United States Department of Labor
Employees' Compensation Appeals Board

R.K., Appellant	)	
	)	
and	)	**Docket No. 20-0623**
	)	**Issued: February 9, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Lake Helen, FL, Employer	)	

Appearances:
Stacey Lehne, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On January 27, 2020 appellant, through counsel, filed a timely appeal from an October 24, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

On December 15, 2016 appellant, then a 52-year-old city carrier, filed an occupational disease claim (Form CA-2), alleging that he sustained injury due to factors of his federal employment, including the actions of G.D., the postmaster at his postal facility. He asserted that he reported G.D. after she committed sexual harassment by touching him when he was in a bent over position, and that she then further harassed, threatened, and intimidated him. Appellant claimed that, as a result, he sustained a nervous breakdown and extreme anxiety. He noted that he first became aware of his claimed conditions on November 9, 2016. Appellant stopped work on November 9, 2016.

In statements accompanying his claim, appellant asserted that he had a nervous breakdown on November 9, 2016 because the employing establishment conducted a 44-question investigative interview, which was intended to bully him. He claimed that, on September 20, 2016, G.D. sexually harassed him by touching him inappropriately, "seductively playing" with his wedding ring, and calling him "hun" three times.[3] Appellant filed an Equal Employment Opportunity (EEO) Commission claim in connection with these matters, alleging that the employing establishment did not take the claim seriously, that it took 39 days for management officials to address it, and that G.D. repeatedly retaliated against him for filing it and separate grievances against the employing establishment. In addition, G.D. punished him for taking sick leave between September and November 2016 to attend mental health therapy sessions, made fun of him for seeing a therapist, and failed to provide him adequate support on his mail delivery route on days he took sick leave. Appellant claimed that G.D. mishandled his leave requests, including an occasion on November 28, 2016 when she improperly denied his leave request after he had an adverse medication reaction. He asserted that management improperly handled disciplinary actions, including letters of warning issued on October 29 and November 18, 2016. Appellant alleged that G.D. ordered him to take his lunch in places where it was unsafe to park his postal vehicle, and that management improperly asked him if he wanted to move to another office. He claimed that he received inadequate training and that G.D. mishandled his work assignments by improperly taking away his responsibility for delivery point sequence mail, blocking his mail sorting case with six mail tubes, and by incorrectly telling him that he was on a 12-hour work assignment.

Appellant submitted a copy of an investigative interview, carried out by the employing establishment on November 9, 2016, which included appellant's answers to 44 questions. He also submitted copies of disciplinary actions, including a November 18, 2016 letter of warning for failure to follow instructions, unsatisfactory performance, expansion of field/unprofessional estimate, and unsatisfactory attendance. In an October 26, 2016 statement, H.B., a coworker, asserted that on September 23, 2016, he overheard G.D. "giving [appellant] a loose piece of mail

[3] Appellant also claimed that G.D. called him "hun" on at least one later occasion in September 2016.

and calling him hun." He reported that, after appellant filed a sexual harassment claim against G.D. the next day, she "was getting on" appellant in "a high voice tone" regarding the inputting of postal vehicle mileage.

Appellant submitted a November 9, 2016 report from Dr. Danny M. Farmer, a Board-certified internist, who found that he was unable to work due to severe anxiety and job stress. On January 17, 2017 Dr. Farmer advised that appellant reported his anxiety/stress was caused by the actions of a co-employee.

In a December 20, 2016 letter, C.A, appellant's immediate supervisor, advised that the employing establishment had conducted an investigation was controverting appellant's occupational disease claim. He asserted that appellant had issues with his job attendance and performance since October 2016, and that he had not been aware of appellant making "any previous report of inappropriate touching."

In a January 4, 2017 development letter, OWCP notified appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding appellant's allegations. It afforded both parties 30 days to respond.

In response, appellant submitted statements, dated January 11, 17, and 26, 2017, in which he further discussed his claimed employment factors. He asserted that G.D. "went after him for 50 days straight" and that S.R., a supervisor of G.D, and other management officials allowed it to happen. Appellant alleged that a December 29, 2016 Step B decision, which resulted from his grievance demonstrated that the November 9, 2016 investigatory interview was retaliatory. He asserted that the interview should have been held behind closed doors rather than with open doors where anyone passing by could hear it being conducted. Appellant alleged that, during a meeting in which he discussed his grievance, R.W., a manager, spoke in a raised voice and interrupted him. He claimed that G.D. bullied him regarding his use of sick leave on November 9, 2016, needlessly questioned figures he provided on a 3996 form he utilized to request extra time to deliver mail, and improperly criticized him for sending her a text on her mobile phone.[4]

In a December 29, 2016 Step B grievance decision, the dispute resolution team determined that the employing establishment did not have just cause to issue the November 18, 2016 letter of warning. It rescinded the letter of warning and directed that it be removed from all files/records. The dispute resolution team found that no evidence was submitted that demonstrated appellant improperly scanned, delayed, and misdelivered mail, incorrectly made clock rings, misreported mileage, or improperly failed to report to work.

In a January 20, 2017 statement, E.E, a union representative, reported that appellant's hands were shaking after the November 9, 2016 investigative interview. Appellant submitted

[4] Appellant submitted copies of text messages between himself and G.D. regarding his use of sick leave on November 9, 2016.

additional medical evidence, including a January 5, 2017 report from Dr. Farmer who recommended a return to work with restrictions.

OWCP received an undated statement from G.D. who responded to appellant's claims and asserted that she appropriately supervised appellant. She maintained that appellant made false allegations that she subjected him to sexual harassment and abusive language, and asserted that the November 9, 2016 investigatory interview was properly conducted. G.D. indicated that appellant was given appropriate assistance to handle his mail delivery duties.

By decision dated April 4, 2017, OWCP denied appellant's emotional condition claim, finding that he had not established a compensable employment factor.

On March 23, 2018 appellant requested reconsideration of the April 4, 2017 decision. In support of his reconsideration request, appellant claimed that C.A. threatened his life by telling him, "[i]f you come to my house, I have guns." He indicated that management was not adequately trained and that C.D., a temporary supervisor, told him that he was too "old and slow" and that he was an "outsider" who did not belong on the job. Appellant claimed that B.E., a coworker who also served as a union representative, yelled at him on the workroom floor on September 20, 2016 and that she mishandled the filing of his grievances against the employing establishment. Appellant asserted that G.D. mishandled his work assignments, improperly texted or called his house on several occasions, and made an insulting comment about his leave usage on October 6, 2016. He claimed that, on November 3, 2016, G.D. yelled at him and B.E. did nothing about it. Appellant alleged that C.A. improperly threatened him with additional disciplinary actions, including termination from his job, wrongly denied his leave requests, and improperly told him he would never work overtime again. He claimed that C.A. bullied and threatened him by referring to the fact that he used to be a sheriff.

Appellant submitted other documents produced prior to the issuance of OWCP's April 4, 2017 decision. In a September 23, 2016 statement, he asserted that, on September 20, 2016, G.D. yelled at him regarding the completion of a 3996 form. Appellant claimed that, on that date, G.D. came up from behind and placed her hand on his left hand, turned his ring, and asked him what kind of ring it was.[5] He also submitted auxiliary control forms regarding his requests for help on his mail delivery route in 2016.

In a September 30, 2016 statement, H.B. indicated that, on September 20, 2016, appellant was estimating mail return times with G.D. and "things were getting heated." He asserted that, when he was on his way home after work on that date, appellant told him that G.D. had made him feel uncomfortable by touching him while he was filling out paperwork that afternoon. H.B. further noted that appellant told him that G.D. committed sexual harassment when she reached over his shoulder and touched his wedding ring hand while "saying things about it."

Appellant submitted additional medical reports and therapy notes from 2017 and 2018, including reports from Dr. Farmer who diagnosed generalized anxiety disorder, depression, and panic caused by his supervisor's actions.

[5] Appellant indicated that he told G.D. that the ring was a "nugget."

In an April 5, 2018 letter, C.A. indicated that the employing establishment continued to controvert appellant's claim. He claimed that he never threatened appellant with violence and indicated that the fact he was a former law enforcement officer only came up in friendly conversation. In a June 18, 2018 letter, C.A. asserted that the employing establishment properly disciplined appellant. In an undated statement, S.M., a coworker, indicated that appellant never told her that he was unfairly treated or made to feel afraid at work, but he did mention that he had "trouble" with a previous female supervisor.

By decision dated July 9, 2018, OWCP modified the decision dated April 4, 2017 to reflect that there was factual evidence, but there was still insufficient evidence finding that he had established a compensable employment factor.

On July 8, 2019 appellant, through counsel, requested reconsideration of the July 9, 2018 decision and provided a statement regarding claimed employment factors, which was similar to prior statements of record. Appellant submitted an undated statement in which H.B. asserted that, from September through November 2016, he witnessed G.D. subject appellant to a stressful and hostile work environment. H.B. maintained that G.D. was "on the phone" saying that she wanted to fire appellant, made the comment, "whatever it takes, [appellant] is gone," and continued to say that she was tired of appellant going to the employee assistance program for two hours at a time. He asserted that, when appellant was out for a few months, G.D. told his coworkers that appellant was being replaced with three more carriers. H.B. reported that, on one occasion, G.D. walked into the men's bathroom and used profanity to tell appellant that he "better be off" the time clock. He asserted that G.D. held a meeting where she stated in front of everyone that he and appellant were "slackers" and that she was going to fix that circumstance. H.B. noted that, on September 20, 2016, appellant came out of G.D.'s office in an upset state and told him that G.D. had come up behind him and touched and played with his wedding ring. He asserted that, on October 26, 2016, G.D. "verbally assaulted" appellant and yelled at him regarding his mileage entries.

Appellant also submitted additional medical evidence in support of his claim.

By decision dated October 24, 2019, OWCP denied modification of its July 9, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] 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

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[6] 5 U.S.C. § 8101 *et seq.*

employment injury.[7] 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.[8]

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.[9]

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. 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.[10] 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.[11]

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.[12] 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.[13]

ANALYSIS

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

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

[8] 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).

[9] *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).

[10] *Lillian Cutler*, 28 ECAB 125 (1976).

[11] *A.E.,* Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

[12] *See O.G.,* Docket No. 18-0359 (issued August 7, 2019); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[13] *Id.*

Appellant alleged that he sustained an emotional condition due to various incidents and conditions in his workplace. OWCP denied his emotional condition claim finding that he had not established a compensable employment factor. The Board must, therefore, initially review whether these alleged incidents and conditions are covered employment factors under the terms of FECA.[14] The Board notes that appellant's claim does not directly relate to his regular or specially assigned duties under *Lillian Cutler*.[15] Rather, appellant primarily claimed that management and coworkers, committed error and abuse with respect to various administrative/personnel matters. He also alleged that management and coworkers subjected him to harassment and discrimination.

With respect to administrative or personnel matters, appellant claimed that management did not take his EEO claim seriously, and that it took 39 days for the claim to be addressed. He alleged that G.D. mishandled his leave requests, and that she failed to provide him adequate support on his mail delivery route on days he took sick leave. Appellant asserted that G.D. improperly criticized him regarding work matters, including needlessly questioning figures he provided on a 3996 form he utilized to request extra time to deliver mail, and improperly chastising him for sending her a text on her mobile phone. He claimed that G.D. mishandled his work assignments, and improperly texted or called his house on several occasions. Appellant alleged that G.D. ordered him to take his lunch in places where it was unsafe to park his postal vehicle, and that management improperly asked him if he wanted to move to another office. He claimed that C.A., his immediate supervisor, wrongfully denied his leave requests and wrongfully told him he would never work overtime again. Appellant asserted that management officials were not adequately trained and that B.E., a coworker who served as a union representative, mishandled the filing of his grievances against the employing establishment. He further claimed that management mishandled disciplinary actions, and improperly issued October 29 and November 18, 2016 letters of warning.

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.[16] 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.[17] 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.[18]

The Board finds that appellant has submitted sufficient evidence to establish that the employing establishment improperly issued him a November 18, 2016 letter of warning. In a

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[14] *Y.W.,* Docket No. 19-1877 (issued April 30, 2020); *Dennis J. Balogh,* 52 ECAB 232 (2001).

[15] *See Lillian Cutler, supra* note 10.

[16] *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).

[17] *M.S.,* Docket No. 19-1589 (issued October 7, 2020); *William H. Fortner*, 49 ECAB 324 (1998).

[18] *J.W.,* Docket No. 17-0999 (issued September 4, 2018); *Ruth S. Johnson*, 46 ECAB 237 (1994).

December 29, 2016 Step B decision, the dispute resolution team determined that the employing establishment did not have just cause to issue the November 18, 2016 letter of warning, and it rescinded the letter of warning and directed that it be removed from all files/records. The dispute resolution team found that no evidence was submitted that demonstrated appellant improperly scanned, delayed, and misdelivered mail, incorrectly made clock rings, misreported mileage, or improperly failed to report to work. Therefore, the Board finds that appellant has submitted sufficient evidence to establish that management committed error or abuse in issuing the November 18, 2016 letter of warning, and that he has established a compensable employment factor in connection with its issuance.

The Board further finds that appellant has not submitted sufficient evidence to establish his other claims of error or abuse regarding administrative/personnel matters. Appellant submitted e-mails and memoranda, which concerned some of these administrative/personnel matters, but the communications did not show that the employing establishment committed error or abuse with respect to these matters. There is no indication that appellant obtained a final determination from an administrative body showing that the employing establishment committed additional acts of error or abuse.[19] 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.[20] Appellant has not substantiated error or abuse committed by the employing establishment in the above-noted additional matters and, therefore, he has not established a compensable employment factor regarding administrative or personnel matters, other than with respect to the November 18, 2016 letter of warning.

Appellant also alleged harassment and discrimination by managers and coworkers. He claimed that, on September 20, 2016, G.D. sexually harassed him by touching him inappropriately, placing her hand on his left hand and "seductively playing" with his wedding ring by turning it. Appellant asserted that, on the same date, G.D. called him "hun" three times.[21] He alleged that G.D. repeatedly retaliated against him for filing an EEO claim, as well as for filing separate grievances against the employing establishment. Appellant claimed that G.D. yelled at him and bullied him regarding many work matters, including his use of a mail scanner and the completion of 3996 forms. He asserted that G.D. "went after him for 50 days straight" and that S.R., an employing establishment supervisor of G.D, and other management officials allowed it to happen. Appellant claimed that G.D punished him for taking sick leave between September and November 2016 to attend mental health therapy sessions and made fun of him for seeing a therapist. He asserted that the investigative interview the employing establishment carried out on November 9, 2016 was a form of retaliation intended to bully him. Appellant alleged that, during a meeting in which he discussed a grievance, R.W., a manager, spoke in a raised voice and interrupted him. He claimed that C.A. threatened his life by telling him, "If you come to my house, I have guns," and also bullied and threatened him by referring to the fact that he used to be a

[19] Appellant indicated that he had filed grievances and an EEO claim, but the case record does not contain a final decision showing that management committed error or abuse, other than with respect to the November 18, 2016 letter of warning. *See M.R.,* Docket No. 18-0304 (issued November 13, 2018).

[20] *T.C.,* Docket No. 16-0755 (issued December 13, 2016).

[21] Appellant also claimed that G.D. called him "hun" on at least one later occasion in September 2016.

sheriff. Appellant asserted that C.A. improperly threatened him with additional disciplinary actions, including termination from his job. He claimed that C.D., a temporary supervisor, told him that he was too "old and slow" and that he was an "outsider" who did not belong on the job. Appellant alleged that B.E. yelled at him on the workroom floor on September 20, 2016.

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.[22] The Board has held that unfounded perceptions of harassment do not constitute an employment factor.[23] Mere perceptions are not compensable under FECA and harassment can constitute a factor of employment if it is shown that the incidents constituting the claimed harassment actually occurred.[24]

Appellant, however, did not submit corroborative evidence in support of his allegations regarding harassment and discrimination by G.D. and others. He did not submit adequate witness statements or other documentary evidence demonstrating that the alleged harassment and discrimination occurred as alleged.[25] In addition, appellant did not submit the final findings of any complaint or grievance he might have filed with respect to these matters, such as an EEO complaint or a grievance filed with the employing establishment.

Appellant submitted several statements regarding these matters from H.B., a coworker. In in a September 30, 2016 statement, H.B. indicated that, on September 20, 2016, appellant told him that G.D. had made him feel uncomfortable by touching him while he was filling out paperwork that afternoon. He further reported that appellant told him that G.D. committed sexual harassment when she reached over his shoulder and touched his wedding ring hand while "saying things about it." However, this statement would not establish appellant's claims of harassment or discrimination by G.D. in that H.B. only related second-hand information and did not actually witness the claimed actions of G.D. The Board has held that statements containing information that was obtained on a second-hand basis would not constitute probative evidence of the existence of harassment or discrimination.[26]

In an October 26, 2016 statement, H.B. reported that on September 23, 2016 he overheard G.D. "giving [appellant] a loose piece of mail and calling him hun." He indicated that, after appellant filed a sexual harassment claim against G.D., she was "getting on" appellant in "a high voice tone" regarding the inputting of postal vehicle mileage. The Board finds that H.B.'s statement that G.D. called appellant "hun" on one occasion would not establish harassment in that H.B. did not provide an adequate description of the context in which this comment was made. Therefore, although appellant established that G.D. made certain comments, but he did not show

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[22] *D.B.,* Docket No. 18-1025 (issued January 23, 2019); *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

[23] *See F.K.,* Docket No. 17-0179 (issued July 11, 2017).

[24] *See id.*

[25] *See B.S.,* Docket No. 19-0378 (issued July 10, 2018).

[26] *See S.A.,* Docket No. 15-1355 (issued November 18, 2015).

that they rose to the level of harassment or discrimination.[27] Moreover, H.B.'s comment that G.D. was "getting on" appellant is vague and nonspecific, and therefore fails to show that G.D.'s actions or statements in the workplace rose to the level of harassment.[28]

Appellant submitted an undated statement in which H.B. asserted that, from September through November 2016, he witnessed G.D. subject appellant to a stressful and hostile work environment. H.B. maintained that G.D. was "on the phone" saying that she wanted to fire appellant, made the comment, "whatever it takes, [appellant] is gone," and continued to say that she was tired of appellant going to the employee assistance program for two hours at a time. He asserted that, when appellant was out for a few months, G.D. told his coworkers that appellant was being replaced with three more carriers. H.B. reported that, on one occasion, G.D. walked into the men's bathroom and used profanity to tell appellant that he "better be off" the time clock. He asserted that G.D. held a meeting where she stated in front of everyone that he and appellant were "slackers" and that she was going to fix that circumstance. H.B. asserted that, on October 26, 2016, G.D. "verbally assaulted" appellant and yelled at him regarding his mileage entries.

The Board finds that H.B.'s undated statement also does not establish a compensable employment factor regarding the claimed harassment/discrimination in that H.B.'s comments regarding the creation of a hostile work environment and use of profanity lack sufficient specificity to establish that G.D. actually engaged in harassment or discrimination.[29] HB. described a number of claimed actions of G.D., which did not occur in appellant's presence, such as comments made to coworkers, but he did not provide adequate details regarding these actions. The Board finds that these claimed actions, which did not directly impact appellant, would not rise to the level of harassment or discrimination.[30]

OWCP also received an undated statement from S.M., a coworker, who indicated that appellant never told her that he was unfairly treated or made to feel afraid at work, but he did mention that he had "trouble" with a previous female supervisor. This statement also is too vague to establish harassment/discrimination as it does not identify the supervisor or describe her actions.[31]

For these reasons, appellant has not established a compensable employment factor with respect to the claimed harassment and discrimination.

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[27] *See L.C.,* Docket No. 20-0461 (issued June 2, 2021); *C.T.,* Docket No. 08-2160 (issued May 7, 2009) (finding that some statements may be considered abusive and constitute a compensable factor of employment, but that not every statement uttered in the workplace will be covered by FECA).

[28] *See T.G.,* Docket No. 19-1668 (issued December 7, 2020) (finding vague and nonspecific statements of record insufficient to establish a compensable employment factor).

[29] *See id.*

[30] *See C.L.,* Docket No. 14-0983 (issued January 23, 2015) (finding that isolated comments not made in the claimant's presence did not establish the existence of a hostile work environment or harassment/discrimination).

[31] *See supra* note 28.

In the present case, appellant has established a compensable factor of employment with respect to the improperly issued November 18, 2016 letter of warning. However, his burden of proof is not discharged by the fact that he has established an employment factor, which may give rise to a compensable disability under FECA. To establish appellant's occupational disease claim for an emotional condition, he must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.[32]

As appellant has establish compensable factors of employment, the case must be remanded for an evaluation of the medical evidence with regard to the issue of causal relationship.[33] After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

[32] *See supra* note 9.

[33] *See M.D.,* Docket No. 15-1796 (issued September 7, 2016).

ORDER

IT IS HEREBY ORDERED THAT the October 24, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: February 9, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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