United States Department of Labor
Employees' Compensation Appeals Board

R.A., Appellant	)	
and	)	**Docket No. 08-166**
	)	**Issued: August 20, 2008**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Boston, MA, Employer	)	

Appearances:
Appellant, pro se
No appearance, for the Director

Oral Argument June 18, 2008

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 24, 2007 appellant filed a timely appeal of an October 27, 2006 merit decision denying her emotional condition claim, and a July 12, 2007 nonmerit decision denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained stress-induced cardiomyopathy as a result of conditions of her employment; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On May 8, 2006 appellant, a 54-year-old lead transportation security screener, filed an occupational disease claim, alleging that she developed stress-induced cardiomyopathy as a result of harassment by her immediate supervisor, "STSO Celito Warrick."

On May 22, 2006 the Office informed appellant that the information submitted was insufficient to establish her claim. It advised her to submit details of alleged employment incidents that caused or contributed to her claimed condition. The Office also asked for a medical report containing a description of her symptoms, a diagnosis, and an opinion, with medical reasons, on the cause of her condition.

Appellant submitted an undated statement alleging that Mr. Warrick had been "hostile" towards her on several occasions, yelling at her, pointing his finger at her, and accusing her of doing things she had not done. She stated that, on April 20, 2006, while she was filing forms, Mr. Warrick yelled at her, telling her to stop what she was doing and begin processing bags. After appellant removed two bags from the belt, she reportedly told Mr. Warrick that he "could do two bags." Mr. Warrick then "yelled" at her "not to tell him what to do," started pointing his finger at her, and told her to stop yelling. He allegedly refused her request to call a screening manager, and threatened to "write her up" if she called for one. Appellant left the room, went to the "Stan" room, and asked for a screening manager. She stated that she developed chest pains as a result of the events of April 20, 2006.

In an undated document, entitled "CA-2 Statement," appellant alleged that Mr. Warrick threatened her verbally on several occasions, including March 28, 2006, always waiting to make sure that there were no other supervisors around. She stated that, from the end of March until April 20, 2006, Mr. Warrick picked on her and accused her of doing things she did not do. Appellant reiterated her allegations concerning the events of April 20, 2006, stating that she was "in fear for her life" as a result of Mr. Warrick's harassment. After reporting the alleged incident to a screening manager, Patrick O'Connor, appellant was told to move to another location to work, because it was against policy to remove a supervisor. The screening manager denied her request to go home, due to staffing issues. At that point, appellant allegedly developed severe chest pains, for which she was hospitalized. In a statement dated May 25, 2006, she claimed that Mr. Warrick had threatened that, if she asked for the screening manager, she would lose her job.

Mr. Warrick disputed appellant's allegations, indicating that, on the date in question, appellant refused to comply with his instructions to process bags which were on the conveyor belt, and spoke to him in a disrespectful manner. He stated that he addressed the issue in a reasonable manner, and that he made a sincere effort to resolve the matter in an amicable manner.

Appellant submitted a witness statement from LTSO Blaikie, who was present during the alleged April 20, 2006 incident. Mr. Blaikie described the interaction, as he perceived it, on the date in question, noting that appellant had refused to follow Mr. Warrick's instructions to process bags on the conveyor belt. He heard Mr. Warrick say, "Do what you are told. I am the supervisor and you are the lead." When appellant asked for a screening manager, Mr. Warrick stated, "I want to take care of this here and now." When appellant started to walk out of the room, the supervisor indicated

that he would "write her up" if she left. Mr. Blaikie reported that appellant ignored Mr. Warrick and left the room. Appellant, then, went to a supervisor's desk and called a screening manager.

In a note dated April 20, 2006, Supervisor Kelly Confar stated that appellant did not make attempts to communicate with Mr. Warrick. He was not present at the time of the conflict on April 20, 2006, but was informed by Mr. Blaikie that there was no physical or verbal abuse by either party. The record contains an unsigned employee counseling form dated April 20, 2006, reflecting that appellant failed to follow her supervisor's instructions, and that she left the room without informing her main supervisor.

In a statement dated April 20, 2006, Maureen Twomey-Roux, screening manager, indicated that, on that date, appellant informed her by radio that a screening manager was needed. She responded immediately, and found appellant breathing hard and agitated. Appellant told her that Mr. Warrick "had been yelling and had a very threatening manner towards her." After she complained of pain and tightness in her chest, the rescue squad was summoned, and appellant was transported to Massachusetts General Hospital.

The record contains an undated statement from Thomas J. Malone, a coworker, who indicated that appellant was difficult to work with. He characterized her behavior as "antagonistic." Mr. Malone also stated that her lack of respect for her supervisors' authority was detrimental to the cohesiveness of the screening location. An undated statement from Mr. Condar documented a dispute between appellant and a subordinate regarding the subordinate's refusal to follow appellant's instructions.

In a statement dated May 25, 2006, appellant reiterated her claim that her stress-induced cardiomyopathy was caused by workplace harassment, and particularly by the events of April 20, 2006. She stated that Mr. Warrick was a "mean unprofessional supervisor and he took all his anger and frustration on [her.]" Noting that he abused her mentally, she stated that she was afraid from his threats that she would lose her job.

By decision dated October 27, 2006, the Office denied appellant's claim, finding that she had failed to identify a compensable factor of employment. It did not address the sufficiency of the medical evidence.[1]

On May 17, 2007 appellant requested reconsideration of the October 27, 2006 decision. In a letter dated November 28, 2006, she contended that the actions of Mr. Warrick, particularly the verbal assault that took place on April 20, 2006, constituted compensable factors of employment. In support of her request, appellant submitted a copy of the witness statement from Mr. Blaikie, and a copy of a May 20, 2006 report from a Dr. Jeffrey Winterfield, both of which were previously submitted to the Office. She also submitted an internet background document entitled "[s]tress-induced cardiomyopathy."

[1] The record also contains numerous medical reports and records from Massachusetts General Hospital. However, as appellant's claim was denied on the grounds that she failed to establish a compensable factor, the medical evidence is not relevant to the issue before the Board and, therefore, will not be addressed in this decision.

By decision dated July 12, 2007, the Office denied appellant's request for reconsideration, finding that the evidence submitted was insufficient to warrant merit review.

LEGAL PRECEDENT -- ISSUE 1

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 work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act. On the other hand, the disability is not covered where it results from such factors as an 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.[2]

Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.[3] Assignment of work is an administrative function of the employer,[4] as is an investigation by the employing establishment.[5] Likewise, an employee's dissatisfaction with perceived poor management is not compensable under the Act.[6]

ANALYSIS -- ISSUE 1

Appellant alleged that she developed stress-induced cardiomyopathy as a result of a number of employment incidents. The Office denied her claim on the grounds that she did not establish any compensable employment factors. The Board must, therefore, initially review whether these alleged incidents are covered employment factors under the Act.

Appellant has not attributed her condition to the performance of her regular duties or to any special work requirement arising from her employment duties under *Cutler,* nor has she implicated her workload as having caused or contributed to her condition. Rather she contends that she was harassed by her supervisor, Mr. Warrick. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[7] However, for harassment or discrimination to give rise to a compensable

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

[3] *Michael Thomas Plante*, 44 ECAB 510 (1993).

[4] *James W. Griffin*, 45 ECAB 774 (1994).

[5] *Jimmy B. Copeland*, 43 ECAB 339 (1991).

[6] *Id.*

[7] *See Lori A. Facey*, 55 ECAB 217 (2004). *See also David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[8] In the present case, appellant has not submitted sufficient evidence to establish her claim.[9]

Appellant alleged that Mr. Warrick had been "hostile" towards her on several occasions, yelling at her and pointing his finger at her. She stated that, from the end of March until April 20, 2006, Mr. Warrick picked on her and accused her of doing things she did not do. Appellant accused Mr. Warrick of being a "mean unprofessional supervisor" who "took all his anger and frustration on [her]" and abused her mentally to the degree that she was afraid that she would lose her job. Appellant's allegations alone are insufficient to establish a factual basis for her claim.[10] She submitted no evidence to corroborate her general allegations of harassment. On the contrary, the evidence reflects that appellant's own behavior was viewed by at least one coworker as "antagonistic," and her lack of respect for her supervisors' authority was deemed detrimental to the cohesiveness of the screening location. General allegations that appellant was treated unfairly and disrespectfully by management are insufficient to establish that harassment did, in fact, occur. Thus, the Board finds that appellant has not established a compensable employment factor under the Act with respect to these above-described allegations of harassment.

Appellant alleged that she was harassed and abused by Mr. Warrick on April 20, 2006 when he yelled at her and told her to stop what she was doing and to begin processing bags. After she removed two bags from the belt, she reportedly told Mr. Warrick that he "could do two bags." Mr. Warrick then "yelled" at her "not to tell him what to do;" pointed his finger at her; told her to stop yelling; refused her request to call a screening manager; and threatened to "write her up" if she called for one. Although the assignment of work duties and disciplinary matters are generally related to the employment, they are administrative functions of the employer rather than regular or specially assigned work duties of the employee.[11] However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[12] The Board finds that appellant has not submitted sufficient evidence to show that the employing establishment committed error or abuse with respect to these matters. It was reasonable for a supervisor to instruct an employee to stop performing one assignment to begin another. It was also reasonable for him to reprimand appellant, tell her to stop yelling, and threaten to "write her up" for insubordination, when she refused to follow his instructions. Mr. Warrick's act of pointing his finger at appellant would not be considered threatening or abusive under the existing

[8] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[9] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

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

[11] *See Lori A. Facey*, *supra* note 7. *See also Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[12] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

circumstances. Thus, appellant has not established a compensable employment factor under the Act with respect to the actions taken by her supervisor in this case.

While the Board has recognized the compensability of verbal abuse in certain situations, this does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.[13] While the manner and tone of appellant's supervisor may have made appellant uncomfortable, the Board finds that the alleged statements of the supervisor did not constitute verbal abuse or harassment.[14] The supervisor's statements may have offended appellant, but did not rise to the level of coverage under the Act.

Appellant stated that she developed chest pains as a result of the events of April 20, 2006, and that she was "in fear for her life" as a result of Mr. Warrick's harassment. However, under the circumstances of this case, the Board finds that appellant's emotional reaction must be considered self-generated, in that it resulted from her perceptions regarding her supervisors' actions.[15] Appellant also complained that, after reporting the April 20, 2006 incident to Mr. O'Connor, she was told to move to another location to work, because it was against policy to remove a supervisor. Appellant's frustration from not being permitted to work in a particular environment is not a compensable factor under the Act.[16]

For the foregoing reasons, appellant has not established any compensable employment factors under the Act. Therefore, she has not met her burden of proof to establish that she sustained a stress-induced cardiomyopathy as a result of conditions of her employment.[17]

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[18] the Office regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[19] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file

[13] *See Leroy Thomas, III*, 46 ECAB 946, 954 (1995).

[14] *See Denis M. Dupor*, 51 ECAB 482, 486 (2000) (explaining that the mere utterance of an epithet which may engender offensive feelings in an employee does not sufficiently affect the conditions of his employment to constitute a compensable factor).

[15] *See David S. Lee*, 56 ECAB 602 (2005).

[16] *See Cyndia R. Harrill*, 55 ECAB 522 (2004).

[17] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

[18] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, [t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

[19] 20 C.F.R. § 10.606(b)(2).

his or her application for review within one year of the date of that decision.[20] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[21] The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[22]

ANALYSIS -- ISSUE 2

Appellant's May 17, 2007 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

In support of her request for reconsideration, appellant submitted a copy of the witness statement from Mr. Blaikie, and a copy of a May 20, 2006 report from a Dr. Winterfield. As these documents duplicate evidence already in the case record, they have no evidentiary value and do not constitute a basis for reopening appellant's claim for merit review.[23] Appellant also submitted an internet background document entitled "[s]tress-induced cardiomyopathy." However, this document is not relevant to the issue decided by the Office, namely whether appellant established a compensable factor of employment. The Board finds that the evidence submitted does not constitute relevant and pertinent new evidence not previously considered by the Office.[24] Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her May 17, 2007 request for reconsideration.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained stress-induced cardiomyopathy causally related to factors of employment. The Board also finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

[20] 20 C.F.R. § 10.607(a).

[21] 20 C.F.R. § 10.608(b).

[22] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

[23] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review. *Denis M. Dupor, supra* note 14.

[24] *See Susan A. Filkins*, 57 ECAB 630 (2006).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 12, 2007 and October 27, 2006 are affirmed.

Issued: August 20, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board