United States Department of Labor
Employees' Compensation Appeals Board

J.F., Appellant	)	
and	)	
U.S. POSTAL SERVICE, MURRELLS INLET POST OFFICE, Murrells Inlet, SC, Employer	)	**Docket No. 20-1118** **Issued: September 2, 2022**

Appearances:
Paul H. Felser, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On May 8, 2020 appellant, through counsel, filed a timely appeal from an April 9, 2020 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.[3]

[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*.

[3] The Board notes that, following the April 9, 2020 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

ISSUE

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

FACTUAL HISTORY

On August 28, 2017 appellant, then a 47-year-old customer service supervisor, filed an occupational disease claim (Form CA-2) alleging that she sustained panic attacks, stress, and aggravation of preexisting fibromyalgia due to factors of her federal employment including being harassed and threatened by S.H., a custodian at her workplace. She claimed that S.H.'s harassment commenced in February 2017 and that he killed her dog with poison in July 2017. Appellant claimed that on August 17, 2017 S.H. directly threatened her safety in the presence of A.G., the postmaster who served as her supervisor. She asserted that she first became aware of her claimed injury on August 17, 2017 and first realized its relation to her federal employment on August 22, 2017. Appellant stopped work on August 28, 2017.

In an accompanying statement, appellant asserted that, in early-February, S.H. called another custodian "a thief" for taking extended breaks and hiding from management to avoid work, and S.H. became offended and hostile when she responded that his talking to people all day instead of working brought about the same result and was like the pot calling the kettle black. Appellant indicated that, at that time, she and S.H. "were enemies" and "were now at war." She asserted that S.H. openly declared that he was crazy and possessed a letter that proved it and allowed him to "do anything he wants." Appellant claimed that S.H. had post-traumatic stress disorder (PTSD) from his service in the Marines 30 years prior and made statements on the workplace floor such as "killing is therapeutic for me." According to his own reports, S.H. considered himself to be a self-appointed vigilante, patrolled his neighborhood fully armed, and pulled his gun on those who approached houses where he suspected illegal drugs were sold. Appellant claimed that when she approached S.H. on March 4, 2017 to arrange a meeting with management, S.H. made false accusations against her and threatened to have her fired, arrested, and thrown in jail. Approximately one week later, two management officials advised her about an investigation into five claims S.H. made against her, only one of which directly involved the relationship between her and S.H. Appellant alleged that on March 4, 2017 S.H. told her to "have fun in jail" and she acknowledged that it was inappropriate for her to respond to S.H.'s comment by making a profane comment to him, a comment for which she received a letter of warning on March 30, 2017. She asserted that S.H. continued to spread unfounded rumors and lies throughout the office regarding her "personal professional integrity" without wrongdoing being found. Appellant advised that S.H. filed an Equal Employment Opportunity (EEO) claim in which he made five new charges that she persecuted him on the basis of age, gender, and medical condition. She asserted that several of the charges were proven to be outright lies and that management officials, including A.G., J.A., and A.C., ignored her right to have S.H. investigated for harassing her. Appellant advised that, in July 2017, her family's pet Labrador retriever had to be put down after suffering acute liver failure due to toxic ingestion. While acknowledging that she did not have proof, she filed a police report indicating she was certain that S.H. poisoned and killed her dog.

Appellant further claimed that, in August 2017, S.H. filed four more charges against her and she claimed that a management official advised her that S.H., as a disabled veteran, was

"virtually untouchable," and that all Vietnam veterans were "really crazy and violent." She asserted that, in connection with these charges, S.H. asked coworkers to produce negative statements about her, and that S.H. continued this activity even after A.G. stated that it was creating a hostile work environment and an "us [*versus*] them mentality" against management. Appellant advised that S.H. then filed a baseless EEO claim alleging she sexually harassed him. She asserted that, during an interview regarding this claim on August 17, 2017, A.G. asked S.H. if he had anything he wanted to add and S.H. responded that "he was afraid that he would wake up in a [Department of Veterans Affairs] hospital and they would be telling him that he had done horrible things." Appellant advised that she learned of S.H.'s comments during an interview with A.G. and she became very upset and concerned for the safety of herself and her family.

In an October 23, 2017 development letter, OWCP notified appellant of the deficiencies of her claim. It advised her of the type of evidence needed and provided a questionnaire for her 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 a November 22, 2017 statement, received by OWCP on that date, appellant responded to the questionnaire provided to her on October 23, 2017. She repeated a number of her earlier claims regarding S.H.'s actions and argued that the employing establishment violated procedural rules by not fully responding to her requests to investigate S.H. Appellant noted, "I am currently suffering from stress and anxiety caused by the [the employing establishment's] ignoring my repeated assertions that I am being required to perform as the direct supervisor of an emotionally disturbed employee, in a hostile work environment, in which I am increasingly afraid for my personal safety, and the safety of my family."

Appellant also submitted an undated six-page statement, received by OWCP on November 22, 2017, in which she repeated a number of her earlier claims regarding S.H.'s actions. She alleged that, on March 4, 2017, S.H., falsely accused her of falsifying documents regarding accountable mail items, and she generally indicated that appellant made numerous derogatory statements about various ethnic groups. Appellant submitted several letters and e-mails, dated between April and July 2017, in which she requested that the employing establishment investigate S.H. These documents contain descriptions of S.H.'s claimed actions, which are similar to those contained in other documents of record.

In a November 21, 2017 letter, C.J., a manager of health and resource management for the employing establishment, provided the employing establishment's response to OWCP's October 23, 2017 request for information. He indicated that the employing establishment investigated the events of March 4, 2017 and that, as a result, both appellant and S.H. were disciplined. C.J. noted that another investigation was concluded on August 17, 2017 in response to an e-mail from an employee claiming a hostile work environment and resulted in a recommendation that appellant attend employee engagement training. He advised that a third investigation was conducted in response to a postmaster sending home an employee who made a statement "understood as threatening." C.J. indicated, "The investigation inquiry led to no action taken against employee other than a few days of missed work and no threat perceived by employees in office, with the exception of [appellant]."

C.J. attached a March 14, 2017 document regarding the investigation into the events of March 4, 2017, which was signed by two postmasters for the employing establishment. The postmasters indicated that the investigation established that appellant made a profane comment to S.H. on March 4, 2017. They noted that other allegations made against appellant by an unnamed complainant, including a claim of committing health insurance fraud, had not been substantiated by the investigation.

Both appellant and the employing establishment submitted additional documents to OWCP. In a March 9, 2017 statement produced in conjunction with an employing establishment investigation, S.H. acknowledged that on March 4, 2017 he accused appellant of falsifying route delivery documents, and committing health insurance fraud. He indicated that appellant responded to his accusations by making a profane comment to him.

In an August 15, 2017 e-mail, K.W., a subordinate of appellant, criticized appellant's performance as her supervisor. She asserted that appellant failed to adequately address the use of profanity in the workplace and, on one occasion, used stereotypical language to describe workmen who made repairs at the workplace. K.W. noted that, during a meeting with her subordinates, appellant admitted that she had used profanity in the workplace on occasion.

In an August 17, 2017 memorandum, D.M., a labor relations specialist for the employing establishment, indicated that concerns had been raised regarding appellant's performance as a supervisor. D.M. indicated that C.H., a subordinate of appellant, had indicated that S.H. "seems to have it out for [appellant]."

In an undated statement, E.H., a labor relations specialist for the employing establishment, discussed an August 29, 2017 meeting attended by himself, appellant, S.H., and E.A., a management official. E.H. advised that, during this meeting, S.H. indicated that A.G. had asked him at the end of an August 17, 2017 interview whether he had anything to add and S.H. noted that he said that "he was afraid he would wake up in a [Department of Veterans Affairs] hospital and they would be telling him horrible things." S.H. then indicated that A.G. misunderstood his comment and wrongly thought that he had said that "he was afraid he would wake up in a [Department of Veterans Affairs] hospital and they would be telling him that he had done horrible things." E.H. noted that S.H. claimed that he told appellant to "have fun in jail." E.H. indicated that he was present at a management interview with C.H. on August 30, 2017 at which time C.H. expressed her belief that S.H. disrespected appellant. E.H. noted that he also was present at the management interview with A.G. on August 30, 2017 at which time A.G. indicated that he issued letters of warning to both appellant and S.H. regarding their exchange of comments on March 4, 2017.[4] At this meeting, A.G. indicated that S.H. said that he "would hate to wake up in [a Department of Veterans Affairs hospital] being told that he … did some horrible things." A.G. then noted that he instructed S.H. to go home "because he felt like what he said was a threat to someone's safety."

[4] E.H. noted that A.G. stated that it had been established during the investigation into the events of March 4, 2017 that appellant responded to S.H.'s statements with a profane comment. A.G. indicated that he did not personally witness the exchange.

In a November 29, 2017 e-mail, C.J. advised that an investigation did not find credible evidence that S.H. threatened appellant in August 2017. In a November 29, 2017 e-mail, A.G. responded to C.J. and indicated that he had "reason to doubt the extent" of appellant's claim. He advised that there was no "credible threat" made by S.H. against appellant. In an undated statement, R.A., a coworker of appellant, indicated that he witnessed appellant making a profane comment to S.H. on March 4, 2017.

Appellant also submitted medical evidence, as well as copies of leave requests and reasonable accommodation requests.

By decision dated January 25, 2018, OWCP denied appellant's emotional condition claim, finding that she failed to establish any compensable employment factors. In particular, it found that appellant had not established that the various interactions she described as having with S.H. constituted employment factors.

On February 1, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. Following a preliminary review, by decision dated a June 1, 2018, OWCP's hearing representative set aside the January 25, 2018 decision and remanded the case to OWCP for further development of the factual evidence. She indicated that, on remand, OWCP should provide the employing establishment with a copy of appellant's November 22, 2017 statement and her undated six-page statement. The hearing representative further directed OWCP to obtain comments from knowledgeable employing establishment officials regarding the claims appellant made in these documents.

On remand, OWCP provided appellant's statements to the employing establishment and requested that knowledgeable management officials comment on appellant's allegations.[5] In a July 20, 2018 statement, C.J. indicated that during the interview A.G. conducted on August 17, 2017, S.H. indicated, "I'm afraid of waking up in the [Department of Veterans Affairs] Hospital [and] them telling me horrible things." He noted that, the next day, appellant claimed that S.H. made a threatening statement and A.G. sent S.H. home on the same day. C.J. indicated that on August 21, 2017 management reached a consensus that S.H. was wrongly sent home as it had not been established that he made a threat, and S.H. returned to work the next day. He maintained that the employing establishment fully addressed appellant's concerns regarding the matter. C.J. acknowledged that supervisors and subordinates can have "personality conflicts" but asserted that "personal conflicts" are not compensable work factors.

In a January 19, 2018 EEO decision, the employing establishment dismissed appellant's complaint against it for discrimination based on sex and retaliation. In a May 23, 2018 EEO Commission decision, it was determined that appellant filed a viable sex discrimination complaint that required further investigation/processing and should not have been dismissed by the employing establishment. The claim was remanded to the employing establishment for continued processing.

[5] OWCP also provided copies of other documents of record, including a more legible copy of S.H.'s March 9, 2017 statement.

By decision dated October 2, 2018, OWCP denied appellant's emotional condition claim, finding that she failed to establish any compensable employment factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On October 10, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on March 20, 2019.

Appellant submitted an undated 14-page statement, received by OWCP on April 18, 2019, in which she provided claims regarding S.H.'s behavior that were similar to those provided in prior statements. She claimed that in early-2018 the employing establishment wrongly dismissed her complaint against management. Appellant also submitted statements from management officials, which praised her work performance, as well as additional medical evidence in support of her claim.

In a March 15, 2019 statement, C.H. indicated that S.H. had made announcements that "killing was therapeutic for him and otherwise he didn't know what would happen." She advised that, when S.H. was "having issues" with appellant, she feared for appellant's and her own safety because she was friends with appellant. C.H. indicated, "[h]is attitude towards [appellant] was hateful, violent and disrespectful of her position."

By decision dated June 10, 2019, OWCP's hearing representative set aside the October 2, 2018 decision and remanded the case to OWCP for further development of the factual evidence. The hearing representative indicated that, on remand, OWCP should address appellant's 14-page statement and address whether the May 23, 2018 EEOC decision establishes an employment factor.

On remand OWCP solicited additional statements from the employing establishment. In a July 23, 2019 statement, C.J. maintained that appellant misquoted S.H.'s August 17, 2017 statement that he was "afraid of waking up in the [Department of Veterans Affairs hospital] and them telling me horrible things" when she asserted that S.H. declared that he was "afraid [he] was going to wake up in the [Department of Veterans Affairs hospital] and be told he had done something terrible." He advised that management concluded that S.H. did not make a viable threat.

On August 26, 2019 OWCP received an undated statement in which appellant asserted that C.H.'s March 15, 2019 statement supported her claims about S.H. Appellant asserted that management did not adequately conduct investigations into her claims, noting that S.H. refused to meet with investigators regarding the third investigation regarding the events of August 2017. She indicated that she agreed that S.H. had declared, "I don't want to wake up in a [Department of Veterans Affairs] hospital with them telling me horrible things." Appellant advised that she still considered this to be a threatening statement and indicated that three management officials considered the statement to be enough of a threat to send S.H. home from work.

In an August 29, 2019 statement, C.H. indicated that S.H. had repeatedly and openly made statements on the workroom floor that were violent and inappropriate, including that killing was therapeutic for him, that he was crazy and had a license to do whatever he wanted, that he had PTSD and was very unstable and dangerous, and that people should not "poke the bear." She also asserted that S.H. made statements in the workplace about his hatred for certain ethnic groups,

constantly talked about his personal gun arsenal, and bragged about his armed stakeouts in his neighborhood to look for any wrongdoing. C.H. indicated that appellant wore a t-shirt in the workplace that, in effect, said, "I'm stressed and therefore I have to go kill something." She asserted that A.G. knew that S.H. was capable of being dangerous.

By decision dated September 23, 2019, OWCP denied appellant's emotional condition claim, finding that she failed to establish any compensable employment factors.

On October 18, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on February 5, 2020.

Appellant subsequently submitted additional documents. In a January 29, 2020 statement, she provided further details regarding her claimed employment factors and the medical treatment she received.

In a March 10, 2020 statement, C.J. referenced counsel's hearing testimony and asserted that it was appellant who contributed to a hostile work environment through her actions in the workplace. He indicated that appellant did not appear to have been intimidated by S.H. as she, on at least one occasion, directed profane language towards him and, on another occasion, approached him in a tractor shed containing tools. C.J. asserted that, at some point, appellant's personal relationship with S.H. soured. In an April 1, 2020 statement, appellant challenged C.J.'s description of her actions. She asserted that she never had a personal relationship with S.H., but had worked with him for five years.

By decision dated April 9, 2020, OWCP's hearing representative affirmed the September 23, 2019 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 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

[6] 5 U.S.C. § 8101 *et seq*.

[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).

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]

A claimant has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.[12] This burden includes the submission of a detailed description of the employment factors or conditions which he or she believes caused or adversely affected a condition for which compensation is claimed, and a rationalized medical opinion relating the claimed condition to compensable employment factors.[13]

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.[14] 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.[15]

ANALYSIS

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

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[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] *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[13] *P.B.*, Docket No. 17-1912 (issued December 28, 2018); *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

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

[15] *Id*.

Appellant has alleged that she sustained an emotional condition as a result of a number of employment incidents and work conditions. OWCP denied her emotional condition claim finding that she had not established a compensable employment factor. The Board must, therefore, initially review whether these alleged incidents are covered employment factors under the terms of FECA.[16] Appellant claimed that management committed error and abuse with respect to administrative/personnel matters and that she was subjected to harassment and discrimination. In addition, elements of appellant's claims of harassment and discrimination could also be characterized as alleged employment factors under the principles of *Lillian Cutler*,[17] in that they stemmed from her supervisory relationship with S.H.

With respect to administrative or personnel matters, appellant claimed that management officials did not adequately support her in connection with her dealings with her subordinate, S.H. Appellant asserted that S.H. filed an EEO claim in which he made five charges that she persecuted him on the basis of age, gender, and medical condition. She claimed that several of the charges were proven to be outright lies and that management officials, including A.G., her immediate supervisor, ignored her right to have S.H. investigated for harassing her. Appellant further claimed that, in August 2017, S.H. filed four more charges against her and she alleged that a management official advised her that S.H., as a disabled veteran, was "virtually untouchable" and that all Vietnam veterans were "really crazy and violent." She claimed that in early-2018 the employing establishment improperly dismissed her complaint regarding wrongdoing by management.

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.[18] 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.[19] 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.[20]

The Board finds that appellant has submitted sufficient evidence to establish a compensable employment factor with respect to her claim that in early-2018 the employing establishment improperly dismissed her complaint regarding wrongdoing by management. In a January 19, 2018 EEO decision, appellant's complaint against the employing establishment for discrimination based on sex and retaliation was dismissed. However, in a May 23, 2018 EEOC decision, it was determined that appellant filed a viable sex discrimination complaint that required further investigation/processing and should not have been dismissed by the employing establishment. The

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

[17] *See supra* note 10.

[18] *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).

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

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

claim was remanded to the employing establishment for continued processing. The Board finds that this evidence supports a finding of error/abuse by the employing establishment with respect to this administrative/personnel matter.

With respect to the other above-mentioned claims regarding administrative/personnel matters, the Board finds that appellant has not submitted sufficient evidence to establish a compensable employment factor. 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 error or abuse with respect to such matters. Appellant has not substantiated error or abuse committed by the employing establishment in the above-noted additional matters and, therefore, she has not established a compensable employment factor with respect to administrative or personnel matters, other than the above-noted dismissal of her complaint in early-2018.

Appellant also alleged that S.H. subjected her to harassment and discrimination. She asserted that S.H. called another custodian "a thief" for taking extended breaks and hiding from management to avoid work, and that S.H. became offended and hostile when she responded that his talking to people all day instead of working brought about the same result and was like the pot calling the kettle black. Appellant alleged that S.H. openly declared that he was crazy and possessed a letter, which proved it and allowed him to "do anything he wants." She claimed that S.H. made violent statements on the workplace floor such as "killing is therapeutic for me" and made offensive comments about various ethnic groups. S.H. also spoke about patrolling his neighborhood fully armed, and pulling his gun on those who approached houses where he suspected illegal drugs were sold. Appellant claimed that when she approached S.H. on March 4, 2017 to arrange a meeting with management, S.H. made false accusations against her and threatened to have her fired, arrested, and thrown in jail. She alleged that on March 4, 2017 S.H. told her to "have fun in jail" for committing health insurance fraud. Appellant asserted that S.H. continued to spread unfounded rumors and lies throughout the office regarding her "personal professional integrity" without wrongdoing being found. She asserted that S.H. specifically asked coworkers to produce negative statements about her. Appellant advised that, in July 2017, her family's pet Labrador retriever had to be put down after suffering acute liver failure due to toxic ingestion and she claimed that S.H. was responsible for poisoning the dog. She asserted that during an interview held on August 17, 2017, A.G. asked S.H. if he had anything he wanted to add and S.H. responded that "he was afraid that he would wake up in a [Department of Veterans Affairs] hospital and they would be telling him that he had done horrible things." Appellant advised that she learned of S.H.'s comments during an interview with A.G. and she became very upset and concerned for the safety of herself and her family.

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.[21] The Board has held that unfounded perceptions of harassment

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

do not constitute an employment factor.[22] 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.[23]

The Board finds that appellant has established harassment/discrimination with respect to S.H.'s actions/statements on March 4, 2017. Evidence in the case record reveals that S.H. has acknowledged that on March 4, 2017 he confronted appellant on the work floor and accused her of falsifying route delivery documents, and committing health insurance fraud. An employing establishment official noted that S.H. acknowledged telling appellant to "have fun in jail" and the case record reflects that S.H. received a letter of warning regarding his actions on March 4, 2017. The Board further notes that the events of March 4, 2017 constitute an employment factor for the additional reason that they could also be characterized as relating to appellant's carrying out of her supervisory duties.[24]

Appellant did not submit adequate witness statements or other documentary evidence to demonstrate that the additional alleged instances of harassment and discrimination occurred as alleged.[25] Although the case record contains statements in which employees indicated that S.H. made offensive comments, including those regarding the commission of violence and the denigration of various groups, the statements are vague in nature and provide no indication that appellant's comments were made in appellant's presence. The Board has found that vague and nonspecific statements of record are insufficient to establish a compensable employment factor.[26] With respect to S.H.'s alleged comment on August 17, 2017 regarding his fears about waking up in a Department of Veterans Affairs hospital, the Board notes that the case record contains conflicting statements about the precise nature of the comment. In addition, there has been no claim that the ostensible comment was made in appellant's presence. Moreover, the employing establishment conducted an investigation and found that the comment did not pose a credible threat to appellant or others. Appellant did not submit the final findings of any complaint or grievance she might have filed with respect to her additional claims of harassment/discrimination. Therefore, appellant has not established a compensable employment factor with respect to the claimed instances of harassment and discrimination, other than S.H.'s actions/statements on March 4, 2017.

In the present case, appellant has established compensable employment factors with respect to the dismissal of her complaint in early-2018 and S.H.'s actions/statements on March 4, 2017. However, appellant's burden of proof is not discharged by the fact that she has established employment factors, which may give rise to a compensable disability under FECA. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized

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

[23] *See id*.

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

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

[26] *See T.G.*, Docket No. 19-1668 (issued December 7, 2020).

medical evidence establishing that she has an emotional or psychiatric disorder, and that such disorder is causally related to an accepted compensable employment factor.[27]

As OWCP found there were no compensable employment factors, the case must be remanded for an evaluation of the medical evidence with regard to the issue of causal relationship.[28] Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* regarding appellant's emotional condition claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the April 9, 2020 decision of the Office of Workers' Compensation Programs is set aside and case is remanded to OWCP for proceedings consistent with this decision of the Board.

Issued: September 2, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

[27] *See supra* note 9.

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