

Disability Act] accommodations on April 2, 2004, Regional Director, Marty Walker[,] agreed to reassignment on June 22, 2004. Ineffective accommodation was abuse of discretion.”

On September 7, 2004 Dr. Randolph W. Pock, appellant’s psychiatrist, noted that he had treated appellant since June 6, 2003 for emotional symptoms from a previous claim.¹ He stated:

“I reevaluated [appellant] today at which time she described to me continuing symptoms of depression like those previously noted. As you may be aware, she returned to work of her own volition and continued to work for 4½ months until August 18, 2004. It should be noted that a written agreement was made to reassign her to another position (in a discussion between Mr. Walker and an EEO counselor). Despite this agreement, however, she was subsequently refused reassignment. Conditions of employment have continued to contribute to her depression which has worsened, requiring her to leave her job on August 18. It is my opinion that her depression is a permanent condition which will involve periods in which her disability may remit and then intensify.”

The Office asked appellant to clarify the nature of her claim. After explaining the difference between a traumatic injury and an occupational disease, the Office asked appellant whether she was claiming that the specific incident of the teleconference on August 18, 2004 caused her emotional condition or whether ineffective accommodation over a period longer than one workday or shift caused or contributed to the claimed condition.

Appellant responded on October 20, 2004 stating:

“Yes, I am stating the specific August 18, 2004 teleconference worsened an already preexisting emotional condition. I was already diagnosed with stress and major depression under the earlier claim number 112016624. Before I returned to work on March 29, 2004 following that first claim, the ESA/EEO Unit Director, Kate Dorrell assured me that it would not affect their processing and handling of my December 2, 2003 request for accommodations under the Americans with Disabilities Act. In June 2004, Regional Director, [Mr.] Walker told the investigating EEO [c]ounselor that he would reassign me. Instead of reassignment I was ostracized by being moved to the eleventh floor where I was totally out of place, and expected to accomplish sixth floor deadlines with no access to the sixth floor, little or no access to critical resources or support staff, and no access to case files. On August 18, 2004 Ms. Dorrell took a negative and nonnegotiable position when she began the telephone conference by telling me, ‘we don’t have to reassign you’!”

* * *

¹ OWCP File No. 112016624. On August 17, 2004 the Board issued a decision and order remanding that case to the Office for a proper statement of accepted facts and further development of the medical opinion evidence on whether the factors of employment established as compensable contributed in any way to appellant’s diagnosed emotional condition.

“I filed a traumatic injury claim on August 18, 2004 when I experienced emotional distress and anxieties about my ability to perform my duties.”

On November 2, 2004 Dr. Pock addressed the incident of August 18, 2004. After relating appellant’s social, family and psychiatric history and her medications, he reported:

“My diagnosis for [appellant] is 296.34, major depression recurrent with possible paranoid features. In my opinion, this condition resulted from the specific incident of August 18, 2004. In my opinion, her depression would not have worsened to the same degree of severity without the impact of this one specific incident.”

In a decision dated December 7, 2004, the Office denied appellant’s claim for compensation benefits. The Office found that the specific event that appellant implicated did not occur in the performance of duty. Specifically, the Office found that appellant’s reaction to a conversation she had with Ms. Dorrell on August 18, 2004 was not a factor of employment.

Appellant requested reconsideration, contending that the evidence was sufficient to accept the claim and award continuation of pay.

In a decision dated July 15, 2005, the Office reviewed the merits of appellant’s claim and denied modification of its prior decision. The Office found that appellant had provided no evidence that the incident or event of August 18, 2004 would be afforded coverage. It noted that dissatisfaction with the workplace or work duties is not a factor of employment, and that such reactions are considered self-generated and not afforded coverage.

Appellant again requested reconsideration. She argued that her claim was filed for stress caused by a special work assignment and that she was trying to meet the daily requirements of her position from a remote location with access to resources virtually eliminated and no access to paper files. Appellant alleged great difficulties trying to manage the workload, and, as Dr. Pock stated in his September 7, 2004 report, her condition worsened when she attempted to discuss her inability to accomplish the specially-assigned duties and severe deadlines with upper management. She added:

“The August 18, 2004 verbal altercation erupted because Kate Dorrell was acting on behalf of the Regional Director, [Mr.] Walker, while trying to play both ends against the middle, as is evident in file. She was telling me things contrary to what she was telling the Regional Director.... While I was trying to have an earnest discussion with her about my severe anxieties regarding the shear nature of the work and my inability to carry out my duties she responded, ‘we don’t have to create a position for you’; when in fact, I have never asked the department to create a position for me.”

Appellant submitted a detailed account of her August 18, 2004 conversation with Ms. Dorrell:

“She starts out: I am hoping to accomplish two things in this conversation. First, I want to discuss the things you would have discussed during the meeting with Dawn. Then we can talk about some of the specifics of your case. You can interrupt me at any time during the conversation if you have questions.

“She continues: You have submitted three letters or emails since your original request.... Under the Rehab Act, we do not have to create a position to reassign you to....

“I interrupted: It is my understanding that I can be reassigned if the employer is in agreement to that. Are you telling me that they are not agreeing to reassignment?

“Kate: Well, just a minute; I want to tell you what’s in the Rehab Act, and then we can talk about your case. You may be eligible for reassignment, but we have to first exhaust every other possibility ... and right now, I believe your doing the essential functions of your job. Under the Rehab Act, the agency does not have to assign you to a different supervisor; it only requires changes in the way the supervisor interacts with you.

“I began crying: I think communication is probably the most essential function of the job and I am telling you that I can’t continue to do this...what does it take to get you people to understand ... this has been going on for four years, I know my own limitations, and I don’t know how much you think a person can take ... I was souring at the peak of my career ... I have poured out blood to the Department of Labor, and all I ever got in return was criticized for the work I’ve done, and now you mean to tell me they can’t do without me? (undue hardship)”

In a decision dated December 21, 2005, the Office reviewed the merits of appellant’s claim and denied modification of the July 15, 2005 decision. The Office noted that appellant now alleged great difficulty performing her job but submitted no supporting evidence and provided no specifics of her difficulties. As before, the Office found that appellant had provided no evidence that the incident or event of August 18, 2004 would be afforded coverage.

LEGAL PRECEDENT

The Federal Employees’ Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.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 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

² 5 U.S.C. § 8102(a).

of employment. This is true when the employee's disability resulted from her emotional reaction to her day-to-day duties, a special assignment or requirement imposed by the employing establishment or by the nature of her work.³

But 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 workers' compensation, 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. Such matters are not related to the employee's regular or specially assigned work duties or to a requirement imposed by the employment.⁴

ANALYSIS

Appellant filed a claim for a traumatic injury occurring on August 18, 2004. Because she mentioned a special work assignment and ineffective accommodation, the Office asked her to clarify the nature of her claim, whether she was claiming that the specific teleconference on August 18, 2004 caused her emotional condition or whether ineffective accommodation over a period longer than one workday or shift caused or contributed to her claimed condition. Appellant responded that her injury was traumatic: "Yes, I am stating the specific August 18, 2004 teleconference worsened an already preexisting emotional condition."

The Board finds that appellant's emotional reaction to her August 18, 2004 conversation with Ms. Dorrell.

Appellant worked as a claims examiner for the Office in Denver, Colorado. Her conversation with Ms. Dorrell on August 18, 2004 about possible accommodation or reassignment under the Rehabilitation Act of 1973 had nothing to do with the job duties she was hired to perform. Appellant's claim was not that she experienced emotional stress in carrying out her employment duties or had fear and anxiety regarding her ability to carry out those duties. Rather, she claimed that she experienced emotional stress from what Ms. Dorrell told her on August 18, 2004.⁵ The August 18, 2004 conversation relates to the Rehabilitation Act of 1973 and appellant's December 2, 2003 request for accommodation. It does not pertain to the discharge of appellant's assigned duties. The Board finds that the claimed injury does not arise

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Id.*

⁵ Dr. Pock, the attending psychiatrist, reported that the impact of this one specific incident worsened appellant's depression: "In my opinion, this condition [major depression recurrent with possible paranoid features] resulted from the specific incident of August 18, 2004."

out of and in the course of appellant's employment. It lies outside the scope of the Act's coverage.⁶ The Board will therefore affirm the denial of her claim for benefits under the Act.

Following the Office's July 15, 2005 denial of modification, appellant argued that her stress was caused by trying to meet the daily requirements of her position and the difficulties she faced trying to manage her workload. She characterized her August 18, 2004 conversation with Ms. Dorrell as one in which she was trying to have an earnest discussion about her severe anxieties regarding the shear nature of her work and her inability to carry out her duties. A claimant may expand her claim at any time, but appellant is doing something more here. She appears to be claiming a different type of injury, an occupational disease or illness, stemming from different factors of employment. She may pursue this by filing the appropriate claim form. This is not a matter to be decided by the Office on reconsideration of her claim for a traumatic injury.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty on August 18, 2004. Workers' compensation does not cover matters that are not related to the employee's regular or specially assigned work duties or to a requirement imposed by the employment.

⁶ See *Donna Faye Cardwell*, 41 ECAB 730 (1990). *Cardwell* held that the claimant's stress and frustration resulting from failure to obtain appropriate redress and corrective actions from the various agencies with which she filed complaints against the employing establishment were not covered by the Act: "While the specific charges in the complaints filed against the employing establishment may constitute compensable employment factors, the actions of the particular administrative agencies, in reviewing and investigating the charges and rendering a decision thereon, do not constitute compensable employment factors. The actions of these agencies do not have a relationship to appellant's assigned duties."

ORDER

IT IS HEREBY ORDERED THAT the December 21 and July 15, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 7, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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