

from a coworker, Debra Coler, reported that she observed Ms. Conway yelling at appellant about some field work. Ms. Coler stated that Ms. Conway's demeanor was demanding and threatening.

In a memorandum dated September 16, 2004, a union steward, Sandra Boudloche, described appellant's version of the incident. She stated that on September 15, 2004 appellant had been on an inspection assignment but Ms. Conway did not appear and appellant decided that it was too late to begin the next assignment. On September 16, 2004 Ms. Conway stood up and leaned over her desk so that she was "in [appellant's] face" and shook her finger and stated, "I am giving you a direct order! You had better be at Microelectronics tomorrow morning!" According to Ms. Boudloche, the supervisor left the office and appellant backed away.

Appellant submitted a narrative statement alleging that "I had to dodge being struck by Conway throwing her hands towards me several times." She did not provide other details regarding the actions of Ms. Conway and referred to the statement from Ms. Boudloche.

The record contains a September 16, 2004 email from Ms. Coler who indicated that appellant initially inquired if Ms. Conway had received a voice mail message and Ms. Conway replied in a demanding and unappreciated voice that she had not checked her email. According to Ms. Coler the supervisor went on in the same demanding voice to tell appellant to be at some site tomorrow and then walked off down the hallway.

Another witness, Eugene Freeman, indicated in a September 24, 2004 statement that he was with appellant at the time of the September 16, 2004 incident. Ms. Conway's was loud and intimidating. Mr. Freeman stated that, based on the supervisor's tone of voice, standing up and throwing her arms around, appellant obviously felt threatened.

The employing establishment submitted a September 28, 2004 memorandum from James Duermeyer, a supervisor, who stated that Ms. Conway was giving appellant a work assignment and was not bullying or intimidating her.

By decision dated January 3, 2005, the Office denied the claim for compensation. The Office found that appellant did not establish any compensable work factors with regard to her claim.

Appellant requested reconsideration by letter dated January 2, 2006. She argued that the September 16, 2004 incident was a factor of employment and submitted additional medical evidence. By decision dated July 19, 2006, the Office reviewed the case on its merits and denied modification.

LEGAL PRECEDENT

To establish a claim that she sustained 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 her condition; and (3) rationalized medical opinion evidence

establishing that the identified compensable employment factors are causally related to her emotional condition.¹

The Board has held that 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 employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to her regular or specially-assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of her work or her fear and anxiety regarding her ability to carry out her work duties.²

By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.³

The assignment of work and related matters are administrative functions of the employing establishment and may be a compensable factor only under certain circumstances.⁴ The Board has found that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.⁵ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁶

ANALYSIS

In the present case, appellant alleges she sustained an injury as a result of a September 16, 2004 incident involving Ms. Conway, her supervisor. The initial question is whether there is a compensable work factor that has been alleged and substantiated by the record. The evidence of record indicated that on September 15, 2004 appellant had not been at the same inspection site as her supervisor and had left after the inspection was completed. On September 16, 2004 appellant alleged that she was directed by the supervisor to go to a specific inspection site on the following day. As noted above, the discussion of work assignments is an

¹ *Leslie C. Moore*, 52 ECAB 132 (2000).

² *Ronald J. Jablanski*, 56 ECAB ____ (Docket No. 05-482, issued July 13, 2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

³ *Id.*

⁴ *See Robert W. Johns*, 51 ECAB 137 (1999).

⁵ *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁶ *Anna C. Leanza*, 48 ECAB 115 (1996).

administrative matter. Appellant must establish error or abuse by the supervisor to establish a compensable work factor.

The witness statements from Ms. Coler and Mr. Freeman indicate that Ms. Conway spoke to appellant with a raised voice. It is well established that not every statement uttered in the workplace will give rise to coverage under the Act, and a raised voice in the course of a conversation does not in itself warrant a finding of verbal abuse.⁷ The supervisor gave appellant an order regarding her work assignment and there is nothing in appellant's allegation or the witness statements sufficient to establish verbal abuse. With respect to an allegation of a physical threat, the witnesses indicated only that the supervisor gesticulated with her arms and stood up. There is no probative evidence that appellant was ever physically threatened by Ms. Conway.

The record does not provide probative evidence of error or abuse by the employing establishment regarding the September 16, 2004 incident. Accordingly, the Board finds appellant did not establish a compensable work factor in this case. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.⁸

CONCLUSION

Appellant did not establish a compensable work factor as contributing to an emotional or physical injury and therefore the Office properly denied the claim.

⁷ *Karen K. Levene*, 54 ECAB 671 (2003).

⁸ *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 19, 2006 is affirmed.

Issued: March 21, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board