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D.S., Appellant	)	
	)	
and	)	Docket No. 08-1244
	)	Issued: January 13, 2009
U.S. POSTAL SERVICE, SAN JOSE	)	
PROCESSING & DISTRIBUTION CENTER,	)	
San Jose, CA, Employer	)	
	)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

On March 24, 2008 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated July 13, 2007 and March 6, 2008 denying her occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On April 23, 2007 appellant, then a 52-year-old clerk, filed an occupational disease claim for an emotional condition sustained on or before that day. She attributed the condition to a letter of warning, alleged violations of medical restrictions and contravention of a settlement agreement pursuant to a prior emotional condition claim.¹ Appellant submitted a May 5, 2003 mediation settlement letter in which the employing establishment agreed to stipulate in her disability retirement application that there was no work available within her medical restrictions.

In a May 10, 2007 letter, the Office advised appellant of the factual and medical evidence needed to establish her claim. It emphasized the need for detailed descriptions of the identified work factors, corroborated by witness statements and documentation. Appellant did not submit additional evidence.

By decision dated July 13, 2007, the Office denied appellant's claim on the grounds that fact of injury was not established. It found that she failed to substantiate any compensable employment factors.

In a November 13, 2007 letter, appellant requested reconsideration. She submitted a September 1, 2007 statement attributing her condition to a November 2000 letter of warning, working the "graveyard shift" from April to November 2001 in violation of her medical restrictions and unspecified violations of a settlement agreement. Appellant also provided January 29 and April 11, 2007 reports from Dr. Stephen J. Heckman an attending licensed clinical psychologist, who stated that she would be able to return to work if she were limited to working six hours a day on the day shift only, in a low noise environment with a commute of 30 minutes or less. She also submitted September 1, 2007 psychiatric evaluation by Dr. George Karalis, an attending psychiatrist, finding her totally disabled for work for two years due to the alleged work factors.

By decision dated March 6, 2008,² the Office denied modification on the grounds that additional evidence submitted did not establish fact of injury. It noted that appellant's allegations regarding work shifts and a letter of warning were adjudicated in her prior emotional condition claim.

LEGAL PRECEDENT

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 an illness has some connection with the employment but nevertheless does not come within the

¹ The Office assigned the April 23, 2007 claim File No. xxxxxx000. Appellant filed a prior emotional condition claim on November 27, 2000 under File No. xxxxxx602, later denied by the Office. File No. xxxxxx602 is not before the Board on the present appeal.

² The record contains two copies of the decision. The first copy appearing in the record is dated March 6, 2008. The second is dated March 4, 2008. Both decisions are identical other than the difference in the issuance date. The Board notes that this discrepancy is nondispositive.

concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³ 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 his frustration from not being permitted to work in a particular environment or to hold a particular position.⁴

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.⁵ 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.⁶

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of employment incidents and conditions which the Office found not to have occurred. Therefore, the Board must review whether she submitted sufficient evidence to establish the alleged incidents and conditions as factual, compensable employment factors under the terms of the Act.

Appellant attributed her emotional condition to violations of a settlement agreement, a letter of warning and being made to work beyond her medical restrictions. In support of her allegations, she submitted a May 5, 2003 settlement agreement stipulating there was no work available within her medical restrictions. The agreement does not establish that appellant's assigned duties violated her medical restrictions. It does not address her other allegations. Therefore, the agreement is insufficient to establish any of the identified work factors as factual.

Dr. Heckman, an attending licensed clinical psychologist, noted work limitations. However, appellant did not submit a job description, supervisory statement or other corroboration that she was made to work outside of those restrictions. Dr. Heckman's opinion is thus insufficient to establish a compensable work factor in this regard.

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ See *Norma L. Blank*, 43 ECAB 384 (1992).

⁶ *Id.*

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty as she failed to establish any compensable factors of employment. As appellant has not established any compensable work factors, the remainder of the medical record need not be addressed.⁷

CONCLUSION

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 6, 2008 and July 13, 2007 are affirmed.

Issued: January 13, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

⁷ Margaret S. Krzycki, 43 ECAB 496, 502 (1992).