

On December 22, 2007 appellant, then a 55-year-old bed management coordinator, filed a claim for compensation alleging that she sustained an emotional injury in the performance of duty during August and September 2007. She came to work on July 3, 2007 and found one of

her Snowbabies turned around so that its bare bottom faced her work space entrance. Appellant faced it forward and thought nothing of it. But when it happened a third time, “I knew that someone was trying to send me a message.” There was already an investigation underway into the defacement of her computer screen,¹ so she believed the “Snowbaby ordeal” was somebody trying to send a message. Appellant did not mention the Snowbaby ordeal for months, until someone came into her work space and grammatically corrected a note by adding the word “are.” She awaited the results of the Navy investigation. She called the investigator, left messages and e-mailed but could not get a response. On August 10, 2007 the investigator called appellant and she related:

“[The investigator] nonchalantly said, they found nothing. I know my blood pressure went sky high. Just by his nonchalant attitude. After discussing this with him and he said the case was closed, I was extremely upset and left with a headache (terrible). I could not get an appointment with [my psychiatrist] but I called her and she called me later and got me to explain what happened and she tried to calm me down. I really felt unprotected, afraid, more paranoid, confused, hurt and betrayed that we had the best Navy investigative team in the world. This was a Friday and I left work around midday....”

In September 2007 appellant e-mailed the investigator to come back to her office. She showed him the grammatical correction on her desk, and she finally told him about the Snowbabies incident. Appellant asked about the status: “He nonchalantly said again ‘oh we didn’t find anything.’ I felt they only interviewed people to please me but I don’t feel they have much documented. From then on I just have gotten worse healthwise and started having headaches daily and stomach nervousness.”

In a decision dated October 24, 2008, the Office denied appellant’s claim for compensation.

On December 4, 2008 appellant requested reconsideration. She clarified what had caused her to become upset:

“It wasn’t the snow babies that upset me. ... My upset after returning to work weren’t the snowbabies. The doctor had asked how were things at work and I told her weekly what was going on but that wasn’t what upset me and I have reiterated to you all time after time and it seems that you all will not go to the source of the matter and that is the INVESTIGATOR who never fed information back to my supervisor, never did a proper investigation and the more I asked about the same case I was working on xxxxxx954 which was still continuing to cause problems. I kept getting nonchalant answers. He was the one upsetting me who was working on my case that never seemed to have done a proper investigation as I have previously have told you all and I don’t see anywhere whereas you all have any other findings involving all of the questions I was asked again on this new case all these questions about the investigation and the results. Well that is what upset me relating case xxxxxx954 when I asked him about the case findings and

¹ This was the subject of a prior claim under OWCP File No. xxxxxx954.

he said it was closed and I went off, felt sick and felt my [blood] pressure was sky rocketing and went home.”

Appellant submitted two medical reports related to her prior claim from May 2007.

In a decision dated January 22, 2009, the Office denied appellant’s request for reconsideration. It found that the request presented no new relevant and pertinent evidence to warrant further review of her case on the merits.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees’ Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² A claimant seeking compensation under the Act has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.³

Workers’ compensation does not cover each and every illness that is somehow related to the employment. 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. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers’ compensation because they are not found to have arisen out of employment.⁴

Workers’ compensation 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 establishment.⁵ As an investigation is generally related to the performance of an administrative function of the employer and not to the employee’s regular or specially assigned work duties, it is not a compensable factor of employment, unless there is affirmative evidence that the employer either erred or acted abusively in the administration of the matter.⁶

As a general rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.⁷ The claimant must substantiate such allegations with

² 5 U.S.C. § 8102(a).

³ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566, 572-73 (1991).

⁶ *Sandra F. Powell*, 45 ECAB 877 (1994). *See also Parley A. Clement*, 48 ECAB 302 (1997) (investigations are administrative matters, and absent sufficient showing of error or abuse, do not constitute compensable employment factors).

⁷ *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).

probative and reliable evidence.⁸ The primary reason for requiring factual evidence from the claimant in support of her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.⁹

ANALYSIS -- ISSUE 1

On appeal, appellant contends that she became upset because the Navy Investigative Service did not properly perform an investigation. “The snow babies didn’t set me off. ... It was the investigator who did not do his job.” Appellant explained that she felt this all stemmed from her original injury in May 2007, which is under a different OWCP claim number.

Although appellant contends that the investigator did not do his job properly, any emotional reaction she had arising from his investigation is not compensable under the Act. The Act does not cover everything that happens at work. The Board has held that it does not cover an emotional reaction to an investigation, which is by its nature an administrative function unrelated to appellant’s duties as a bad management coordinator.

The Board has recognized an exception where the evidence proves error or abuse in the administrative matter, but appellant has submitted no such proof. Appellant’s perception that the investigator did not adequately do his job is not sufficient to establish error in the investigation of her complaints. There is no independent or reliable evidence to support that the investigator committed any administrative error. Even accepting appellant’s description of his demeanor as nonchalance, this does not support a finding of abuse.

Because appellant attributes her emotional reaction around August and September 2007 to a matter that is not compensable under the Act, the Board finds that she has not met her burden of proof to establish that she sustained an injury in the performance of her duties. The Board will therefore affirm the Office’s October 24, 2008 decision denying her claim for workers’ compensation benefits.

The reason the Office assigned a different OWCP claim number to appellant’s December 22, 2007 claim for compensation was that she was alleging an emotional reaction to a new incident or exposure at work. Appellant was not alleging some spontaneous worsening of her May 2007 emotional condition without intervention from any other factors. She was alleging that she became upset as a result of her interaction (or lack thereof) with the investigator around August and September 2007. That would be considered a new injury directly attributable not to what happened in May 2007, but to what happened later that summer. A new injury, and thus a new OWCP claim number.

⁸ *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990); *Pamela R. Rice*, 38 ECAB 838 (1987).

⁹ *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

LEGAL PRECEDENT -- ISSUE 2

The Office may review an award for or against payment of compensation at any time on its own motion or upon application.¹⁰ The employee shall exercise this right through a request to the district Office.¹¹

An employee (or representative) seeking reconsideration should send the request for reconsideration to the address as instructed by the Office in the final decision. The request for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.¹²

A request for reconsideration must be sent within one year of the date of the Office decision for which review is sought.¹³ A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the request for reconsideration without reopening the case for a review on the merits.¹⁴

ANALYSIS -- ISSUE 2

Appellant filed her December 4, 2008 request for reconsideration within one year of the Office's October 24, 2008 merit decision denying her claim for compensation. The request is therefore timely. The question for determination is whether the request met any of the standards for obtaining a merit review of her case.

Appellant's December 4, 2008 request for reconsideration did not show that the Office erroneously applied or interpreted any specific point of law. She did not advance a relevant legal argument not previously considered by the Office, nor provide relevant and pertinent new evidence not previously considered by the Office. Appellant discussed her prior claim from May 2007 and again explained what it was that upset her later that summer. The medical evidence she submitted did not prove that the investigator's conduct constituted administrative error or abuse. It did not address her emotional reaction to the investigator around August and September 2007. Because appellant's request did not meet one of the standards for obtaining a merit review of her case, the Board will affirm the Office's January 22, 2009 decision to deny that request.

¹⁰ 5 U.S.C. § 8128(a).

¹¹ 20 C.F.R. § 10.605.

¹² *Id.* at § 10.606.

¹³ *Id.* at § 10.607(a).

¹⁴ *Id.* at § 10.608.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional injury in the performance of duty around August and September 2007. The Board also finds that the Office properly denied appellant's December 4, 2008 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the January 22, 2009 and October 24, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 3, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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