United States Department of Labor
Employees' Compensation Appeals Board

R.T., Appellant	)	
and	)	**Docket No. 13-1665**
	)	**Issued: September 12, 2014**
U.S. POSTAL SERVICE,PROCESSING & DISTRIBUTION CENTER, Long Beach, CA, Employer	)	

Appearances:
William H. Brawner, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 3, 2013 appellant, through her attorney, filed a timely appeal from a March 8, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied her emotional condition claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On June 21, 2011 appellant, then a 40-year-old maintenance support clerk, filed an occupational disease claim alleging that she developed an emotional condition in the

[1] 5 U.S.C. § 8101 *et seq.*

performance of duty. She alleged that she first became aware of her condition, and first realized it was work related, on November 1, 2010.

Appellant explained that she was subjected to sexual harassment and discrimination by her immediate supervisor, Donald Logsdon. She added that other managers either encouraged his behavior or failed to properly intercede. Appellant's allegations included the following:

- B.J. Williams, a custodian, started a rumor in November 2003 that she had sex in the women's restroom with three black men. She worked as a custodian at the time and had to interact with Mr. Williams frequently. He and another coworker, Ernest Paul, would call her a "bitch" or "whore" in passing.

- Mr. Williams, as an acting supervisor, talked negatively about her during a safety meeting, with encouragement from a supervisor. She filed an Equal Employment Opportunity (EEO) complaint, which resulted in a settlement that she was not to be negatively discussed during any stand-up talk.

- In 2006 Mr. Williams demanded to be detailed to the Tool and Parts Office, where she worked. She complained that she was unable to work with him, after all that happened. Mr. Williams was later transferred.

- Mr. Logsdon became appellant's supervisor in 2006. Beginning in 2007, he made suggestive comments to her and would frequently leer at her body or raise his eyebrows suggestively. This persisted almost daily, making her extremely uncomfortable in his presence and afraid of her job.

- After she filed her EEO complaint, Mr. Logsdon gave her a special assignment outside of her normal responsibilities and job description. She felt that this constituted retaliation.

- In January 2009, before she was about to leave for a vacation with coworker José Martinez, Mr. Logsdon and a male coworker, Jun Versoza, crudely teased her about the vacation, making rude and suggestive comments about her private activities with men. This pattern continued every time she went on vacation.

- In July 2009 she requested a change in schedule to accommodate a vacation. On July 21, 2009 Mr. Logsdon sent her an e-mail asking if she was planning to join Rito Palencia in the Philippines. Mr. Palencia was a married coworker with whom appellant had no relationship outside of work. She asked Mr. Logsdon to stop discussing her personal life. He made several rude, extremely explicit and suggestive sexual innuendos forecasting her private activities with men.

- On August 4, 2009 Mr. Versoza made several snide sexual innuendos to her, echoing almost the same langue that Mr. Logsdon had used earlier concerning her private relationship with Mr. Martinez. Mr. Logsdon was present and did nothing to stop these comments. She asked him to intervene, but he shrugged and walked away with a laugh.

- In December 2009 Mr. Logsdon posted a holiday schedule with the following comment next to appellant's name: "Enjoy your Sat off ho, ho, ho." She felt this referred to her as a "ho" or whore. She confronted him, and he did not deny it or apologize, and he did not change the posting or take it down.

- On December 15, 2009 after she returned from vacation, Mr. Logsdon again made snide comments about her love life. He told her she should change her last name to Martinez to redeem herself.

- On February 3, 2010 after returning from a week off, a coworker told her that Mr. Logsdon and Mr. Versoza had discussed her relationship with Mr. Martinez in a loud, rude and suggestive manner clearly intended to be overheard by others. Tommy Grayson was present and heard these comments. The coworker added that Mr. Logsdon did this every time appellant went on vacation.

- On March 30, 2010 she told Mr. Logsdon that she was upset with Mr. Versoza and asked Mr. Logsdon to control his behavior. Mr. Logsdon called her a "Latina Elizabeth Taylor." She asked for an apology, but he did not offer one.

- In September 2010 Lorenzo Carter, a supervisor, told Mr. Martinez that appellant was being discussed in a maintenance manager's meeting. Shelly Weir, a supervisor, had commented on statements made by Mr. Logsdon about whether appellant was having an affair or was Mr. Martinez's girlfriend.

- Following this meeting, Ms. Weir denied leave requests and work schedule requests from appellant and Mr. Martinez, while approving similar requests from other employees. Mr. Carter informed Mr. Martinez that Mr. Logsdon had instructed him to deny the requests due to his relationship with appellant. Appellant argued that the selective denial was error or abuse and a way to target her. When she temporarily worked for another manager, she had no trouble getting leave requests or schedule changes approved.

- In October 2010 Mr. Logsdon refused to furnish Family Medical and Leave Act (FMLA) forms when she requested them. After she advised that he was required to provide, she received them in the mail. She felt this was retaliation.

- On October 10, 2010 Mr. Logsdon loudly and angrily chastised her regarding her FMLA absences, as witnessed by Jacqueline Jeffrey and Mr. Versoza.

- After an EEO meeting with a counselor on October 28, 2010, the counselor advised that Mr. Logsdon be removed from the office or at least separated from appellant, but the counselor's advice was not followed.

- In late 2010 appellant attempted to obtain a restraining order against Mr. Logsdon. A postal service attorney, Joanna Hull, intervened and moved to dismiss the complaint on the grounds that Mr. Logsdon had immunity because this happened at work. The attorney called appellant at home and told her she could not win the complaint, and that if she sought EEO relief or a restraining order against her supervisor, she would

lose her job. Appellant withdrew her request for a restraining order for fear of losing her job.

- On February 9, 2011 appellant agreed to a settlement that would have resulted in a transfer away from Mr. Logsdon and would have ended the harassment, but the settlement was not approved. Mr. Logsdon, who had been off work due to an injury, returned to his regular position on February 14, 2011, and Supervisor Tracey Jones refused to assign appellant to a different supervisor. Instead, Mr. Jones moved Mr. Logsdon to a location close to appellant, where she would have daily contact with him.

- During a meeting called to settle a union grievance for a contractual violation, a postal service attorney, Ayesha Mahapatra, repeatedly badgered appellant to drop her EEO complaint without first giving notice to appellant's attorney, even though the employing establishment was fully aware the claimant was represented by counsel. Appellant filed an ethics complaint with the California Bar Association.

- Supervisor Logsdon refused to approve appellant's request for holiday hours on Columbus Day and Veterans Day following the filing of her EEO complaint. Appellant felt this was retaliation, as this had been approved in the past.

Mr. Martinez submitted a statement alleging the following:

- On February 3, 2010 Mr. Logsdon approached him and rudely asked if he and appellant were having an affair.

- On October 28, 2010 he and appellant met with Supervisor Jones to discuss appellant's EEO complaint. Appellant showed Mr. Jones an e-mail that illustrated Mr. Logsdon's inappropriate behavior. Although Mr. Jones indicated that Mr. Logsdon would be removed from the office, it never occurred.

Mr. Logsdon provided a statement addressing the following:

- Appellant was not given extra work in retaliation for her EEO complaint. She and other employees were assigned the task based on operational needs.

- He denied making inappropriate comments, gestures or advances to appellant. He stated it was the other way around. In May or June 2009, appellant came to his office and said, "I can get anything I want from any man except you," to which he replied that he followed the rules to be fair to all employees. In June 2010 she asked him if he would date anyone in the post office. He replied he never would.

- Appellant shared numerous details about her personal life. While on vacation by the pool with her then-husband, she called Mr. Versoza at work. She told how she sweet talked an inspector to get some items passed when her home was under repair. She talked about flirting with a representative to get reduced electrical rates. She once came back from a trip with a picture of her sitting on a boulder and said, "See, Jun, I got bigger balls than you." Many times she said she wanted to go to the Philippines

with Mr. Versoza. He would reply, "Good, then I can sell you." When Mr. Palencia said he was going to the Philippines, Mr. Versoza told appellant she could go with him. Appellant never indicated she was being harassed or felt uncomfortable due to these statements. Mr. Logsdon saw nothing inappropriate, as she and Mr. Versoza teased each other for months about the Philippines.

- He denied harassing or retaliating against appellant. He would not risk his job by violating the policy prohibiting retaliation. He denied gossiping about appellant when she was on vacation or making snide remarks about her love life. Appellant made such remarks, however. She used to tell Mr. Versoza that she had his balls hanging on a chandelier in her bedroom.

- He has never seen the e-mail that appellant alleges she has from him.

- He denied that the "ho ho ho" comment was meant to harass appellant. He explained that this was the last schedule of the year, and appellant had pleaded and begged for the day off. Another coworker agreed to cover the shift. Since it was almost Christmas, he added "ho ho ho." He argued that appellant falsely portrayed this as an insult. She never questioned the comment at the time.

- He had a meeting with appellant and Mr. Versoza concerning a dispute whether people were talking about appellant while she was on vacation with Mr. Martinez. She accused Mr. Versoza. He called her a liar. Mr. Logsdon indicated that the possibility of appellant and Mr. Martinez taking vacation together was discussed. He stated to appellant: "We just don't want to see you do a Liz Taylor on us." She asked what that meant. He explained that Elizabeth Taylor had gotten married and divorced several times. When she said she resented the comment, he apologized and said he would never do it again. An hour later, she and Mr. Versoza were talking like nothing happened.

- On October 28, 2010 Supervisor Jones advised that appellant had made charges of sexual harassment. After an interview, Mr. Jones let Mr. Logsdon work in his office.

- Supervisor Jones stopped approving revised schedules for appellant in late July or early August 2010 because there was no justification for it, except that appellant wanted to carpool. Appellant begged, but he explained he could not justify it. She went to Supervisor Jones, but he left it up to Mr. Logsdon. Mr. Martinez asked for the approval several times. He explained he and appellant were married and asked if Mr. Logsdon would help out a married couple. Mr. Logsdon explained that the only way he could approve a schedule revision was if appellant had a special reason, like a project, to come in early. At a manager meeting, Mr. Logsdon was advised that carpooling was not sufficient justification for a revised schedule. Someone asked if they were dating, and Mr. Logsdon advised that Mr. Martinez said they were married. This someone added he did not know why temporary supervisors had approved any revised schedules, as Mr. Jones had instructed not to approve long-term schedule revisions.

- Appellant did not request FMLA leave. She requested sick leave three consecutive weeks, each time placing her request on his desk when he was out of the office. He told her that he was submitting the requests under FMLA because it appeared to be an ongoing situation. She approved and after receiving an FMLA number asked to have all her slips changed to FMLA.

Addressing the written statement of Mr. Martinez, Mr. Logsdon alleged the following:

- He did not encourage people to gossip about appellant while she was on vacation. A couple of times he heard someone ask if appellant and Mr. Martinez were off work at the same time. That was all he heard, so there was nothing to stop.

- He denied saying that appellant was a loose woman or a Latina Elizabeth Taylor.

- He did not inquire about the relationship between appellant and Mr. Martinez on February 3, 2010.

- He confirmed that he was removed from his work area for an investigative interview with Mr. Jones. When he returned to work, he was placed in another office to review videos on harassment. He also had a discussion with Mr. Jones about policies on harassment.

Supervisor Jones provided a statement alleging the following:

- Mr. Williams and Mr. Paul denied appellant's allegations of harassment. They were instructed not to speak or look at appellant, not to speak about her to coworkers, and to avoid unnecessary contact with her.

- Mr. Williams asked that appellant not take lunch in the north end of the building, where he worked.

- In 2006 Mr. Williams requested a detail to the Tool and Parts Office because of racial discrimination. His request was denied.

- Appellant reported no further incidents with Mr. Williams. As recently as November 2010, appellant stated everything was fine with Mr. Williams.

- Appellant's special assignment was within her regular duties, and no overtime was required.

- In 2009 and 2010 management changed the start time of a large number of employees. Some, including appellant, asked for revised schedules. All requests were denied. A temporary manager approved some revised schedules for appellant that he believed were temporary requests; he had no knowledge of prior requests.

- Appellant made no complaint about Mr. Logsdon to Supervisor Jones prior to October 28, 2012, following the denial of one of her requests for a schedule revision.

- When appellant complained on October 28, 2010 that Mr. Logsdon was harassing her, Mr. Jones moved him to another location pending an investigation. When appellant still complained that they shared a printer, she was given a printer in another location. Mr. Jones stated that he did not ignore the advice of the EEO counselor to separate appellant and Mr. Logsdon.

- The only statements received in the investigation were from appellant and Mr. Martinez. Appellant submitted no other pertinent information. Appellant was advised that the investigation had found that Mr. Logsdon's actions were not considered harassment and that he would be returning to his position when he recovered from an injury.

- On February 9, 2011 appellant asked to be transferred to a different supervisor. This request was denied, as management determined it would be too disruptive and too destructive to Mr. Logsdon.

- At a meeting that same day, employing establishment Attorney Mahapatra made it clear to appellant that she had the right to discuss the meeting with her representatives. Appellant's union representative was at the meeting, and she did not mention that she had another representative.

Appellant responded to the statements of Mr. Logsdon and Mr. Jones as follows:

- Emails from Jacqueline Jeffrey proved that she was not being treated fairly with work assignments.

- Brian Moyer proved that Mr. Jones took steps that forced her to interact with Mr. Logsdon, such as using a printer in front of her office.

- The letter of warning from the California State Bar Association had confirmed the misconduct of employing establishment Attorney Mahapatra at the February 9, 2011 meeting.

- The special assignment list supported it was an unfair workload, and documentation showed the EEO complaint was filed before the assignment.

- Mr. Logsdon was aware of her divorce in October 2008, when he signed paperwork, of record, acknowledging it. He also admitted that he overheard Mr. Versoza making remarks to her and would not stop it; and an e-mail, of record, showed that he wrote to appellant about meeting a married man in the Philippines.

- Mr. Logsdon falsely denied calling appellant a Latina Elizabeth Taylor, and contrary to his statement, she and Mr. Versoza did not speak after the meeting.

- She filed the EEO complaint because in September 2010 Mr. Logsdon discussed her personal life in a maintenance meeting, that is, whether Mr. Martinez was her lover.

- Email evidence to Rito Palencia proved that Mr. Logsdon was interested in her personal life.

Appellant submitted several letters she had written, some as far back as 2003, as well as statements from coworkers and other evidence. This included a July 21, 2009 e-mail from Mr. Logsdon regarding her request for a 5:00 a.m. revised schedule. Mr. Logsdon replied by asking whether this was so she could be with Mr. Palencia sooner before going to the Philippines, and that Mr. Palencia would just have to wait until she got off work at 3:30 p.m. "lol." But on a serious note, he would not approve a revision without justification. A coworker confirmed that when appellant questioned Mr. Logsdon on October 20, 2010 about FMLA absences, his voice started out loud and got louder. The tone of his voice angered. And when appellant refused to argue, his attitude softened. Appellant submitted a holiday schedule from December 26, 2009 to January 1, 2010, which included the following comment next to her name: "Enjoy your last Sat off ho ho ho."

In an August 8, 2011 statement, Deborah Mastren, a cowoker, reported that in November 2003 she attended a safety talk regarding the rules of conduct related to gossip. She heard a coworker say, "This must be because of [appellant] having sex in the bathroom." Another coworker replied, "That rumor is not true," and another coworker stated, "Yes, it is." According to Ms. Mastren, the meeting spread the rumor about appellant, and it was not until she was contacted by appellant on August 8, 2011 that she was convinced the story was a lie. In October-November 2009 she heard maintenance employees continuing to make sexual jokes about appellant.

By decision dated May 18, 2012, OWCP found that appellant failed to establish a compensable factor of employment. It denied her claim on the grounds that the evidence was not sufficient to establish that she was injured in the performance of duty.

By decision dated March 8, 2013, an OWCP hearing representative affirmed. He found that appellant failed to establish a compensable work factor through probative and reliable evidence.

On appeal, counsel contends that appellant submitted sufficient evidence to establish that she was subjected to harassment in a hostile workplace and suffered as a result of the derogatory name-calling, teasing, false gossip and slander to her reputation.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[2] As the Board explained in *Lillian Cutler*,[3] workers' compensation does not cover each and every illness that is somehow related to the employment. When an employee experiences emotional stress in carrying out his or her employment duties or has fear and anxiety regarding his or her ability to carry out his or her duties, and the medical evidence establishes that the disability resulted from his or her emotional

[2] 5 U.S.C. § 8102(a).

[3] 28 ECAB 125 (1976).

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

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA. However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in an administrative matter, coverage will be afforded.[4] 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.[5]

It is well settled that an employee's reaction to supervision is not a compensable factor of employment under *Cutler*.[6] Complaints about the manner in which a supervisor performs his duties or the manner in which a supervisor exercises his discretion fall, as a rule, outside the scope of coverage provided by FECA. This principle recognizes that a supervisor or manager must be allowed to perform his duties and that employees will, at times, dislike the actions taken. Mere disagreement or dislike of a supervisory or managerial action is not compensable, absent evidence of error or abuse.[7]

As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[8] In claims for a mental disability attributed to work-related stress, the claimant must submit factual evidence in support of her allegations of harassment or discrimination. The claimant must specifically delineate those factors or incidents to which the emotional condition is attributed and submit supporting factual evidence verifying that the implicated work situations or incidents occurred as alleged. Vague or general allegations of

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[4] *Thomas D. McEuen*, 42 ECAB 566, 572-73 (1991).

[5] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[6] *Reco Roncaglione*, 52 ECAB 454 (2001) (disagreement with the associate warden held not compensable, whether viewed as a disagreement with supervisory instructions or as perceived poor management); *Robert Knoke*, 51 ECAB 319 (2000) (where the employee attributed his emotional injury to the manner in which his supervisor spoke to him about undelivered mail, the Board found that a reaction to the instruction itself was not compensable, as work assignments given by supervisors in the exercise of supervisory discretion are actions taken in an administrative capacity and as such, are outside the coverage of FECA); *Frank A. Catapano*, 46 ECAB 297 (1994) (supervisory instructions, with which the employee disagreed, held not compensable in the absence of evidence of managerial error or abuse); *Rudy Madril*, 45 ECAB 602 (1994) (where the employee questioned his supervisor's instructions to move from belt number five to belt number six and unload mail and became upset because he felt he was being pushed and picked on, the Board found that the incident was not a compensable factor of employment).

[7] *T.G.*, 58 ECAB 189 (2006).

[8] *See Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

perceived harassment, abuse or difficulty arising in the employment are insufficient to give rise to compensability under FECA. Based on the evidence submitted by the claimant and the employing establishment, OWCP is required to make factual findings which are reviewable by the Board. 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 OWCP and the Board.[9]

Thus, for harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative.[10] Grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.[11] The Board has generally held that being spoken to in a raised or harsh voice does not in itself constitute verbal abuse or harassment.[12] The issue is whether the claimant has submitted sufficient evidence under FECA to establish a factual basis for the claim by supporting her allegations with probative and reliable evidence.[13]

ANALYSIS

When appellant filed her occupational disease claim, she did not attribute her emotional condition to her assigned duties under *Cutler*. The statement she submitted in support of her claim made clear that she was not alleging emotional stress in carrying out her employment duties or fear and anxiety regarding her ability to carry out those duties. Instead, she explained that she was subjected to sexual harassment and discrimination by her immediate supervisor, Mr. Logsdon. And she added that other managers either encouraged his behavior or failed to properly intercede.

Appellant did implicate a special assignment given her after she filed her EEO complaint, but she argued this was evidence of retaliation. She added that the assignment's workload was unfair, as the task was outside her regularly assigned duties and she had to do more than other workers, but this raised the issue of discrimination, not whether she found the duties of the assignment so stressful that she developed an emotional condition in attempting to discharge them.[14] Appellant's claim, therefore, is not generally regarded as compensable under *Cutler*. By attributing her emotional condition to the actions of her immediate supervisor, other supervisors, and employing establishment attorneys, appellant's claim is largely based on error or abuse in administrative or personal matters under *McEuen*.

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

[10] *Michael Ewanichak*, 48 ECAB 364 (1997).

[11] *Charles D. Edwards*, 55 ECAB 258 (2004); *Parley A. Clement*, 48 ECAB 302 (1997).

[12] *Beverly R. Jones*, 55 ECAB 411, 418 (2004).

[13] *James E. Norris*, 52 ECAB 93 (2000).

[14] Supervisor Jones advised that the task was within appellant's regularly assigned duties and that no overtime was required.

As stated earlier, however, the Board has recognized an exception when error or abuse or unreasonable conduct on the part of managers or supervisors is established by the evidence. Having reviewed the extensive evidence in this record, the Board finds that appellant has established two compensable factors of employment.

Mr. Logsdon, the focal point of appellant's claim, became her immediate supervisor in 2006, and it was the following year that she alleged some difficulty working with him. Earlier, in 2003, appellant alleged that Mr. Williams had started a rumor about her having sex in the women's bathroom with several men. She alleged that Mr. Williams and Mr. Paul would call her "bitch" or "whore" in passing. It appears from Mr. Jones' statement that both denied the allegations. Further, Coworker Mastren identified someone else as having started the rumor, a woman who had walked into the bathroom and allegedly saw appellant with a male coworker. Appellant's allegations are rather distant in time, and the various statements are not sufficiently probative to establish this as a compensable factor. A settlement agreement, without prejudice to the position of the parties and with the understanding that it would not be cited in other proceedings, does not establish that Mr. Williams committed error in negatively discussing appellant at a stand-up meeting.

On July 21, 2009 appellant asked Mr. Logsdon if she could revise her Friday schedule for 5:00 a.m. Mr. Logsdon replied: "Is this so you can be with Rito [Palencia] sooner before going to the Philippines? Rito will just have to wait until you get off from work at 15:30 lol." Although it appears he intended to strike a light-hearted tone, the nature of the comment was erroneous and unwarranted for communication between a supervisor and his subordinate.[15] The Board finds this to be a compensable factor of employment.

On March 30, 2010 Mr. Logsdon met with appellant and her coworker, Mr. Versoza, about a dispute they were having about people talking behind her back while she was on vacation with Mr. Martinez. After a long silence between the two, Mr. Logsdon told appellant that he did not want her "doing a Liz Taylor on us." Asked what that meant, he explained that Elizabeth Taylor had gotten married and divorced several times. Appellant resented the comment, and Mr. Logsdon stated he apologized, saying it would never happen again. The Board again finds that the nature of this comment was erroneous for a supervisor and constitutes a compensable factor of employment.

As appellant has met her burden to establish compensable factors of employment, the Board finds that this case is not in posture for decision on whether she sustained an emotional condition in the performance of duty. The Board will set aside OWCP's March 8, 2013 decision and remand the case for further development on the issue of causal relationship and an appropriate final decision on her claim for compensation.[16]

Appellant made many other allegations, of course, but they are either disputed, unsubstantiated by evidence, or simply do not fall within the scope of workers' compensation. She has filed an EEO complaint concerning these same matters, and if she is able to obtain a favorable decision on the merits of her complaint or any finding by the EEOC that confirms

[15] *See Carolyn S. Philpott*, 51 ECAB 175 (1999).

[16] *E.g., Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

administrative error or abuse with respect to management's treatment of her, she may submit such evidence to OWCP in further support of her claim for compensation.

Appellant alleged that in 2007 Mr. Logsdon began to make suggestive comments and would frequently leer at her body or raise his eyebrows suggestively. The allegation is not specific as to time and place, and Mr. Logsdon disputed the allegation. Mr. Logsdon denied making inappropriate comments, gestures or advances. Indeed, he stated it was the other way around, and that contrary to her assertion, appellant had shared numerous details about her personal life with other staff.

Appellant alleged retaliation in being given a special assignment following the filing of her EEO complaint, but Mr. Logsdon denied retaliation, noting that she and other employees were assigned the task based on operational needs. Whether the distribution of work was in fact discriminatory is not established by the record. Again, if the EEOC should find retaliation or discrimination in this regard, appellant may submit such evidence to OWCP in further support of her claim.

Appellant has made a number of allegations concerning administrative matters, such as the denial of leave requests, the denial of a new starting time or temporary schedule change, the denial of requests for holiday hours, the denial of a transfer to a new supervisor, the furnishing of FMLA forms, or the failure to agree to a settlement that would have transferred Mr. Logsdon. In the absence of independent evidence establishing administrative error or abuse in such matters, as opposed to appellant's mere perception of error or abuse, the record does not establish a compensable factor of employment.

The Board will discuss matters relating to the employing establishment attorneys. On February 9, 2011 employing establishment Ms. Mahapatra communicated with appellant, outside the presence of her attorney and without his knowledge or consent, about settling her EEO complaint. Ms. Mahapatra explained, and Mr. Jones confirmed, that appellant did not indicate she was represented by counsel, nor did she supplement or append any paperwork to note she had retained an attorney. The California State Bar Association determined there was substantial evidence Ms. Mahapatra's conduct amounted to a violation of a rule of professional conduct, and therefore she was issued a warning letter as notice that the specified conduct was prohibited and to refrain from such conduct in the future. The State Bar Association wrote to appellant and advised her that the warning letter was not considered public discipline; the letter was confidential, and it was not to be disclosed to anyone besides her and Ms. Mahapatra. Further, the Bar made clear to appellant: "The letter cannot be offered to or considered by a court or other proceeding as evidence of professional misconduct." But this is just what appellant attempted to do when she disclosed the matter to OWCP and argued that the action taken by the Bar substantiated her allegation of compensable administrative error. Appellant's allegation concerning the EEO proceeding and settlement communication by Ms. Mahapatra lies outside the scope of coverage under *McEuen*. Her remedy was provided by the California State Bar Association which has jurisdiction to consider issues of professional misconduct.[17]

[17] *Compare Isabel R. Pumdido*, 51 ECAB 326 (2000).

In late 2010 appellant attempted to obtain a restraining order against Mr. Logsdon. An employing establishment attorney, Ms. Hull, called appellant at home and told her she could not win the complaint, and that if she sought EEO relief or a restraining against her supervisor, she would lose her job. Appellant allegedly withdrew her request for fear of losing her job. The Board notes that the hearing representative accepted that Ms. Hull called her at home and made such representations. The Board finds this to be a compensable factor under *McEuen* as it was inappropriate and in error

In other matters, the record establishes that in December 2009 Mr. Logsdon posted a holiday schedule with the following comment by appellant's name: "Enjoy your last Sat off ho ho ho." Although she felt this referred to her as a "ho," he stated that it was Christmas and denied that it was meant to harass her. She alleged that she confronted him about it, but he denied that she ever questioned the comment. The evidence of record does not establish a compensable factor in this regard.

On October 10, 2010 Mr. Logsdon spoke to appellant loudly about her FMLA absences. This was witnessed. As the Board noted earlier, being spoken to in a raised or harsh voice does not in itself constitute verbal abuse or harassment. Without evidence that Mr. Logsdon used inappropriate language in addressing appellant, his loud or angry tone is not a compensable factor of employment.[18]

Appellant's alleged that others were talking about her behind her back. For example, on February 3, 2010, after she returned from a week off, a coworker told appellant that Mr. Logsdon and Mr. Versoza had discussed her relationship with Mr. Martinez in a manner that could be heard by others. The coworker told appellant that Mr. Logsdon did this each time she went on vacation. Appellant was embarrassed when she was informed of this. This was not an incident, however, that appellant experienced first-hand. Mr. Logsdon and Mr. Versoza did not speak to her directly or in her presence.[19] If it occurred, it occurred in her absence. Her emotional reaction was to hearing about it from someone else. The Board had held that an emotional reaction to gossip in the workplace represents a personal frustration unrelated to one's duties and is not compensable.[20] In *Gracie A. Richardson*,[21] the claimant had become romantically involved with a coworker. She alleged, among other things, that she was devastated to think that coworkers were gossiping behind her back regarding her marital and other personal relationships. The Board found that an emotional reaction to gossip was not a compensable factor of employment.

The Board finds two compensable employment factors. The case will be remanded for development on the medical issue of causal relationship.

[18] *See Joe M. Hagewood*, 56 ECAB 479 (2005).

[19] *See Mary A. Sisneros*, 46 ECAB 155 (1994) (the claimant learned that a coworker had called her a bitch). Appellant has also alleged that Mr. Logsdon and Mr. Versoza had made snide remarks to her directly about her private relationship with Mr. Martinez, but these allegations are disputed and unsubstantiated by other evidence.

[20] *S.A.*, Docket No. 11-171 (issued January 9, 2012).

[21] 42 ECAB 850 (1991).

CONCLUSION

The Board finds that the case is not in posture for decision on whether appellant sustained an emotional condition in the performance of duty. Further development is warranted.

ORDER

IT IS HEREBY ORDERED THAT the March 8, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: September 12, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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