

In a decision dated September 17, 2007, an administrative law judge found that the employing establishment “failed to reasonably accommodate [appellant’s] back disability and violated the Rehabilitation Act when he was sent home on June 1, 2005 and [was] told there was no work for him within his restrictions.” She indicated that appellant was a limited-duty employee, but even if the employing establishment in good faith considered him a light-duty employee, he was treated differently than other light-duty employees. The judge concluded that appellant “has demonstrated that he was discriminated against based on his physical disability (back injury) and perceived disability (heart condition) in violation of the Rehabilitation Act when the agency failed to reasonably accommodate his back disability and sent him home, denied him the opportunity to work and charged him with AWOL [absent without leave] based on his perceived disability.”

By decision dated January 25, 2008, the Office denied the claim for compensation. It found that on June 1, 2005 appellant was in a “light-duty” status (nonemployment related) rather than a “limited-duty” status (employment related), a distinction that was not “effectively brought forward in the EEOC decision.” The Office found that the employing establishment’s failure to provide appellant with the dispatch position as of June 2005 was not error or abuse.

Appellant requested a hearing before an Office hearing representative, which was held on May 28, 2008. By decision dated August 18, 2008, the hearing representative affirmed the January 25, 2008 decision. She found that the EEOC decision was of diminished probative value finding that the administrative law judge “was under the impression that [appellant] continued to have an accepted work-related back claim for which he was entitled to compensation.” According to the hearing representative, “The judge also appeared to believe that the [employing establishment] is able to routinely accommodate all other employees seeking accommodation but treated [appellant] disparately. However, the case record neither confirms that in this case nor is the employing establishment routinely able to accommodate employees who request such.”

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment.¹ This burden includes the submission of detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.² A claimant must also submit rationalized medical opinion evidence establishing a causal relationship between the claimed condition and the established, compensable work factors.³

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 illness has some connection with the employment but nevertheless does not come within the coverage of

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

³ *See Bonnie Goodman*, 50 ECAB 139, 141 (1998).

workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his 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.⁴

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.⁵ Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.⁶ While the findings of other federal agencies are not dispositive with regard to questions arising under the Act, such evidence may be given weight by the Office and the Board.⁷

ANALYSIS

Appellant submitted a September 17, 2007 decision from an administrative law judge in an EEOC action finding that the employing establishment had violated the Rehabilitation Act, 29 U.S.C. § 791. The judge found that the employing establishment had failed to make reasonable accommodation for appellant's disability. The Office found the decision to be of diminished probative value on the grounds that appellant was not in a limited-duty status for an employment injury, but in a light-duty status for a nonemployment-related condition.

The Board notes that the administrative law judge explained her conclusion regarding limited duty based on testimony from the employing establishment. In addition, the judge also clearly found that, even if the employing establishment had in good faith classified appellant as a light-duty employee, there was still a violation of the Rehabilitation Act. She found that appellant was treated differently than other light-duty employees.

Moreover, the judge based her decision in part on a finding that the employing establishment denied appellant the dispatch job on their perception that he was disabled due to a heart condition, a perception that was not supported by the medical evidence. This finding of error was not based on a distinction between a limited-duty and a light-duty status.

The Board finds no basis for the conclusion that the September 17, 2007 EEOC decision is of diminished probative value on the issue of administrative error. The judge provided a detailed decision that set forth factual findings pertaining to appellant's allegations, evaluated the

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

⁵ *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

⁶ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

⁷ *Pamela D. Casey*, 57 ECAB 260, 264 (2005); *Michael Deas*, 53 ECAB 208, 217 (2001).

credibility of testimony and evidence presented and made appropriate findings. As noted above, while her findings are not dispositive under the Federal Employees' Compensation Act, such evidence may be given weight by the Office and the Board.

The evidence of record is sufficient to establish error by the employing establishment in failing to reasonably accommodate appellant under the Rehabilitation Act. Appellant has established a compensable work factor. The case is remanded for proper consideration of the medical evidence.⁸ After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that the evidence establishes a compensable work factor and the case is remanded to the Office for proper consideration of the medical evidence.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 18 and January 25, 2008 are set aside and the case remanded for further action consistent with this decision of the Board.

Issued: September 22, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

⁸ When the evidence establishes a compensable work factor, the Office must base its decision on an analysis of the medical evidence. *Jeral R. Gray*, 57 ECAB 611 (2006).