

<sup>1</sup> Docket No. 07-2239 (issued February 5, 2008).

Opportunity (EEO) Commission decision finding that the employing establishment had discriminated against her. The administrative judge found the employing establishment had discriminated on the basis of disability by denying appellant's request to continue a Tour 2 schedule (7:00 a.m. to 3:30 p.m.) as of November 1, 2004.<sup>2</sup> The Board noted that the Office had not discussed the evidence submitted on reconsideration. The history of the case as provided in the Board's prior decision is incorporated herein by reference.

By decision dated April 3, 2008, the Office reviewed the case on its merits and determined that the EEO Commission decision did establish a compensable work factor. It found, however, that the medical evidence did not establish a diagnosed condition causally related to the work factor and therefore the claim was denied.

### **LEGAL PRECEDENT**

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment.<sup>3</sup> This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>4</sup> If a compensable work factor is established, a claimant must submit medical evidence establishing causal relationship between the compensable work factor and a diagnosed medical condition.<sup>5</sup>

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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>6</sup>

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.<sup>7</sup> Nevertheless, if the evidence

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<sup>2</sup> The administrative judge found appellant was a "qualified individual with a disability" as she had submitted medical evidence regarding bipolar II disorder, post-traumatic stress disorder (PTSD) and depression.

<sup>3</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>4</sup> *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>5</sup> *Beverly R. Jones*, 55 ECAB 411, 419 (2004).

<sup>6</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>7</sup> *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

demonstrates that the employing establishment erred, acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.<sup>8</sup>

### ANALYSIS

The Office found appellant did establish clear evidence of error and reviewed the case on its merits. The July 26, 2006 EEO Commission decision is probative evidence of discrimination and the Office accepted a compensable work factor in this regard. With respect to additional compensable work factors, the Board notes that in her claim form appellant had referred to disciplinary actions by the employing establishment, including a June 7, 2004 notice of removal and an August 5, 2004 letter of warning. These disciplinary actions are actions taken in an administrative capacity and do not constitute a compensable work factor unless there is evidence that the employing establishment erred or acted abusively.<sup>9</sup> The June 7, 2004 notice of removal was issued for unauthorized removal of documents, and the August 5, 2004 letter of warning was issued for unsatisfactory attendance. There is no probative evidence of record that the employing establishment acted unreasonably in these disciplinary matters. The Board notes that the July 26, 2006 EEO Commission decision did not address specific disciplinary actions by the employing establishment.

The Board accordingly finds that the only compensable work factor established in this case is the employing establishment's failure to accommodate appellant's request to maintain her work schedule as of November 1, 2004. Although she has established a compensable work factor, to establish her claim for compensation appellant must submit rationalized medical evidence on causal relationship between a diagnosed condition and the compensable work factor. Rationalized medical opinion evidence is an opinion based on a complete factual and medical background, supported by medical rationale explaining the nature of the relationship between a diagnosed condition and the compensable work factor.<sup>10</sup>

In this case the record does not contain a rationalized medical opinion on the issue presented. In a duty status report (Form CA-17) dated October 29, 2004, Dr. Morton Meltzer, a psychiatrist, indicated that appellant should remain in a full-time Tour 2 assignment. In a report dated April 8, 2005, he indicated that appellant had been receiving psychotherapy and medication since March 1998 for her chronic illness. Dr. Meltzer stated that the limitations of appellant's illness should be accommodated to provide her an opportunity to be a full-time and productive employee. The report does not contain a complete history, a diagnosis, or a rationalized opinion on causal relationship between appellant's condition and the compensable work factor. In the absence of probative medical evidence, the Board finds appellant did not meet her burden of proof to establish her claim.

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<sup>8</sup> *Margreate Lublin*, 44 ECAB 945, 956 (1993).

<sup>9</sup> *See Charles D. Edwards*, 55 ECAB 258, 266 (2004). In determining whether the employing establishment has erred or acted abusively, the evidence is examined to determine if the employing establishment acted reasonably.

<sup>10</sup> *Beverly R. Jones*, *supra* note 5.

**CONCLUSION**

Appellant did not submit medical evidence establishing causally relationship between a diagnosed emotional condition and the compensable work factor.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 3, 2008 is affirmed.

Issued: January 21, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board