

FACTUAL HISTORY

This case has previously been before the Board. The facts and the circumstances of the Board's September 25, 2003 decision are hereby incorporated by reference.¹ The relevant facts are briefly set forth.

On January 8, 2001 appellant, then a 35-year-old secretary, alleged that she sustained post-traumatic stress aggravated by her employment. She contracted post-traumatic stress as a result of her military tour in the near east during the Persian Gulf War, but was not placed on medication at that time. Appellant alleged that, as a result of her exposure to harassment at the employing establishment, her symptoms had increased. She identified incidents in her federal employment as aggravating her emotional condition including disputes over advanced sick leave for her father's funeral, harassment by her supervisor and not being selected for a permanent position. In a May 6, 2003 decision, the Office denied appellant's claim. It denied reconsideration on May 6, 2003. In a decision dated September 25, 2003, the Board affirmed the Office's determination that appellant had failed to establish a compensable factor of employment. The Board further found that the Office properly denied appellant's request for reconsideration.²

By letter dated December 16, 2003, appellant requested reconsideration before the Office. She submitted a clinical intake form report by Dr. M. Mueller, who reviewed appellant's history and diagnosed chronic post-traumatic stress disorder and panic disorder with recurrent major depression.

By decision dated January 30, 2004, the Office denied merit review of appellant's case. As appellant's claim was denied for failure to establish a compensable employment factor, the new evidence did not address this issue but consisted of medical evidence which was not relevant.

On October 22, 2007 appellant again requested reconsideration. In a June 9, 2005 report, Dr. Richter, a psychiatrist, diagnosed a mood disorder, panic disorder without agoraphobia and post-traumatic stress disorder. He opined that appellant's post-traumatic stress disorder/panic disorder began in Iraq, but the stress of her difficult work environment had exacerbated her symptoms and led to further deterioration of her mental status.

By decision dated October 26, 2007, the Office denied appellant's request for reconsideration without further reviewing the merits of the case.

On January 6, 2008 appellant filed an appeal with the Board. By decision dated July 8, 2008, the Board remanded the case to the Office for reconstruction of the case record and to issue a new decision to protect appellant's appeal rights.³

¹ Docket No. 03-1590 (issued September 25, 2003).

² *Id.*

³ Docket No. 08-645 (issued July 8, 2008).

By decision dated September 3, 2008, the Office denied modification of its prior decisions. It found that the evidence was not sufficient to establish any compensable factors of employment.

LEGAL PRECEDENT

To establish that an emotional condition was sustained in the performance of duty, a claimant must submit the following: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified employment factors are causally related to the emotional condition.⁴

When employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation. However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for the periods after the aggravation has ceased.⁵

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.⁶ On the other hand, the disability is not covered where it results from such factors as an employee's frustration from not being permitted to work in a particular environment or to hold a particular position.⁷

ANALYSIS

In a September 25, 2003 decision, the Board affirmed the denial of appellant's claim for an emotional condition as she had failed to establish a compensable factor of federal employment. Specifically, it was found that appellant did not establish administrative error in the denial of leave or in not being selected for a permanent position. Further, she did not establish harassment by her supervisor. Thereafter, appellant submitted new medical evidence in support of her claim. She submitted a clinical intake form by Dr. Meuller and a medical report from Dr. Richter. However, this evidence is not relevant to the reason appellant's claim was denied, *i.e.*, that she had not established the existence of a compensable work factor. Appellant did not submit any evidence to establish as factual her claims of error in the aforementioned

⁴ *Robert Johns*, 51 ECAB 137, 141 (1999).

⁵ *Raymond W. Behrens*, 50 ECAB 221 (1999).

⁶ 5 U.S.C. §§ 8101-8193.

⁷ See *Thomas D. McEuen*, 41 ECAB 387, 390-91 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

administrative matters or of harassment. Only after she establishes a compensable work factor does the Office address medical evidence.⁸

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. As appellant has not established any compensable work factors, the medical evidence need not be addressed.⁹

CONCLUSION

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 3, 2008 is affirmed.

Issued: June 15, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

⁸ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

⁹ *Id.*