



even while on medication. She alleged that she first noticed her stress-induced high blood pressure was caused or aggravated by her employment on May 1, 2002 and attributed it to the employing establishment "not filling vacancies and employees not receiving credit cards to perform duties. Decisions not being made by upper management to alleviate the problem." Appellant stopped work on or about July 17, 2002 and has not returned. Submitted were copies of diagnostic, hospital and medical records which included a July 17, 2002 emergency medical record signed by Dr. Stanley J. Callister, diagnosing possible cardiovascular accident (CVA) and possible premigraine aura); a July 17, 2002 computerized tomography (CT) scan of the head, in which a Dr. George N. Baldwin diagnosed a small single lucent area within the skull on the right side; and a July 17, 2002 emergency medical record diagnosing right inferior lateral quadrantanopia.

In an August 9, 2002 statement, appellant stated that her elevated blood pressure, which occurred on July 17, 2002 was due to the stress and tension she has endured at work. She stated that her Office had a vacancy from January 25, 2001 to March 25, 2002 and, to keep the work caught up, two coworkers split the work required to be done by the vacancy. When another coworker retired on January 3, 2002 appellant stated that the same two employees were required to do the work of four employees and that they started working Fridays. She stated that, around that time, a merger of the organization occurred and her group was put under an individual who had no background in supply. Appellant stated that, in March 2002, Cindy Vilhauer was placed in her organization on a task list even though she was against having her there. She related that Ms. Vilhauer was not trained to do the type of work that they did, but management chose to put her over there even though she had said "no." Appellant advised that also in March 2002 her shoulder blades were tight from tension and stress and she saw Dr. Glenn H. Thompson, a chiropractor, but had to undergo trigger point injections to relieve the tension. She stated that on March 25, June 3 and on July 1, 2002 the vacancies in her organization were finally filled and that the new employees needed to be trained and issued a Government Visa Credit Card to complete their jobs. Appellant stated that no one would make the decision as to who the credit cards would be issued through and, when the cards were finally issued, they were not doing the job of purchasing as Dugway Procurement did not have the proper program on their computers. She related that on July 17, 2002 she was typing on her computer when she lost part of her vision in her right eye. Appellant indicated that she went to the dispensary and then to the hospital and that her blood pressure was 172/110 even though she was on medication. She stated that her blood pressure has stayed at a normal range since she has been home for three weeks.

In an August 15, 2002 report, Dr. Carolyn Forbes, a Board-certified family practitioner, advised that appellant was seen in April and May 2002 for muscle spasms in her neck and shoulders which required trigger point injections to relieve the spasm. In July 2002, she developed high blood pressure and severe headaches, which resulted in an emergency room visit on July 17, 2002. Dr. Forbes advised that, as a result of stress and the above symptoms, appellant was on a medical leave of absence. In an undated note, she advised that appellant would be on a leave of absence from work beginning August 5, 2002.

In an undated report, which the Office received September 30, 2002, Dr. Thompson advised that he started seeing appellant on March 7, 2002 for neck pain and opined that her neck pain was directly related to the stress from work.

On September 9, 2002 the Office received a statement from Doryl Lish, Director of Public Works, controverting appellant's claim. He advised that since the Chemical Weapons Demilitarization plant (CAMDS) supply organization was merged with Desert Chemical Depot (DCD), it seemed that appellant had constant problems with the merger, particularly with the attitude that DCD was going to take over CAMDS and then use its money for DCD's use. As a result of this mistrust, Mr. Lish indicated that all decisions made by DCD command elements were treated with great skepticism. He indicated that most of what bothered appellant from the time she started working for him was a result of this attitude. In addition, Mr. Lish stated that she was talking about retiring from the moment he became her supervisor. He stated that one employee from DCD and the four supply clerks from CAMDS were merged together as a result of the merger of supply functions. Mr. Lish indicated that, during this time, two CAMDS employees opted to leave or retire, which created a shortage of employees in the supply division. He stated that Ms. Vilhauer was assigned to the supply division in March to assist with the shortage of employees and to accommodate her own restrictions. Mr. Lish stated that appellant had problems with Ms. Vilhauer from the beginning and related some examples. He further stated that because of massive changes pending army-wide with regard to how purchasing and contracting would be handled, there was a lack of credit cards. Mr. Lish indicated that it was only in early August that management was able to work out with Dugway Procurement to temporarily oversee the credit card purchasing program. He stated that he agreed with appellant's frustrations of the problems within the office and that she had worked a great deal of overtime, but opined that the pressure she felt was from herself and not her supervisors.

In a September 20, 2002 letter, appellant responded to Mr. Lish's statement. With regard to the merger of DCD and CAMDS, she stated that no one from the supply organization was involved and when she asked questions, Mr. Lish almost never got back to her. Appellant indicated that he never wanted the responsibility of new employees and that he had always been attentive to the DCD employees, even after the merger. She advised that no one asked her whether she was in agreement to employ Ms. Vilhauer and indicated that, as Ms. Vilhauer had no background, they would have to train her. Appellant stated that there was not enough time to keep up with their work, let alone train Ms. Vilhauer. She admitted that she had problems working with Ms. Vilhauer and noted that Ms. Vilhauer had filed a grievance against her. Appellant stated that she had a meeting with Col. Cooper over some of the problems with Mr. Lish, after the situation with Ms. Vilhauer took place. She related that she had been eligible for retirement since May 2002 and had been talking about it long before Mr. Lish became her supervisor. Appellant also stated that she worked both overtime and compensation time and that she had told Mr. Lish numerous times that the work was overwhelming and that they were not going to be able to keep up the pace much longer. She alleged that Mr. Lish denied her 12 hours of compensation time when she updated the supply manual during a temporary duty (TDY) trip to Maryland, on the basis that the time was not approved prior to her going on TDY. Appellant also indicated that, during a meeting with Mr. Lish and Harold Oliver, discussing the merger, she commented that she would like to combine both tool cribs from Supply and CAMDS, but was told by Mr. Oliver that things would be left like they were. In March appellant stated that she had contacted Sonya Crossley from purchasing to find out what needed to be done to get her new employees a credit card and relayed this information to Mr. Lish, but he did not act on the information until July.

By decision dated January 31, 2003, the Office denied appellant's claim for failure to establish fact of injury.

In a letter dated August 20, 2003, appellant requested reconsideration. She stated that she suffered a blind spot in her right eye caused by high blood pressure and, according to Dr. Callister, possibly causing a stroke or the onset of a migraine. Appellant indicated that the date of injury should have been July 17, 2002 as opposed to May 1, 2002. She stated that Mr. Lish portrayed her as a negative person by challenging her compensation claim and that reference letters from former supervisors were submitted to disclaim such negativity. Appellant advised that Mr. Lish got his information from Bridgette Gehring rather than coming to her and that he knew next to nothing about her organization. She stated that she was not qualified to train Ms. Vilhauer in the field where they needed the help. Appellant related that, when Mr. Lish failed to respond to her merger questions, she contacted Joe Brandon, a member of the Commanders Committee, and stated that he was aware of the problems she was having with Mr. Lish as well as the situation concerning Ms. Vilhauer. She also stated that she retired on January 3, 2003 but that Mr. Lish did not make an appearance at her luncheon or open house. Submitted with her request for reconsideration were letters of references pertaining to her character; numerous diagnostic test results from mammograms, pap, blood, ultrasounds; and office notes from Dr. Forbes. In a February 13, 2003 letter, Dr. Thompson advised that he saw appellant on March 7, 2002 for neck and shoulder pain. He stated that most of her pain appeared to be due to stress, particularly at work and that there was moderate to severe muscle spasms with mechanical dysfunction throughout the entire area. Dr. Thompson stated that he treated appellant from March until April, but there was not a complete remission of the muscle spasms until injections were done by Dr. Forbes.

By decision dated December 24, 2003, the Office modified its previous decision to accept the fact of injury component, but affirmed the denial of the claim as the claimed injury did not occur in the performance of duty.

In a letter dated January 20, 2004, appellant requested reconsideration. She contended that her blood pressure rose and she experienced a blind spot in her right eye while she was on the job. By decision dated February 3, 2004, the Office denied appellant's reconsideration request on the grounds that she failed to raise a substantial question or submit relevant evidence not previously considered.

### **LEGAL PRECEDENT -- ISSUE 1**

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.<sup>1</sup>

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<sup>1</sup> *Fred Faber*, 52 ECAB 107 (2000).

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*,<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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 and 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.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

Appellant has alleged that the medical conditions which she experienced on July 17, 2002 were due to the stress and tension she endured at work. Although, she later contended that the date of injury should have been July 17, 2002, as opposed to May 1, 2002, the CA-2 form clearly

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<sup>2</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *James E. Norris*, 52 ECAB 93 (2000).

<sup>5</sup> *Lillian Cutler*, *supra* note 2.

<sup>6</sup> *See James E. Norris*, *supra* note 4.

<sup>7</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>8</sup> *Id.*

indicates that appellant first noticed that her stress-related conditions were caused or aggravated by her employment on May 1, 2002. Moreover, the medical record indicates that she was seeking medical attention for neck pain around the April to May 2002 time period. As appellant's physicians relate her medical conditions to stress at work, the Board first needs to determine whether she has established a compensable factor of employment.

Appellant alleged that she sustained stress and tension from the following actions of the employing establishment: not filling vacancies, the issuance of credit cards to new employees, management's decision to employ Ms. Vilhauer and management's decision to not combine both tool cribs and decisions not being made by upper management to alleviate the problem. Although the assignment of work duties and the monitoring of activities of work are generally related to the employment, they are administrative functions of the employer rather than regular or specially assigned duties of the employee.<sup>9</sup> Thus, the employing establishment's decision of when a vacancy is filled, who is hired or transferred into the vacancy and how various organizations are run within a department are administrative functions of the employer rather than regular or specially assigned work duties of the employee. Where disability results from an employee's emotional reaction to certain administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, the disability does not fall within the coverage of the Act.<sup>10</sup> The Board has found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.<sup>11</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>12</sup> In this case, however, there is no evidence of any error or abuse by the employing establishment. Thus, appellant has not established a compensable factor in this regard.

Appellant has contended that she had one vacancy from January 25, 2001 to March 25, 2002 and, when another employee retired on January 3, 2002 in order to keep the work caught up, the same two employees were required to do the work of four employees and they had to start working Fridays. The Board has recognized that overwork can be a compensable factor.<sup>13</sup> To the extent that appellant may be alleging that she was overworked as a result of the vacancies in her organization, she must submit additional factual details and other evidence supporting that she was overworked.<sup>14</sup> She has not done so in this case. The Board finds that appellant has not established a compensable factor of employment in this regard.

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<sup>9</sup> See *Beverly R. Jones*, 55 ECAB \_\_\_\_ (Docket No. 02-1441, issued March 31, 2004).

<sup>10</sup> *Phillip L. Barnes*, 55 ECAB \_\_\_\_ (Docket No. 02-1441, issued March 31, 2004).

<sup>11</sup> *Charles D. Edwards*, 55 ECAB \_\_\_\_ (Docket No. 02-1956, issued January 15, 2004); *Michael Thomas Plante*, 44 ECAB 510 (1993).

<sup>12</sup> *Lori A. Facey*, 55 ECAB \_\_\_\_ (Docket No. 03-2015, issued January 6, 2004); *Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>13</sup> *Sandra F. Powell*, 45 ECAB 877 (1994).

<sup>14</sup> *Id.*

Appellant has contended that, after the merger occurred, her group was put under Mr. Lish, who had no background in supply issues and who knew next to nothing about her organization, but relied on Ms. Gehring for his information. She further alleged that no one from the supply organization was involved in the merger and when she asked questions, Mr. Lish almost never got back to her. Appellant further stated that Col. Cooper, Joe Brandon and the Commander were aware of the problems she was having with Mr. Lish, including the situation with Ms. Vilhauer. Although the record reflects that a merger had taken place, there is no factual evidence in the record to verify her contentions.

Appellant alleged that, although she found out what was required to obtain a credit card for a new employee from Sonya Crossly in March 2002 and had relayed this information to Mr. Lish, no action was taken until July. Mr. Lish, however, stated that there were massive changes pending army-wide with how purchasing and contracting would be handled and that it was not until early August that management was able to work out with Dugway Procurement to temporarily oversee the credit card purchasing program. Absent evidence establishing error or abuse, a mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable.<sup>15</sup> In this case, there is no showing that the employing establishment's delay in issuing credit cards to new employees was the result of error or abuse. The Board has held that an employee's dissatisfaction with working in an environment and frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable under the Act.<sup>16</sup>

Appellant has asserted that no one involved her in the decision of whether to employ Ms. Vilhauer. Mr. Lish has indicated that Ms. Vilhauer was assigned to the supply division in March to assist with the shortage of employees and to accommodate her restrictions. As previously stated, frustration from not being permitted to work in a particular environment is not covered by workers' compensation.<sup>17</sup> Moreover, the Board has held that the manner in which a supervisor exercises his discretion falls outside the coverage of the Act. This principal recognizes that a supervisor or manager must be allowed to perform their duties and that employees will at times disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.<sup>18</sup> In this case, there is no showing of abuse by the employing establishment in assigning Ms. Vilhauer to the supply division.

Matters concerning leave requests<sup>19</sup> and training<sup>20</sup> are an administrative function of the employer and not a duty of the employee. Appellant has alleged that Mr. Lish wrongly denied her 12 hours of compensation time during a TDY trip to Maryland, when she worked on the

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<sup>15</sup> *Linda J. Edwards-Delgado*, 55 ECAB \_\_\_\_ (Docket No. 03-823, issued March 25, 2004).

<sup>16</sup> *See Beverly R. Jones*, *supra* note 9.

<sup>17</sup> *Id.*

<sup>18</sup> *Linda J. Edwards-Delgado*, *supra* note 15.

<sup>19</sup> *Charles D. Edwards*, *supra* note 11.

<sup>20</sup> *James E. Norris*, *supra* note 4.

supply manual. She further alleged that she was not qualified to train Ms. Vilhauer in the field where they needed help. However, appellant has submitted insufficient evidence to substantiate that the employing establishment erred in the administration of these personnel matters.

Appellant has further asserted that Mr. Lish portrayed her as a negative person by challenging her compensation claim. However, the processing of compensation claims bears no relation to appellant's day-to-day or specially-assigned duties.<sup>21</sup>

Appellant has also asserted that Mr. Lish did not make an appearance at her retirement luncheon or open house. This matter, however, bears no connection between her assigned duties and, thus, her reaction must be considered as self-generated.<sup>22</sup>

As appellant has failed to establish a compensable factor of employment, the Board concludes that she has not met her burden of proof in establishing that her medical conditions arose in the performance of duty as alleged.<sup>23</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulation provide that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.<sup>24</sup> Section 10.608(b) provide that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>25</sup>

### **ANALYSIS -- ISSUE 2**

The Office denied appellant's reconsideration request on the grounds that her January 20, 2004 letter neither raised substantive legal questions, nor included new and relevant evidence and was thus, insufficient to warrant merit review. In support of her reconsideration request, appellant argued that, although there may never be a medical reason as to why she experienced a blind spot in her eye and her blood pressure plummeted to dangerous figures, the event happened while she was at work and thus, it occurred in the performance of duty. However, she did not submit new and relevant evidence with her reconsideration request, but merely reiterated her allegations. Her January 20, 2004 request for reconsideration does not show that the Office

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<sup>21</sup> *Phillip L. Barnes*, 55 ECAB \_\_\_\_ (Docket No. 02-1441, issued March 31, 2004).

<sup>22</sup> *See id.*

<sup>23</sup> 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).

<sup>24</sup> 20 C.F.R. § 10.606(b)(2) (1999).

<sup>25</sup> 20 C.F.R. § 10.608(b) (1999).

erroneously applied or interpreted a point of law or advanced a point of law or fact not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2). Moreover, as she failed to submit any new or relevant evidence with her request for reconsideration, she is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).

As appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office did not abuse its discretion in denying she January 20, 2004 request for reconsideration.

### **CONCLUSION**

The Office properly denied appellant's claim on the grounds that she failed to establish a compensable factor within the performance of duty. The Office also properly denied she reconsideration request without conducting a merit review of the record.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated February 3, 2004 and December 24, 2003 are affirmed.

Issued: August 20, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member