

review. The Board found that appellant had submitted relevant evidence requiring further merit review. Sheila Jennings, appellant's supervisor, completed a statement on December 2, 2005 and contended that appellant acted angry before the conversation began and had informed her that she had something to tell her as well. Ms. Jennings stated, "I told her that I depended on the "girls" to ensure things were done correctly." Appellant became belligerent and asserted that she was not a girl. Ms. Jennings stated, "I had not called her a 'girl.' 'Girls' is a term I use in referring to the secretaries. I have even included myself in that term." Ms. Jennings asserted that she then asked what appellant wanted to tell her and that appellant stated that she was leaving. The facts and the circumstances of the case as set out in the Board's prior decision are adopted herein by reference.¹

Following the Board's February 12, 2008 decision, appellant submitted additional medical evidence in support of her claim. She resubmitted e-mail messages regarding lunch on July 25, 2005.

By decision dated June 9, 2008, the Office denied appellant's claim finding that the evidence submitted was not sufficient to meet appellant's burden of proof by substantiating a compensable factor of employment.

On appeal, appellant requested that the Board appoint her a legal representative. She also requested a copy of any transcript of her February 12, 2008 oral argument before the Board noting that she could not financially afford to travel to Washington for further oral argument.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related 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 worker's compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.² 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 frustration from not being permitted to work in a particular environment or to hold a particular position.³ Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. Although the Board has recognized the compensability of verbal abuse in certain circumstances this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.⁴

¹ Docket No. 07-932 (issued August 21, 2008).

² 5 U.S.C. §§ 8101-8193.

³ See *Thomas D. McEuen*, 41 ECAB 387, 390-91 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁴ *Marguerite J. Toland*, 52 ECAB 294 (2001).

ANALYSIS

The Board has previously reviewed the merits of appellant's emotional condition claim. In regard to the additional evidence reviewed on the merits by the Office, the Board notes that Ms. Jennings acknowledged using the word "girl" in appellant's presence. However, Ms. Jennings denied calling appellant a "girl" and asserted that she generally referred to secretaries as girls and to herself in this manner. The Board finds that this statement does not establish verbal abuse on the part of Ms. Jennings. The evidence does not establish a compensable factor of employment. Therefore appellant has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.⁵

It is well established that appellant may not submit evidence directly to the Board.⁶ The Board's review on appeal is only of that evidence in the case record at the time of the Office decision from which appellant seeks review.⁷ Oral argument provides appellant with the opportunity to draw the Board's attention to that evidence of record which supports the employee's contentions of error in fact or law in the adjudication of her claim before the Office. It is not a proceeding in which evidence is submitted and accepted into the record.⁸ No transcript of oral argument is made by the Board or any such record maintained.

Appellant also requested the Board to appoint a legal representative. Her request on appeal is analogous to that in *Stanley K. Hendler*.⁹ In that case, the employee requested that an attorney be appointed to represent him in the matter of an overpayment before the Office. The Board noted that there was no authority under the Act to appoint a representative for an employee or to pay any fee for such representation in connection with a claim.¹⁰ Under section 8127(a), an employee may authorize an individual to represent him or her in any proceeding under the Act.¹¹ The Board found that the Office properly rejected the employee's request. In this case, there is no provision under the Board's Rule of Procedure for retaining or paying for representation of appellant. Section 501.11(a) provides that in any proceeding before the Board, a party may appear or be represented by any duly authorized person.¹² No person shall be

⁵ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *See Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

⁶ *Frieda Nachman (Albert H. Nachman)*, 3 ECAB 114 (1950). Evidentiary material which has not been presented to the Office and is not part of the case record may not introduced before the Board in an appeal. *See Richard R. Reeves*, 6 ECAB 371 (1953).

⁷ *Albert S. Becker*, 56 ECAB 465 (2005); *Charles S. Jalkewicz*, 34 ECAB 444 (1982).

⁸ *See Rudolph S. Rehak*, 19 ECAB 629 (1968) (during oral argument, the employee submitted medical evidence contending it was furnished to the Office and as the record did not contain the report, the Board did have authority to consider it). *Accord Edgar Aikman, et al*, 32 ECAB 1570 (1981).

⁹ 36 ECAB 263 (1984).

¹⁰ *Id.* at 266

¹¹ 5 U.S.C. § 8127(a).

¹² 20 C.F.R. § 501.11(a).

recognized as representing appellant unless written authorization signed by appellant is filed with the Board. There is no provision allowing for either the appointment of a representative for appellant or to pay for such representation in connection with her appeal. Appellant's request must be denied.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 9, 2008 is affirmed.

Issued: October 6, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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