

In a December 28, 2004 statement, appellant indicated that she had been a modified carrier since February 1992 and, following her back surgery, was reassigned to various postal stations, which caused increased depression, agitation and panic attacks.¹ She stated that she was given a permanent rehabilitation job offer as a modified city carrier on April 15, 1995, but was given job offers for a modified distribution clerk on July 17 and September 10, 2001, which violated her medical restrictions. Appellant alleged that in March 2003 she was forced to become a modified mail processing clerk with no seniority and that the station manager, Kevin Augustine, told her in front of witnesses in May 2003 that he would convert her back to a modified carrier if he ever left. She asserted that she became depressed over the change in her career status and that Mr. Augustine never converted her back to her carrier craft when he transferred. Appellant indicated that she filed an Equal Employment Opportunity (EEO) Commission claim and maintained that management had refused to honor the terms of an EEO settlement agreement dated April 1, 2004 even though she had medical evidence which showed she could perform carrier work. She further asserted that she received a letter in December 2004 stating that her clerk job was being excessed and which provided a list of residual vacancies for jobs which violated her work restrictions.

Appellant submitted a copy of a November 30, 2004 functional capacity evaluation, a November 1, 2004 duty status report from her neurosurgeon and a copy of the April 1, 2004 EEO settlement agreement in which the employing establishment agreed to restore appellant to the carrier craft upon receipt of medical evidence from a physician “which states that she is physically capable of performing the essential functions of the position of [c]ity [c]arrier either without accommodation or with a specified reasonable accommodation.” The agreement also stipulated that the employing establishment “does not admit to and the parties mutually agree that this settlement does not constitute an admission of, any error, fault or legal violation of any nature by the [a]gency, its agents or its employees with respect to the subject matter outlined herein.”

In a January 4, 2005 report, Dr. Gary K. Arthur, a Board-certified psychiatrist, noted that he reviewed appellant’s statement regarding her workers’ compensation claim and set forth his examination findings. Dr. Arthur opined that appellant had moderate to severe depression and anxiety directly caused by being forced to become a clerk; management’s failure to honor her EEO agreement of April 2004; receiving a letter of being excessed as a clerk as of January 8, 2005, when adequate proof of functional capacity evaluation and her neurosurgeon complied with the EEO agreement of April 2004. He further opined that this situation has caused recurring memories of her “experience of 1992,” in which she suffered a depressive breakdown after being assigned to the midnight casing pool several times in 1992.²

The employing establishment submitted a January 24, 2005 letter from Ralf Christiano, manager, customer service, who wrote that appellant had been working in a modified-duty job

¹ In a separate claim, not presently before the Board, appellant sustained an employment-related lumbar spine injury for which she underwent authorized surgery.

² The record is void of any information concerning the nature and the function of the referenced midnight casing pool. The record indicates, however, that appellant had filed a stress claim in 1992 under file number 060542724, as a result of her assignment to the midnight casing pool, which the Office denied.

that was within her restrictions. Mr. Christiano stated that, when appellant was reclassified to perform more clerical duties, she filed an EEO complaint which was settled. He stated that appellant had not provided the necessary medical evidence to return her to the carrier craft and that appellant's subsequent EEO complaints were dismissed. Mr. Christiano further stated that in December 2004, appellant was one of the clerks who were offered other positions as her position was not necessary. He noted, however, that the directive to eliminate the positions was subsequently rescinded prior to going into effect. In an earlier letter of December 20, 2004, Mr. Christiano stated that when appellant was handed the list she stated that she could not make a choice and cried. He noted that this was not an unusual display for appellant.

In a March 9, 2005 letter, the Office provided appellant an opportunity to comment on Mr. Christiano's statement; however, she did not submit a response.

By decision dated April 12, 2005, the Office denied appellant's emotional condition claim on the grounds that she did not establish a compensable factor of employment.

In a May 3, 2005 letter appellant, through her representative, requested an oral hearing, which was held February 22, 2006. He stated that appellant worked as a modified carrier until the employing establishment moved her to the clerk craft. He argued that the employing establishment failed to honor the EEO settlement agreement and move appellant back to the carrier craft as a modified carrier. Appellant also testified. No additional evidence was submitted.

In a March 17, 2006 letter, the employing establishment advised that it had not breached the terms of the April 1, 2004 settlement agreement. The employing establishment further stated that appellant was returned to the city carrier craft effective February 19, 2005 without loss of seniority. A copy of a final agency EEO decision dated June 8, 2005 was submitted. The EEO decision specifically found that the employing establishment had not breached the terms of the settlement agreement when it failed to offer appellant a permanent city carrier position.

By decision dated April 20, 2006, an Office hearing representative affirmed the April 12, 2005 decision finding that appellant failed to establish any compensable factors of employment.

LEGAL PRECEDENT

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. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³ On the other hand, the disability is not covered where it results from such factors as an

³ 5 U.S.C. §§ 8101-8193.

employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁴

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.⁵ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁶

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in 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 and are 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.⁷ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁸

ANALYSIS

Appellant alleged that she sustained an emotional condition due to actions by the employing establishment during the period March 2003 to December 2004. The Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must initially review whether the alleged incidents and conditions of employment are compensable under the terms of the Act.

Appellant alleged that her emotional condition was caused or aggravated by her transfer to the clerk craft effective March 29, 2003, with a resulting loss of seniority she had as a letter carrier; the employing establishment's refusal to return her to the carrier craft; and being advised on December 13, 2004 that her current clerk position might be eliminated and that she had to choose from a list of available positions. Her allegations of employment factors that caused or contributed to her condition fall into the category of administrative or personnel actions.⁹ As a

⁴ See *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁶ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁷ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁸ *Id.*

⁹ See *Ernest J. Malagrida*, 51 ECAB 287 (2000) (the denial by an employing establishment of a request for a different job, promotion or transfer is an administrative decision, which does not directly involve an employee's ability to perform his work duties, but rather constitutes an employee's desire to work in a different position).

general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Act.¹⁰ However, to the extent that the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹¹ In this case, there is insufficient evidence to establish that the employing establishment erred in these matters.

Appellant's reaction to being transferred to the clerk craft and her desire to remain in the carrier craft is not a compensable factor of employment; rather it relates to frustration from not being permitted to hold a particular position. In this case, there is insufficient evidence to establish that the employing establishment erred in either transferring appellant out of the carrier craft to the clerk craft or back into the carrier craft. With regard to the employing establishment's transfer of appellant from the carrier craft to the clerk craft, the assignment of work is an administrative function and the manner in which a supervisor exercises his or her discretion falls outside the ambit of the Act.¹² Mere disagreement or dislike of a supervisory or management action will not be compensable without a showing through supporting evidence that the incidents or actions complained of were unreasonable.¹³ Appellant has not submitted any evidence that the employing establishment erred in transferring her from the carrier craft to the clerk craft. The fact that appellant entered into an EEO settlement, which stipulated a return to the carrier craft once certain conditions were met, does not, in and of itself, establish error or abuse by management in its administrative duties.¹⁴ The settlement agreement specifically stated that it did not constitute an admission of any error, fault or legal violation on the part of the employing establishment and appellant has not submitted any evidence of error or abuse from the employing establishment's placement of her into the clerk craft. Moreover, the record reflects that this issue was ultimately resolved in appellant's favor as appellant returned to the city carrier craft effective February 19, 2005 without a loss of seniority. The fact that appellant returned to the city carrier craft does not, in itself, establish that the employing establishment's actions were either erroneous or unreasonable.¹⁵ The employing establishment also explained that it sought to provide appellant work consistent with her restrictions and its internal personnel policies. Appellant has not shown that the reason for her return to the carrier craft was due to any erroneous or unreasonable action on the employing establishment's part.

Appellant, therefore, has not established that the administrative actions of being transferred from the carrier craft and to the clerk craft and back to the carrier craft is a compensable factor of employment. Thus, appellant's transfer out of the carrier craft and into

¹⁰ *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹¹ *Roger Williams*, 52 ECAB 468 (2001).

¹² *Barbara J. Latham*, 53 ECAB 316 (2002).

¹³ *Id.*

¹⁴ See e.g., *Peter D. Butt*, 56 ECAB ____ (Docket No. 04-1255, issued October 13, 2004).

¹⁵ See *Sherry L. McFall*, 51 ECAB 436, 440 (2000).

the clerk craft amounts to her frustration and dislike for that particular position and not a compensable factor of employment.¹⁶

Appellant also alleged that being advised on December 13, 2004 that her current clerk position might be eliminated caused or contributed to her condition. The record reflects that the employing establishment's directive to eliminate the positions was subsequently rescinded prior to going into effect. However, appellant's feelings of job insecurity and fears about the possible elimination of her clerk position do not constitute a compensable employment factor.¹⁷ Thus, this allegation does not constitute a compensable employment factor.

For the foregoing reasons, the Board finds that appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹⁸

CONCLUSION

Appellant has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.

¹⁶ *Kim Nguyen*, 53 ECAB 127 (2001).

¹⁷ *See Katherine A. Berg*, 54 ECAB 262 (2002).

¹⁸ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *Karen K. Levene*, 54 ECAB 671 (2003); *see also Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the April 20, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 19, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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