United States Department of Labor
Employees' Compensation Appeals Board

R.C., Appellant	)	
and	)	**Docket No. 08-2224**
	)	**Issued: May 20, 2009**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Dayton, OH, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 12, 2008 appellant, through her representative, filed a timely appeal from the May 9, 2008 merit decision of the Office of Workers' Compensation Programs, which denied compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant sustained an emotional condition in the performance of duty on February 6, 2008.

FACTUAL HISTORY

On February 20, 2008 appellant, then a 46-year-old program support assistant, filed a claim alleging that she sustained a traumatic emotional injury at work on February 6, 2008: "I had a meeting with Mr. Frazee on February 6, 2008, 2:00 p.m. for a decision of proposed removal. This decision was to remove me. I got so stressed out that I left the office and called

Dr. Reynolds and made AP." Appellant stated that during the meeting she could not believe the director had decided to remove her "on all the bogus charges, some of which was false." She stated that she felt Mark D. Frazee, a chief, voluntary and recreation therapy service, was laughing to himself about firing her.

The record shows that appellant was removed from her position effective February 22, 2008 on four charges: allowing an unauthorized user to use her veterans administration computer login, inappropriate conduct, deliberate failure to carry out supervisor's instruction and inappropriate behavior. Mr. Frazee stated that he met with appellant and her union representative on February 6, 2007 to present her with the Medical Center Director's decision to remove her. He stated that when appellant understood she was being fire, she became upset.

In a decision dated May 9, 2008, the Office denied appellant's claim for compensation benefits. It found no incident that could be considered in the performance of duty.[1] The Office specifically found that the termination of an employee is an administrative function of the employer and is not considered to be a compensable factor of employment. It further found no evidence of error or abuse by the employer in terminating her.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for disability of an employee resulting from personal injury sustained while in the performance of duty.[2] When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her 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 resulted from her emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of her work. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.[3]

Workers' compensation law does not cover an emotional reaction to an administrative or personnel action unless the evidence shows error or abuse on the part of the employing

[1] On February 7, 2008 appellant described what happened leading up to the February 6, 2008 meeting. In an effort to be as comprehensive as possible, the Office addressed the compensability of all the events she mentioned. The Board, however, considers this background information and is not convinced that appellant intended to claim a broad occupational injury spanning the course of several months. Instead, appellant's later February 20, 2008 claim form stands as persuasive evidence that she intended to claim a traumatic emotional injury on February 6, 2008, when she learned that she was being removed from her employment.

[2] 5 U.S.C. § 8102(a).

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

establishment.[4] As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[5] The claimant must substantiate allegations with probative and reliable evidence.[6]

ANALYSIS

The evidence shows that appellant had an emotional reaction on February 6, 2008 when she learned in a meeting with her supervisor that the medical center director had decided to remove her from her employment. Although this meeting and appellant's removal, are clearly connected to her employment, the decision to remove an employee for cause is a managerial or administrative function of the employer and is not considered a compensable factor of employment. Appellant's emotional injury, therefore, does not fall within the scope of workers' compensation.

Appellant alleged that the director had decided to remove her on bogus charges, but there is no probative evidence of wrongful termination. She also alleged that she felt that Mr. Frazee was laughing to himself about firing her, but this appears to be nothing more than her personal perception of someone else's mood or thinking. Appellant's union representative attended this meeting and has made no charge of abusive behavior or misconduct by Mr. Frazee. In the absence of proof that the employer committed error or abuse in removing her from her employment, the Board finds that appellant has not met her burden of proof to establish that her February 20, 2008 claim for compensation falls within the scope of the Act.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty on February 6, 2008.

[4] *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566, 572-73 (1991).

[5] *See Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

[6] *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

ORDER

IT IS HEREBY ORDERED THAT the May 9, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 20, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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