

)	
SHEILA M. MATHIS, Appellant)	
)	
and)	Docket No. 04-255
)	Issued: March 5, 2004
DEPARTMENT OF THE ARMY, NATIONAL)	
GUARD, Montgomery, AL, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

On November 10, 2003 appellant filed a timely appeal from an Office of Workers' Compensation Programs' hearing representative decision dated August 29, 2003, which affirmed the denial of her emotional condition claim. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant established that she sustained an emotional condition while in the performance of duty.

On March 7, 2002 appellant, then a 46-year-old international partnership specialist, filed a notice of occupational disease, alleging that she developed an adjustment disorder as a result of being told on September 21, 2001 that she was reassigned to another position. It was noted on the claim form that as of September 21, 2001 appellant was on paid leave from work.

Appellant prepared a personal statement which alleged that in August 1989 she was selected as the family program coordinator for the employing establishment and had to work long hours during Desert Storm and the following 10 years to keep family assistance on the forefront. Appellant stated that from July 2000 to July 2001 she underwent the most difficult time of her life having to cope with the deaths of friends and family members. She stated that she had to take time off of work from August to September 2001 because she was mentally and physically exhausted. During that period, appellant stated that she began to see a counselor for support. She alleged that, on September 20, 2001, she received a call from her supervisor, Colonel Dwayne Smith, who asked her to come by his office the next day to discuss some issues. Appellant stated that she told Colonel Smith on the telephone that she was ready to report back to work to be of assistance to the military families following September 11, 2001. Appellant further stated that, when she reported to her scheduled meeting of September 21, 2001, Colonel Smith was off on annual leave and she was sent to meet with his deputy who informed her that she was being reassigned to another position, given her emotional state and "the worldly situation." Appellant alleged that she was devastated by the news of her reassignment and tried to explain that she was capable of returning to her prior job but that this information seemed to have no bearing on the decision. She related that she sat in the deputy's office for approximately one hour crying and could barely drive home after she left. Appellant alleged that she has suffered stress and depression as a result of how management handled her reassignment with no prior warning or justification. She stated that she was unable to sleep and would have crying episodes. Her emotional stress has allegedly manifested itself in physical problems such as headaches, body aches, low back pain and memory loss.

Appellant also submitted the following documents in support of her claim for compensation: (1) a notice of reassignment dated September 28, 2001; (2) a copy of the "[n]otification of [p]ersonnel [a]ction" indicating that management had initiated her reassignment from a state family program specialist to an international partnership specialist effective October 27, 2001; (3) a memorandum of acceptance of the transfer prepared by appellant; (4) a copy of a request for advanced sick leave dated September 26, 2001; (5) copies of performance appraisals; (6) a letter of recommendation dated December 5, 2003; (7) position descriptions for a state family program specialist, military personnel technician, and an international partnership specialist; (8) copies of certificates of commendation and training; (9) a signed release of medical information and a certificate of employment; (10) a statement from appellant dated March 7, 2002 regarding the dates she attended counseling on behalf of her daughter and not for her own personal issues; (11) medical reports from Dr. David D. Schaffer, an osteopath, dated September 19 and December 11, 2001 and January 24, 2002; and (12) a standard Form 172 federal employment application and personal qualifications statement.

In a September 6, 2002 letter, the Office advised appellant that a job reassignment was not considered to be one of the accepted performance of duty factors for a valid stress claim. The Office advised appellant that she had 30 days to submit additional information or evidence with respect to her claim for compensation.

In a decision dated October 10, 2002, the Office denied appellant's claim for compensation on the grounds that she failed to establish a compensable work factor and, therefore, failed to establish that she sustained an emotional condition while in the performance of duty. Appellant subsequently requested a hearing, which was held on July 21, 2003. In a

decision dated August 29, 2003, an Office hearing representative affirmed the Office's October 10, 2002 decision.

LEGAL PRECEDENT

Workers' compensation is not applicable to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,¹ the Board discussed at length the principles applicable to the adjudication of emotional conditions and the distinctions as to the type of employment situations giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act.² When an employee experiences an emotional reaction to his or her regular assigned employment duties or to a requirement imposed by the employment 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 an emotional reaction to such factors, the disability is generally regarded as due to an injury arising out of and in the course of employment and comes within coverage of the Act.³ On the other hand where the disability results from an employee's emotional reaction to employment matters which are not related to the employee's regular or specially assigned work duties or to requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within coverage of the Act.⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors 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 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.⁵ The Board will review the evidence to determine whether the alleged incidents and conditions of employment constitute compensable employment factors.

ANALYSIS

Appellant has alleged that she had an emotional reaction to being told on September 21, 2001 that she was being reassigned to a new position. She alleged that the employing establishment gave her no prior notice of the reassignment, and that she developed an adjustment disorder due to the manner and timing of the employing establishment's decision to place her in a new job. Appellant alleged that after September 21, 2001 she became depressed, was unable to sleep and would experience episodes of uncontrollable crying.

¹ 28 ECAB 125 (1976).

² 5 U.S.C. §§ 8101-8193.

³ *James E. Norris*, 52 ECAB 93 (1999).

⁴ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁵ *James E. Norris*, *supra* note 3.

The Board has held that the factual circumstances surrounding an employee's claim must be carefully examined to discern whether the alleged injury is being attributed to the inability to perform an employee's regular or assigned job duties due to a change in the duty shift, *i.e.*, a compensable factor arising out of and in the course of employment, or whether it is based on a claim which is premised on the employee's frustration at not being permitted to work a particular shift or to hold a particular position. In this regard, the assignment of a work schedule or tour of duty is recognized as an administrative function of the employing establishment and absent any error or abuse, does not constitute a compensable factor of employment.⁶

In this case, the Board finds that appellant's claim focuses on the administrative process by which the employing establishment assigned her new position and not her inability to perform the requirements of the new job. Her emotional reaction arises from her disappointment of not being able to continue in her prior job as a family support technician and learning of her reassignment without any prior notification. Appellant had not actually started in her new position when she filed her claim for compensation based on emotional stress. Thus, appellant's emotional claim is found to be based on her frustration at not being able to hold a particular position and is not a compensable work factor.

Furthermore, the Board finds no error or abuse in the employing establishment's decision to have appellant reassigned to a different position. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁷ In this case, the Board finds that the employing establishment acted reasonably in the reassignment of appellant's job. The Board finds no error or abuse in the decision to transfer appellant to a new position since she was already off work due to nonwork-related emotional problems and her supervisor indicated that the position change was in response to world events surrounding September 11, 2001. Although appellant may have disliked the administrative action taken by her supervisor in directing her reassignment, she has not demonstrated error or abuse. Thus, the Board concludes that she has failed to establish a compensable work factor.⁸

CONCLUSION

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

⁶ See *Peggy R. Lee*, 46 ECAB 527 (1995).

⁷ See *William H. Fortner*, 49 ECAB 324 (1998); *Ronald C. Hand*, 49 ECAB 113 (1997).

⁸ Because appellant failed to establish a compensable work factor, the Board finds that it is unnecessary to address the medical evidence of record. See *John Polito*, 50 ECAB 347 (1999).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 29, 2003 is affirmed.

Issued: March 5, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member