United States Department of Labor
Employees' Compensation Appeals Board

W.S., Appellant	)	
and	)	**Docket No. 08-2126**
	)	**Issued: April 15, 2009**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Richmond, VA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 29, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 24, 2008, denying her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained an injury causally related to her federal employment.

FACTUAL HISTORY

On September 20, 2007 appellant, then a 42-year-old tax adviser, filed an occupational claim (Form CA-2) alleging that she sustained asthma, chronic obstructive pulmonary disease (COPD) and hypertension from her employment. In a statement, she indicated that she had filed

a prior compensation claim[1] and the processing of her claim had been "extremely frustrating and exasperating since its conception." According to appellant, on September 7, 2007 she had become upset after a conversation with the employing establishment about the claim, resulting in aggravation of her respiratory condition and hypertension, requiring hospitalization from September 7 to 11, 2007. The record indicates that appellant had been off work since June 18, 2007 due to the left shoulder injury.

The Office requested that appellant submit additional evidence regarding her claim by letter dated October 17, 2007. By decision dated February 1, 2008, it denied the claim for compensation, finding that appellant had not established an injury in the performance of duty.

Appellant requested a hearing before an Office hearing representative, and a telephonic hearing was held April 25, 2008. According to her, on September 7, 2007 while at home she had spoken with the Office and was told that the employing establishment had not submitted certain documents relevant to her left shoulder injury claim. Appellant then called to speak with the employing establishment's compensation liaison, but she was not at work, and she had to speak with an assistant. The assistant told appellant that she had not submitted certain paperwork, which appellant disputed. Appellant indicated that she became very upset as a result of the telephone calls, began wheezing and later went to the hospital.

By decision dated June 24, 2008, the hearing representative affirmed the February 1, 2008 decision. The hearing representative found appellant was not in the performance of duty on September 7, 2007.

LEGAL PRECEDENT

Appellant has the burden of proof to establish that the condition for which she claims compensation was causally related to her federal employment.[2] The Federal Employees' Compensation Act[3] provides for the payment of compensation benefits for disability or death of an employee resulting from personal injury sustained while in the performance of duty. The phrase "while in the performance of duty" in the Act has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers' compensation law of "arising out of and in the course of employment."[4] In addressing this issue, the Board has stated that, in the compensation field, to occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be said to be engaged in his or her master's business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.[5]

[1] OWCP File No. xxxxxx923 for a left shoulder injury.

[2] *Pamela R. Rice*, 38 ECAB 838 (1987).

[3] 5 U.S.C. §§ 8101-8193.

[4] *Bernard D. Blum*, 1 ECAB 1 (1947).

[5] *Allan B. Moses*, 42 ECAB 575 (1991); *Mary Keszler*, 38 ECAB 735 (1987).

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*,[6] the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Act. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.[7] When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment.[8]

ANALYSIS

Appellant filed an occupational claim and noted frustration at the processing of her prior compensation claim. Her primary allegation is that on September 7, 2007 she became upset after having telephone conversations with the Office and the employing establishment regarding her prior compensation claim, resulting in aggravation of her asthma and hypertension.

With respect to the September 7, 2007 telephone conversations, the evidence does not establish that appellant was in the performance of duty. Appellant was not at work and was on leave at the time of the telephone calls. The September 7, 2007 telephone conversations did not occur at a time when the employee may reasonably be said to be engaged in her master's business, or at a place where she may reasonably be expected to be in connection with the employment. Moreover, the discussion of the workers' compensation claim was not fulfilling her job duties or incidental thereto. The handling of a workers' compensation claim is not related to job duties and is not considered a compensable work factor.[9] Appellant's frustration at the processing of her claim, including her reaction on September 7, 2007 at the employing establishment's perceived failure to submit evidence in her compensation claim, does not arise from a compensable work factor. She must allege, and the record must substantiate, a compensable work factor with regard to her claim. In the absence of a compensable work factor substantiated by the record, the emotional reaction and any associated physical complaints are not compensable.[10] The Board finds appellant has not established an employment-related injury in this case.

[6] 28 ECAB 125 (1976).

[7] *See Robert W. Johns*, 51 ECAB 137 (1999).

[8] *K.W.*, 59 ECAB ___ (Docket No. 07-1669, issued December 13, 2007).

[9] *David C. Lindsey, Jr.*, 56 ECAB 263, 270 (2005); *George A. Ross*, 43 ECAB 346 (1991). The handing of a compensation claim is an administrative function and is not compensable absent evidence of error or abuse by the employing establishment. No probative evidence of error or abuse was submitted.

[10] *See Beverly R. Jones*, 55 ECAB 411 (2004). If a compensable work factor is established, then the medical evidence is examined to determine if there was diagnosed injury arising out of the employment. *Id.*

CONCLUSION

The evidence of record is not sufficient to meet appellant's burden of proof to establish an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 24 and February 1, 2008 are affirmed.

Issued: April 15, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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