U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROL L. FOTI and U.S. POSTAL SERVICE,
WOODACRE MAIN POST OFFICE, Woodacre, CA

Docket No. 00-2045; Submitted on the Record;
Issued November 28, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has met her burden of proof to establish that she developed an emotional condition while in the performance of duty; and (2) whether the Office of Workers' Compensation Programs' denial of reconsideration constituted an abuse of discretion.

On December 16, 1999 appellant, then a 57-year-old mail clerk, filed an occupational disease claim, alleging that since the installation of a new postmaster in 1997 her work environment had been one of extreme aggression and hostility, resulting in her filing 12 union grievances and an Equal Employment Opportunity claim. On October 1, 1999 the employing establishment placed appellant in emergency off-duty status, without pay, as a result of a shortage discovered in her flexible credit account. In her narrative statement, appellant reiterated that she had "experienced a variety of problems with the current [postmaster] since his installation in April 1997" and stated that she suffered from a "variety of physical and mental ailments" she believed were "directly related to work." Appellant did not give a detailed account of the actions or conditions she believed contributed to her condition. Appellant also submitted several progress notes from her treating physicians.

By letter dated December 20, 1999, the employing establishment challenged appellant's claim, alleging that appellant had a long history of financial shortages and disciplinary infractions. The employing establishment submitted numerous documents cataloguing appellant's conduct throughout the years.

In a January 31, 2000 letter, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office further advised appellant to submit additional factual and medical evidence supportive of her claim, including an explanation of what she termed a hostile working environment, and specific descriptions of all practices, incidents, confrontations, etc., she believed affected her condition.

By letter dated February 22, 2000, appellant submitted several treatment notes and asked for a 30-day extension to allow her to collect her medical records and other pertinent documents.

By decision dated March 3, 2000, the Office found the evidence of record insufficient to establish that appellant sustained an injury in the performance of duty.

By letter dated March 13, 2000, appellant submitted additional treatment notes, and stated that she intended to submit all relevant documents for reconsideration of her claim.

In a decision dated March 31, 2000, the Office refused to reopen appellant's claim for merit review on the grounds that the evidence submitted was insufficient.

The Board has duly reviewed the case record on appeal and finds that appellant has not established that she developed an emotional condition while in the performance of duty.

The initial question presented in an emotional condition claim is whether appellant has alleged and substantiated compensable factors of employment contributing to her condition. Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where disability results from an emotional reaction to regular or specially assigned work duties or 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 factors such 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. Disabling conditions resulting from an employee's feeling of job insecurity or desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.[1] When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.[2] In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to her assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.[3]

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

[2] *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985).

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

In addition, matters involving disciplinary actions, performance evaluations, leave requests, work assignments and work monitoring relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.[4] Although the handling of disciplinary actions, evaluations and leave requests, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[5] 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.[6]

A person who claims benefits under the Act[7] has the burden of establishing the essential elements of her claim, including that she sustained an injury while in the performance of duty and that she had disability as a result.[8] In accordance with the Federal (FECA) Procedure Manual, in order to determine whether an employee actually sustained an injury in the performance of her duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components which must be considered one in conjunction with the other. The first component to be established is that the employee actually experienced the employment incident or exposure which is alleged to have occurred.[9] In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[10] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[11] The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.[12]

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[4] *See 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).

[5] *Id.*

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

[7] 5 U.S.C. §§ 8101-8193.

[8] *Daniel R. Hickman*, 34 ECAB 1220 (1983); *see* 20 C.F.R. § 10.110(a).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

[10] *John C. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease" defined).

[11] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[12] *Manuel Garcia*, 37 ECAB 767 (1986).

In the present case, appellant has not submitted sufficient factual information to establish that she was injured in the course of her federal employment. Despite the Office's January 31, 2000, detailed request, appellant did not submit any factual evidence or provide a statement of work events which she felt contributed to or aggravated her condition. As the record is devoid of any factual evidence to establish that appellant's federal employment contributed to or aggravated her condition, the first prong of the fact-of-injury test has not been established.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained a stress-related or emotional condition in the performance of duty.[13]

The Board also finds that the Office properly denied appellant's request for reconsideration on March 31, 2000.

Section 10.606 of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.[14] Section 10.608 provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.

On reconsideration appellant submitted additional progress notes from her treating physicians. However, this evidence does not contain a complete description of the events and circumstances appellant believes contributed to her condition, as requested by the Office. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[15] Thus, the Office properly denied appellant's request for reconsideration on March 31, 2000.

[13] 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, 502-03 (1992).

[14] 20 C.F.R. § 10.606(b).

[15] *Dominic E. Coppo*, 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

The decisions of the Office of Workers' Compensation Programs dated March 31 and March 3, 2000 are hereby affirmed.[16]

Dated, Washington, DC
November 28, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

[16] The Board notes that appellant submitted numerous factual and medical documents in support of her claim. This appears to be appellant's response to the Office's January 31, 2000 letter requesting additional information. However, the Board may not consider such evidence for the first time on appeal. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(a). Appellant may resubmit this evidence to the Office, together with a request for reconsideration.