

depression after she was bullied while in the performance of duty. She asserted that E.G., transportation supervisor, instigated a hostile work environment. Appellant further asserted that G.A., senior manager of distribution operations, pushed and threatened her twice. In addition, she claimed that M.S., supervisor of distribution operations, threatened her and tried to fight her three times. On the reverse side of the claim form, W.C., manager of distribution operations, indicated that appellant stopped work on the date of injury. He contended that she was not in the performance of duty because she was involved in an altercation and placed in nonpay status.

In an accompanying February 17, 2017 statement, appellant contended that G.A. intimidated and verbally harassed her about decisions made by management. She recounted being summoned to his office and when she asked him why she needed to be present, he became irate and she responded by telling him to speak to her supervisor, C.J. Appellant noted that E.G. and M.S. did nothing to prevent her from being harassed by G.A. She became anxious and scared and requested a union steward. Appellant claimed that G.A. then became belligerent and threatened to “have something waiting” for her when she returned to work that night. She also claimed that she was afraid of him because on a previous occasion at work he expressed a desire to commit suicide, but then questioned why he would do that when he could kill people at work. Appellant indicated that as G.A. begrudgingly walked her to the union office he badgered her and called her “sorry, lazy, and good-for-nothing.” G.A. also continuously defamed her character. When they arrived at the union office, he repeated his prior threat to her in the presence of a union steward. Appellant noted that as she returned to her work unit she noticed G.A. on the dock. She approached him to smooth things over with him and he screamed at her and told her to get out of his face. As appellant walked away, M.S. stalked and verbally taunted her. She feared for her life and recalled the previous two weeks of terror by M.S. which resulted in her developing shingles. Appellant faced M.S. who verbally threatened her with physical harm. G.A. grabbed M.S. Appellant claimed that M.S. tried to fight her three times and she wrote a statement to management confirming her own behavior. She noted that there was only one witness to this incident, but many false statements were made against her and in favor of M.S. Appellant claimed that no one said anything about G.A. pushing her during the altercation.

Appellant contended that since 2009 she had been relentlessly harassed, bullied, and sabotaged by G.A., M.S., and E.G. She alleged that G.A. had made it clear that he was looking for a reason to remove her from her position, put her off the clock, and possibly force her into retirement. Appellant asserted that E.G. retaliated against her and constantly cursed at her because management ruled in her favor to allow “MVS” drivers to get their mail from the registry unit.

Appellant claimed that on January 22, 2017 she informed her supervisor W.C. that M.S. was interfering with her job duties.

Appellant contended that she spoke to a postal inspector who told her that G.A.’s comment was not considered a threat and that he could be physically aggressive and push her if he desired.

Appellant further contended that on January 26, 2017 she filed a case with a postal police sergeant who informed her that obtaining a restraining order against her assailants from the Coppell Police Department would be null and void since the post office was a federal building. The police sergeant assured her that she would be protected, but only advised her that fights and weapons were not allowed on federal property.

Appellant submitted medical evidence.

OWCP, in a March 10, 2017 development letter, advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she respond to an attached questionnaire in order to substantiate the factual elements of her claim and provide medical evidence to establish that she sustained an emotional condition caused by her federal employment. In a separate development letter dated March 22, 2017, OWCP requested that the employing establishment respond to appellant's allegations and provide additional information regarding the duties and physical requirements of her position. It afforded both parties 30 days to submit the necessary evidence.

OWCP thereafter received medical evidence.

In an undated statement, W.C. controverted appellant's claim, noting that according to witness statements, on January 24, 2017, appellant stepped into M.S.'s personal space and created a hostile work environment when she put her foot on top of M.S.'s foot and threatened to stab her with a pen while they were on the dock. He noted that when G.A. separated them and attempted to find out what caused the incident, appellant continued to act out. G.A. instructed her and M.S. to end their tour and return to work at their scheduled time on the night of January 24, 2017. W.C. noted that appellant had not attended an investigation interview that was scheduled to take place on that night because she called in and requested three days of unscheduled sick leave.

W.C. submitted a January 24, 2017 disciplinary request/just cause worksheet in which he proposed to take disciplinary action against appellant for her conduct during the incident on that date. In a letter of even date, he also put her on emergency placement in an off-duty status, effective that date. In letters dated February 2, 8, and 23, 2017, W.C. requested that appellant report to a pre-disciplinary interview (PDI) to discuss her employment status.

W.C. also submitted medical evidence. OWCP thereafter continued to receive medical evidence.

In a letter dated April 7, 2017, OWCP requested that appellant review the evidence submitted by the employing establishment and provide comments.

On April 11, 2017 appellant responded to OWCP's March 10, 2017 development letter. In a handwritten notation on the development letter, she reiterated her allegation that E.G. instigated the hostile work environment. Appellant also submitted additional medical evidence.

OWCP subsequently received witness statements dated January 24 and 26, 2017 from appellant's coworkers who confirmed that she and M.S. were involved in a verbal and physical altercation. They heard and observed appellant threaten to stab M.S. with a sharp object in her hand. Appellant's foot was also observed on top of M.S.'s foot.

In a January 25, 2017 statement, G.A. noted that, around 3:00 a.m. on January 24, 2017 E.G. called him to the transportation office regarding an ongoing problem with appellant. He called appellant to resolve any issues. When G.A. asked her about the procedure for dispatching registered mail to "MVS" drivers she became loud and screamed for a union steward. G.A. walked appellant to the union office to conduct an interview. It was impossible to conduct the interview

because she talked over him and the union steward, and did not listen to them. G.A. ended the meeting and advised appellant and the union steward that he would get back to them. He instructed appellant to return to her assignment. G.A. noted that she subsequently approached him while he was on a deck with M.S. She asked to speak to him and he responded that she had a chance to talk to him when they were with the union steward. Appellant then rushed into M.S.'s face and started to argue with her. G.A. grabbed M.S. He instructed appellant to return to her work area. G.A. escorted M.S. outside for a walk to calm her down and stop her from crying. About 30 minutes later, appellant returned to the dock and again argued with M.S. G.A. sent both women home.

OWCP continued to receive medical evidence.

M.S., in a January 24, 2017 statement, indicated that, on that date, appellant argued with her, touched her foot, and threatened to stab her with a pen.

Additional witness statements dated January 24 and 26, 2017 from appellant's coworkers and E.G. continued to confirm that appellant and M.S. were involved in a verbal altercation and that appellant placed her foot on top of M.S.'s foot and threatened to stab her with a pen on January 24, 2017. The witnesses who provided statements noted that they were verbally abused by appellant. E.G. noted that her drivers complained of being harassed by appellant when they took mail early to stations on the first dispatch. She noted that on many occasions prior to the January 24, 2017 incident she had to walk drivers to pick up the mail because appellant made disparaging remarks about them. When E.G. and appellant met in G.A.'s office to discuss this matter, appellant asked why G.A. was setting her up.

Appellant, in a January 31, 2017 employee's statement and an undated statement in response to W.C.'s statement, reiterated that on January 22, 2017 she complained to W.C. about M.S.'s constant interference with her dispatching mail. She claimed that two days later she was bullied and harassed by G.A., E.G., and "MVS" drivers. Appellant contended that such harassment had been going on for two years and resulted in her physical and emotional illness. She noted that a postal inspector investigated the January 24, 2017 incident, but he refused to listen to her, was biased, and sided with management.

In another undated statement, appellant denied a witness' allegation of verbal abuse. She contended that she had to call management at least three times a week because he refused to take registry mail. Appellant also contended that she rejected the witness' request to have a side fling with him and he became jealous when she talked to other men at work. Two months ago the witness started an argument with her.

Appellant's daughter, in an undated statement, noted that on January 26, 2017 she accompanied her mother to the employing establishment to file a complaint against G.A. and M.S. regarding their threats and actual acts of physical harm and verbal abuse with a postal police sergeant.

Appellant submitted a copy of her EEO complaint and an undated step 2 grievance appeal form regarding the January 24, 2017 verbal altercation. In an undated summary, she indicated that her EEO complaint was settled on April 26, 2017.

OWCP continued to receive medical evidence.

By decision dated September 13, 2017, OWCP denied appellant's claim finding that she had not established a factual basis for her claim because the evidence submitted was insufficient to substantiate that the January 24, 2017 incident occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On October 6, 2017 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

A January 26, 2017 witness statement by appellant's coworker noted that on January 24, 2017 she heard yelling on the dock. When she went onto the dock she saw G.A. and another employee trying to calm M.S. down. M.S. was upset because appellant had apparently threatened her. After appellant was escorted to her work area by an employee she returned and yelled at M.S. who became upset again. She noted that G.A. sent both women home.

In a June 17, 2017 witness statement, B.P., another coworker, indicated that E.G. had directed derogatory language towards her and black male drivers and falsely accused her of having a sexual relationship with drivers. She noted that she had lost a sister who was also harassed by E.G.

An undated and unsigned summary of appellant's EEO redress presentation continued to allege that she was harassed, retaliated against, and intimidated by E.G., M.S., and W.C. on January 24, 2017 and worked in a hostile and an offensive work environment.

Appellant submitted a document indicating that management settled her grievance and paid her for time lost from work.

Additional medical evidence was submitted.

An OWCP hearing representative, by decision dated February 5, 2018, vacated the September 13, 2017 decision and remanded the case because OWCP had not sent documents submitted by appellant in response to its March 10, 2017 development letter to the employing establishment for review and comments. He recommended that appellant's claim should be converted into an occupational disease claim as the claimed incidents occurred over a period more than a single workday.

On remand, by letter dated February 6, 2018, OWCP requested that the employing establishment review appellant's allegations and provide comments. It was afforded 30 days to respond. No response was received.

OWCP received additional medical evidence.

By decision dated December 4, 2018, OWCP denied appellant's emotional condition claim. It accepted that on January 24, 2017 she was called into the transportation office by G.A. OWCP also accepted that appellant was instructed to report to W.C.'s office on February 2, 2017 for an investigative interview, on February 8, 2017 for a PDI, on February 23, 2017, and on March 6, 2017 to discuss her employment status. However, it found that these accepted incidents were not compensable factors of employment as they involved supervisory actions regarding investigative and disciplinary matters and no error or abuse was established in the handling of

these matters. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, 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.³ 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.⁴

To establish an emotional condition in the performance of duty, appellant 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 or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.⁵

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. When the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁶

To the extent that disputes and incidents alleged as constituting harassment by coworkers are established as occurring and arising from a claimant's performance of his or her regular duties, these could constitute employment factors.⁷ However, for harassment to give rise to a compensable disability under FECA there must be evidence that harassment did, in fact, occur.

² *Id.*

³ *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

⁴ 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).

⁵ *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).

⁶ *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *See B.S.*, Docket No. 19-0378 (issued July 10, 2019); *M.R.*, Docket No. 18-0304 (issued November 13, 2018); *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

Mere perceptions of harassment are not compensable under FECA.⁸ Additionally, verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.⁹

An employee's emotional reaction to administrative or personnel matters generally falls outside of FECA's scope.¹⁰ Although related to the employment, administrative and personnel matters are functions of the employer rather than the regular or specially assigned duties of the employee.¹¹ However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹² Harassment and discrimination by supervisors and coworkers, if established as occurring and arising from the performance of work duties, can constitute a compensable employment factor.¹³ A claimant, however, must substantiate allegations of harassment and discrimination with probative and reliable evidence.¹⁴

ANALYSIS

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

Appellant has attributed her emotional condition in part to *Cutler*¹⁵ factors. She contended that M.S. constantly interfered with her job duties. Pursuant to *Cutler*,¹⁶ this allegation could constitute a compensable employment factor if appellant established that her regular job duties or special assignment caused an emotional condition. The Board finds, however, that appellant submitted no evidence in support of her allegation that M.S. interfered with the performance of

⁸ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

⁹ *Y.B.*, Docket No. 16-0193 (issued July 23, 2018); *Marguerite J. Toland*, 52 ECAB 294 (2001).

¹⁰ *G.R.*, Docket No. 18-0893 (issued November 21, 2018); *Andrew J. Sheppard*, 53 ECAB 170, 171 (2001); *Matilda R. Wyatt*, 52 ECAB 421, 423 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991).

¹¹ *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005); *McEuen, id.*

¹² *Id.*

¹³ *C.B.*, Docket No. 19-1351 (issued March 25, 2020); *D.W.*, Docket No. 19-0449 (issued September 24, 2019); *E.K.*, Docket No. 17-0246 (issued April 23, 2018); *T.G.*, 58 ECAB 189 (2006); *Doretha M. Belnavis*, 57 ECAB 311 (2006).

¹⁴ *D.W., id.; E.K., id.; C.W.*, 58 ECAB 137 (2006); *Robert Breeden*, 57 ECAB 622 (2006).

¹⁵ *Supra* note 6.

¹⁶ *See id.*

her duty to dispatch mail. Without evidence substantiating her allegation, she has not met her burden of proof to establish a compensable factor of employment under *Cutler*.¹⁷

Appellant has further attributed her emotional condition to verbal abuse, threat of physical harm, and harassment by G.A., M.S., and E.G in a hostile and an offensive work environment. She alleged a series of incidents where G.A. was belligerent and defamed her character. She also alleged that W.S. verbally taunted her and tried to fight her on several occasions. While the Board has recognized the compensability of physical threats or verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under FECA.¹⁸

The Board finds that the factual evidence of record fails to support appellant's allegations of verbal abuse and physical threats. Appellant did not provide statements from witnesses with further details regarding her own allegation of verbal abuse and physical threats and harm by G.A. and M.S. Based on the evidence of record, the Board finds that appellant has not established, with corroborating evidence, that she was verbally abused and physically threatened on January 24, 2017 by G.A. and M.S.¹⁹

Appellant has also alleged that since 2009 she had been retaliated against by E.G., G.A., and M.S. She asserted that E.G. retaliated against her and constantly cursed at her because management ruled in her favor to allow "MVS" drivers to get their mail from the registry unit. Appellant contended that G.A. had made it clear that he was looking for a reason to remove her from her position and force her into retirement.

The Board finds that the factual evidence of record fails to support appellant's allegations of retaliation by E.G., G.A., and M.S. She did not submit any witness statements corroborating her allegation. E.G. noted that her drivers complained about being harassed by appellant and being subjected to her disparaging remarks when they took mail early to stations on the first dispatch. Based on the evidence of record, the Board finds that appellant has not established, with corroborating evidence, that she was subjected to retaliation by E.G., G.A., and M.S.

The Board further finds that appellant's allegations regarding being summoned to the transportation office on January 24, 2017 by G.A.,²⁰ investigations of the allegations of verbal abuse, physical threat, and harassment on January 24, 2017,²¹ the filing of an EEO complaint

¹⁷ *Id.*

¹⁸ *C.B.*, *supra* note 13; *D.W.*, *supra* note 13; *E.K.*, *supra* note 13; *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁹ *Id.*

²⁰ *F.W.*, Docket No. 19-0107 (issued June 10, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *Beverly R. Jones*, 55 ECAB 411, 416 (2004).

²¹ *See D.W.*, *supra* note 13; *M.R.*, Docket No. 17-1803 (issued February 8, 2019); *M.R.*, Docket No. 18-0304 (issued November 13, 2018); *D.G.*, Docket No. 17-0514 (issued May 4, 2018).

regarding the January 24, 2017 verbal and physical altercation with M.S.,²² and the issuance of disciplinary letters for appellant's conduct during this incident²³ relate to administrative functions or personnel matters of the employer and not the regular or specially-assigned work duties of the employee. For an administrative or personnel matter to be considered a compensable factor of employment, the evidence must establish error or abuse on the part of the employer.²⁴ The Board finds that appellant did not submit sufficient evidence to establish error or abuse with respect to administrative/personnel matters. Although she expressed dissatisfaction with the supervisory actions of G.A., 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.²⁵

Finally, while the record indicates that appellant's EEO grievance was settled by the employing establishment and she was paid for time lost from work, there was no final EEO decision finding that the employing establishment committed error or abuse.²⁶ The Board finds that appellant has not established error or abuse in the handling of the above-noted administrative matters, and thus she 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.²⁷

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, as alleged.

²² See *W.F.*, Docket No 18-1526 (issued November 26, 2019); *B.O.*, Docket No. 17-1986 (issued January 18, 2019); *E.T.*, Docket No. 17-0672 (issued April 26, 2018); *Michael A. Salvato*, 53 ECAB 666, 668 (2002).

²³ *F.W.*, *supra* note 20; *G.R.*, Docket No. 18-0893 (issued November 21, 2018).

²⁴ See *D.W.*, *supra* note 13; *B.O.*, *supra* note 22; *Judy Kahn*, 53 ECAB 321 (2002).

²⁵ *F.W.*, *supra* note 20; *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *T.C.*, Docket No. 16-0755 (issued December 13, 2016).

²⁶ *J.E.*, Docket No. 17-1799 (issued March 7, 2018).

²⁷ See *R.B.*, Docket No. 19-0434 (issued November 22, 2019); *B.O.*, *supra* note 22 (finding that it is not necessary to consider the medical evidence of record if a claimant has not established any compensable employment factors). See also *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the December 4, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 28, 2020
Washington, DC

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

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board