



headaches triggered with nausea, diarrhea, and anxiety that she attributed to a hostile, unprofessional, and contentious work environment. She asserted that the constant offensive words and behavior were very stressful. Appellant reported that she first became aware of her condition on January 9, 2017 and first realized that it resulted from her employment on May 4, 2017. On the reverse side of the claim form, the employing establishment indicated that she first received medical treatment and was last exposed to the conditions alleged to have caused her illness on August 10, 2017.

In an undated narrative statement, appellant alleged that D.L.S., a senior credentialer and appellant's coworker, made statements outside of the office that were not conducive to a psychologically safe working environment. She also asserted that a double standard was applied regarding a May 4, 2017 incident involving a missing signature since D.L.S. had missed signatures and forgotten things. Appellant further contended that D.L.S.'s tone was offensive, hostile, and not conducive to productivity. She alleged that the credentialing team had a history of "running" people out, belittling others, and making a very uncomfortable work environment.

In an August 16, 2017 statement, appellant related on that morning that B.O., a lead credentialer and appellant's training supervisor, began to berate and question her about a missing fax. She alleged that the conversation became "heated."

Appellant submitted several e-mails between herself and D.R.S., service chief of the quality management service unit and appellant's supervisor. In a January 9, 2017 e-mail, she described that, when she returned from vacation, there were a myriad of documents that were pulled from her cabinet, a couple of which had been torn up for her to see, and a couple of which had notes affixed to them that stated "Fix Label." Appellant also expressed her disagreement with both D.L.S. and B.O.'s questioning of her ability to perform and understand the training that was provided. In an August 9, 2017 e-mail, she informed D.R.S. that her work atmosphere was no good and not conducive to learning. Appellant asserted that D.L.S. ridiculed and highlighted other people's shortcomings, said and did whatever she felt like at the moment, and verbally insulted her. She described how she had mixed up two providers and D.L.S. laughed at her.

OWCP also received a May 4, 2017 report of contact (ROC) by appellant. Appellant alleged that, after that morning's huddle, she sought clarification from D.L.S. and B.O. on how to remedy an error when a file had been taken to the most recent board without proper signatures. She contended that D.L.S. made statements in a loud and offensive manner. Appellant asserted that when she asked D.L.S. to "tone it down," D.L.S. left the office.

In an August 25, 2017 examination note, Dr. Jeanette Rylander, a Veterans Administration staff physician, indicated that appellant was seen in their clinic for complaints of neck stiffness contributing to headache. She recommended that appellant remain off work that day.

By development letter dated September 7, 2017, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the factual and medical evidence necessary to establish her claim and also provided a questionnaire for completion. OWCP afforded appellant 30 days to submit the necessary factual information and medical evidence.

In a decision dated February 22, 2018, OWCP denied appellant's emotional condition claim, finding that she had not established a compensable employment factor, and thus, had not established an emotional condition in the performance of duty.

On September 4, 2018 appellant requested reconsideration. She indicated that she was providing new evidence in the form of an Equal Employment Opportunity Commission (EEOC) complaint and investigator's report. Appellant pointed out that none of the witness accounts denied or contradicted her complaint of a hostile work environment, which validated the events listed in her complaint.

Appellant submitted her EEOC complaint filed on November 9, 2017. She also submitted a November 16, 2017 EEOC counselor report, which noted that she had filed a claim for harassment/hostile work environment. The report provided a description of appellant's claim, including specific incidents alleged by her, and related that the resolution sought was to stop the alleged harassment and to be reassigned.

OWCP also received a June 29, 2018 EEOC Investigative Report regarding appellant's claim of hostile work environment on the basis of race. It described various events, which she alleged demonstrated a hostile work environment, listed the documents that were reviewed, and provided a summary of the witness testimony.

According to B.O.'s summary, she acknowledged that several times appellant's files were left on her desk with a note describing errors and issues. B.O. explained that all the credentialing and privileging files were available to any credentialer as needed. She related that it was customary that, if a credentialer responsible for that file was out of the office, another credentialer was expected to access that file and provide a response. If something was found to not be in order with the file, then a note describing the issue was left with the file on the credentialer's desk. B.O. also contended that appellant received adequate training and was informed of all the proper policies and procedures, as well as given one-on-one instruction. She further confirmed that their office had poor communication and that many discussions were had regarding the tension in the office.

The report also contained a summary of D.L.S.'s testimony. D.L.S. asserted that she had never gone through appellant's desk. She clarified that credentialing files were not private and that other credentialers would work on other files if the credentialer responsible was not in the office. The report indicated that D.L.S. confirmed that she criticized appellant's work performance and that she admitted that she was not soft-spoken. D.L.S. explained that appellant's work was substandard and she believed that appellant was not working at an acceptable level. She also responded that she refused appellant's request for formal mediation in June 2017 because it was not mandatory and she did not think it would be of any good.

In the summary of D.R.S.'s testimony, she related that appellant had repeatedly vocalized concerns and opinions regarding interpersonal communication challenges in the workplace. D.R.S. noted that she did not observe any evidence of discrimination in the working relationship between appellant and the two senior members on her team, but she intervened whenever an issue or conflict was brought to her attention. She indicated that notes were left on appellant's desk in order to notify her of issues that needed to be addressed. D.R.S. was unable to confirm whether D.L.S. or B.O. interrupted appellant during a staff meeting, but she explained that there was a

significant “give and take and energized discussions” in the meetings. She acknowledged that appellant was hired and received training during a time when the team was under pressure to produce, so the environment for learning may have been different in comparison with the team member that was hired after appellant. D.L.S. opined that all the parties were responsible for the general conflict that had risen between them.

OWCP received a December 21, 2017 Notice of Partial Acceptance of appellant’s EEOC complaint for a hostile work environment. The letter explained that appellant’s claim of harassment had been accepted for investigation.

Appellant submitted additional medical evidence, including August 15 and 16, 2018 return to work notes by Lindsay McQuade, a family nurse practitioner, an August 24, 2018 return to work note by Sodha Iqbal, a physician assistant, an August 28, 2018 work status note by Dr. Sarah Morgan, a psychiatrist.

In an October 11, 2018 ROC report, appellant indicated that when she returned to work after medical leave the harassment and hostile work environment continued. She alleged that while she was out of the office from August 16 to October 1, 2018 her personal times and work items were removed from her desk. Appellant contended that D.R.S. had initially agreed to appellant’s request to accommodate, but later provided appellant with a revised form that would no longer accommodate. She also asserted that on October 3, 2018 someone damaged her property and left a signage on her desk calling appellant a “B\*\*\*h” while she was out of the office. Appellant alleged that on October 11, 2018 she received several e-mails from credentialing staff concerning work that they perceived had errors, but she did not receive any response when she requested a meeting with the lead credentialer for a status meeting. She included a photo of the signage left on her desk.

In an October 16, 2018 narrative ROC summary, appellant related that, beginning August 16, 2018, she was unable to work for a total of six weeks due to stress of enduring a hostile work environment. She explained that, during the time while out of work, she had learned that her desk had been cleaned and her personal and professional items discarded. Appellant reported that on October 3 she informed B.L.R. and D.L.S. that she was leaving and when she returned from a meeting at approximately 12:40 p.m., she found her property damaged with writing that read “[appellant] is a B\*\*\*\*.” She related that on October 5, 2018 D.R.S. approved for her to work in another office outside of the hostile space. Appellant asserted that on October 15, 2018 D.L.S. shoved documents in her office and that someone had written a racially offensive slur on the back of her door. She attached a photo of the racial slur written on her door.

By decision dated January 11, 2019, OWCP denied modification of OWCP’s February 22, 2018 decision.<sup>2</sup>

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<sup>2</sup> The January 11, 2019 decision noted that it superseded December 3, 2018 and January 8, 2019 OWCP decisions.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>4</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

To establish an emotional condition in the performance of duty, a claimant must submit the following: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) medical evidence establishing that he or she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his or her emotional condition is causally related to the identified compensable employment factors.<sup>7</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.<sup>8</sup> In the case of *Lillian Cutler*,<sup>9</sup> 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.<sup>10</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>11</sup> 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

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *G.R.*, Docket No. 18-893 (issued November 21, 2018); *George H. Clark*, 56 ECAB 162 (2004).

<sup>8</sup> *L.Y.*, Docket No. 18-1619 (issued April 12, 2019); *L.D.*, 58 ECAB 344 (2007).

<sup>9</sup> 28 ECAB 125 (1976).

<sup>10</sup> *W.F.*, Docket No. 17-640 (issued December 7, 2018); *David Apgar*, 57 ECAB 137 (2005).

<sup>11</sup> *Cutler*, *supra* note 9; *see also Trudy A. Scott*, 52 ECAB 309 (2001).

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 to hold a particular position, such injury or illness falls outside FECA's coverage because they are found not to have arisen out of employment.<sup>12</sup>

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA.<sup>13</sup> However, the Board has held that, where the evidence establishes error or abuse on the part of the employing establishment, coverage will be afforded.<sup>14</sup> In determining whether the employing establishment erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.<sup>15</sup>

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.<sup>16</sup> Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.<sup>17</sup> A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.<sup>18</sup> 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 agencies, such as the EEOC compliant, 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 coemployees or coworkers. Mere perceptions of harassment or discrimination are not compensable under FECA.<sup>19</sup>

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 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

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<sup>12</sup> *B.L.*, Docket No. 18-0965 (issued November 19, 2018); *William E. Seare*, 47 ECAB 663 (1996).

<sup>13</sup> *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>14</sup> *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *William H. Fortner*, 49 ECAB 324 (1998).

<sup>15</sup> *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *see Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>16</sup> *B.Y.*, Docket No. 17-1822 (issued January 18, 2019); *K.W.*, 59 ECAB 271 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

<sup>17</sup> *James E. Norris*, 52 ECAB 93 (2000).

<sup>18</sup> *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, *supra* note 16.

<sup>19</sup> *G.R.*, Docket No. 18-0893 (issued November 21, 2018); *M.D.*, 59 ECAB 211 (2007); *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

employment and may not be considered.<sup>20</sup> 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.<sup>21</sup>

### ANALYSIS

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

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. OWCP denied her emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.<sup>22</sup> The Board notes that appellant's allegations do not pertain to her regularly or specially assigned duties under *Cutler*. Rather, appellant has alleged a hostile work environment, harassment and discrimination, and error and abuse on the part of her supervisors.

Specifically, appellant asserted that D.L.S. and B.O. often criticized appellant about her work and held her to a double standard even though she was inadequately trained. The Board has long held that disputes regarding assessment of work performance is administrative or a personnel matter, and can only be considered a compensable work factor if there is probative evidence of error or abuse.<sup>23</sup> Appellant did not submit any evidence to show that she was not properly trained or to substantiate that D.L.S. and B.O. unreasonably criticized her.

Appellant also submitted various e-mails from herself to D.R.S. where she expressed concerns about how D.L.S. and B.O. interacted with her. She described a specific incident when she returned from vacation and there were various files pulled from her cabinet and left on her desk with notes attached to them to "Fix Label." The Board notes that these e-mails do not show that the employing establishment committed error or abuse in this situation.<sup>24</sup> Moreover, in the summary of D.R.S. and B.O.'s testimonies, they both acknowledged that all files were available to any credentialer as needed. They related that it was common practice in their office to access another credentialer's files if that credentialer was out of the office and if an issue was noticed, a note was left with the file on the credentialer's desk. Thus, the Board finds that appellant did not submit sufficient evidence to establish a compensable employment factor.

In an October 11, 2018 ROC report, appellant contended that D.R.S. had initially approved appellant's request for reasonable accommodation, but later provided appellant with a revised form

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<sup>20</sup> *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>21</sup> *P.B.*, Docket No. 17-1912 (issued December 28, 2018); *K.S.*, Docket No. 18-845 (issued October 26, 2018).

<sup>22</sup> *Supra* note 20.

<sup>23</sup> *F.A.*, Docket No. 17-0315 (issued July 11, 2017); *Elizabeth W. Esnil*, 46 ECAB 606 (1995).

<sup>24</sup> *See B.S.*, Docket No. 19-0378 (issued July 10, 2019).

that she would no longer accommodate. The Board has held that management's handling of reasonable accommodations are administrative functions of the employing establishment, and not duties of the employee.<sup>25</sup> Appellant has not submitted corroborating evidence of error or abuse in this administrative matter, and thus, has not established a compensable employment factor.<sup>26</sup>

Appellant submitted several documents related to her EEOC action, including the November 9, 2017 complaint, a November 16, 2017 counselor report, a December 21, 2017 partial acceptance letter, and a June 29, 2018 investigative report. While the December 21, 2017 letter acknowledges partial acceptance of concluded that her allegations of harassment and hostile work environment were accepted for investigation by EEOC, this information alone is insufficient to establish harassment or discrimination. The Board notes that there is no admission of error, fault, or legal violation on the part of the employing establishment in the EEOC documents submitted and no final EEOC decision has been issued.<sup>27</sup>

Appellant also further attributed her emotional condition to alleged harassment on the basis of her race. 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.<sup>28</sup> However, for harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under FECA.<sup>29</sup>

Appellant also provided general statements of how D.L.S. spoke to her in an offensive and hostile manner that was not conducive to productivity and that D.L.S. often made statements that did not promote a psychologically safe working environment. She provided a May 4, 2017 ROC summary which described an incident when D.L.S. spoke to her offensively and disrespectfully about a missing signature.

Verbal altercations and difficult relationships with supervisors/managers, when sufficiently detailed and supported by the record, may constitute compensable factors of employment.<sup>30</sup> However, this does not imply that every ostensibly abusive or threatening statement uttered in the workplace will give rise to coverage under FECA. For appellant to prevail on her claim, she must support her allegations with probative and reliable evidence.<sup>31</sup> The Board has held that being spoken to in a loud or harsh tone does not in itself constitute verbal abuse or

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<sup>25</sup> See *S.B.*, Docket No. 18-1113 (issued February 21, 2019); *Janet I. Jones*, 47 ECAB 345, 347 (1996).

<sup>26</sup> *Id.*

<sup>27</sup> See *S.W.*, Docket No. 17-1016 (issued September 19, 2018); *A.C.*, Docket No. 18-0507 (issued November 26, 2018).

<sup>28</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

<sup>29</sup> *Supra* note 19.

<sup>30</sup> *J.M.*, Docket No. 16-0717 (issued January 12, 2017); *L.M.*, Docket No. 13-0267 (issued November 15, 2013).

<sup>31</sup> *Y.J.*, Docket No. 15-1137 (issued October 4, 2016).

harassment.<sup>32</sup> Appellant, however, has not submitted any witness statements or other evidence corroborating that she was spoken to in an offensive and disrespectful manner. The Board has held that mere allegations, in the absence of factual corroboration, are insufficient to meet a claimant's burden of proof.<sup>33</sup>

Appellant submitted an October 11, 2018 ROC report, where she described that on October 3, 2018 someone damaged her property and left a signage on her desk of “[appellant] is a B\*\*\*\*.” She included a photo of the signage left on her desk. In an October 16, 2018 narrative ROC summary, appellant claimed that on October 15, 2018 D.L.S. shoved documents in her office and someone had written a racial slur on the back of her door. She attached a photo of the racially offensive slur on her door. The Board notes that the photographs establish as factual that someone wrote a hateful message on appellant's desk and wrote a racial slur on the back of her door. The Board has held that the use of an epithet, which is derogatory in nature, and disparaging comments concerning national or ethnic origin, can constitute harassment and discrimination under FECA.<sup>34</sup> The Board therefore finds that appellant has provided reliable and probative evidence regarding the signage left on her desk and the slur on the back of her door that, accordingly, she has established compensable work factors.<sup>35</sup> Thus, appellant has established compensable employment factors with respect to these allegations of harassment and discrimination.

The Board finds that appellant has established compensable employment factors with respect to her allegations of harassment that signage was left on her desk on October 3, 2018 and that someone wrote a racially offensive slur on the back of her door. Thus, OWCP must base its decision on analysis of the medical opinion evidence with regard to causal relationship. The Board will therefore set aside OWCP's January 11, 2019 decision and remand the case for OWCP to review of the medical evidence as it relates to the accepted compensable factors of employment.<sup>36</sup>

### **CONCLUSION**

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

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<sup>32</sup> *R.T.*, Docket No. 13-1665 (issued September 12, 2014).

<sup>33</sup> See *Pamela D. Casey*, 57 ECAB 260 (2005); *Bonnie Goodman*, 50 ECAB 139 (1998).

<sup>34</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *Felix Flecha*, 52 ECAB 268, 273 (2001); *Abe E. Scott*, 45 ECAB 164 (1993).

<sup>35</sup> *S.S.*, Docket No. 17-0959 (issued June 26, 2018); *C.O.*, Docket No. 07-1290 (issued December 6, 2007).

<sup>36</sup> See *K.G.*, Docket No. 16-1066 (issued September 21, 2017); *T.F.*, Docket No. 12-0439 (issued August 20, 2012).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 11, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision of the Board.

Issued: November 5, 2019  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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