



current supervisor. She alleged that she developed headaches, gastrointestinal problems, and loss of sleep. The claim form does not indicate that appellant stopped work.

Appellant submitted an October 26, 2015 narrative statement further explaining her claim. She noted a group meeting held on July 13, 2015 where her supervisor allegedly “attacked her” on several issues. According to appellant, the supervisor inquired about documents that needed to be completed, and a “sharps fair” that appellant was coordinating with safety staff. Appellant noted that she was later told that the supervisor had instructed staff not to help her with the fair. There was a July 22, 2015 meeting in which appellant indicated that the supervisor requested daily surveillance of all hospital-associated infections, and appellant was told there would be no excuse for late reporting. At an August 10, 2015 meeting, appellant alleged that she and another employee rose to leave at the end of the meeting, but appellant was singled out and told to sit down as the meeting was not over. She identified an August 28, 2015 meeting during which appellant asked for clarification of her assignment, but the supervisor responded in a condescending manner. With respect to a September 10, 2015 meeting, appellant alleged that the supervisor continually changed expectations regarding a presentation to be given by her. She also alleged that on September 11, 2015 she was given a written counseling letter for failure to follow directions, and on September 22, 2015 she received only a “satisfactory” performance appraisal, as opposed to her usual outstanding rating. Appellant also referenced a leave request dated August 21, 2015 that was not approved by the supervisor.

The employing establishment submitted an October 8, 2015 report of a fact-finding investigation regarding allegations by appellant of a hostile work environment. With respect to a July 22, 2015 training meeting, the supervisor alleged that it was appellant whose behavior was disruptive, as appellant did not understand the software and kept repeating herself. She reported that she interrupted appellant to keep the meeting on track. With respect to telling appellant to sit down at the end of a meeting, the supervisor indicated this was to conclude the meeting with peer recognition, which had become standard practice. The report indicated that two witnesses at the meeting agreed the supervisor’s actions were not demeaning in nature. As to the August 28, 2015 meeting, appellant was offered the Employee Assistance Program to help with stress. The report concluded that there was no evidence that the supervisor had created a hostile work environment with respect to appellant. It recommended that the supervisor provide detailed instructions to all staff to avoid confusion and ensure fair treatment.

By letter dated December 3, 2015, OWCP requested that appellant submit additional evidence regarding her claim. In a December 10, 2015 response, appellant indicated that she had filed a complaint on October 9, 2015 with the Office of Resolution Management, and the employing establishment had offered to settle the claim. According to appellant, the employing establishment had offered to change the performance appraisal to “highly successful” and to remove the letter of counseling. An October 15, 2015 letter indicated that an EEO (Equal Employment Opportunity) counselor had been selected regarding appellant’s complaint.

In a decision dated April 22, 2016, OWCP denied appellant’s claim for compensation. It found that appellant had not established any compensable work factors with respect to allegations of harassment by the supervisor or error by the employing establishment.

Appellant requested reconsideration on July 11, 2016. She submitted a statement from a coworker, who reported that it was clear that there was some tension between appellant and the supervisor. The coworker wrote that there were a lot of closed-door meetings, and that appellant has indicated she was having stomach problems and did not want to come to work. According to the coworker, the supervisor would stop meetings to find out what appellant was telling others in the department. Appellant also submitted a February 10, 2016 report from Dr. Ramal Rafique, a psychiatrist.

By decision dated October 5, 2016, OWCP reviewed the merits of the claim, but denied modification of its prior decision.

### **LEGAL PRECEDENT**

Appellant has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.<sup>2</sup> This burden includes the submission of detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>3</sup> To establish an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.<sup>4</sup> When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.<sup>5</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it, but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>6</sup>

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<sup>2</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>3</sup> *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>4</sup> *D.C.*, Docket No. 16-1870 (issued May 17, 2017); *George H. Clark*, 56 ECAB 162 (2004).

<sup>5</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>6</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.<sup>7</sup> Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.<sup>8</sup>

### ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of alleged employment incidents. OWCP denied appellant's emotional condition claim because she had failed to establish any compensable employment factors. The Board must initially review whether these alleged incidents of employment are covered employment factors under the terms of FECA. The Board notes that appellant's allegations do not pertain to her regular or specially assigned duties under *Cutler*.<sup>9</sup> Rather, appellant has alleged harassment and discrimination on the part of her supervisor and error and abuse in administrative matters.

The initial question presented is whether appellant has established a compensable work factor. For an allegation of harassment to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.<sup>10</sup> In this case, the Board finds that appellant has not submitted probative and reliable evidence in support of her claim.

Appellant has described staff meetings that occurred in 2015, but her allegations indicate only that she perceived her supervisor was at times singling her out or speaking to her in a condescending tone. Perceptions of harassment or verbal abuse are not compensable work factors.<sup>11</sup> Appellant provided no probative evidence of harassment or abusive actions of a supervisor. The witness statement provided only general observations of perceived tension between appellant and the supervisor. While appellant indicated that she had filed an EEO complaint in October 2015, no additional evidence or findings with respect to this complaint are of record.<sup>12</sup> Moreover, the employing establishment provided a fact-finding report that did not support her allegations of harassment. The report found that the supervisor treated appellant no different from other employees or establish incidents where appellant was treated in a demeaning manner.

In her claim, appellant has also referred to a disciplinary letter, a performance appraisal, and a leave request. All of these are administrative or personnel matters and can only be

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<sup>7</sup> See *Brian H. Derrick*, 51 ECAB 417, 421 (2000).

<sup>8</sup> *Margreat Lublin*, 44 ECAB 945, 956 (1993).

<sup>9</sup> *Supra* note 5. See also *J.T.*, Docket No. 16-1424 (issued March 7, 2017).

<sup>10</sup> See *T.C.*, Docket No. 16-0755 (issued December 13, 2016); *Robert Breeden*, 57 ECAB 622 (2006).

<sup>11</sup> See *M.D.*, 57 ECAB 211 (2007).

<sup>12</sup> Findings with respect to EEO claims are probative evidence, although not dispositive with respect to compensable factors under FECA. See *J.S.*, Docket No. 08-2072 (issued April 20, 2009); see also *James A. Hildenbrand*, Docket No. 05-1638 (issued November 1, 2005).

considered compensable work factors if there is probative evidence of error or abuse.<sup>13</sup> No such evidence was presented in this case. Appellant referred to an offer from the employing establishment to remove the disciplinary letter and change the performance appraisal. Even if the evidence of record were to document a change in a disciplinary matter or a performance appraisal, this does not itself establish error or abuse. The mere fact that an administrative action is later modified or rescinded does not, in and of itself, establish error or abuse.<sup>14</sup>

The Board accordingly finds that the evidence of record fails to substantiate a compensable work factor. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.<sup>15</sup>

On appeal appellant writes that she has suffered an emotional and physical injury, and feels that she has been wronged. As discussed above, a claimant must allege and substantiate compensable work factors with respect to her claim for compensation. If compensable work factors are established, then the medical evidence is reviewed to determine if a diagnosed condition causally related to a compensable work factor has been established.<sup>16</sup> For the reasons discussed, appellant has not established a compensable work factor in this case.

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 failed to establish an emotional condition in the performance of duty.

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<sup>13</sup> *Donney T. Drennon-Gala*, 56 ECAB 469 (2005); *Beverly R. Jones*, 55 ECAB 411 (2004); *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>14</sup> *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Richard J. Dube*, 42 ECAB 916 (1991) (reduction of a disciplinary letter to an official discussion did not constitute abusive or erroneous action by the employing establishment).

<sup>15</sup> *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>16</sup> *See I.D.*, Docket No. 16-0581 (issued December 12, 2016).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 5, 2016 is affirmed.

Issued: July 11, 2017  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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