United States Department of Labor
Employees' Compensation Appeals Board

M.S., Appellant	)	
and	)	
U.S. POSTAL SERVICE, DISTRICT ADMINISTRATIVE OFFICE, Portland, ME, Employer	)	**Docket No. 07-537** **Issued: July 12, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 19, 2006 appellant filed a timely appeal from a September 22, 2006 decision of the Office of Workers' Compensation Programs, denying her claim for an emotional condition. Pursuant to 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's claimed emotional condition is causally related to a compensable factor of her employment.

FACTUAL HISTORY

On April 6, 2005 appellant, then a 48-year-old workplace improvement analyst, filed a claim for a traumatic injury (Form CA-1) on March 23, 2005 alleging that Michael Donahue, Manager of Human Resources, refused to allow her attendance at a March 22, 2005 meeting

regarding an employee who had a history of hostile behavior.[1] She indicated that she should have been included in the meeting to observe the employee and determine whether he should be allowed to return to work. On March 23, 2005 an employee, who had been threatened by the hostile employee, telephoned appellant and asked why she had not attended the meeting and how he could protect himself from the hostile employee. Appellant felt frustrated and helpless because she could not assist employees who were afraid of the hostile employee. She alleged that she sustained an acute agitated depressive reaction on March 23, 2005. Appellant submitted medical evidence in support of her claim.

On April 14, 2005 Mr. Donahue stated that the March 22, 2005 meeting was a predisciplinary meeting generally attended by an employee, his or her supervisor and management or union representatives. Attending predisciplinary meetings was not a function of appellant's position, nor was it included in her job description. It was not normal procedure to have her attend a predisciplinary meeting. Mr. Donahue stated that several managers, including appellant, had been invited to the March 22, 2005 meeting by another manager who noted that this was a predisciplinary meeting. Appellant emailed Mr. Donahue asking him "What are your thoughts on this?" Mr. Donahue responded that the meeting was predisciplinary in nature and gave her a simple management instruction that she was not needed at the meeting. He was not condescending to appellant in his response; he merely instructed her that the meeting was a management matter that did not involve her.

On April 22, 2005 the Office asked appellant to explain how her job duties included her attendance at a predisciplinary meeting or how management abused its administrative discretion in not allowing her attendance at the March 22, 2005 predisciplinary meeting.

By decision dated June 3, 2005, the Office denied appellant's claim on the grounds that the evidence did not establish that her emotional condition was causally related to a compensable factor of employment.

Appellant requested an oral hearing that was held on July 11, 2006. She testified that Mr. Donahue was wrong in disallowing her participation in the March 22, 2005 predisciplinary meeting. Appellant stated that she had attended other predisciplinary meetings in the past. On August 7, 2006 Mr. Donahue responded to the hearing transcript. He stated that his instruction to appellant that she not attend the March 22, 2005 predisciplinary hearing was not condescending or abusive. Regarding appellant's testimony that she had participated in predisciplinary hearings in the past, Mr. Donahue noted that she was working as an Employee and Workplace Intervention Specialist at that time, not a Workplace Improvement Analyst and her duties had changed significantly from the previous position. On August 13, 2006 appellant disputed Mr. Donahue's statement, arguing error or abuse in his decision not to allow her attendance at the March 22, 2005 predisciplinary meeting.

By decision dated September 22, 2006, the Office hearing representative affirmed the June 3, 2005 decision.

[1] Appellant submitted a CA-2 dated April 6, 2005 for a separate emotional condition claim under OWCP file number 012029848. On April 3, 2006 the Office denied her claim. Appellant requested a hearing which had not been held as of the September 22, 2006 decision in OWCP file number 012031852.

LEGAL PRECEDENT

To establish a claim that she sustained an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.[2]

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 employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to her regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act.[3] The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of her work or her fear and anxiety regarding her ability to carry out her work duties.[4] By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of the employment, such as when disability results from an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.[5]

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors of employment, which may be considered by a physician when providing an opinion on causal relationship, and which are not deemed compensable factors of employment and may not be considered.[6] When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.[7] When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.[8] As a rule, allegations

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[2] *Pamela D. Casey,* 57 ECAB ___ (Docket No. 05-1768, issued December 13, 2005; *George C. Clark,* 56 ECAB ___ (Docket No. 04-1573, issued November 30, 2004).

[3] 5 U.S.C. §§ 8101-8193.

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

[5] *Id*.

[6] *Dennis J. Balogh,* 52 ECAB 232 (2001).

[7] *Margaret S. Krzycki,* 43 ECAB 496 (1992).

[8] *See Charles D. Edwards,* 55 ECAB 259 (2004).

alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.[9]

ANALYSIS

The Board finds that appellant has not established a compensable factor of employment under the Act.

Appellant's allegation that Mr. Donahue erred or acted abusively when he told her not to attend the March 22, 2005 predisciplinary meeting concerns an administrative or personnel matter. The Board has found that an administrative or personnel matter will be considered to be an employment factor only where the evidence discloses error or abuse on the part of the employing establishment.[10] In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[11]

Appellant stated that her emotional condition was sustained on March 23, 2005 when an employee, who had been threatened by the employee who was the subject of the March 22, 2005 predisciplinary meeting, telephoned appellant and asked why she did not attend the meeting and how he could protect himself from the hostile employee. She felt frustrated and helpless because she could not assist employees who were afraid of this employee.

Mr. Donahue stated that the March 22, 2005 meeting was a predisciplinary meeting generally attended by an employee, his or her supervisor and their representatives. Attending predisciplinary meetings was not a function of appellant's position, nor was it included in her job description. It was not normal procedure to have appellant attend a predisciplinary meeting. Mr. Donahue gave her instruction that she was not needed at the March 22, 2005 meeting. He stated that his instruction to appellant that she not attend the March 22, 2005 predisciplinary hearing was not condescending or abusive. Regarding her hearing testimony that she had participated in predisciplinary hearings in the past, Mr. Donahue noted that she was working in a different position then and her duties had since changed.

The Board finds that appellant has not submitted sufficient evidence to show that Mr. Donahue committed error or abuse with respect to this administrative matter, his management decision not to include appellant in the March 22, 2005 predisciplinary meeting. Mr. Donahue provided a reasonable explanation for instructing appellant not to attend the predisciplinary meeting: that it was not normal procedure for her to attend such meetings and that attending these meetings was not a function of her position. He denied that he was abusive in his instruction to appellant that she not attend the March 22, 2005 predisciplinary meeting. Appellant has not established that Mr. Donahue erred or acted abusively in instructing her not to attend the March 22, 2005 predisciplinary meeting. Thus, appellant has not established a compensable employment factor under the Act with respect to this administrative matter.

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[9] *See Charles E. McAndrews*, 55 ECAB 711 (2004).

[10] *Charles D. Edwards*, *supra* note 8.

[11] *Janice I. Moore*, 53 ECAB 777 (2002).

For the foregoing reasons, appellant has not established a compensable employment factor under the Act. Therefore, she has not met his burden of proof in establishing that she sustained an emotional condition in the performance of duty.[12]

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to compensable factors of employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 22, 2006 is affirmed.

Issued: July 12, 2007
Washington, DC

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

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

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

[12] Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence. *See Barbara J. Latham,* 53 ECAB 316 (2002); *Garry M. Carlo,* 47 ECAB 299 (1996).