United States Department of Labor
Employees' Compensation Appeals Board

B.S., Appellant	)	
and	)	**Docket No. 09-1652**
	)	**Issued: March 10, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Dallas, TX, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 22, 2009 appellant filed a timely appeal from a May 8, 2009 merit decision of the Office of Workers Compensation Programs denying her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.[1]

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On September 9, 2008 appellant, then a 58-year-old customer service supervisor, filed a traumatic injury claim form for a stress-related condition which occurred on March 10, 2008.

[1] The record reflects that appellant has a separate emotional condition claim, No. xxxxxx350, for which she also filed an appeal which was docketed as No. 09-1650. The Board will adjudicate appeal No. 09-1650 separately from the instant matter.

She stopped work on March 12, 2008. Appellant alleged that Jason Kacsuta, her manager, informed her that Stephanie Harris, an up line manager, instructed him to tell appellant not to use her time card anymore. She also stated that Mr. Kacsuta told her that his supervisors in California were able to complete their assignments in eight hours. Appellant indicated she used her time card when doing bargaining craft work or working excessive overtime. She had an anxiety attack while performing bargaining craft work that day. Appellant alleged that her manager refused to take her to the doctor; rather, he called the paramedics, who took her to the hospital.

In a September 22, 2008 statement, Mr. Kacsuta noted that on March 10, 2008 appellant stated she was stressed and was going to call her doctor. He instructed her to fill out a 3971 form and go home, but she refused to leave the building and wanted to see a company doctor. Mr. Kacsuta repeated his instructions, but appellant stated that she was having an anxiety attack and asked him to call paramedics, which he did. The paramedics found nothing wrong with appellant but she insisted on going to the hospital.

In an October 8, 2008 letter, the Office advised appellant of the factual and medical evidence needed to establish her claim. No additional evidence was received.

By decision dated November 10, 2008, the Office denied her claim on the grounds that fact of injury was not established. It found that none of the alleged events occurred, other than appellant's manager calling paramedics on March 10, 2008. The Office noted that no medical evidence had been received in support of the claim.

On December 3, 2008 appellant's attorney requested a telephonic hearing, which was held on March 25, 2009. At the hearing, appellant testified that, prior to March 10, 2008, she had swiped her time card when she performed excessive craft work. She explained craft duties were performed by employees she supervised and she only performed such work when there was not adequate manpower. Appellant swiped the time card when she wished to be paid for her overtime hours. She was told on March 10, 2008 not to swipe her time card anymore. Appellant stated that Mr. Kacsuta had begun working at their station on March 3, 2008 and did not have the right to instruct her to stop swiping her time card. She reiterated that he told her that his supervisors in California were able to complete their work in eight hours. Appellant stated that management was attempting to save money by not having supervisors claim credit for working overtime. She contended that the contract allowed for payment for overtime after eight hours and thirty minutes. Appellant's attorney argued that supervisors were covered by overtime laws. He contended that, since compensatory overtime was illegal, employees were obligated to tell the employing establishment that they had worked overtime and be paid for it.

Appellant submitted medical evidence concerning her hospitalization, diagnostic testing and her chronic headache/migraine conditions. In reports dated May 28 through November 4, 2008, Jesse C. Ingram, Ph.D., a clinical psychologist, advised that appellant had depressed mood, stress and anxiety related to her job and that she was to remain off work.

Appellant submitted a January 27, 2000 letter concerning additional pay for supervisors by John E. Potter, senior vice president of operations. He noted that "under the terms of the current EAS pay package, FLSA special exempt supervisors are eligible for additional straight

time pay when authorized to work more than 8.5 hours in a workday and for all authorized hours on a nonscheduled workday."

By decision dated May 8, 2009, an Office hearing representative affirmed the November 10, 2008 decision, finding that appellant failed to establish any compensable factor of employment.

LEGAL PRECEDENT

To establish a claim that an emotional condition arose 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 the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the 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 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. 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.[3] 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 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.[4]

Workers' compensation does not cover an emotional reaction to an administrative or personnel action unless the evidence shows error or abuse on the part of the employing establishment.[5] It is well settled that an employee's reaction to supervisory instructions is not a

[2] *D.L.*, 58 ECAB 217 (2006).

[3] *Ronald J. Jablanski*, 56 ECAB 616 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[4] *Id.*

[5] *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566, 572-73 (1991).

compensable factor of employment in the absence of error or abuse.[6] In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.[7]

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. 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 attributes her emotional reaction on March 10, 2008 to an instruction by her manager to not swipe her time card anymore. As noted, an employee's reaction to supervisory instructions is not a compensable factor of employment in the absence of error or abuse.[9]

It is not disputed that Mr. Kacsuta gave an instruction regarding appellant's time card. Mr. Potter's January 27, 2000 letter states that supervisors are eligible for pay when they work more than 8.5 hours during a workday. However, the letter alone does not establish that appellant's managers erred or were abusive by instructing her to no longer swipe her time card. The letter does not, on its face, indicate that any instruction from management to not use her time card was erroneous or unreasonable. Furthermore, even if the letter pertained to appellant's situation, it indicates only that a qualifying supervisor would be eligible for certain pay, not that such a supervisor would be entitled to such pay. There is insufficient evidence to establish that the direction that appellant not swipe her time card rises to the level of compensable error or

[6] *T.G.*, 58 ECAB 189 (2006); *C.S.*, 58 ECAB 137 (2006); *A.K.*, 58 ECAB 119 (2006); *D.L.*, *supra* note 2. *See Reco Roncaglione*, 52 ECAB 454 (2001) (disagreement with the associate warden held not compensable, whether viewed as a disagreement with supervisory instructions or as perceived poor management); *Robert Knoke*, 51 ECAB 319 (2000) (where the employee attributed his emotional injury to the manner in which his supervisor spoke to him about undelivered mail, the Board found that a reaction to the instruction itself was not compensable, as work assignments given by supervisors in the exercise of supervisory discretion are actions taken in an administrative capacity and, as such, are outside the coverage of the Act); *Frank A. Catapano*, 46 ECAB 297 (1994) (supervisory instructions, with which the employee disagreed, held not compensable in the absence of evidence of managerial error or abuse); *Rudy Madril*, 45 ECAB 602 (1994) (where the employee questioned his supervisor's instructions to move from belt number five to belt number six and unload mail, and became upset because he felt he was being pushed and picked on, the Board found that the incident was not a compensable factor of employment).

[7] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[8] *Supra* note 6.

[9] *See supra* note 6.

abuse. Appellant stated that her manager did not have the right to issue such instruction; there is no evidence specific to appellant's situation that shows that the manager acted in error.

In her statement accompanying her claim, appellant also indicated that her manager refused to take her to the doctor after she started feeling ill. This does not pertain to a regular or specially assigned work duty of appellant. The evidence also does not establish that Mr. Kacsuta acted unreasonably in exercising his administrative discretion regarding appellant. In his September 22, 2008 statement, he noted discussing the matter with appellant. When she indicated that she was having an anxiety attack, he called paramedics at her request who took her to a hospital. The record reflects that Mr. Kacsuta acted reasonable in this matter.

Appellant's statement also indicated that she had an anxiety attack while performing bargaining unit craft work on March 10, 2008. While emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable,[10] appellant's statement lacked specificity and did not clearly identify any particular work duty that caused anxiety.[11] This general allegation is insufficient to establish a compensable employment factor.

Appellant has not established that the issuance of an instruction by the employing establishment to which she attributes her emotional condition is a compensable factor of employment. Therefore, she has not established her claim.[12]

CONCLUSION

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.

[10] *C.S.*, *supra* note 6.

[11] *See Robert Breeden*, 57 ECAB 622 (2006) (the claimant did not establish the factual aspects of assertions regarding work duties where the claimant's statements lacked specificity and where the claimant did not submit sufficient supporting evidence).

[12] As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record. *Marlon Vera*, 54 ECAB 834 (2003).

ORDER

IT IS HEREBY ORDERED THAT the May 8, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 10, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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