United States Department of Labor
Employees' Compensation Appeals Board

B.B., Appellant	)	
and	)	**Docket No. 10-722**
	)	**Issued: October 18, 2010**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Gaithersburg, MD, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 25, 2010 appellant filed a timely appeal from an August 30, 2009 merit decision of the Office of Workers' Compensation Programs and a November 16, 2009 decision denying merit review of the claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant established an emotional condition causally related to a compensable work factor; and (2) whether the Office properly denied appellant's application for reconsideration without merit review; under 5 U.S.C. § 8128.

FACTUAL HISTORY

On February 19, 2008 appellant, then a 56-year-old mail processor, filed a traumatic injury claim (Form CA-1) alleging that she sustained an injury on November 17, 2007 when her supervisor harassed her and she developed an anxiety attack. In a narrative statement, appellant

stated that on November 17, 2007, Mr. Royall, a supervisor, called her into his office several times about a leave slip for the prior two days. Appellant refused to sign the leave slips designating she was absent without leave (AWOL) for those days and requested union representation. She began having an anxiety attack and left work to receive treatment at a hospital.

By decision dated April 9, 2008, the Office denied the claim for compensation. It found appellant had not established a compensable work factor.

On August 13, 2008 appellant requested reconsideration of her claim. She submitted SF-50 personnel forms and a treatment note dated July 1, 2008.

In a decision dated November 6, 2008, the Office reviewed the case on its merits and denied modification.

By letter dated April 6, 2009, appellant again requested reconsideration of her claim. She submitted medical evidence regarding treatment for an anxiety disorder. In a statement dated December 4, 2008, Ms. Day a coworker, stated there were a number of occasions when the supervisor spoke unfairly and unprofessionally to appellant. She did not discuss the November 17, 2007 incident. In a March 4, 2009 letter, a union representative stated that in November 2007 appellant had approached her about requested "court leave." The union representative spoke with another supervisor, who indicated that the requested leave could not be approved as it was not for employing establishment business or jury duty, but it could be approved as annual leave. Appellant was advised to submit an appropriate form for annual leave.

By decision dated June 25, 2009, the Office reviewed the case on its merits and denied modification.

On July 17, 2009 appellant again requested reconsideration. She submitted a statement from Mr. Shelton, a coworker, who noted that on November 17, 2007 Mr. Royall "was very loud speaking to [appellant], he was being very abusive to her." Mr. Shelton stated the supervisor called appellant into his office several times.

A telephone conference was held on July 24, 2009 between Mr. Shelton and an Office claims examiner. In a memorandum of that date, the claims examiner advised that while Mr. Shelton saw appellant pass his section to enter Mr. Royall's office on November 17, 2007, he did not observe the meeting or hear the conversation between her and Mr. Royall.

By decision dated August 20, 2009, the Office again denied modification.

In a letter dated October 23, 2009, appellant requested reconsideration of her claim. She argued her supervisor erred in requiring her to sign a leave slip for AWOL, as it was a disciplinary action without union representation.

In a November 16, 2009 decision, the Office denied reconsideration, finding that the accompanying evidence was insufficient to warrant further merit review.

LEGAL PRECEDENT -- ISSUE 1

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.[1] This burden includes the submission of detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[2] A claimant must also submit rationalized medical opinion evidence establishing a causal relationship between the claimed condition and the established, compensable work factors.[3]

Workers' compensation law does not apply to each and every injury or illness that is some how 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.[4]

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.[5] Nevertheless, if the evidence 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.[6]

ANALYSIS -- ISSUE 1

Appellant alleged that she sustained an emotional condition resulting from the actions of her supervisor on November 17, 2007. The initial question is whether appellant has alleged and substantiated a compensable work factor. Once a compensable work factor is established, the medical evidence is reviewed to determine if a diagnosed condition causally related to the compensable work factor has been established.

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

[2] *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

[3] *See Bonnie Goodman*, 50 ECAB 139, 141 (1998).

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

[5] *See Brian H. Derrick*, 51 ECAB 417, 421 (2000). *See also Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566(1991).

[6] *Margreate Lublin*, 44 ECAB 945, 956 (1993). *See also Thomas D. McEuen*, *id*.

Appellant alleged that on November 17, 2007 she was called into her supervisor's office several times regarding a leave slip covering her absence from work on November 15 and 16, 2007. Administrative or personnel matters, involving the use of leave are generally not considered a compensable factor unless there is evidence of error or abuse.[7] Appellant alleges she had to take AWOL for those days, which was erroneous. The evidence of record does not establish error by her supervisor in this administrative matter. According to a union representative, appellant's requested "court leave" was not approved because it did not concern the employer's business or jury duty, but she could submit the proper form for annual leave. There is no probative evidence that appellant was subject to administrative error or that any abuse on the part of her supervisor occurred. The evidence of record indicates that the supervisor acted reasonably in denying appellant's request for "court leave." As to any verbal abuse, Mr. Shelton referred generally to the supervisor speaking loudly and being "abusive," he did not provide further explanation.[8] As noted by the claims examiner, Mr. Shelton was not a party to meeting of appellant and Mr. Royall. The memorandum of telephone conference noted that he did not hear the conversations between appellant and the supervisor.

The Board finds there is no probative evidence of error or abuse with respect to an administrative action on November 17, 2007. It is appellant's burden of proof to establish a compensable work factor and she did not meet her burden in this case. Since she has not established a compensable work factor, the Board will not address the medical evidence.[9]

On appeal, appellant contended that she established a compensable work factor and it was error for the Office to find the medical evidence was immaterial. For the reasons noted above, the Board finds that appellant did not establish a compensable work factor.

LEGAL PRECEDENT -- ISSUE 2

The Federal Employees' Compensation Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision.[10] The employee shall exercise this right through a request to the district office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."[11]

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application 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

[7] *See Joe M. Hagewood*, 56 ECAB 479 (2005).

[8] The Board has held that the raising of a voice during the course of a conversation does not itself warrant a finding of verbal abuse. *Carolyn S. Philpott*, 51 ECAB 175, 179 (1999).

[9] *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

[10] 5 U.S.C. § 8128(a).

[11] 20 C.F.R. § 10.605 (1999).

interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent evidence not previously considered by the Office.[12]

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meet 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 application for reconsideration without reopening the case for a review on the merits.[13]

ANALYSIS -- ISSUE 2

In her October 23, 2009 application for reconsideration appellant alleged that being asked to sign a leave slip as AWOL was a disciplinary action and she was, therefore, entitled to union representation. As noted, the evidence did not support appellant's allegations and she did not submit any new and relevant evidence on the issue. Appellant reiterated her allegation that the supervisor was loud and abusive, without submitting additional evidence.

To warrant reopening the claim for merit review appellant must meet one of the requirements of 20 C.F.R. § 10.606(b)(2). In this case, she did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. In addition, she did not submit new and relevant evidence on the issue of a compensable work factor. Since appellant did not meet a requirement of 20 C.F.R. § 10.606(b)(2), the Office properly denied merit review in accord with 20 C.F.R. § 10.608.

On appeal, appellant stated that she submitted a medical report and an National Labor Relations Board (NLRB) decision on union representation. The record on appeal does not contain such evidence. Appellant argued that she advanced a point of law or fact not previously considered, but the requirement is to show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. For these reasons, the Board finds appellant did not meet the requirements of 20 C.F.R. § 10.606(b)(2).

CONCLUSION

The Board finds that appellant did not establish an emotional condition causally related to a compensable work factor. The Board further finds the Office properly denied merit review of the claim in its November 16, 2009 decision.

[12] *Id*. at § 10.606(b)(2).

[13] *Id*. at § 10.608.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 16 and August 30, 2009 are affirmed.

Issued: October 18, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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