United States Department of Labor
Employees' Compensation Appeals Board

M.S., Appellant	)	
and	)	**Docket No. 19-1589**
	)	**Issued: October 7, 2020**
DEPARTMENT OF THE NAVY, COMMANDER NAVAL INSTALLATIONS COMMAND, San Diego, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 23, 2019 appellant filed a timely appeal from a June 12, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish an emotional condition in the performance of duty, as alleged.

FACTUAL HISTORY

On February 8, 2018 appellant, then a 62-year-old equal employment opportunity (EEO) specialist, filed a traumatic injury claim (Form CA-1) alleging that on January 31, 2018 she experienced stress and anxiety while in the performance of duty which exacerbated her vertigo as

[1] 5 U.S.C. § 8101 *et seq.*

a result of being assigned to process a reasonable accommodation case with no training. She noted that she called S.P., a reasonable accommodation coordinator at the employing establishment, for assistance with her case. Appellant also noted that she subsequently became dizzy and fainted while discussing another question about the case with M.V., a coworker, by his cubicle. On the reverse side of the claim form, J.C., appellant's supervisor, indicated that appellant stopped work on the date of injury, but asserted that she was not injured in the performance of injury. J.C. indicated that his knowledge of the facts about the claimed injury did not agree with appellant's statements.

In an undated attachment to appellant's claim, J.C. explained that appellant was not injured in the performance of duty because her vertigo resulted from her September 7, 2017 heart surgery which likely led to her claimed medical condition on January 31, 2018. He noted that she had also experienced dizziness at work on January 24, 2018. J.C. maintained that the discussion she was having with M.V. on January 31, 2018 involved a task that fell within the scope of her current position description.

Appellant submitted a February 6, 2018 witness statement from M.V. who noted that appellant was standing by his cubicle and nearly passed out while she was speaking to him.

Appellant also submitted medical evidence.

OWCP, in a development letter dated February 15, 2018, informed appellant of the deficiencies of her claim. It requested that she submit additional factual and medical evidence and provided a questionnaire for her completion. In a separate letter of even date, OWCP requested a response from the employing establishment regarding appellant's allegations. It afforded both parties 30 days to provide the requested information.

In a March 7, 2018 letter, appellant attributed her emotional condition to several other incidents at work. She alleged that she was subjected to a hostile and intimidating work environment from March 2017 through August 2017, which represented an occupational disease. Appellant noted that she was subjected to continuous harassment and disparate treatment and reprisals for filing an EEO complaint and had been denied reasonable accommodation under the Americans with Disabilities Act (ADA), which seriously affected her health and her physical, emotional, and financial well-being. She was off work from August 10, 2017 through January 19, 2018 due to work stress, anxiety, and depression. Following her September 7, 2017 open heart surgery, she reported to work on January 23, 2018 and noted her concern about being subjected to a hostile work environment to J.C. Appellant explained that on January 24, 2018 she felt dizzy and experienced shortness of breath after walking through several buildings with her coworkers to obtain a new security card and new computer. On January 25, 2018 she informed J.C. that she had been diagnosed as having vertigo. Appellant noted that although she did not request leave to attend her January 25, 2018 medical appointment, he told her that sick leave or leave without pay (LWOP) would not be approved. She indicated that when she was assigned several reasonable accommodation cases on January 31, 2018 by J.C., M.V. argued that she should be assigned more cases. M.V. placed a case on appellant's desk for processing although he was not her supervisor. Appellant became anxious about processing this case because it had already been started, and therefore, there was a short deadline for its processing and completion. She was also anxious as she claimed that she had not received formal training for processing reasonable accommodation cases. Appellant recalled a similar situation in May 2017 when she had to process a reasonable

accommodation case that was previously assigned to M.V. and was already late. On May 5, 2017 she had an anxiety attack at work and was off work for one week on sick leave when C.C., a human resources specialist, sent an e-mail to her and copied to T.G., a command deputy EEO officer and appellant's supervisor, inquiring about the status of a reasonable accommodation case because it was late. Appellant contended that T.G. did not care about her well-being because she was aware of her anxiety attack, but did not reassign the case to another employee who knew how to process the claim. Additionally, she indicated that her repeated requests for reasonable accommodation training were denied by T.G. and H.M., a deputy EEO officer for the Bureau of Medicine and Science. Appellant noted that she had another vertigo attack on February 1, 2018 for which she sought medical treatment.

Appellant contended that from March 2017 to August 2017 she was subjected to discrimination, disparate treatment, and harassment based on her race national origin age, sex disability, and reprisal for filing an informal EEO complaint on May 5, 2017. She alleged that in March 2017, H.M. assigned her to manage a unit of over 2,000 employees and the most informal and formal complaints, alternative dispute resolution (ADR), and reasonable accommodation requests. He explained to her that she was a senior EEO specialist and was expected to handle a larger population. Appellant disagreed with him, noting that M.V. was also a GS-12. She indicated that her repeated requests for formal training on processing reasonable accommodation cases were again denied by H.M. and T.G. T.G. also denied that M.V., who was previously assigned to process reasonable accommodation cases, could continue to process them until she was fully trained to do so. Appellant informed T.G. that she was harassed by H.M. and M.V., and that H.M. sent her demeaning and intimidating e-mails. She also informed her about being assigned the large unit of employees and being uncomfortable with processing reasonable accommodation cases. Appellant noted that T.G. failed to address her concerns. She asserted that M.V. kept asking her when she was going to retire and he told other employees that she should retire since she was sick and had asthma.

Appellant also claimed that on July 5, 2017 she was harassed by H.M and on the next day she requested leave under the Family and Medical Leave Act and submitted supportive documents to H.M. Appellant also sent him an e-mail requesting assistance with processing two reasonable accommodation cases. In response, H.M. chastised her for making this request. In a July 11, 2017 e-mail to him, she requested authorization to attend a Defense Equal Opportunity Management Institute Disability Program (DEOMIDP) course. He replied that the training was announced on June 22, 2017 and it was too late for her to apply for the training. Appellant replied that she was off work on that day and the deadline was July 17, 2017. In an August 4, 2017 e-mail, H.M. falsely accused her of failing to submit required documents for an EEO complaint and to follow EEO procedures. She sent him copies of the documents which she had previously submitted. H.M. later found them and apologized to appellant. Appellant noted that this was not the first time he had falsely accused her of failing to provide him with documents and other information. In an August 9, 2017 e-mail, H.M. informed her that she was unprofessional for forwarding an e-mail to him without saluting and saying good morning to him. Appellant contended that she said good morning in the first e-mail she sent to him. She had another anxiety attack at work following this incident and was off work until September 1, 2017. Appellant submitted e-mails dated April 20 through July 20, 2017 between herself, T.G., and H.M. regarding the claimed incidents noted above.

Appellant also submitted additional medical evidence.

OWCP, by decision dated March 29, 2018, denied appellant's claim for an employment-related emotional condition finding that the evidence of record was insufficient to establish the factual component of fact of injury. It noted that she failed to provide documenting evidence, such as witness statements, to establish the alleged incidents. OWCP further determined that appellant failed to submit medical evidence containing a medical diagnosis in connection with the alleged incident(s). It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On April 27, 2018 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In an April 27, 2018 letter, appellant noted that contrary to OWCP's finding that she had not submitted witness statements, she previously noted that M.V. was a witness to the claimed January 31, 2018 incident.

Appellant continued to submit medical evidence.

Following a preliminary review, by decision dated August 31, 2018, OWCP's hearing representative found that the case was not in posture for a hearing. The hearing representative set aside the March 29, 2018 decision and remanded the case for further development of the factual evidence as the record did not dispute that appellant worked on a reasonable accommodation case, as alleged. On remand the hearing representative directed OWCP to request that the employing establishment address whether appellant was trained in reasonable accommodation cases at the time of her reported injury on January 31, 2018.

OWCP thereafter received an additional statement dated September 27, 2018 from J.C. who disagreed with several statements made by appellant. J.C. noted that according to her résumé, she had prior work experience processing reasonable accommodation requests. He also noted the importance of all EEO specialists having an understanding of the reasonable accommodation process and agency policy to conduct EEO counseling as failure to accommodate represented a large percentage of issues identified in discrimination complaints filed against the employing establishment and government wide. J.C. maintained that appellant was not assigned a larger workload than her coworker. While she was assigned a single unit that had more civilian employees compared to her coworker who was assigned nine units with fewer civilian employees, she had a much lower complaint load. The employing establishment's EEO complaint tracking report for the 12-month period May 2016 through May 2017 showed that appellant only had 5 EEO complaints while her coworker had 10 EEO complaints. J.C. maintained that being assigned one single unit was much easier to manage than nine units. With one unit, an EEO specialist only had to support one commanding officer, executive officer, command managed employment officer (EO) advisor, and group of union and human resources officials in one location. Appellant's coworker had nine times the amount of these leaders and officials in nine different locations throughout southern California. J.C. noted that he had reviewed H.M.'s e-mails and maintained that they were direct and to the point with appellant. Regarding the availability of training, he noted that he had created a SharePoint website in early 2016 called "EEO Portal," which contained the Civilian Human Resources Manual Chapter 1606, a simple to follow guide for processing reasonable accommodation requests. J.C. believed that as a full-performance level GS-12 EEO specialist, appellant should have easily been able to follow the process for completing reasonable accommodation requests as it was not nearly as complicated as processing EEO complaints. In

addition to having access to the "EEO Portal," appellant could ask questions about her work to coworkers. J.C. noted that no formal reasonable accommodation courses were offered because each agency sets their own policy and process within the parameters set by the EEOC and in compliance with the ADA, the ADA Amendments Act, and the Rehabilitation Act. He noted that appellant responded to H.M.'s e-mail requesting volunteers to attend the DMP course at DEOMI after registration had closed. In a subsequent e-mail, appellant informed H.M. that she was not able to attend the course. J.C. noted that the DPM course would not be useful to appellant as a full-performance GS-12 EEO specialist because it targeted collateral duty non-EEO professionals and the reasonable accommodation topic was covered in no more than two hours and would not provide enough detail to be useful or specific on the employing establishment's policy and process. He noted that on April 26, 2017 the employing establishment conducted a two-hour online interactive course, "Advanced Reasonable Accommodation," on its Defense Collaborative Service (DCS). Appellant and all of the other EEO specialists were notified by e-mails on two separate occasions and twice during weekly team conference calls leading up to and on the morning of the training. J.C. indicated that appellant did not participate in the training. He uploaded a copy of the DCS course onto the "EEO Portal" the next day after the training. J.C. maintained that at no time had appellant mentioned to him or any other coworkers that she was subjected to harassment based on a protected category. He also maintained that no reprisal actions were taken against her for filing a complaint. J.C. believed that overall appellant was over her head in her position, noting her performance deficiencies. He noted that she admitted to receiving help with her EEO cases from her coworkers, but he maintained that her workload was not too large for a full-performance level GS-12. Appellant had no more than four cases at a time. She was out of work for about two weeks and on August 21, 2018 J.C. assigned her cases to other EEO specialists. The cases were missing various documents that would have exposed the employing establishment to adverse actions by the EEO Commission and one case was over 80 days old. J.C. believed that appellant was not harassed based on a protected category, rather she was simply directed to perform, as all the other EEO specialists, from the "cradle to the grave." Appellant made excuses for why she could not perform her work duties. When she returned to work in January 2018 she had no workload and was only assigned three reasonable accommodation cases and two of her coworkers, one of which was very knowledgeable, were assigned to answer her questions. J.C. indicated that her performance plan included reasonable accommodation responsibilities. He also indicated that 10 other EEO specialists had no formal training on processing reasonable accommodation requests.

J.C. submitted witness affidavits from several employees regarding appellant's EEO complaint. In a March 14, 2018 affidavit, J.L. indicated that he heard M.V. ask appellant when she was going to retire and stated that she needed to retire. He also reviewed an e-mail that H.M. sent to appellant and believed it was abrasive. J.L. noted that his coworkers believed that H.M. was abrasive, but noted that he had not personally experienced this behavior.

In an undated affidavit, R.R. noted that he had no knowledge of appellant's allegation of a hostile work environment and complaints against M.V., H.M., and T.G. He further noted that he had received no formal training prior to performing reasonable accommodation duties. R.R. questioned how an employee can be held accountable for performing these duties with no training.

In a March 1, 2017 affidavit, D.K. noted that appellant told him that M.V. made her uncomfortable when he walked into her office and lifted his middle finger and threatened physical harm to staff and supervisors who worked in the human resources office. Appellant also told him

that H.M. did not equally distribute the work in her office because she was assigned to service a larger population than another EEO specialist in her office. D.K. noted that reasonable accommodation duties were a part of appellant's position description and training was provided in the employing establishment's Civilian Human Resource Manual 1606. He indicated that although some staff told him that H.M. could be abrupt and direct, he never experienced this behavior. D.K. did not observe H.M.'s communication with appellant. Appellant noted to him that T.G. selected M.V. and not her to attend training in New Orleans, Louisiana. D.K. indicated, however, that he had no reason to believe that she was discriminated against by T.G. or treated differently by H.M.

J.C. also submitted employment records.[2] Appellant's résumé indicated that she had prior work experience in processing reasonable accommodation cases with the San Francisco Municipal Transit Agency. A copy of her official position description as an equal employment specialist, and an incomplete performance appraisal revealed that she was required to facilitate requests for reasonable accommodation.

In a letter dated April 3, 2018, received by OWCP on October 26, 2018, appellant informed J.C. that she was retiring effective April 30, 2018 due to a hostile work environment. She noted that on January 24, 2018 he denied her request to temporarily work from home two days per week after she felt dizzy and experienced shortness of breath which was later diagnosed as vertigo. Appellant further noted that J.C. unfairly charged her with being absent without leave (AWOL) for 20.83 hours without notice although she had always provided a medical excuse from her physicians. She denied having unsatisfactory attendance based on the above-noted reasons.

Appellant, in an October 25, 2018 letter, responded to J.C.'s September 27, 2018 statements. She reiterated her allegations that the employing establishment failed to provide the requisite training to perform her assigned work duties and she was harassed by the employing establishment. Appellant denied that she had prior work experience in processing reasonable accommodation requests.

Appellant submitted additional e-mails dated April 20 through July 14, 2017 between her, L.P., H.M., T.G., and C.K., an employee, regarding her allegation of inadequate training and the filing and processing of her EEO discrimination complaint.

Appellant also submitted additional medical evidence and employment records, including an interim performance appraisal for the period October 1, 2015 through March 31, 2017, which indicated that she was required to provide comprehensive technical advice on the processing of reasonable accommodation requests.

OWCP, by decision dated November 20, 2018, denied appellant's claim for an emotional condition finding that she had not established a compensable factor of employment.

On January 11, 2019 appellant requested a review of the written record by an OWCP hearing representative. In a January 10, 2019 letter, received by OWCP on January 28, 2019, she

[2] A notification of personnel action (Form SF50) indicated that appellant had voluntarily retired from the employing establishment, effective April 30, 2018.

contended that the witness affidavits for her EEO complaint established her allegations of discrimination and harassment by the employing establishment.

An April 23, 2018 witness affidavit from V.B., an equal employment manager/deputy EEO officer and appellant's previous supervisor, noted that appellant processed EEO complaints and never performed reasonable accommodation duties. She noted that appellant may have had knowledge about these duties, but had no hands on working knowledge.

OWCP continued to receive medical evidence.

In an April 24, 2019 statement, J.C. contended that appellant had not met her burden of proof to establish her claim based on the evidence submitted.

By decision dated June 12, 2019, a second OWCP hearing representative affirmed the November 20, 2018 decision finding that appellant had not established a compensable employment factor.

LEGAL PRECEDENT

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.[3]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to a claimant's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.[4] However, disability is not compensable when it results from factors such as an employee's fear of a reduction-in-force, or frustration from not being permitted to work in a particular environment, or to hold a particular position.[5]

An employee's emotional reaction to administrative or personnel matters generally falls outside of FECA's scope.[6] Although related to the employment, administrative and personnel matters are functions of the employer rather than the regular or specially assigned duties of the

[3] *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).

[4] *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[5] *Lillian Cutler*, *id.*

[6] *See G.R.*, Docket No. 18-0893 (issued November 21, 2018); *Andrew J. Sheppard*, 53 ECAB 170-71 (2001), 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

employee.[7] 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.[8]

For harassment or discrimination to give rise to a compensable disability under FECA, there must be probative and reliable evidence that harassment or discrimination did in fact occur.[9] Mere perceptions of harassment, retaliation, or discrimination are not compensable under FECA.[10]

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 compensable factors of employment and may not be considered.[11] 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.[12] If a compensable factor of employment is substantiated, OWCP must base its decision on an analysis of the medical evidence which has been submitted.[13]

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*[14] factors. She alleged that she was overworked. Appellant noted that she had a larger workload than her coworker, M.V., as she was assigned to manage over 2,000 employees in the units which had the most informal and formal complaints and ADR and reasonable accommodation requests. Pursuant to *Cutler*[15] this allegation could constitute a compensable employment factor if appellant establishes that her regular job duties or a special assignment caused an emotional condition. The Board has held that overwork, when substantiated by sufficient factual information to corroborate appellant's account

[7] *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005); *Thomas D. McEuen*, *id.*

[8] *Id.*

[9] *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *Marlon Vera*, 54 ECAB 834 (2003).

[10] *Id.*; *see also Kim Nguyen*, 53 ECAB 127 (2001).

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

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

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

[14] *Supra* note 4.

[15] *Id.*

of events, may be a compensable factor of employment.[16] The Board finds, however, that appellant submitted no evidence supporting her allegation that she was overworked. A witness affidavit from D.K., a coworker, indicated that appellant was assigned to service a larger population. However, this general statement from a coworker is insufficient to establish that appellant was overworked.[17] J.C., appellant's former supervisor, disputed that appellant was overworked during her assignment. He explained that while she had more employees than M.V., she had a much lower complaint load as an EEO complaint tracking report for a 12-month period revealed that she only had 5 EEO complaints while M.V. had 10 EEO complaints. J.C. noted that appellant's caseload was no higher than four cases at a time. Additionally, he indicated that she had to support considerably fewer senior leaders and human resource and union officials in one location than M.V. had to support them in nine locations throughout southern California. Thus, for these reasons, the Board finds that appellant has not established a compensable employment factor under *Cutler*.

Appellant alleged that she had not received the requisite training to process reasonable accommodation requests. The Board has held that an employee's emotional reaction to being made to perform duties without adequate training is compensable.[18] However, appellant submitted no evidence supporting her allegation that she had not received the requisite training to perform her assigned work cases. Her résumé reveals that she had prior work experience processing reasonable accommodation requests at the San Francisco Municipal Transit Agency. An affidavit from R.R., a coworker, indicated that he had received no formal training prior to performing reasonable accommodation cases. However, he did not provide any details as to whether he had difficulties processing reasonable accommodation requests without training and he did not indicate that he had any knowledge of appellant's difficulties with processing these requests. D.K. noted that training was provided in the employing establishment's Civilian Human Resource Manual Chapter 1606, which provided specific guidance for processing reasonable accommodation cases. J.C. confirmed that the simple manual was available along with a two-hour online advanced reasonable accommodation course he uploaded to the "EEO Portal." He noted that she was provided several notifications about the online course, but chose not to participate in the training. Additionally, J.C. indicated that appellant's coworkers were available to answer her questions about reasonable accommodation cases. He explained why the DPM course appellant wanted to attend would not be useful to her, noting, *inter alia*, that the process for handling reasonable accommodation cases was easy, little time was devoted to the subject matter and no specific details were provided on the employing establishment's policy and process during the course, and she was a full-performance GS-12 EEO specialist rather than collateral duty non-EEO professionals which were targeted by the course. Without evidence substantiating that appellant was not provided with the requisite training to perform her job, appellant has failed to meet her burden of proof to establish a compensable factor of employment under *Cutler*.[19]

[16] *L.S.*, Docket No. 18-1471 (issued February 26, 2020); *R.B.*, Docket No. 19-0343 (issued February 14, 2020); *W.F.*, Docket No. 18-1526 (issued November 26, 2019); *Bobbie D. Daly*, 53 ECAB 691 (2002).

[17] *See A.L.*, Docket No. 17-0368 (issued June 20, 2018); *K.B.*, Docket No. 17-0277 (issued March 16, 2018).

[18] *D.T.*, Docket No. 19-1270 (issued February 4, 2020); *S.S.*, Docket No. 18-1519 (issued July 17, 2019); *C.T.*, Docket No. 09-1557 (issued August 12, 2010); *Donna J. Dibernardo*, 47 ECAB 700 (1996).

[19] *Id.*

Appellant's allegations regarding the assignment of work,[20] denial of her requests to attend training[21] and for reasonable accommodation,[22] the handling of leave requests and attendance matters,[23] and the filing of grievances and EEOC complaints[24] relate to administrative or personnel management actions. Administrative and personnel matters, although generally related to employment, are administrative functions of the employer rather than 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.[25] Appellant has not submitted any corroborative evidence to establish a factual basis for her allegations that she was improperly assigned to the larger units to process reasonable accommodation requests, should have been granted reasonable accommodation, and should not have been placed on LWOP and AWOL status by the employing establishment. Additionally, while appellant filed an EEO complaint against her supervisors, T.G. and H.M., and her coworker, M.V., for harassment, discrimination, disparate treatment, and reprisals, the record does not contain a final EEO decision finding that the employing establishment committed error or abuse.[26] Lastly, as noted above, J.C. and D.K. explained that appellant had the ability to process reasonable accommodation requests because she was a full-performance GS-12 EEO specialist with prior work experience in the subject matter and available training opportunities at work. For these reasons, the Board finds that appellant has not established a compensable employment factor with respect to these administrative matters.

Appellant alleged that she was harassed, discriminated against, and subjected to disparate treatment based on her race, national origin, age, sex, and disability, and also subjected to reprisals for filing an informal EEO complaint by M.H., T.G., and M.V., which created a hostile work environment. To the extent that incidents alleged as constituting harassment or a hostile environment by a manager are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[27] However, for harassment to give rise to a compensable disability under FECA, there must be evidence that harassment did in

[20] *L.S.*, *supra* note 16; *V.M.*, Docket No. 15-1080 (issued May 11, 2017); *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

[21] *C.V.*, Docket No. 18-0580 (issued September 17, 2018); *R.L.*, Docket No. 17-0883 (issued May 21, 2018).

[22] *F.W*, Docket No. 18-1526 (issued November 26, 2019); *James P. Guinan*, 51 ECAB 604, 607 (2000); *John Polito*, 50 ECAB 347, 349 (1999).

[23] *R.B.*, *supra* note 16; *B.O.*, Docket No. 17-1986 (issued January 18, 2019); *Lori A. Facey*, 55 ECAB 217 (2004); *Judy L. Kahn*, 53 ECAB 321 (2002).

[24] *B.O.*, *id.*; *James E. Norris*, 52 ECAB 93 (2000).

[25] *Thomas D. McEuen*, *supra* note 6.

[26] *See S.W.*, Docket No. 17-1016 (issued September 19, 2018); *A.C.*, *supra* note 4; *J.E.*, Docket No. 17-1799 (issued March 7, 2018).

[27] *W.F.*, *supra* note 16; *F.C.*, Docket No. 18-0625 (issued November 15, 2018); *Kathleen D. Walker*, 42 ECAB 603 (1991).

occur as alleged. Mere perceptions of harassment are not compensable under FECA.[28] Although appellant alleged that her supervisors and coworker engaged in actions, which she believed constituted harassment, discrimination, disparate treatment, and reprisals, she provided no corroborating evidence to establish her allegations.[29] A witness affidavit from J.L., a coworker, maintained that H.M. sent appellant an abrasive e-mail. However, his statement is general in nature as he did not provide a detailed description of what H.M. stated in the e-mail that could be considered abrasive.[30] Further, J.L. acknowledged that he had never personally experienced H.M.'s abrasive behavior. Additionally, he provided only a general observation of perceived harassment by M.V. when he heard him ask appellant about her retirement plan and encouraged her to retire. D.K. did not witness M.V. make appellant feel uncomfortable when he threatened to cause physical harm to employees, rather he merely provided a history of the alleged incident as related to him by appellant. Similarly, he did not provide the reason why M.V. was selected over appellant to attend training in New Orleans. Again, D.K. merely provided a history of the alleged incident as related to him by appellant. Further, he acknowledged that he did not witness H.M.'s abrasive communication with appellant and he did not personally experience his behavior. D.K. and R.R. also noted that they had no knowledge that she was subjected to a hostile work environment by M.V., H.M., and T.G. He had no basis to believe that appellant was subjected to discrimination by T.G. or treated differently by H.M. J.C. denied appellant's allegation of harassment, noting that she was simply directed to work like all the other EEO specialists, from the "cradle to the grave." He maintained that she made excuses for her failure to perform her work duties. J.C. reviewed H.M.'s e-mails to appellant and maintained that they were not demeaning, but rather they were direct and to the point. Appellant even acknowledged that H.M. apologized for falsely accusing her of failing to submit EEO documents and to follow procedure. He also maintained that no reprisals were taken against her for filing an EEO complaint. J.C. denied that reprisals were taken against appellant. Based on the evidence of record, the Board finds that appellant has not established, with corroborating evidence, that she was harassed, discriminated against, and subjected to disparate treatment and reprisals by the employing establishment.

As the Board finds that appellant has not established a compensable employment factor, it is not necessary to consider the medical evidence of record.[31]

On appeal appellant contends that she has submitted sufficient evidence to establish that she sustained an employment-related emotional condition. For the reasons stated above, appellant has not submitted sufficient factual evidence to establish an emotional condition in the performance of duty, as alleged.

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[28] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991). *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence). *See also M.G.*, Docket No. 16-1453 (issued May 12, 2017) (vague or general allegations of perceived harassment, abuse, or difficulty arising in the employment are insufficient to give rise to compensability under FECA).

[29] *See William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

[30] *C.B.*, Docket No. 19-1351 (issued March 25, 2020); *E.K.*, Docket No. 17-0246 (issued April 23, 2018).

[31] *See R.B.*, Docket No. 19-0434 (issued November 22, 2019); *B.O.*, *supra* note 23 (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).

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.

ORDER

IT IS HEREBY ORDERED THAT the June 12, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 7, 2020
Washington, DC

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

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

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