



## **FACTUAL HISTORY**

On November 26, 2014 appellant, then a 38-year-old laborer-custodian, filed an occupational disease claim (Form CA-2) alleging that she sustained major depressive disorder, anxiety, panic attacks, heart palpitations, migraine headaches, and insomnia due to constant harassment by management which created a hostile work environment.<sup>3</sup> She indicated that she first became aware of her claimed conditions and their relation to her federal employment on September 10, 2013. Appellant stopped work on October 31, 2013.

In an undated response to the Form CA-2, appellant's immediate supervisor, P.P., contended that management had never harassed appellant. She indicated that on one occasion another supervisor had asked appellant where she had been when she saw her off the premises of the employing establishment outside of her lunch hour, and appellant responded that she had used a bathroom a block away due to the unsuitability of the bathrooms on premises. P.P. noted that appellant worked for two hours per day at the Surfside Post Office and asserted that, when appellant did not return to the employing establishment after two hours, she would call the Surfside Post Office and officials would say that she was not present there.

Appellant submitted medical evidence in support of her claim, including an October 17, 2014 report from Dr. Joseph Poitier, a Board-certified psychiatrist, who noted that appellant was being treated for major depressive disorder due to stress at work. On December 3, 2014 Dr. Poitier noted that appellant reported having been subjected to constant harassment at work and he advised that she could not return to work. Appellant also submitted an October 17, 2014 report of Carter T. Wiggins, a licensed clinical social worker.

In a December 22, 2014 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. In a separate development letter also dated December 22, 2014, OWCP requested that the employing establishment provide information regarding appellant's claimed sources of stress. It provided both parties 30 days to respond.

In response, appellant submitted a January 13, 2015 statement in which she discussed the delay in filing her claim and provided further details of the incidents and conditions at work which she believed had caused her stress-related conditions. She expressed her belief that management had "personal issues" with her traveling to the Surfside Post Office to work for approximately two hours each day. Appellant asserted that, for this reason, management deprived her of the ability to work at the Surfside Post Office by hiding the keys for the work van she used to travel between the employing establishment and Surfside work locations or by moving the van from its usual location and not advising her of its new location. She alleged that, some mornings, P.P. told her that she was not going to the Surfside Post Office that day and she generally asserted that management did not "agree with anything" pertaining to her going to that location. Appellant indicated that P.P. wrongly accused her of ordering duplicate custodial supplies for the employing establishment and Surfside work locations. She claimed that management placed her on a work

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<sup>3</sup> In a November 26, 2014 statement, appellant indicated that several managers at the employing establishment harassed her and created a hostile work environment which made it difficult for her to function at work.

schedule which was stricter than that of other custodians and she indicated that management's observation of her on lunch and breaks made her uncomfortable.

Appellant further asserted that management falsified Family and Medical Leave Act (FMLA) documentation and that in October 2013 it improperly changed and merged her FMLA cases. She believed that P.P. and other managers tried to sabotage her reputation as a good employee by calling the Surfside Post Office on multiple occasions and inquiring about her whereabouts.<sup>4</sup> Appellant asserted that two of her managers, E.M. and C.W., instructed her to use faulty equipment and that P.P. failed to order equipment she needed to perform lawn work in the yard at her workplace. She indicated that, after she spoke to an employing establishment official about her concerns at work, P.P. told her, "I don't care how many managers you bring here!" Appellant alleged that, with respect to her cutting the lawn at work on October 17, 2013, the postmaster of the Miami Beach Post Office, L.A., exclaimed, "If I tell her to go out there and do it, she needs to do it even if it takes eight hours!" She indicated that she attempted to obtain a transfer away from her hostile work environment, but that no such transfer occurred. Appellant asserted that an employing establishment official who was supposed to help with her transfer request did not return her telephone calls.

Appellant also submitted a journal-style document in which she discussed employment factors alleged to have occurred on specific dates.<sup>5</sup> She asserted that on June 4, 2013 she raised concerns about having to use her personal vehicle to go the Surfside Post Office and L.A. spoke condescending to her by saying, "I'm not concern[ed], I just need the Surfside station clean!" Appellant alleged that on July 3, 2013 P.P. forced her to receive training from an uncertified trainer. She indicated that on July 10, 2013 C.W. spoke to her in a condescending manner regarding lunch breaks and exclaimed, "Again, you need to take your lunch within six hours, not seven!" Appellant asserted that on July 11, 2013 P.P. spoke to her in a belligerent manner regarding which vehicle she was driving and falsely led her to believe that a work vehicle was not available. On the next day, P.P. continued to call the Surfside Post Office to ask questions about appellant's whereabouts. Appellant claimed that on July 15, 2013 she could not receive training to use a weed eater because the equipment malfunctioned and that on July 19, 2013 P.P. harassed her about her use of the time clock. She alleged that on July 22, 2013 P.P. harassed her by calling her twice at the Surfside Post Office and asking her questions about a hand truck and the time she planned to return to the employing establishment. Appellant asserted that on July 30, 2013 C.W. harassed her about her maintenance of the yard and that on July 31, 2013 P.P. used an expletive when she referenced an accumulation of catalogues in the workplace.

Appellant asserted that on August 7, 2013 she was subjected to harassment because a manager, S.E., supervised her while she was working in the yard and that, later in the day, P.P. and E.M. harassed her about her whereabouts. She indicated that, on the same date, E.M. falsely accused her of not performing her duties and she responded that she did not need to be micromanaged. Appellant maintained that on August 14, 2013 P.P. tried to provoke her during a

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<sup>4</sup> In reference to an instance when P.P. saw her off-premises, appellant indicated that she left the employing establishment to find a restroom because all the on-premises restrooms were occupied.

<sup>5</sup> Appellant also submitted two other journal-style documents which described the work duties she performed in late-2013.

brief conversation after she opened a door for P.P. She alleged that on August 30, 2013 P.P. telephoned the Surfside Post Office and questioned whether she was actually pulling weeds and that on September 12, 2013 P.P. referred to her as a “girl” when speaking to a coworker. Appellant indicated that on September 23, 2013 P.P. questioned a coworker, J.H., about her whereabouts and that, two days later, P.P. “interrogated” her about her driver’s license. She asserted that on October 25, 2013 a vehicle was not made available for her to travel to the Surfside Post Office. Appellant indicated that on a number of occasions in 2013 P.P. told her she could not go to the Surfside Post Office because her presence at the employing establishment was needed to perform custodial tasks.

Appellant submitted an October 20, 2014 statement from a coworker, D.F., who expressed his belief that P.P. and E.M. harassed appellant by not contacting the garbage company to collect trash at the employing establishment and asserted that, after a collection had not occurred for weeks, the trash almost blocked a hallway. He noted that he brought the matter to P.P.’s attention, but that she “didn’t seem too concerned.” D.F. indicated that the trash was not collected until he reported the matter to the safety department. He advised that he learned that another custodian “was not treated as near as terrible” as appellant by management.<sup>6</sup>

In an undated statement, another coworker, J.H., asserted that appellant had been subjected to constant harassment at the employing establishment and indicated that, when she was not within sight, the entire management staff would look for her. Appellant was met with hostility because she did not want to use her own vehicle to travel back and forth between the employing establishment and Surfside work locations. J.H. indicated that, after some opposition, management issued appellant a work van to make the trip, but that the van keys would go missing and she would not be able to go to the Surfside Post Office on many days. She observed that management placed more demands on appellant than on other custodians, including requiring her to wax the floor without assistance and limiting her breaks to their exact allotted length. J.H. asserted that other custodians were allowed to be tardy with respect to attendance and breaks without consequences.<sup>7</sup>

In an undated statement received by OWCP on January 28, 2015, E.M. indicated that appellant alleged harassment when management instructed her to maintain the outside of the work premises, including mowing the lawn, because she believed that she should not have been required to perform that task. She asserted that everything that appellant requested from management was provided to ensure her safety and allow her to accurately and efficiently perform her job. E.M. noted that she spoke to appellant after observing her clock in from her lunch period, immediately leave the premises, and then return 27 minutes later. She noted that appellant filed an Equal Employment Opportunity (EEO) claim regarding the matter and, during an informal EEO meeting in July 2013, management denied appellant’s requests to lengthen the time she spent at the Surfside

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<sup>6</sup> Appellant also submitted an October 10, 2014 statement in which a coworker, B.M., advised that she had known appellant for approximately a year and had observed that she conscientiously and efficiently performed her work.

<sup>7</sup> Appellant also submitted other documents including a list she produced on August 16, 2013 of yard maintenance supplies, July 17, 2013 documents acknowledging her requests to be reassignment to other workplaces in Florida, a July 19, 2015 preferred-duty assignment form, an April 4, 2014 letter and an undated letter from superiors praising her work performance, and undated work schedules. She also submitted additional reports of Dr. Poitier from 2014.

Post Office and to end her work shift at that location. E.M. advised that, after that point, appellant had been either calling out sick or gone on absent without leave (AWOL) status.

In another undated statement received by OWCP on January 28, 2015, C.W. asserted that she did not harass appellant at the employing establishment. She indicated that her job as a supervisor was to instruct employees regarding their duties and responsibilities and she maintained that she gave appellant the same instructions she would have given to any other employee.

By decision dated February 9, 2015, OWCP denied appellant's claim finding that she had not established an emotional condition in the performance of duty as there was no compensable employment factor. It determined that she failed to establish that management had harassed her, subjected her to a hostile work environment, or otherwise committed wrongdoing.

On March 5, 2015 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. During the hearing held on January 17, 2018, she testified that management at times prevented her from working at the Surfside location or from working there more than two and a half hours if a Surfside manager requested her to stay longer. Appellant testified that management failed in its responsibility to have dumpster trash removed from the employing establishment, thereby requiring her to leave trash bags on the sidewalk. She claimed that management did not provide a functioning lawn mower and that she had to use a weed eater to cut grass.

By decision dated March 16, 2018, OWCP's hearing representative set aside the February 9, 2015 decision and remanded the case to OWCP for further development. She found that appellant had not established that management subjected her to harassment/discrimination or committed error or abuse regarding administrative actions. However, the hearing representative directed OWCP to further evaluate appellant's allegations with respect to several claimed employment factors ostensibly related to her work duties, including her reported difficulties obtaining a vehicle to travel to the Surfside Post Office, accumulation of work when she did not go to the Surfside Post Office, barriers to obtaining necessary supplies, and failure to have dumpster trash collected.

On remand OWCP sent the employing establishment a March 27, 2018 development letter in which it requested that knowledgeable managers complete an attached questionnaire posing questions about the frequency of appellant's visits to the Surfside location, provision of transportation to the Surfside location, ordering and provision of supplies, methods of carrying out lawn work, and pickup of dumpster trash.

In an April 16, 2018 statement, P.P. indicated that appellant's bid required that she go to the Surfside Post Office for two hours per day and advised that transportation was provided to appellant each day. She noted that a work vehicle was always available for appellant to travel to the Surfside Post Office and that a key for a work vehicle was always available as well. In response to a question regarding whether appellant suffered consequences if she did not go to the Surfside Post Office, P.P. indicated that she could not remember a time when appellant did not go to the Surfside Post Office and she noted that appellant often returned late from her work at that location. She indicated that appellant was directed to give managers a list of supplies as she needed them and they ordered everything appellant requested, even if she requested excess supplies. P.P. noted

that appellant was given a lawn mower to mow grass and that she received the required training for the lawn mower. She advised that a new lawn mower was ordered and received when the existing lawn mower did not work, but appellant still found reasons not to mow the lawn. P.P. advised that the facility did not have a working weed eater when appellant was there. She indicated that trash pickup was twice a week and there were times when it was not picked up. However, P.P. noted that, if the trash was not picked up, management would call and it would be picked up that day or the following day. If the dumpster was overflowing, they placed the bags on the ground next to the dumpster and the trash collectors took all the bags including those on the ground. P.P. noted that appellant often disappeared from the work premises when performing her outdoor duties and that, consequently, managers had to closely scrutinize her work.

In an undated statement, E.M indicated that appellant's job required her to go to the Surfside Post Office for two hours daily. She asserted that transportation was always provided as the employing establishment had a spare van that appellant used every morning from 6:00 a.m. to 8:00 a.m. to travel to the Surfside Post Office. E.M. indicated that the keys to the vehicle were always available. The Surfside Post Office was about 10 minutes away from the employing establishment, but management gave appellant until 8:30 a.m. to return, despite the fact that she would often not return in a timely manner. E.M. noted that, when the van was serviced, management allowed appellant to use one of two carrier vans. She asserted that appellant always went to the Surfside Post Office each day. E.M. advised that she, P.P., and C.W., were responsible for ordering all supplies. Appellant would make a list of supplies she needed and they ordered everything she requested. E.M. indicated that, shortly after appellant arrived on the job, she made them aware that the lawn equipment was broken and they ordered a new lawn mower, jump suits, protective goggles, and everything else she needed. She advised that the work facility never ran out of supplies, and that there were no consequences for appellant if supplies ran out because she was not responsible for ordering them. E.M. indicated that appellant did not have to mow the lawn with a weed eater, but rather used the lawn mower. She believed that trash was picked up from the dumpster twice a week most weeks. E.M. advised that occasionally the trash crew would miss a pickup and management would call and then the trash would be picked up that day or the next day.

Appellant submitted an April 26, 2018 report in which Dr. Poitier noted that she reported she had been under constant harassment on her job and had problems with her managers, P.P. and E.M.

By decision dated July 6, 2018, OWCP denied appellant's claim as she had not established an emotional condition in the performance of duty. It found that appellant had not established the factual aspect of the claimed employment factors ostensibly related to her work duties. OWCP also found that appellant had not established that the employing establishment committed error/abuse with respect to administrative/personnel matters or subjected her to harassment and discrimination.

On July 19 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In a September 17, 2018 letter, counsel requested the issuance of subpoenas to compel the appearance and testimony of P.P. and E.M. On November 6, 2018 OWCP's hearing representative

denied the request for the issuance of subpoenas, noting that the issuance of such subpoenas was not necessary because statements of P.P. and E.M. were already of record.<sup>8</sup>

During the hearing held on November 29, 2018, appellant testified regarding her work duties, asserting that her custodial duties at Surfside Post Office sometimes took longer than two hours. She indicated that, if she had not finished her work at the Surfside Post Office after two hours, P.P. and/or other managers from the employing establishment would call and request that she return to that facility. Appellant testified that P.P. allowed the trash to accumulate at the employing establishment to the point it blocked the stairway and ramp. She asserted that many times her assigned vehicle was not available for her to transfer to the Surfside Post Office.

By decision dated February 5, 2019, OWCP's hearing representative affirmed the July 6, 2018 decision denying appellant's emotional condition claim.<sup>9</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>10</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>11</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>12</sup>

To establish an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or contributed to his or her claimed emotional condition; (2) medical evidence establishing that he or she has a diagnosed emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.<sup>13</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment, but nevertheless does not come within the concept or

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<sup>8</sup> OWCP's hearing representative noted that appellant could not appeal the denial of the issuance of subpoenas before the requested hearing was held, but could do so if the hearing representative decision issued after the hearing was unfavorable to her.

<sup>9</sup> OWCP's hearing representative indicated that the July 6, 2018 decision was affirmed as modified, but did not specify how the prior decision was modified.

<sup>10</sup> 5 U.S.C. § 8101 *et seq.*

<sup>11</sup> *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>12</sup> 20 C.F.R. § 10.115(e); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *see T.O.*, Docket No. 18-1012 (issued October 29, 2018); *see Michael E. Smith*, 50 ECAB 313 (1999).

<sup>13</sup> *See S.K.*, Docket No. 18-1648 (issued March 14, 2019); *M.C.*, Docket No. 14-1456 (issued December 24, 2014); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>14</sup> On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment, or to hold a particular position.<sup>15</sup>

Appellant has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.<sup>16</sup> This burden includes the submission of a detailed description of the employment factors or conditions which he or she believes caused or adversely affected a condition for which compensation is claimed, and a rationalized medical opinion relating the claimed condition to compensable employment factors.<sup>17</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 factors of employment and are to be considered by a physician when providing an opinion on causal relationship, and which working conditions are not deemed factors of employment and may not be considered.<sup>18</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, it must base its decision on an analysis of the medical evidence.<sup>19</sup>

### ANALYSIS

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

Appellant alleged that she sustained an emotional condition due to various incidents and conditions at work. Therefore, the Board must initially review whether these alleged incidents and conditions are covered employment factors under the terms of FECA. The Board notes that aspects of appellant's claim, if factually established, would relate to her regular or specially assigned duties under *Lillian Cutler*.<sup>20</sup> Appellant also claimed that management committed error and abuse with

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<sup>14</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>15</sup> *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>16</sup> *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>17</sup> *P.B.*, Docket No. 17-1912 (issued December 28, 2018); *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>18</sup> *See O.G.*, Docket No. 18-0359 (issued August 7, 2019); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>19</sup> *Id.*

<sup>20</sup> *See Lillian Cutler*, *supra* note 14.

respect to various administrative/personnel matters and that management subjected her to harassment and discrimination.

Appellant alleged that difficulties pertaining to aspects of her regular duties contributed to her claimed emotional condition. She alleged that she encountered difficulties in obtaining a vehicle to travel to the Surfside Post Office, problems with completing her work at the Surfside Post Office given the instances she could not travel there, adverse consequences due to the inability to obtain adequate supplies, and problems related to management's failure to have dumpster trash collected in a timely manner.

OWCP specifically carried out development regarding these claimed factors which, if established as factual, could constitute compensable factors of employment. The Board notes that appellant's managers, P.P. and E.M., indicated that appellant was required as part of her bid assignment to travel between the Surfside Post Office and the employing establishment on a daily basis and that a vehicle (with keys) was always available for those transfers. They also indicated they could not recall an instance when appellant did not go to the Surfside Post Office. Appellant submitted an undated statement in which a coworker, J.H., indicated that, after some opposition, management issued appellant a work van to make the trip, but that the van keys would go missing and she would not be able to go to the Surfside Post Office on many days. However, this statement would not establish a compensable employment factor due to its vague and nonspecific nature. J.H. did not detail any specific instances when vehicle keys went missing and appellant was unable to go to the Surfside Post Office. Therefore, appellant has provided no detailed, independent evidence establishing that she was prevented from traveling to the Surfside Post Office because she could not obtain a vehicle or that she was otherwise prevented from working at that location. Therefore, appellant has not established as factual her allegation that she was prevented from working at the Surfside Post Office such that her work at that location or the employing establishment was negatively impacted.

The Board further notes that P.P. and E.M. indicated that appellant was not responsible for ordering supplies, and that they ordered and made available to her everything she requested. Both P.P. and E.M. noted that appellant was provided with a new lawn mower when it was called to their attention that the prior mower was not working, and E.M. advised that appellant did not have to mow grass with a weed eater, as she had alleged. The Board finds that appellant has not submitted evidence establishing that her regular duties were made more difficult by not having adequate supplies.

In addition, with respect to appellant's claims that deficiencies in dumpster trash collection significantly affected her job, P.P. and E.M. noted the dumpster trash was collected a couple of times per week. Although they indicated that there may have been occasions when the pickup time was missed, they advised that there was no notable accumulation of trash because they would call and arrange for the dumpster trash to be picked up later on the same day or on the next day. In an undated statement, D.F., a coworker, alleged that P.P. and E.M. failed to arrange for dumpster trash collection for weeks. However, this statement would not establish a compensable employment factor because it is vague in nature and lacks specific details. D.F. did not provide specific information about the frequency that dumpster trash was not collected by outside trash collectors. The Board finds that appellant has not submitted sufficient evidence to show that notable delays in dumpster trash pickup made it more difficult for her to carry out her duties.

For the above-noted reasons, appellant has not established the factual aspect of the claimed employment factors allegedly related to her regular or specially assigned duties. Therefore, the Board finds that she has not established a compensable employment factor with respect to these matters.

With respect to administrative or personnel matters, appellant claimed that management officials committed error and abuse with respect to such matters as arranging for vehicles to be available for her use, handling work assignments, scrutinizing job performance, ordering supplies, handling requests for job transfers, managing training matters, handling leave requests and the recordation of time worked, and carrying out waste management responsibilities. The Board has held that 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>21</sup> However, the Board has also 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.<sup>22</sup> 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.<sup>23</sup>

The Board finds that appellant has not submitted sufficient evidence to establish the above-noted claims about administrative/personnel matters. Appellant submitted documents which concerned some of these administrative/personnel matters, but they do not show that the employing establishment committed error or abuse with respect to these matters. There is no indication that she obtained a final determination from an administrative body showing that the employing establishment engaged in wrongdoing. The case record reflects that appellant had filed an EEO claim regarding a number of these matters, but there is no final decision in the case record, whether relating to an EEO claim or a grievance with the employing establishment, showing that management committed error or abuse with respect to administrative/personnel matters.<sup>24</sup> Although appellant expressed dissatisfaction with the actions of several superiors, the Board has held that mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor.<sup>25</sup> Appellant has not substantiated error or abuse committed by the employing establishment in the above-noted matters and, therefore, the Board finds that she has not established a compensable employment factor with respect to administrative or personnel matters.

Appellant also alleged harassment and discrimination by managers with respect to such matters as the handling of her working at the Surfside Post Office, obtaining transportation

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<sup>21</sup> *T.L.*, Docket No. 18-0100 (issued June 20, 2019); *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>22</sup> *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *William H. Fortner*, 49 ECAB 324 (1998).

<sup>23</sup> *J.W.*, Docket No. 17-0999 (issued September 4, 2018); *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>24</sup> *See M.R.*, Docket No. 18-0304 (issued November 13, 2018).

<sup>25</sup> *T.C.*, Docket No. 16-0755 (issued December 13, 2016).

between worksites, being subjected to disproportionate scrutiny on the job, and receiving inadequate supplies and training. She alleged that several managers, particular her immediate supervisor, P.P., made statements that were abusive in nature. To the extent that disputes and incidents alleged as constituting harassment are established as occurring and arising from an employee's performance of his or her regular duties, these could constitute employment factors.<sup>26</sup> The Board has held that unfounded perceptions of harassment do not constitute an employment factor.<sup>27</sup> Mere perceptions are not compensable under FECA and harassment or discrimination can constitute a factor of employment if it is shown that the incidents constituting the claimed harassment or discrimination actually occurred.<sup>28</sup>

Appellant, however, did not submit corroborative evidence in support of her allegations regarding harassment and discrimination. She did not submit sufficient witness statements or other documentary evidence to demonstrate that harassment and discrimination occurred as alleged.<sup>29</sup> Appellant submitted statements from coworkers, including D.F. and J.H., who generally indicated that managers subjected her to harassment and discrimination through such actions as overly scrutinizing/surveilling her in the workplace, criticizing her work to a greater extent than other custodians, frustrating her attempts to obtain transportation between work locations, and purposefully interfering with dumpster trash pickup. However, the coworkers' statements would not establish harassment and discrimination because they are vague and lack detail regarding specific actions by managers perceived to have constituted harassment or discrimination. Given the vague nature of these statements, it is unclear whether the coworkers' assertions of harassment/discrimination are based on direct observation rather than on secondhand accounts of such managerial actions. Appellant did not submit the final findings of any complaint or grievance she might have filed with respect to these matters, such as an EEO complaint or a grievance filed with the employing establishment. Therefore, the Board finds that appellant has not established a compensable employment factor with respect to the claimed harassment and discrimination.

On appeal counsel argues that appellant's emotional condition claim should have been accepted because she established compensable employment factors as well as causal relationship between those factors and her claimed medical conditions. However, the Board has explained that appellant has not established a compensable employment factor. As the Board finds that appellant has not established a compensable employment factor, it is not necessary to consider the medical evidence of record.<sup>30</sup>

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<sup>26</sup> *D.B.*, Docket No. 18-1025 (issued January 23, 2019); *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

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

<sup>28</sup> *See id.*

<sup>29</sup> *See B.S.*, Docket No. 19-0378 (issued July 10, 2018).

<sup>30</sup> *See B.O.*, Docket No. 17-1986 (issued January 18, 2019) (finding that it is not necessary to consider the medical evidence of record if the claimant has not established any compensable employment factors). *See also Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 5, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 7, 2020  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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