United States Department of Labor
Employees' Compensation Appeals Board

P.C., Appellant	)	
	)	**Docket No. 08-1321**
and	)	**Issued: November 21, 2008**
SOCIAL SECURITY ADMINISTRATION, OFFICE OF DISABILITY ADJUDICATION & REVIEW, Harrisburg, PA, Employer	)	

Appearances:
Appellant, pro se
Office of 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 April 3, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated March 21, 2008 which affirmed a September 18, 2007 decision 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 the case.

ISSUE

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

FACTUAL HISTORY

On May 9, 2007 appellant, then a 55-year-old senior case technician, filed an occupational disease claim alleging that she developed stress at work. She became aware of her

illness on May 1, 2007 and realized her condition was caused or aggravated by her employment on the same date. Appellant stopped work on May 1, 2007 and did not return.

In a May 30, 2007 statement, appellant noted that in February 2007 her office switched from paper case files to an electronic computer system. She alleged that she was provided with inadequate training and expected to maintain her current production standard while learning the new system. Appellant generally alleged that she was overworked.

Appellant submitted nurse practitioner notes February 23 to July 9, 2007 for treatment of bipolar disorder. A May 2, 2007 prescription note, from a nurse practitioner, excused appellant from work for two weeks due to medical problems. A May 29, 2007 attending physician's report from Dr. Gregory B. Sullivan, a Board-certified psychiatrist, diagnosed bipolar mood disorder beginning in 1990. Dr. Sullivan noted that it was unknown whether the condition was caused or aggravated by appellant's work duties.

By letter dated June 22, 2007, the Office asked appellant to submit additional factual and medical information, including a detailed description of the employment factors or incidents that she believed contributed to her claimed illness. It also requested additional medical evidence.

In a July 9, 2007 statement, appellant reiterated that her office switched from paper files to an electronic system and she received inadequate training. On April 3 and 23, 2007 she was given unsatisfactory performance evaluations and her supervisor stated that she wasted time away from her desk and made personal telephone calls and e-mails. Appellant alleged that her supervisor micromanaged employees, monitored her work area and created a hostile work environment. She submitted an April 3, 2007 performance evaluation which indicated that she completed an average share of the workload; however, there was room for improvement in the area of case work on numbers and the amount of time needed to work-up files and complete case development. Appellant's supervisor further noted that appellant completed work assignments in a timely manner or as scheduled and used a balanced approach to complete the work assignments effectively and efficiently using appropriate technology. The supervisor suggested appellant limit performing certain duties on a specific workday to decrease the amount of multitasking needed each day.

In an October 17, 2006 decision, the Office denied appellant's claim finding that the claimed emotional condition did not arise in the performance of duty.

On September 24, 2007 appellant requested a telephonic oral hearing which was held on January 10, 2008. She alleged that she was treated disparately regarding her work performance. Appellant submitted treatment notes from Nate Segal, a licensed clinical social worker, dated June 22 to September 25, 2007. Mr. Segal treated appellant for bipolar disorder and work-related stress.

By decision dated March 21, 2008, the hearing representative affirmed the October 17, 2007 decision.

LEGAL PRECEDENT

To establish her claim that she sustained an emotional condition in the performance of duty, appellant 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.[1]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,[2] the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.[3] 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 under the Act.[4] When an employee experiences emotional stress in carrying out her employment duties, and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of an in the course of employment. This is true when the employee's disability results from her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of her work.[5] 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 under the Act. 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 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.[6]

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.[7] If a claimant does implicate a factor of

---

[1] *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[2] 28 ECAB 125 (1976).

[3] 5 U.S.C. §§ 8101-8193.

[4] *See Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

[5] *Lillian Cutler, supra* note 2.

[6] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler, supra* note 2.

[7] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

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 generally alleged that she was treated disparately and received inadequate training on a new computer system which was introduced into her department. She stated that management expected her to maintain her case load while learning the new system. When appellant's case production fell short she was given a poor performance evaluation. She also alleged that her supervisor micromanaged the staff, creating a hostile environment. Appellant alleges that these matters constituted harassment. However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.[9]

The factual evidence fails to support appellant's allegations regarding harassment.[10] Appellant did not submit sufficient evidence to establish such treatment by her supervisor. Although she alleged that her supervisors engaged in actions which she believed constituted harassment, she provided no corroborating evidence, such as witness statements, to establish her allegations.[11] The Board finds that appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

Other allegations by appellant regarding her work assignments relate to administrative or personnel actions. In *Thomas D. McEuen*,[12] the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[13]

---

[8] *Id.*

[9] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991). *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 Michael A. Deas*, 53 ECAB 208 (2001).

[11] *See William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

[12] *See Thomas D. McEuen, supra* note 6.

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

Appellant stated that in February 2007 her office switched from paper case files to an electronic computer system and she was provided with inadequate training. The Board has held that matters relating to training are administrative in nature and not covered under the Act in the absence of error or abuse.[14] Appellant has not submitted any evidence to support her contention that any training she received on the new system was inadequate or that the employing establishment's actions in this regard were unreasonable. She submitted no evidence to establish that the agency erred or acted unreasonably in expecting her to maintain her production while learning the new system. Thus appellant has not established administrative error or abuse in the performance of these actions and therefore it is not compensable under the Act.

Appellant alleged that on April 3 and 23, 2007 she was unfairly given an unfavorable performance review. She stated that during the evaluation her supervisor advised that she wasted time away from her desk and made personal telephone calls and e-mails. Although the handling of evaluations is generally related to the employment, it is an administrative function of the employer and not a duty of the employee.[15] As noted, 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. The evidence is insufficient to establish that the employing establishment erred or acted abusively in this matter. The performance evaluation noted appellant's strengths including that she completes an average share of the workload, completes work assignments in a timely manner or as scheduled, she uses a balanced approach to complete the work assignments effectively and efficiently uses appropriate technology. The supervisor suggested areas for improvement including case work-up numbers, better management of the amount of time needed to work-up files and complete case development and limited performance of certain duties on a specific workday to decrease the amount of multi-tasking needed each day. There is no evidence that appellant's supervisor acted unreasonably in this administrative matter. Appellant has not provided evidence to substantiate error, or abusive. She has not established a compensable factor pertaining to the performance evaluation.

Appellant's allegations of micromanagement by her supervisor also fall outside the coverage of the Act. The Board has found that an employee's complaints concerning the manner in which a supervisor performs his duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor or manager in general must be allowed to perform his duties and that employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.[16] The evidence indicates that the employing establishment acted reasonably. The Board finds that appellant has not submitted evidence to support her assertions in this regard. Likewise, appellant alleged that her supervisor monitored her work area and observed her activities. Although the monitoring of activities at work is generally related to the employment, it is an administrative function of the employer, and not a duty of the employee.[17]

---

[14] *See Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

[15] *C.S.*, 58 ECAB ___ (Docket No. 06-1583, issued November 6, 2006).

[16] *See Marguerite J. Toland*, 52 ECAB 294 (2001).

[17] *See Dennis J. Balogh*, 52 ECAB 232 (2001); *see also John Polito*, 50 ECAB 347 (1999).

Appellant has presented no corroborating evidence to support that the employing establishment erred or acted abusively with regard to these allegations. The Board finds that the evidence does not show that the employing establishment acted unreasonably in its effort to monitor appellant's work as a way of improving her job performance.

Appellant made a general allegation of overwork, noting that she was provided with inadequate training on the new electronic computer system. As noted, the record fails to support this allegation and appellant has not provided evidence to substantiate such actions were in error, abusive or unreasonable in nature. To the extent that appellant alleged overwork, this is not established by the evidence.[18] She did not attribute her emotional condition to performing a specific regular or specially assigned duty in her job. Consequently, appellant has not established her claim for an emotional condition as she has not attributed her claimed condition to any compensable employment factors.[19]

CONCLUSION

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the March 21, 2008 and September 18, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 21, 2008
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

[18] The Board has held that overwork, as substantiated by sufficient factual information to support the claimant's account of events, may be a compensable factor of employment. *Bobbie D. Daly*, 53 ECAB 691 (2002).

[19] As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).