirements and was in charge of a video teleconferencing system. He noted that SSO A.P. told him that she would get him more help, but the help did not come. Furthermore, in an October 10, 2014 statement, appellant related that, around 2010, the employee became increasingly frustrated about a large increase in his workload. Dr. Bricklin also recounted that K.W., had indicated that the employee complained of being overworked. He also related that according to an interview with G.C., the employee's former coworker, the employee was overwhelmed by his job duties. In his interview G.C. explained that the employee's IT department had three people, but after two months, there were only two individuals working. The employing establishment did not challenge these allegations and they are supported by corroborating statements of coworkers, appellant, and the contemporaneous documentation including the employee's suicide note. The Board thus finds that the evidence of record is sufficient to substantiate the allegations of overwork and thus establish a compensable employment factor.

Appellant has also contended that the employee sustained workplace stresses, which caused him to commit suicide, as a result of a toxic work environment by his supervisors. She has specifically questioned the actions of LTC D.K. from May 1 to 5, 2017, which preceded the employee's disappearance and death. As noted above, when an employing establishment's actions in an administrative matter are shown to be erroneous or abusive, the claim is compensable.[30] The record reflects that on March 1, 2014 LTC D.K. advised the employee of a meeting on May 5, 2014 that the investigation was complete, and that he had already prepared a Letter of Reprimand. However, instead of advising the employee of the results of the completed investigation and subsequent disciplinary action, LTC D.K. made the employee wait until the following Monday and refused to inform him of the results despite the employee's repeated requests to obtain the information. This refusal was contemporaneous with the employee's treatment for stress-related conditions.

The Board finds that there is sufficient evidence of record to establish that the actions of LTC D.K. from May 1 to 5, 2014 constitute error or abuse on the part of the employing establishment. The employing establishment's October 25, 2017 letter to OWCP expressly shows that LTC D.K. did not follow the employing establishment's own policy to not provide upsetting information at the end of the workweek, particularly to an employee who had received treatment for depression and a failed suicide attempt.[31] It admitted that how LTC D.K. notified the employee of pending disciplinary action "may be inconsistent with advice offered during training for [employing establishment] supervisors" and referenced its own Suicide Prevention Program Directive. Error or abuse is further demonstrated by the fact that LTC D.K. received a Letter of

[30] *See Thomas D. McEuen, supra* note 23.

[31] *See M.C.*, Docket No. 14-1135 (issued June 7, 2016) (the Board found error or abuse on the part of the employing establishment where a security officer testified that another security officer did not follow its own de-escalation policy when he placed the claimant in a control hold and escorted her off the premises).

Admonition on June 1, 2015 for his treatment of the employee.[32] The letter critiqued LTC D.K. for exercising "questionable judgment and leadership with respect to [his] subordinates." The Board thus finds that appellant has submitted sufficient evidence to establish error or abuse by the employing establishment when LTC D.K. notified the employee on May 1, 2014 that the investigation was complete, refused to give the employee information about the results of the investigation or any disciplinary action, and instructed the employee to wait until May 5, 2014 for a meeting.

Appellant has also described several instances of alleged harassment on the part of SSO A.P. towards the employee. She related that SSO A.P. violated the employee's privacy by disclosing to other coworkers that the employee obtained a sizable inheritance after his mother died in 2011. Appellant has also described a situation when SSO A.P. told the employee: "I guess your give a s*** factor just went out the window" when the employee returned to work after his mother had died. The Board finds, however, that the evidence of record does not establish that these specific incidents of verbal abuse or privacy violations are compensable factors of employment. Appellant has provided no corroborating evidence or witness statements to support her or the employee's allegations regarding SSO A.P.'s statements or conduct. As noted above, mere perceptions of harassment or discrimination are not compensable under FECA.[33] A claimant must establish a factual basis for his or her allegations that the harassment occurred.[34] Because appellant has not provided corroborating evidence to verify her allegations regarding SSO A.P.'s actions towards the employee, she has not established a factual basis for her claim as to this allegation.

The Board finds that appellant has not established a compensable employment factor under FECA with respect to the alleged harassment against the employee by SSO A.P. However, the Board also finds that the evidence of record is sufficient to establish that LTC D.K.'s actions preceding the employee's disappearance on May 5, 2017 constitute error or abuse and, therefore, appellant has established a compensable employment factor under FECA. Additionally, the Board finds that the evidence of record is sufficient to establish that the employee was overworked, which constitutes a compensable employment factor under FECA.

By denying appellant's claim, OWCP has not reviewed the medical opinion evidence submitted on the issue of causal relationship. The Board will, therefore, set aside OWCP's February 26, 2018 decision and remand the case for review of the medical opinion evidence as it relates to the accepted compensable factors of employment.[35] After such further development as deemed necessary, OWCP shall issue a *de novo* decision on the issue of entitlement to survivor benefits.

[32] *See K.A.*, Docket No. 14-0017 (issued August 4, 2014) (the Board determined that a grievance settlement between management and the union, which agreed that supervisors had acted wrongly against the claimant, was sufficient to show error or abuse on the part of the employing establishment).

[33] *Supra* note 20.

[34] *Supra* note 21.

[35] *See E.M.*, Docket No. 16-1695 (issued June 27, 2017); *Tina E. Francis*, 56 ECAB 180 (2004).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the February 26, 2018 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this opinion.

Issued: March 26, 2019
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