

emotional condition.² She alleged that there were repeated violations by management of her modified work assignment, and disparaging and disparate treatment by a Ms. Feld-Byers, a supervisor.

In a statement dated July 22, 2009, Ms. Feld-Byers stated that appellant was never assigned duties out of her realm of custodial duties. She indicated that appellant became agitated with any changes to her regular routine, such as when she was asked to clean the men's bathroom because the other custodian was on an extended absence. Ms. Feld-Byers never witnessed any inappropriate treatment regarding appellant.

By decision dated September 8, 2009, OWCP denied the claim for compensation. It found there were no compensable work factors established by the evidence of record.

On April 13, 2010 appellant's representative requested reconsideration of the claim. He argued that the record established administrative error by the employing establishment. Appellant submitted an undated statement discussing the employment factors she believed contributed to her emotional condition. She again asserted that she was told to perform duties outside her work restrictions, stating that she was told by Ms. Feld-Byers on numerous occasions to shovel snow on the front walkways and rear ramp. Appellant was subject to disparate and unfair treatment, citing as examples: (1) she was required to use an online "E-Travel" system, while others were not required, and she did not receive proper reimbursement; (2) other workers received Christmas bonuses; (3) there was an unfair division of responsibility between custodians; and (4) she was no longer eligible for overtime as of September 2008. In addition, she alleged that copies of duty status reports (CA-17) were left out for others to see, and she described a June 18, 2009 incident in which Ms. Feld-Byers belittled her in front of her coworkers.

The employing establishment responded in a September 11, 2010 statement from Ms. Feld-Byers, who indicated that the E-Travel system was required for all employees. Ms. Feld-Byers denied that appellant was ever directed to shovel snow, but appellant took it upon herself as a substitute for cleaning duties. With respect to CA-17 forms, she stated that many times appellant left the form on a supervisor's desk. Ms. Feld-Byers reported the form would be copied and one copy placed in a folder. Regarding the June 2009 incident, she stated that appellant was attempting to cut a large cardboard box with a knife and the supervisor became concerned for appellant's safety as appellant appeared agitated. Ms. Feld-Byers told appellant the other employee's had the situation under control and appellant began yelling and would not calm down. According to Ms. Feld-Byers, she always treated appellant and other employees with respect and dignity.

The record also contains a September 10, 2010 statement from the postmaster at appellant's work site. He stated that the job duties were split equally between the two custodial positions. The postmaster stated that Ms. Feld-Byers was respectful and sensitive to her employee's, but appellant did not accept changes easily. When she was told to clean the men's bathroom, she began yelling and screaming. With regard to overtime, the postmaster explained that a casual employee was hired as a custodian when another custodian did not return to work,

² According to appellant's representative, OWCP accepted a claim for injury on March 7, 2008.

and therefore the employing establishment no longer needed appellant to work overtime. The postmaster reiterated that E-Travel was mandatory for all employees, and while appellant was unhappy with the change she was never denied reimbursement. He also stated there were no Christmas bonuses, only awards given for exceptional work performance.

By decision dated October 4, 2010, OWCP reviewed the case on the merits of the claim and denied modification. It found no compensable work factors had been established.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.³ 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.⁴ A claimant must also submit rationalized medical opinion evidence establishing a causal relationship between the claimed condition and the established, compensable work factors.⁵

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 her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁶

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.⁷ 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.⁸

³ *Pamela R. Rice*, 38 ECAB 838 (1987).

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

⁵ See *Bonnie Goodman*, 50 ECAB 139, 141 (1998).

⁶ *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ See *Brian H. Derrick*, 51 ECAB 417, 421 (2000).

⁸ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

ANALYSIS

Appellant alleged that she sustained an aggravation of an emotional condition causally related to factors of her federal employment. The initial question is whether the alleged factors are compensable work factors that are established by the evidence of record.

Appellant alleged that the employing establishment erroneously required her to work outside of her work restrictions, specifically that she was required to shovel snow in December 2008. It is not clear what specific work restriction she believed was being exceeded in this instance. There is a September 24, 2008 CA-17 (duty status report) in which a physician checked “intermittent” for various activities, including bending and stooping. The record and her allegation are not clear as to how long she shoveled or whether it was in violation of her work restrictions. The statement of Ms. Feld-Byers noted that appellant was not required to shovel snow. The Board finds that the evidence is not sufficient to establish a compensable work factor in this regard.

Appellant also alleged she was treated unfairly or differently from other employees. She cited to administrative actions of the employing establishment, such as the travel reimbursement and bonuses. As noted, error or abuse by management could constitute a compensable work factor. There is, however, no probative evidence to substantiate her allegations. As to the E-Travel system, the employing establishment advised this was a mandatory system and appellant was not denied reimbursement for expenses. Appellant was not provided overtime because a casual employee was hired and overtime hours were not necessary. With respect to an alleged Christmas bonus, the employing establishment stated that no employees received a Christmas bonus. Appellant alleged an unfair division of responsibility between custodians, but Ms. Feld-Byers noted the duties were the same. The record does establish that appellant was assigned to clean the men’s bathroom during a period when the other custodian was on leave, but the evidence is not sufficient to establish an unfair division of labor. The Board finds no evidence of error or abuse by her employer as to appellant’s work assignments.

There is also an allegation that the employing establishment erroneously left medical reports in public for other employees to view. Appellant did not provide a detailed statement in this regard. Ms. Feld-Byers stated that appellant left her reports on the supervisors’ desk. The Board finds no probative evidence to substantiate an allegation of error or abuse. As to a June 2009 incident, Ms. Feld-Byers discussed the incident and stated that appellant was informed her help was needed with respect to opening boxes. No evidence was presented of verbal abuse by the supervisor or error in an administrative action.

The Board finds that appellant has not established by probative evidence a compensable work factor. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.⁹

On appeal, appellant’s representative provides citation to case law regarding emotional condition claims and argued that an employee’s statement regarding an employment incident is of great probative value. It is well established that a claimant must substantiate an allegation

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

with probative and reliable evidence.¹⁰ While appellant argued there was error or abuse by management, the Board finds that the evidence of record does not substantiate a compensable work factor.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established an emotional condition causally related to compensable work factors.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 4, 2010 is affirmed.

Issued: November 25, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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

¹⁰ See, e.g., *Joel Parker, Sr.*, 43 ECAB 220 (1991).