U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETTY MURRAY and SOCIAL SECURITY ADMINISTRATION, OFFICE OF HEARINGS & APPEALS, Long Beach, CA

Docket No. 99-2555; Submitted on the Record;
Issued February 22, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM, PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant established that she sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for merit review under 5 U.S.C. § 8128.

On February 17, 1998 appellant, then a 49-year-old hearing office clerk, filed a notice of traumatic injury alleging that on February 12, 1998 she developed traumatic stress disorder with grand mal seizures due to a conversation she had with her supervisor. Appellant stopped work on February 12, 1998 and did not return.

The record contains a memorandum dated February 11, 1998, which was sent to appellant from Dee Jones, an office manager for the employing establishment. The memorandum stated as follows:

> "At your workstation, I located a case file ... which you closed out in HOTS on January 29, 1998. After reviewing the file, it was determined that a PRTF form was not prepared as an attachment to the final decision. It is imperative that you review the draft decision to determine that all documents required have been prepared as requested by the Judge."
>
> "Also, this file should have been mailed on the same day that it was closed out. In the future, do not close out final decisions without mailing the file the same date of the transmittal."

In an undated statement, appellant alleged that on February 12, 1998 she was handed an envelope by Ms. Jones, a "manager with an arrogant attitude." She was then approached by Betty Dixon, another supervisor, who informed appellant that Ms. Jones had reported that her work assignments were not finished. According to appellant, Ms. Dixon "did not acknowledge what I was saying" and "was on a mission to pressure me." Appellant described feeling nauseous and dizzy with a pounding headache. She further alleged that when she asked

Ms. Jones to discuss the matter, Ms. Jones arrogantly denied her request. Appellant stated that she "cannot recall nothing but the paramedic and the hospital they monitor my blood pressure."

In a February 12, 1998 memorandum, Ms. Dixon stated that at 8:50 a.m., after Ms. Jones informed her of the priority of appellant's work for the day, she approached appellant and requested that appellant give priority to getting three "CE requests done [and] out." Appellant stated that she had three decisions to mail out from the day before and was unclear about the priority of her work assignments. She told appellant that she would check further with Ms. Jones regarding, the work priority. Ms. Dixon stated that at 9:50 a.m. she observed a union representative talking to appellant, who was crying and had put her head down at the desk. She stated that the union representative approached her and said that appellant needed to go to the doctor. Ms. Dixon then got approval from Ms. Jones for appellant to leave work for her doctor's office. She noted that appellant then had a seizure and had to be moved to a counsel room until paramedics arrived and took charge.

In a memorandum dated February 12, 1998, Ms. Jones described the procedures followed from the time appellant began her seizure until the time the paramedics arrived to take her to the hospital. She indicated that appellant had not been denied emergency medical treatment and that telephone attempts were made to contact appellant's husband and daughter. Ms. Jones stated: "The fire department did not indicate that serious medical treatment was needed for [appellant]. However, myself and [Ms.] Dixon insisted that [appellant] be transported to a hospital for medical attention."

In a February 18, 1998 witness statement, Lana H. Parke noted that on or about February 12, 1998 appellant had told her that a dear friend had recently died, perhaps the day before and that appellant was doing terribly and was in shock.

In a decision dated August 21, 1998, the Office denied the claim on the grounds that the evidence of record was insufficient to establish that appellant's condition arose out of and in the performance of duty.

Appellant subsequently requested a hearing on August 21, 1998 and submitted a packet of information indicating that she had filed a grievance against her employer for the alleged February 12, 1998 incident.

On February 24, 1999 Mary Cole, a legal assistant, stated:

> "I told [Ms.] Dixon that [appellant] was ill and I asked her if I could drive her to the doctor. [Ms.] Dixon said she would ask [Ms.] Jones. She came back minutes later and said she could n[o]t find her. Karen and I took [appellant] to the sofa room because [she] was starting to shake uncontrollable. [Ms.] Dixon never asked [appellant] is she was O.K. In the sofa room [appellant] started to have small seizures. W[e] helped [her] to the floor. [Ms. Jones] and [Ms.] Dixon came to the room. [Ms. Jones] told Kathleen [Dune] and Karen to leave the room. They left. The paramedics appeared. Everyone left the room. I told the paramedics that [appellant] had been under a lot of stress...."

In statement dated February 24, 1999, Dora Cowan noted that she was an acting supervisor and had personally received upsetting memorandums from management and that there was a lot of stress in the office. She noted that appellant seemed very nervous to her.

Appellant alleged in a statement dated May 2, 1999 that the memorandum was prepared to "set me up" and that she was "NOT conscious during the entire event." She stated that her office had become a hostile work environment.

In a decision dated May 14, 1999, an Office hearing representative affirmed the Office's August 21, 1998 decision.

On July 30, 1999 appellant requested reconsideration.

In an August 18, 1999 decision, the Office denied appellant's request for reconsideration.

The Board finds that appellant has failed to establish that she sustained an emotional condition in the performance of duty.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of his employment.[1] This burden includes the submission of a detailed description of the employment conditions or factors which appellant believes caused or adversely affected the condition for which he or she claims compensation.[2] This burden also includes the submission of rationalized medical opinion evidence, based upon a complete and accurate factual and medical background of appellant, showing a causal relationship between the condition for which compensation is claimed and the implicated factors or conditions of her federal 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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but nevertheless are not covered because they are not found to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.[4]

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[1] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[2] *See generally* 20 C.F.R. §§ 10.115-116 (1999).

[3] *See Ruth C. Borden*, 43 ECAB 146 (1991).

[4] *Lillian Cutler*, 28 ECAB 125 (1976).

Appellant alleged that she was harassed by her office manager, Ms. Jones, for her work performance. Appellant attributed her emotional condition to having received a memorandum on February 12, 1998 that was critical of her work and having been ignored by Ms. Jones when appellant attempted to discuss the matter with her. The medical record indicates that appellant had a seizure on February 12, 1998 and that she was diagnosed with stress and panic disorder.

The Board notes that the assignment of work and reprimands for poor work performance involve matters that are administrative in nature and do not involve an employee's regular of specially assigned work duties. As such these matters are not considered to be employment factors.[5] An administrative or personnel matter will only be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.

The Board finds the evidence does not establish that Ms. Jones acted abusively or unreasonably by issuing the February 12, 1998 memorandum. Although appellant became emotional after receiving the February 12, 1998 memorandum and felt like she was ignored by Ms. Jones when she wanted to discuss her work performance, Ms. Jones has stated that she simply told appellant that she could not talk to her at that time because she was busy preparing a report. Ms. Dixon approached appellant to advise her that she needed to prioritize and finish her work assignments. There is no evidence to show this instruction was unreasonable. Appellant's perception that she was being harassed and pressured by management is without sufficient factual support.

A claimant's own feeling or perception that a form of criticism or disagreement is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under the Act absent evidence that the interaction was, in fact, abusive. This recognizes that a supervisor or management in general must be allowed to perform their duties and that in the performance of such duties, employees will at times dislike actions taken. Mere disagreement or dislike of a supervisor or management action will not be compensable without showing through supportive evidence that the incidents or actions complained of were unreasonable.[6]

The Board also finds that appellant's allegation that she was denied proper medical care is not supported by the weight of evidence. Based on the accounts by Ms. Cole and Ms. Dune, paramedics were called immediately when appellant began her seizure and she was promptly transferred to a hospital.

Appellant has alleged harassment in the workplace but she has not substantiated her claim with sufficient factual evidence.[7] Consequently, the Board finds that appellant has failed to allege a compensable factor of employment. Based on the Board's ruling, it is not necessary to address the medical evidence.

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[5] *Patricia A. English*, 49 ECAB 532 (1998).

[6] *Constance I. Galbreath*, 49 ECAB 401 (1998).

[7] Appellant filed a union grievance but there was no final decision, by an appropriate agency as to whether appellant was harassed. Grievances and Equal Employment Opportunity complaints, by themselves, do not establish workplace harassment or unfair treatment. *See Constance I. Galbreath, supra* note 6.

The Board finds that the Office properly denied appellant's request for merit review.

Section 8128(a) of the Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.[8] The regulations provide that a claimant may obtain review of the merits of the claim by submitting argument and evidence that: (1) show that the Office erroneously applied or interpreted a specific point of law; or (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[9] When an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.

Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[10] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[11] Where a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered it is a matter of discretion on the part of the Office to reopen a case for further consideration under section 8128 of the Act.[12]

The Board finds that appellant failed to show that the Office erroneously applied or interpreted a point of law. She did not advance on reconsideration a relevant legal argument not previously considered by the Office. Appellant also failed to submit relevant and pertinent new evidence to warrant a merit review. Therefore, because appellant did not satisfy the requirements of section 8128 of the Act, the Office properly denied her request for reconsideration on the merits.

[8] 5 U.S.C. § 8128; *see Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

[9] 20 C.F.R. § 10.606(b) (1999).

[10] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin,* 35 ECAB 1090, 1093-94 (1984).

[11] *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

[12] *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).

The decisions of the Office of Workers' Compensation Programs dated August 18 and May 14, 1999 are hereby affirmed.

Dated, Washington, DC
February 22, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member