

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HAZEL CLARK and DEPARTMENT OF VETERANS AFFAIRS,  
MEDICAL CENTER, St. Louis, MO

*Docket No. 02-2025; Submitted on the Record;  
Issued December 9, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issues are: (1) whether appellant has established an injury causally related to compensable work factors; and (2) whether the Office of Workers' Compensation Programs properly denied her request for reconsideration without a merit review of the claim.

On August 4, 2000 appellant, then a 52-year-old dental hygienist, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained a heart attack, as well as coronary disease, causally related to her federal employment. On the claim form, she stated that she worked in a hostile environment and was subject to reprisal for filing prior Equal Employment Opportunity (EEO) complaints. Appellant also indicated that on February 16, 2000 she was stressed because, on that day, it was confirmed that eight hours of claimed sick leave would be changed to absent without leave (AWOL).

In a narrative statement dated August 4, 2000, appellant reported that on February 16, 2000, after being told that she would be charged with AWOL, she began having symptoms that included shortness of breath and chest pains. Appellant stated that she received treatment on February 16, 2000 at the employing establishment's emergency room; on the following day, she returned to work but had a return of symptoms and was treated at a local hospital. The medical evidence of record indicates that she underwent coronary bypass surgery on February 18, 2000, with a diagnosis of coronary artery disease, myocardial infarction and ventricular septal defect. Appellant underwent additional coronary surgery on February 28, 2000.

By decision dated February 27, 2001, the Office denied the claim, finding that appellant had not established compensable work factors as contributing to a cardiac condition. In a decision dated November 15, 2001, an Office hearing representative affirmed the prior decision. By decision dated July 15, 2002, the Office determined that appellant's request for reconsideration was insufficient to warrant a merit review of the claim.

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

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>1</sup> The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and her federal employment.<sup>2</sup> Neither the fact that the condition manifested during a period of federal employment, nor the belief of appellant that the condition was caused or aggravated by her federal employment, is sufficient to establish causal relation.<sup>3</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 her 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>4</sup>

In this case, appellant alleged that her federal employment contributed to a myocardial infarction, as well as coronary artery disease. The initial question presented is whether the employment factors identified by her are compensable work factors under the Act. Appellant has alleged that she became upset on February 16, 2000 when she learned that eight hours of sick leave she had requested for December 29, 1999 had been changed to AWOL and this contributed to a myocardial infarction. The Board has held that matters involving the use of leave and procedures relating thereto are administrative and personnel matters that are not directly related to an employee's regular or specially assigned duties.<sup>5</sup> In order to be a compensable work factor,

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<sup>1</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>2</sup> *See Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>3</sup> *Manuel Garcia*, 37 ECAB 767 (1986).

<sup>4</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Diane C. Bernard*, 45 ECAB 223 (1993).

the evidence must demonstrate that the employing establishment has erred or acted abusively in administration of a personnel matter.<sup>6</sup>

By memorandum dated November 16, 2000, the employing establishment indicated that appellant was required to have medical certification for sick leave. The employing establishment found that she had not submitted medical certification for sick leave on December 29, 1999 and, therefore, it was changed to AWOL. The record indicates that appellant filed an EEO complaint regarding the medical certification requirement, but there is no decision or other probative evidence of error or abuse by the employing establishment as to either the requirement for medical certification or the decision to charge eight hours of AWOL for December 29, 1999. In the absence of evidence of error or abuse, the Board finds that appellant has not established a compensable work factor with respect to medical certification or the change in leave status for December 29, 1999.

In addition to the administrative matter regarding use of leave on December 29, 1999, appellant has alleged a hostile work environment and reprisal for filing EEO complaints. In a December 8, 2000 statement, she indicated that she had filed 10 EEO complaints. The record contains the following EEO complaints: November 4, 1991 for race discrimination in hiring practices; October 2, 1992 based on race and reprisal with respect to a reprimand; May 14, 1993 for harassment based on race and reprisal; July 26, 1999 for reprisal in issuing a July 8, 1999 admonishment; and a November 5, 1999 complaint based on the medical certificate requirement. Appellant also submitted EEO counselors reports issued pursuant to other EEO complaints filed. None of the evidence of record, however, contains findings of discrimination or reprisal by the employing establishment. There is no probative evidence to support a claim based on discrimination or reprisal in this case.

The Board notes that, in her December 8, 2000 statement, appellant reports that by decision dated September 20, 1990, the EEOC ordered the employing establishment to reinstate appellant to her former position. The basis for the decision is not clear as the record does not contain a copy of the decision. It is noted that, if appellant can establish an incident of discrimination, there must be medical evidence presented on causal relationship between a diagnosed condition and a compensable work factor.

In this case, the record does not contain evidence sufficient to establish a compensable work factor. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.<sup>7</sup>

The Board further finds that the Office properly denied appellant's request for reconsideration without a merit review of the claim.

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<sup>6</sup> See *Sharon R. Bowman*, 45 ECAB 187, 194 (1993).

<sup>7</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>8</sup> the Office's regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>9</sup> Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.<sup>10</sup>

In this case, appellant requested reconsideration by letter dated March 27, 2002 and submitted a brief report dated February 9, 2002 from Dr. Rashmi Nakra, a psychiatrist, who diagnosed major affective disorder, severe depression and post-traumatic syndrome disorder, stating that appellant continued to experience psychological stress secondary to her work-related situation. As noted above, the underlying merit issue in the case, at least initially, is the establishment of compensable work factors as contributing to a diagnosed condition. Appellant's claim was denied on the grounds that compensable work factors had not been substantiated by the record. Dr. Nakra's report is not relevant to the factual issue presented. The Board finds that appellant did not meet any of the requirements of section 10.606(b)(2) and, therefore, the Office properly denied the request for reconsideration without a merit review of the claim.

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<sup>8</sup> 5 U.S.C. § 8128(a)(providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application)."

<sup>9</sup> 20 C.F.R. § 10.606(b)(2).

<sup>10</sup> 20 C.F.R. § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

The decisions of the Office of Workers' Compensation Programs dated July 15, 2002 and November 15, 2001 are affirmed.

Dated, Washington, DC  
December 9, 2002

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member