

had previously been suspended and was 6 feet 5 inches tall weighing 250 pounds. Appellant stated that he scared and intimidated her. She alleged that the February 4, 2006 incident resulted in mental trauma.

In a letter dated March 10, 2006, the Office requested additional factual and medical evidence regarding appellant's alleged employment injury. The employing establishment responded on April 7, 2006 and stated that the altercation was the result of Leslie Swann, acting supervisor, appropriately directing appellant to store an electronic device. There were three witnesses who did not support appellant's allegation of intentional touching. The employing establishment concluded that appellant accidentally bumped into Mr. Swann. The employing establishment noted that Mr. Swann had previously received a five-day suspension in January 1994 regarding "disreputable conduct, use of insulting, abusive and obscene language" directed toward appellant and a letter of reprimand for similar actions toward another coworker in April 2004. Appellant received a notice of proposed suspension on March 27, 2006 for "refusal to carry out orders, directions, assignments given by a superior official; defiance of authority; use of obscene language" regarding the incident with Mr. Swann.

On February 22, 2006 appellant alleged that she was entering her advanced work schedule into her personal digital assistant (PDA) when Mr. Swann directed her to store her telephone. She replied that she was entering her schedule and Mr. Swann again directed her to store the device. Appellant refused. After a few minutes, Mr. Swann repeated his instructions and appellant refused. He then approached appellant and stated in a louder voice that she should "put your [tele]phone up." Appellant placed her PDA on the counter. She and Mr. Swann were relieved of their respective positions by Donna Polinsky. Mr. Swann wrote a note to Ms. Polinsky describing the interaction with appellant. Appellant then approached Mr. Swann in the break room along with a coworker, Gizelle Young, to act as witness. She stated that she called Mr. Swann and that he came very close to her at which point she asked him to back up. Mr. Swann asked if she wanted to speak to him privately and appellant declined. She moved away and informed Mr. Swann that he should have told Ms. Polinsky what occurred rather than writing a note. Appellant then left the room and alleged that Mr. Swann followed her to the bathroom yelling. She closed the bathroom door and realized that she needed clothes from the mailbox room. Appellant stated:

"Mr. Swann was blocking the doorway to the mailbox room at an angle facing the women's bathroom. While walking towards the doorway which is approximately three to four feet long, Mr. Swann moved his arms back, stuck out his chest and stated, 'You want some of this?[,] [a]nd then, chest butted (pushed me with his chest) which made me fall back into the metal frame of the elevator door."

The employing establishment interviewed appellant on February 7, 2006 and she denied using profanity.

Mr. Swann completed a statement on February 4, 2006 and asserted that, while acting as supervisor, he noted that appellant was using a wireless telephone. He stated that he professionally instructed her to store the device. Appellant allegedly stated, "Come on give me a break there's nothing going on." Mr. Swann then stated that he respectfully instructed her to store the device. He felt that appellant was being insubordinate. Mr. Swann stated that, when

seven minutes later appellant was still using her wireless telephone for internet access, he again instructed her to put the telephone away. Appellant became upset and responded with belligerent gestures and posturing tones. Mr. Swann stated that he did not respond to appellant other than stating, "I [a]m not repeating myself again." He acknowledged writing a note to Ms. Polinsky regarding appellant's wireless telephone usage. Mr. Swann noted that appellant then approached him in the break room in an aggressive manner, using profanity and yelling. He asked if she wanted to speak to him in private which appellant declined with more yelling and profanity. Mr. Swann returned to the preparation of lunch and informed appellant that she could not use her wireless telephone on his shift. He stated:

"[Appellant] went to the restroom and I heard the door slam. I [a]m still not upset. I went to the mailbox area to retrieve other items for my meal. While at my mailbox, I heard the ladies restroom door bolt open. I heard fast footsteps and [appellant] instantly coming back out yelling and cursing about me again. In the process of returning to the break room she ran into me at the door/corner area of the break room. I do [not] think she saw me until it was too late. I definitely did [not] see her. [Appellant] ran into my waistline/chest area."

Mr. Swann filed a complaint against appellant on February 4, 2006 alleging that she was abusive and used profanity. In a memorandum dated February 24, 2006, the employing establishment found that witness Ms. Young did not support appellant's allegation of intentional contact. Another witness, Vanna LaLande, stated that appellant used profanity. The employing establishment did not find any fault on the part of Mr. Swann. The employing establishment provided appellant's March 27, 2006 notice of proposed suspension.

On February 5, 2006 appellant informed her supervisor that she was afraid to work with Mr. Swann. He advised that appellant and Mr. Swann were to be kept apart on February 7, 2006. However, appellant alleged that after her shift ended on February 7, 2006, Mr. Swann left the 12th floor by elevator and then returned. She felt this was a means of intimidating her. On February 8, 2006 appellant's supervisor informed Mr. Swann that the employing establishment was attempting to keep appellant apart from him and requested his cooperation.

By decision dated April 11, 2006, the Office denied appellant's claim as she failed to provide any medical evidence to establish a traumatic injury claim.

Appellant, through her attorney, requested an oral hearing on April 20, 2006. In a report dated March 13, 2006, Alicia M. Todd, Ph.D. a clinical psychologist, diagnosed acute stress disorder as the result of an assault. On April 20, 2006 appellant protested the proposed suspension dated March 27, 2006. She denied using profanity and again stated that she was not using the wireless telephone function of her PDA, but merely adding her schedule. In a report dated June 6, 2006, Dr. Todd noted that, as Mr. Swann was promoted to supervisor, appellant's symptoms had worsened to major depression. On August 15, 2006 he altered appellant's diagnosis to post-traumatic stress disorder. She stated that the promotion of Mr. Swann to supervisor, the 10-day suspension and the lack of response to appellant's request for employment elsewhere and protracted medical leave were exacerbating appellant's symptoms of anxiety and depression.

In a letter dated February 16, 2006, appellant informed the employing establishment that she did not feel safe enough to return to work after encountering Mr. Swann on February 7, 2006.

Appellant and union representative Paul Rinaldi testified at the oral hearing on August 17, 2006. Mr. Rinaldi discussed Mr. Swann's disciplinary actions from 2004. Appellant testified that following her return to work on February 7, 2006 after leaving on the elevator, Mr. Swann returned to appellant's workstation and walked back and forth in the hallway. She telephoned for assistance and was escorted out of the building.

By decision dated October 27, 2006, the hearing representative denied appellant's claim for an emotional condition finding that she failed to establish a compensable factor of employment as causing or contributing to her diagnosed condition.

LEGAL PRECEDENT

Congress, in providing a compensation program for federal employees, did not contemplate an insurance program against any and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with his or her employment. Liability does not attach merely upon the existence of an employee-employer relationship.¹ Instead, Congress provided for the payment of compensation for personal injuries sustained while in the performance of duty. The phrase "while in the performance of duty" has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers' compensation law of "arising out of and in the course of employment." In addressing this issue, the Board has stated:

"In the compensation field, to occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be said to be engaged in his or her master's business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto."

In determining whether an injury occurs in a place where the employee may reasonably be or constitutes a deviation from the course of employment, the Board will focus on the nature of the activity in which the employee was engaged and whether it is reasonably incidental to the employee's work assignment or represented such a departure from the work assignment that the employee becomes engaged in personal activities unrelated to his or her employment.²

When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her duties and the medical evidence

¹ *Janet M. Abner*, 53 ECAB 275 (2002).

² *Id.*

establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment.³

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 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 Act.⁴ 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.⁵

ANALYSIS

Appellant attributed her emotional condition to an assault by Mr. Swann on February 4 and 7, 2006. She alleged that Mr. Swann assaulted her by bumping her with his chest. Mr. Swann denied this allegation and asserted that appellant inadvertently bumped into him. Appellant submitted no witness statements or other evidence corroborating that an assault occurred. Ms. Young did not support appellant's allegation of an assault by Mr. Swann and Ms. LaLande stated that it was appellant who used profanity towards Mr. Swann on February 4, 2006. Her allegation is not substantiated by the evidence of record. Appellant has not substantiated an assault or intimidation on the part of Mr. Swann as a compensable factor. She stated that, when she attempted to discuss Mr. Swann's decision to inform Ms. Polinsky of the delay in storing her PDA, he tried to intimidate her by standing very close, that he followed her yelling and that he then asked "You want some of this?" and his chest butted her. The Board has held that the mere fact that a supervisor raised his voice during the course of a conversation does not warrant a finding of verbal abuse.⁶ 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.⁷ Appellant has not submitted any evidence substantiating her allegation that Mr. Swann yelled at her. Therefore, she failed to substantiate this compensable factor of employment.

Appellant alleged that on February 7, 2006 Mr. Swann rode down the elevator appearing to leave and then came back upstairs in an attempt to intimidate her. She also alleged that he

³ *Mary J. Summers*, 55 ECAB 730, 734-35 (2004).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ 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).

⁶ *Carolyn S. Philpott*, 51 ECAB 175 (1999).

⁷ *Marguerite J. Toland*, 52 ECAB 294 (2001).

walked back and forth along the hallway in an intimidating manner. Appellant did not submit any factual evidence to support this allegation. There are no witnesses' statements or other corroborative evidence substantiating that Mr. Swann acted in an inappropriate, aggressive or intimidating manner on February 4 or 7, 2006.

CONCLUSION

Appellant has not submitted the necessary factual evidence to establish that the events of February 4 and 7, 2006 occurred as alleged.

ORDER

IT IS HEREBY ORDERED THAT the October 27 and April 11, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 19, 2007
Washington, DC

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

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

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