

palpations, jaw clenching and nausea. Rosa Viramontes, her supervisor and the deputy director, advised that Olophios Perry, the district director, and Anna Y. Park, the regional attorney, met with appellant to discuss the status of some cases. Ms. Park, in what appeared to be frustration on the pace of the investigation, raised her voice when asking questions on the efforts made in an investigation. Appellant stopped work on August 17, 2006. In an August 23, 2005 letter, Esmerelada Lake, a nurse practitioner for West Gastroenterology Medical Group, indicated that appellant's ulcerative colitis condition was unstable due to her current stress and that she was disabled for 90 days.

In a letter dated September 29, 2006, the Office advised appellant that the information submitted was insufficient to establish her claim. It requested additional factual and medical information, including a comprehensive medical report from her treating physician containing a diagnosis for her condition and a well-rationalized opinion on whether or not the claimed employment incident contributed to her condition.

Appellant provided a statement alleging that Ms. Park verbally assaulted her on August 16, 2006. She contended that it was in retaliation for appellant's earlier detail as acting director in the San Diego office from 2005 to April 2006. Appellant explained that she had identified two major problems in San Diego's legal department and believed that Ms. Park was not pleased with her findings. She noted that, during an October 2005 office retreat at which Ms. Park was present, she noted that the San Diego office was not able to meet its "Aged Inventory" goal regarding old pending cases. When appellant's detail in San Diego ended, she returned to Los Angeles. She was assigned 80 cases to personally handle, which the regional attorney had characterized as "human trafficking" cases. Appellant had three investigators to work part time on the cases and was told by Ms. Viramontes, not to incur costs to hire interpreters. She indicated that there was a lot of ambiguity of the regional attorney's actions and directions in terms of how to proceed on these cases. Appellant was advised by Ms. Viramontes, to discontinue asking Ms. Park for direction and to proceed with the investigation based on her judgment and experience. In July 2006, she stated that she was assigned another investigative caseload of cases which had deadlines and was told to resume her enforcement management duties. Appellant stated that she became overwhelmed with the amount of work and went to an emergency room on July 3, 2006 with heart palpitations and chest pain. By the end of July 2006, she received information related to the human trafficking cases but was unable to immediately work on them because of her other work assignments. Appellant sought clarification from Ms. Viramontes about her priorities, but did not receive clarification. At the August 16, 2006 meeting with Ms. Viramontes and Ms. Park, she was asked questions about the human trafficking assignment. Appellant told Ms. Park that she could not analyze the subpoena response due to her other work assignments. She alleged that Ms. Park started ranting about the problems in the investigation of the cases, including the lack of interpreters and had directed her comments only to appellant who told Ms. Park during the meeting that she was working as hard as she could, but that she also had other assignments and was not going to be made a scapegoat. Appellant stated that Ms. Park's verbal attack devastated her. She was angered and hurt by a lack of support from her up line director. Appellant contended that she became disabled due to the verbal altercation and in not being supported by her supervisors. She sought help from the Employee Assistance Program the next day. Appellant submitted a copy of an organizational chart, copies of electronic mailings indicating her assignment of cases and questions related to them, a copy of a grievance, medical reports

documenting her inflammatory bowel disorder and a copy of her July 3, 2006 visit to the emergency room.

In an October 27, 2006 report, Dr. Adebambo Ojuri, a gastroenterologist, advised that appellant was diagnosed with ulcerative colitis in January 2004 which stabilized after surgery in August 2004. He indicated that about three months prior, appellant experienced a flare-up of her colitis, as evidenced by abdominal and back pain with severe diarrhea. A repeat colonoscopy in July 2006 showed active ileitis. Dr. Ojuri noted that stress was a factor which could cause a flare-up of ulcerative colitis. He indicated that appellant was currently experiencing stress. Dr. Ojuri opined that as of August 23, 2006 appellant was totally disabled from work.

In an undated memorandum, Ms. Park provided an account of appellant's assignment to the human trafficking cases and the August 16, 2006 meeting. She stated that the human trafficking case was an A-1 priority case and, from the start, appellant had great difficulty in coordinating and moving the case along as she continued to ask the same questions over and over again. Ms. Park listed several examples of appellant's lack of understanding. She had expressed her concern with Ms. Viramontes and the district director about appellant's abilities to coordinate efforts relating to the subpoena. Ms. Park had asked appellant several times about the interviews and analysis to the subpoena response, but did not hear back or receive a clear answer from appellant. During the August 16, 2006 meeting, she expressed frustration with the way the case was handled and addressed her concerns that the investigators were not properly prepared. Ms. Park stated that her frustration was not directed at appellant personally, but that she raised the fact that this was the only A-1 case. She indicated that the director took responsibility for enforcement's overall failure to move the case along and further discussions occurred.

By decision dated November 8, 2006, the Office denied appellant's claim on the grounds that she had failed to establish any compensable factors of employment.

On December 5, 2006 appellant requested a review of the written record. She asserted that she was demeaned and harassed as a result of office politics and that the directors choose not to use enforcement resources to work on the human trafficking cases.

By decision dated March 15, 2007, an Office hearing representative affirmed the November 8, 2006 denial of appellant's claim.

LEGAL PRECEDENT

To establish a claim that an emotional condition arose in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he 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.¹

¹ *D.L.*, 58 ECAB ____ (Docket No. 06-2018, issued December 12, 2006).

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 his 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 his work or his fear and anxiety regarding his ability to carry out his 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 An employee's emotional reaction to an administrative or personnel matter is generally not covered by workers compensation. The Board has held, however, that error or abuse by the employing establishment in an administrative or personnel matter may afford coverage.⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, 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. If a claimant does implicate a factor of employment, the Office 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, the Office must base its decision on an analysis of the medical evidence.⁵

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 the Act.⁶ 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.⁷

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

³ *Id.*

⁴ *Margreate Lublin*, 44 ECAB 945 (1993). See generally *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁵ *T.G.*, 58 ECAB ____ (Docket No. 06-1411, issued November 28, 2006); *C.S.*, 58 ECAB ____ (Docket No. 06-1583, issued November 6, 2006); *A.K.*, 58 ECAB ____ (Docket No. 06-626, issued October 17, 2006); *D.L.*, *supra* note 2.

⁶ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, *supra* note 4.

⁷ See *William H. Fortner*, 49 ECAB 324 (1998).

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.⁸

As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.⁹ Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.¹⁰ The primary reason for requiring factual evidence from the claimant in support of her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.¹¹

ANALYSIS

Appellant alleged stress and anxiety which resulted in an aggravation of her preexisting ulcerative colitis condition as a result of a meeting on August 16, 2006. She met that day with Mr. Perry, Ms. Viramontes and Ms. Park to discuss the work pertaining to pending cases.

Appellant alleged that Ms. Park verbally assaulted her while asking questions pertaining to the investigation of human trafficking cases. She further alleged that Ms. Park had directed her comments at her. A verbal altercation, when sufficiently detailed by the claimant and supported by the evidence, may constitute a compensable employment factor.¹² Appellant, however, has not presented sufficient evidence to establish that she was verbally abused by Ms. Park or that her comments were directed only to her. Ms. Park acknowledged that she had raised her concerns at the meeting about the progress of the investigation into the human trafficking cases. She advised that her frustration was not directed at appellant. Ms. Viramontes, the deputy director, stated that Ms. Park appeared to be frustrated with the pace of the investigation and raised her voice when asking questions on the efforts made in the investigation. Ms. Viramontes did not confirm that such comments were directed only towards appellant. While the record does establish that Ms. Park may have spoken in a raised voice, the Board has held that being spoken to in a harsh or raised voice does not, of itself, constitute verbal abuse.¹³

⁸ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁹ *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Arthur F. Hougens*, 42 ECAB 455 (1991) and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence established such allegations).

¹⁰ *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

¹¹ *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

¹² *Janet D. Yates*, 49 ECAB 240 (1997).

¹³ *Beverly R. Jones*, 55 ECAB 411 (2004).

The evidence of record does not establish a compensable employment factor of verbal abuse. While appellant alleged that her supervisors did not actively support her after Ms. Park's statements, she did not submit any evidence substantiating error or abuse by either director. Ms. Park advised that the director took responsibility for enforcement's overall failure to move the case along. Appellant has not established a compensable employment factor in this regard.

Appellant alleged that Ms. Park's comments about the case investigation were in retaliation of her earlier detail as acting director in the San Diego office. She contended that Ms. Park was vindictive because she had identified two major problem areas and made remarks about the workflow in the legal unit where Ms. Park was a supervisor. However, appellant has not presented evidence to establish a factual basis for her allegation of harassment with reliable and probative evidence. She has not established a compensable employment factor.¹⁴ While Ms. Park did make remarks about the progress of work to which appellant was assigned, the Board has characterized criticisms of performance, supervisory discussions of job performance, matters involving training and reprimands as administrative or personnel matters of the employing establishment, which are covered only when in error or abusive.¹⁵ Appellant has not submitted evidence to establish error on the part of Ms. Park in raising questions concerning an ongoing investigation and the status of cases. Appellant has not established a compensable employment factor.

To the extent that appellant alleged she was overworked, the Board notes that the assignment of work duties is an administrative function of the employing establishment and is not compensable absent error or abuse.¹⁶ The Board has held that overwork, when substantiated by sufficient factual information to support the claimant's account of events, may be a compensable factor of employment.¹⁷ Appellant has not submitted evidence to substantiate that the employing establishment, in its administrative capacity, acted unreasonably in assigning her work.¹⁸ Similarly, the mere fact that appellant filed an Equal Employment Opportunity complaint does not constitute evidence of harassment or unfair treatment by the employing establishment.¹⁹

As appellant failed to establish any compensable factors of employment occurring on August 16, 2006 the Office properly denied her claim.²⁰

¹⁴ *Lori A. Facey*, 55 ECAB 217 (2004).

¹⁵ *Roger W. Robinson*, 54 ECAB 846 (2003); *James E. Norris*, 52 ECAB 93 (2000).

¹⁶ *See Barbara J. Latham*, 53 ECAB 316 (2002).

¹⁷ *Bobbie D. Daly*, 53 ECAB 691 (2002).

¹⁸ *See Donney T. Drennon-Gala*, 56 ECAB ____ (Docket No. 04-2190, issued April 26, 2005) (the assignment of work is an administrative function of the employer and the manner in which a supervisor exercises his or her discretion falls outside the ambit of the Act).

¹⁹ *See David C. Lindsey, Jr.*, 56 ECAB ____ (Docket No. 04-1828, issued January 19, 2005).

²⁰ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *See Hasty P. Foreman*, 54 ECAB 427 (2003).

CONCLUSION

The Board finds that appellant has not established that she sustained an emotional condition on August 16, 2006 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 15, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board