United States Department of Labor
Employees' Compensation Appeals Board

C.J., Appellant	)	
and	)	**Docket No. 19-1722**
	)	**Issued: February 19, 2021**
FEDERAL HOUSING FINANCE AGENCY, Washington, DC, Employer	)	

Appearances:
Paul H. Felser, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 14, 2019 appellant, through counsel, filed a timely appeal from a July 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.

[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 her burden of proof to establish an emotional condition in the performance of duty, as alleged.

FACTUAL HISTORY

On July 7, 2018 appellant, then a former 55-year-old principal risk analyst, filed a traumatic injury claim (Form CA-1) alleging that she suffered stress, anxiety, and depression while in the performance of duty which began on her first day of work. She noted that she was suffering severe neck pain, muscle tension, headaches, and difficulty walking and sleeping. On the claim form, appellant provided a chronological list of claimed employment factors. She recounted that:

> "On April 11, 2017 [appellant] walked into stressful work conditions above the normal level, noting that she met with B.M., her first-line supervisor, who told her that she set increased standards for appellant because she was a minority; on June 27, 2017 [appellant] informed her manager that she had gone to the emergency room and was told she had to send in a [physician] report which, appellant claimed, was a violation of privacy laws; on July 4, 2017 B.M. asked for an updated [physician's] note and became irate when appellant did not respond because she was unwilling to share privacy information; on July 7, 2017 [appellant] provided an updated [physician's] note to B.M., but felt uncomfortable because it included her Social Security [Administration] (SSA) number, birthdate, prognosis, and mailing address. Appellant indicated that she requested approval for reasonable accommodations; on July 9, 2017 B.M. called to inquire about an updated note and informed appellant that she was not willing to approve any additional reasonable accommodation days, so appellant then called human resources (HR) to inquire about reasonable accommodation policies; on July 10, 2017 [appellant] called HR and was asked to provide a [physician's] note so that it could be determined if she was entitled to receive reasonable accommodations. She told the HR representative that she was uncomfortable sharing personal information with her manager who had requested copies of [physician's] notes for approval of temporary reasonable accommodations; on March 30, 2018 appellant indicated that she received disturbing news from the employing establishment that increased her stress level and depression; and on May 3, 2018 [appellant's] was on a conference call with the employing establishment that also elevated her stress and depression."

On the reverse side of the claim form B.M., appellant's supervisor, indicated that appellant's last day of work was February 16, 2018, when she was fired for misconduct. She noted by check marks that the injury was caused by willful misconduct and that her knowledge did not agree with appellant's statements. B.M. indicated that appellant had not reported an injury during her employment, and she did not report it until after she was terminated.

In a July 12, 2018 statement, B.M. indicated that appellant did not report to her that she sustained an injury while performing her official duties and did not file a FECA claim. She reported that appellant's employment had been terminated for providing false, misleading, and inaccurate statements. B.M. indicated that she met with appellant on her first day of employment,

April 11, 2017, during her orientation as a new employee. The meeting involved introductions and an overview of the Governance and Compliance Branch, appellant's assigned division, and her assignments. She advised that appellant did not mention suffering stress, anxiety, and depression then or at any time during her employment. B.M. maintained that appellant had no credible information to draw the conclusion that stress was above the normal level for her position as a Grade 15 principal risk analyst. She noted that on June 27, 2017 appellant notified her *via* e-mail that appellant had gone to the emergency room and voluntarily attached a physician's note which did not disclose appellant's SSA number or date of birth.

As to July 4, 2017, B.M. indicated that the alleged incident did not occur, as that date was a federal holiday. She indicated that she never threatened to fire appellant, that appellant never requested telework for purposes of a reasonable accommodation, and that she had approved all requested telework under her authority. On July 7, 2017 B.M. advised that appellant voluntarily attached a physician's note to an e-mail message, and that the note did not disclose appellant's SSA number or her prognosis. She maintained that appellant's statements about a conversation with her on July 9, 2018 were fabricated, noting that the physician's note on July 7, 2017 covered the following week for which telework had already been approved. B.M. indicated that appellant was never put on temporary reasonable accommodation status. She advised that appellant was removed from federal employment effective February 16, 2018 and that she had no knowledge regarding the referenced dates March 30 and May 3, 2018.

In a development letter dated August 10, 2018, OWCP indicated that it was not clear from the evidence provided whether she was claiming an occupational disease or a traumatic injury. It asked her to clarify which type of injury she was claiming, and asked that she provide a report from her physician who provided by a medical explanation regarding the cause of her emotional condition. OWCP attached a questionnaire for appellant's completion and forwarded B.M.'s statement.

In a second development letter of even date, OWCP asked the employing establishment to provide additional information regarding appellant's claim.

In a March 5, 2018 response, appellant maintained that B.M.'s statement was false which she maintained was intentional, and indicated that B.M. should be charged with making a false, fictitious, or fraudulent statement or representation. She alleged that while employed at the employing establishment she was subjected to discrimination, including harassment/hostile work environment on the bases of race (African-American), gender (female), reprisal/retaliation (prior Equal Employment Opportunity (EEO) activity), color (black), disability (physical), age (March 1, 1963), pay disparity (white employees received higher pay than black employees), and Family and Medical and Leave Act (not paid for overtime). Appellant alleged that the employing establishment's office of minority and women failed to protect her against workplace discrimination, maintaining that B.M., M.H., the HR director, K.W., her second-line supervisor, and J.K., an employing establishment representative, did not protect appellant from discrimination and should be held accountable, and that they violated EEO process, and the No Fear Act. She indicated that by allowing these employees to engage in this conduct and remain with the employing establishment demonstrated "a shocking degree of indifference to government ethical standards, procurement regulations, and public integrity." Appellant urged the employing establishment to remove the above-named employees from any position where they could

discriminate, harass, bully, and engage in misconduct, and to take appropriate measures to ensure that such conduct did not occur in the future, and that it should suitably discipline employees who had committed serious wrongdoing. She maintained that B.M. had committed perjury when she lied and made a statement that was untruthful while under oath, alleging that the written statement B.M. provided was not truthful, and she should be charged with perjury. Appellant concluded by noting that, as of February 16, 2018, she had been terminated by the employing establishment and that B.M. had been reassigned to another position within the employing establishment.

In response to OWCP's development letter, in a statement dated September 5, 2018 appellant indicated that she was experiencing an occupational disease, which was due to the work setting and occupational actions. Appellant maintained that she was hired into a hostile work environment where B.M. bullied and harassed her, and retaliated against her from April 11, 2017 to the present. She noted that she filed her first EEO complaint on September 26, 2017 and that the employing establishment hired a law firm to investigate her complaint. Appellant maintained that she was targeted by bullies beginning in her first week of employment, and thereafter her manager would make snide remarks, threaten, and criticize her, which caused her to be nervous each day when she reported to work. She related that she went to the emergency room and was instructed to stay off her feet because the intolerable stress affected her body such that it was difficult to walk. Appellant indicated that she felt that her manager would never be happy with her work or assignments, so that each day she was worried about reporting to work, but that, even with notes from physicians, B.M. demanded that appellant report to work. She related that she had not had any similar disability or symptoms before working at the employing establishment, and that, after she began work there, the chronic worrying and emotional stress triggered a host of health problems including difficulty walking and high blood pressure.

Appellant indicated that every Monday, she met with her manager to discuss her work assignments, and every Monday the meetings were used to belittle, threaten, bully, harass, and torment her, maintaining that B.M. created a demeaning, hostile work environment, with lack of training, and poor management, and this contributed to stress, anxiety, and depression. She continued that the employing establishment management had been critical, demanding, unsupportive, bullying, and that there were no prior stressful events that contributed to her emotional condition, but that she continued to be stressed and depressed since she left the employing establishment, and that she was afraid of her manager. Appellant indicated that her life outside of work had become complicated because she was experiencing anxiety, depression, irritability, and fatigue and that she had difficulties concentrating, memory loss, and problem solving. The effect of fatigue and stress at work had affected her personal life. Appellant maintained that the workplace bullying had not ended, and that she was still experiencing stress, depression, neck pains, muscle tension, headaches, anxiety, panic attacks, itching, trouble sleeping, and high blood pressure, which had worsened. She noted that she was currently completing EEO documents and other requests by the employing establishment, which made it difficult to feel better because she was reliving the pain of working there and was one step from being homeless due to one bad manager and what she endured at the employing establishment. Appellant concluded that she had learned that her former manager had been demoted and her second level manager had resigned. She maintained that the employing establishment should be held accountable for hiring her into a hostile work environment.

Appellant submitted additional evidence including e-mail correspondence regarding her EEO claims. She also included a list of witnesses.

Medical evidence submitted included a July 7, 2017 note in which Susan B. Campbell, a nurse practitioner, advised that appellant was seen on that day and should be allowed to work from home for one week.

In an August 30, 2018 report, Dr. John Wierzbicki, an osteopath, advised that appellant was first seen on November 28, 2017 when she reported a knot in the back of her neck and was concerned that it is related to work stress. He indicated that she followed up on January 16, 2018 reporting sleep issues, chronic itching, and continued work stress, and was seen on July 12, 2018 with complaints of neck pain, continued itching, and sleep problems. Dr. Wierzbicki noted that appellant was seeing a therapist and was looking for work. He last saw her on August 21, 2018 when she reported that she was unable to sleep. Dr. Wierzbicki opined that appellant continued to have physical manifestations due to current stressors and was on blood pressure medication, which was affected by her stress load.

L.H., who had worked in a different division at the employing establishment, noted on August 23, 2018 that he remembered hearing that, when appellant was hired, it was mandated that a minority be hired. He indicated that they crossed paths briefly and that he witnessed enough of her adversarial treatment from her first day, mainly from hearing through other colleagues who worked directly with her who felt compelled to tell him of the tense relationship between her and her supervisor. L.H. wrote that he stayed in touch with appellant periodically after he left the employing establishment in September 2017 and opined that it was clear that she had been hurt significantly by her treatment there. He maintained that the employing establishment had a reputation for bullying, harassment, and intimidation of selected targets, including her.

By report dated August 22, 2018, Steve Milgrim, who has a master's degree in counselling, indicated that appellant worked in an excessively stressful environment with symptoms of anxiety and depression. He advised that he had originally diagnosed adjustment disorder with mixed anxiety and depression, but changed his diagnosis to post-traumatic stress disorder. Mr. Milgrim indicated that appellant's symptoms had not improved.

In an October 2, 2018 report, Nausheen Yunas, Psy.D, a clinical psychologist, related that she treated appellant that day for symptoms of depression, anxiety and traumatic stress that began in March 2017 and occurred daily. She noted that appellant reported a history that appellant suffered racial discrimination from her previous boss, that she was placed on investigative leave in September 2017 and eventually fired in February 2018, and since had daily panic attacks. Dr. Yunas indicated that psychological testing revealed severe depression. She diagnosed major depressive disorder, recurrent, moderate, and adjustment disorder with anxiety. Dr. Yunas opined that, due to her diagnoses, appellant's occupational and social functioning had deteriorated and that appellant also had trouble sleeping due to flashbacks of negative interactions with her former boss, and that this caused her present psychological problems.

On October 4, 2018 Dr. Wierzbicki noted that appellant was being treated for hypertension, anxiety, insomnia, myalgia, and pruritus. He described her symptoms and advised that she had significant health complications.

By decision dated January 16, 2019, OWCP found that appellant had not established that the claimed events occurred as alleged and denied the claim. It did not address the employing establishment's willful misconduct claim.

On February 11, 2019 counsel requested a hearing before a representative of OWCP's Branch of Hearings and Review.

In a statement dated February 9, 2018 and an addendum dated February 13, 2018, J.M., who worked in the same division as appellant, maintained that she had observed that appellant was held to a different work and review standard than her coworkers on multiple occasions. She noted that appellant informed her that appellant was not allowed to begin employment at a later date when appellant asked because her mother had recently died, that immediately upon employment she was assigned to prepare a manual model with a quick turnaround time and was not given appropriate guidance or examples, and when appellant turned in the draft manual model, her supervisor was very critical. J.M. indicated that appellant's supervisor requested that multiple people, including herself, review appellant's work and established a tone within the division of mistrust of appellant. She also indicated that B.M. was dismissive of appellant during meetings, and that K.W. was dismissive of B.M. J.M. opined that appellant unwittingly walked into a hostile environment and was set to fail, and did not think B.M.'s criticism of appellant's work was justified. She indicated that she and appellant, the only two African-American women in the division, were the only employees who were denied telework for two days a week. J.M. noted that appellant reported that she was being accused of changing information on her résumé, and J.M. felt the timing appeared to be tied to appellant's filing an EEO complaint at that time. She indicated that someone in HR informed her that appellant had been asked by HR to make these changes to her résumé, for salary negotiations. J.M. indicated that appellant had been placed on administrative leave and was asked to call her supervisor every morning. She also related that on May 10, 2017 she and appellant conducted research on the salaries of her coworkers, and identified that white colleagues were paid a higher salary. J.M. indicated that appellant was harassed and subjected to a hostile work environment including interference with work performance, noting that the division had a pervasive culture of fear that was documented. She noted that in December 2017 K.W. abruptly retired, and in February 2018 B.M. was removed from managerial duty. J.M. opined that management took actions against appellant based on race, color, sex, and prior EEO activity, noting that whites were not placed on administrative leave, and that, only she and appellant, the only two African-American women in the group, were never asked to submit a physician's note. She concluded that the employing establishment had a harassing environment and included a list of examples of racial discrimination at the employing establishment that were not specific to appellant.

In a February 2, 2018 statement, C.C. indicated that she and appellant worked closely together on a project from May 1, 2017 until appellant was placed on administrative leave. She noted that appellant was held to a different standard and that she did not know why appellant was placed on administrative leave. C.C. indicated that she did not believe that appellant was given a chance to be fully successful, and that she worked in a hostile work environment. She specifically observed rancor between K.W. and B.M. who demonstrated bullying tactics, and further noted that supervisors changed procedures on an *ad hoc* basis and then failed to communicate these changes to staff. C.C. also wrote that she had no personal knowledge of appellant being harassed, but wrote that if appellant was placed on administrative leave due to her work product, she was held to a

different standard than two white colleagues. She maintained that appellant was requested to complete a manual module without sufficient training.

At the May 14, 2019 hearing, which appellant did not attend, counsel asserted that appellant was heavily recruited for her job, but entered an ongoing hostile work environment. He alleged that B.M. lashed out "to show who's boss" and held appellant to a different standard than others, as evidenced by requiring her to draft a module with a short dead-line. Counsel maintained that the witness statements supported appellant's claim. He stated that he was unaware of a final EEO decision. The hearing representative asked counsel to determine what disturbing news appellant received on March 30, 2018. She held the record open for 30 days.

Subsequent to the hearing appellant submitted a statement in which she repeated that on July 4, 2017 B.M. demanded medical documentation and threatened to fire appellant. She also alleged additional employment factors:

> "[O]n April 12, 2017 she met with K.W. and some of the team. Appellant alleged [that] it was made clear that she was hired into a hostile work environment; on April 17, 2017 [appellant] met with B.M. and K.W. to discuss appellant's first assignment that was due one week later. B.M. provided no guidance or feedback; on April 19, 2017 a staff meeting was held where K.W. provided conflicting answers to questions; on April 24, 2017 [appellant] met with B.M. for feedback on her first assignment. B.M. told appellant that she did not follow instructions, and appellant discussed this with a coworker, J.M.; on July 4, 2017 [appellant] additionally alleged that she was under [physician's] orders, and B.M. demanded documentation and threatened to fire appellant who did not want to share a [physician's] note, which was a Health Insurance Portability and Accountability Act (HIPAA) violation; on August 7, 2017 appellant met with B.M. to discuss an assignment and was told that she had to meet with B.M. every day for a week. [Appellant] indicated that B.M. was unhappy with her work and used vulgar language; on September 26, 2017 B.M. and M.H., the HR director, came into appellant's office and told her that she was being placed on administrative leave because they were investigating the terms of her employment. They demanded that she turn in the employing establishment computer, telephone, and her identification badge, and advised her to gather her personal belongings and leave. Appellant noted that the door was open and, therefore, others could hear; on October 19, 2017, M.H. and an employing establishment [representative,] J.K., sent her an e[-]mail demanding that she schedule a conference call for a telephonic investigatory interview. Appellant informed them that she was uncomfortable attending the meeting without legal representative, but they insisted on having the conference call; on October 20, 2017 B.M. sent appellant an e[-]mail ordering her to call every morning for instructions. Appellant related that she was confused because she had no equipment, so how could she work. She indicated that she would call very early and leave a voicemail; on December 27, 2017 B.M. sent her an e[-]mail while she was on vacation, accusing her of not following instructions. This made it difficult for appellant to enjoy her vacation; on January 3, 2018 she received an e[-]mail from B.M. for her to write an accomplishment report. She talked with J.M. about this, who told her employees had a longer time to submit this report; on

> February 16, 2018 she received an e[-]mail indicating that she was dismissed due to performance concerns and inconsistencies on her resume; on February 24, 2018 she received an e[-]mail from HR with her performance review. Appellant indicated that she was not given the opportunity to improve and was instead fired."

Additional evidence submitted included a partial position description, e-mails dated April 12 and 14, 2017 from B.M. to staff regarding projected projects, e-mails dated May 23, 2017 between appellant and B.M. concerning a report and a meeting, a July 7, 2017 e-mail from appellant indicating that she had forwarded a physician's note and requesting telework because she was unable to travel, and a reply from B.M. notifying appellant that telework had been approved, a July 13, 2017 e-mail exchange between appellant and B.M. in which appellant noted that she had forwarded a physician's note requesting special accommodations, and B.M. asking if the physician provided an end date.

A series of e-mails beginning on October 17, 2017 between appellant and M.H., an employing establishment manager, were in regard to questions about appellant's employment application and regarding a conference scheduled for October 19, 2017. M.H. informed appellant that she would also be asked to produce documents related to claims of education, certifications, employment, *etc*. that she made in her employment application. She also notified appellant of her obligation to cooperate and respond fully and truthfully. Appellant replied that she was having difficulty reaching M.H., by telephone and indicated that she wanted to wait until she hired counsel before responding to questions or scheduling interviews. On October 31, 2017 she informed M.H. that she could not comply with the requests made by management because she had not been given the necessary equipment such as a telephone, laptop or Wi-Fi. Appellant concluded by writing that she was invoking her Fifth Amendment right against self-incrimination for this matter.

Additional e-mails included April 2017 e-mails from B.M. to staff regarding meetings and assignments, October 23, 2017 e-mails from appellant to J.K. and M.H. regarding a conference call and October 24, 2017 e-mails between appellant, E.F. and S.M., outside counsel, were in regard to scheduling a meeting. E.F. informed appellant that she was handling the investigations of her hostile work environment EEO complaint. A February 14, 2018 notice of reorganization advised of B.M.'s transfer. In a February 22, 2018 e-mail, appellant forwarded a February 18, 2018 e-mail to an unknown party. The February 18, 2018 e-mail, from an HR specialist, indicated that appellant's removal from federal service had been sustained, effective at close-of-business that day.

A list of feedback for B.M. was also submitted which outlined things that B.M. should and should not do to/for staff; an employing establishment conduct and discipline policy, an employing establishment vacancy announcement for a principal risk analyst that closed on October 31, 2016, and an unsigned dated June 1, 2019 containing comments to the hearing transcript.[3]

In a July 1, 2019 pleading, counsel asserted that the evidence of record confirmed that appellant established compensable factors of employment and worked in a hostile environment

[3] Although unsigned, both the feedback for B.M. and comments on the hearing transcript appear to have been prepared by appellant.

and that the medical evidence demonstrated that her stressful work environment caused a disabling emotional condition.

By decision dated July 24, 2019, an OWCP hearing found that appellant had not established a compensable factor of employment and affirmed the January 16, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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.[5] 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.[6]

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.[7]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.[8] 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.[9] On the other hand, the disability is not covered when 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.[10]

[4] *Supra* note 2.

[5] *S.Z.*, Docket No. 20-0106 (issued July 9, 2020); *R.C.*, 59 ECAB 427 (2008).

[6] *Id*.

[7] *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).

[8] *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

[9] *L.H.*, Docket No. 18-1217 (issued May 3, 2019); *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

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

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.[11] However, the Board has 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.[12] 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.[13]

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.[14] Mere perceptions of harassment, retaliation, or discrimination are not compensable under FECA.[15]

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.[16] 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.[17] If a compensable factor of employment is substantiated, OWCP must base its decision on an analysis of the medical evidence which has been submitted.[18]

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 not attributed her emotional condition to the performance of her regular work duties or to any special work requirement arising from her employment duties under *Cutler*.

[11] *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).

[12] *See O.G.*, Docket No. 18-0359 (issued August 7, 2019); *D.R.*, Docket No. 16-0605 (issued October 17, 2016); *William H. Fortner*, 49 ECAB 324 (1998).

[13] *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Ruth S. Johnson*, 46 ECAB 237 (1994).

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

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

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

[17] *L.S.*, Docket No. 18-1471 (issued February 26, 2020); *Charles E. McAndrews*, 55 ECAB 711 (2004).

[18] *M.A.*, Docket No. 19-1017 (issued December 4, 2019); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

Rather, she alleged that the employing establishment committed error and abuse regarding specific administrative duties, and, primarily, that employing establishment management harassed and retaliated against her.

Appellant specifically alleged that her first assignment was due in one week and that B.M. provided no guidance or feedback, that appellant was improperly asked to submit medical evidence, that appellant was improperly denied telework, that she was required to attend a teleconference without counsel while on administrative leave, and that she was improperly asked to submit an accomplishment report.

As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of FECA.[19] Absent evidence establishing error or abuse, a claimant's disagreement or dislike of such a managerial action is not a compensable factor of employment.[20] Work assignments and modification of work schedule, management's comments and directives, the monitoring of appellant's activities at work and training, and investigations are administrative functions of the employing establishment, and not duties of the employee.[21] Likewise, management's handling of reasonable accommodations, including telework, are administrative functions of the employing establishment, and not duties of the employee.[22]

Appellant submitted e-mails and EEO documents that concerned some of these administrative matters, but this evidence did not demonstrate that B.M. or other employing establishment officials committed error or abuse. She did not demonstrate error or abuse by submitting the final findings of an EEO complaint or grievance that she filed with respect to these matters.[23] Although appellant expressed dissatisfaction with the supervisory actions of B.M., K.W., M.H., and J.K., 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.[24] A number of her allegations were vague in nature. For example, appellant did not provide specific detail regarding her first assignment or perceived lack of guidance and/or feedback. She has admitted that she met with her supervisor every Monday to discuss her work assignments, and that as of August 7, 2017 she met on a daily basis to discuss her work. As to the request for medical information, appellant has not shown error or abuse or indicated in any way that this was not in accordance with agency policy.[25] BM. has refuted appellant's allegation noting that appellant voluntarily submitted medical notes in support of her absences. Appellant has submitted nothing to establish error or abuse in this matter.

[19] *R.B.*, Docket No. 19-0343 (issued February 14, 2020); *Carolyn S. Philpott*, 51 ECAB 175 (1999).

[20] *Id*.

[21] *R.B.*, *supra* note 19.

[22] *R.D.*, Docket No. 19-0877 (issued September 8, 2020); *S.B.*, Docket No. 18-1113 (issued February 21, 2019).

[23] *F.W.*, Docket No. 19-0107 (issued June 10, 2020).

[24] *Id*.

[25] *See E.S.*, Docket No. 18-1493 (issued March 6, 2019).

The evidence of record indicates that appellant was terminated from her employment for falsifying her résumé and employment application, following an investigation during which she was placed on administrative leave. The handling of disciplinary actions is an administrative personnel matter which will be considered a compensable factor of employment if the evidence establishes error or abuse on the part of the employing establishment.[26] Appellant has submitted witness statements which have alleged in general terms that the employing establishment's HR department requested and participated in the falsification of her résumé materials, appellant has not submitted any specific evidence from witnesses with first-hand knowledge in support of this allegation. During the investigation of this matter the evidence of record indicates that she "took the fifth amendment."

The Board further notes that B.M. provided an extensive explanation of why the administrative/personnel actions she and other managers carried out with respect to appellant were proper. B.M. explained that appellant's employment had been terminated for providing false, misleading, and inaccurate statements, and that appellant did not mention that she suffered from stress, anxiety, and depression then or at any time during her employment. She further explained that appellant had voluntarily provided a physician's note, which did not disclose private information and that she had approved appellant's telework requests.

Thus, as appellant has not substantiated error or abuse by the employing establishment, she has not established a compensable employment factor with respect to these administrative and personnel matters.[27]

Appellant also maintained that, from her first day of employment, she worked in a hostile work environment and that management conducted deliberate acts of harassment and retaliation against her. She also alleged that she was harassed, discriminated against, and subjected to disparate treatment based on race, age, gender, and disability, and also subjected to reprisals for filing EEO complaints and grievances. 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.[28] However, for harassment to give rise to a compensable disability under FECA, there must be evidence that harassment did occur as alleged.[29] Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations that the harassment occurred with probative and reliable evidence.[30]

While appellant submitted signed statements from coworkers, these generalized and overly-broad statements are insufficient to establish that she was held to a different standard and

[26] *See R.D.*, *supra* note 22; *D.L.*, Docket No. 09-1103 (issued February 26, 2010).

[27] *R.B.*, *supra* note 19.

[28] *L.S.*, *supra* note 17.

[29] *Id*.

[30] *S.R.*, Docket No. 19-1591 (issued August 18, 2020).

subjected to mistreatment or harassing behavior by management at any specific time. L.H. admitted that his opinion was based on hearsay.[31] JM. noted that, following conversations with appellant, she felt that appellant was treated inappropriately by management. Her statements, as well as those C.C. provided, were overly broad and insufficient to establish appellant's claim. Moreover, C.C. indicated that she had no personal knowledge of appellant being harassed.

As such, the Board finds that appellant has not established, with corroborating evidence, that she was harassed, discriminated against, and subjected to disparate treatment, and/or reprisals by the employing establishment.[32] As noted, in support of her claim appellant submitted documentation regarding her EEO complaints and grievances. However, the record does not contain a final EEO or grievance determination. As such, the Board finds that appellant has not established harassment in any form as a compensable factor of employment.[33]

As to counsel's allegations on appeal that EEO filings and witness statements establish compensable, performance of duty work factors, for the reasons noted above, appellant has not established a compensable factor of employment under FECA. Appellant, therefore, has not met her burden of proof to establish an emotional condition in the performance of duty.

As appellant has not met her burden of proof to establish an employment-related emotional condition, it is not necessary to consider the medical evidence of record.[34]

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.

[31] *L.H.*, Docket No. 18-1217 (issued May 3, 2019).

[32] *See M.S.*, Docket No. 19-1589 (issued October 7, 2020); *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).

[33] *See A.F.*, Docket No. 20-0525 (issued September 14, 2020).

[34] *R.B.*, *supra* note 19.

ORDER

IT IS HEREBY ORDERED THAT the July 24, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 19, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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