U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GWENDOLYN E. HARPER and DEPARTMENT OF DEFENSE, COMMISSARY, MCCLELLAN AIR FORCE BASE, CA

Docket No. 02-252; Submitted on the Record;
Issued June 17, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS, MICHAEL E. GROOM

The issues are: (1) whether appellant sustained an injury while in the performance of her duties; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On July 20, 2000 appellant, then a 49-year-old sales store checker, filed an occupational disease claim asserting that she became stressed when she was given a tour change on June 26, 2000. She stated that her diabetes and blood pressure went "out of whack" and she "went off" on a coworker. Appellant was upset about the new schedule. It was one of her older schedules and she charged that she was not given sufficient notice and time to adjust.

In a decision dated August 27, 2001, the Office denied appellant's claim on the grounds that the evidence failed to establish that she sustained a condition or disability arising in the course of her federal duties.[1]

Appellant requested reconsideration. In support thereof, she submitted a decision of the Social Security Administration approving disability benefits.

In a decision dated September 18, 2001, the Office denied a merit review of appellant's claim on the grounds that the evidence submitted in support of her request was immaterial.

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury while in the performance of her duties.

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.[2] An employee's emotional reaction to an administrative or

[1] The record also contains an unsigned decision, dated August 16, 2001, denying appellant's claim on the same grounds.

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

personnel matter is generally not covered. Thus, the Board has held that an oral reprimand generally does not constitute a compensable factor of employment,[3] neither do disciplinary matters consisting of counseling sessions, discussion or letters of warning for conduct;[4] investigations;[5] determinations concerning promotions and the work environment;[6] discussions about an SF-171;[7] reassignment and subsequent denial of requests for transfer;[8] discussion about the employee's relationship with other supervisors;[9] or the monitoring of work by a supervisor.[10]

Nonetheless, the Board has held that error or abuse by the employing establishment in an administrative or personnel matter or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.[11] Perceptions alone, however, are not sufficient to establish entitlement to compensation. To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations with probative and reliable evidence.[12]

Appellant filed a claim attributing the aggravation of her diabetes and blood pressure to the emotional reaction she had when she received a tour change on June 26, 2000. Assigning work schedules based on the needs of the store is an administrative function of the employing establishment and as a general rule, appellant's emotional reaction to such an administrative action falls outside the scope of coverage of workers' compensation. There is no evidence in this case to substantiate any error or abuse by the employing establishment in making the tour assignment. Appellant has submitted no proof that the employing establishment violated any rule or failed reasonably to accommodate doctors' orders. Without evidence of error or abuse by the employing establishment, her claim does not substaintiate any administrative error. The Board will affirm the Office's August 27, 2001 decision denying compensation benefits.

The Board also finds that the Office acted within its discretion in denying appellant's request for reconsideration.

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)

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[3] *Joseph F. McHale*, 45 ECAB 669 (1994).

[4] *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

[5] *Sandra F. Powell*, 45 ECAB 877 (1994).

[6] *Merriett J. Kauffman*, 45 ECAB 696 (1994).

[7] *Lorna R. Strong*, 45 ECAB 470 (1994).

[8] *James W. Griffin*, 45 ECAB 774 (1994).

[9] *Raul Campbell*, 45 ECAB 869 (1994).

[10] *Daryl R. Davis*, 45 ECAB 907 (1994).

[11] *Margreate Lublin*, 44 ECAB 945 (1993). *See generally Thomas D. McEuen*, 42 ECAB 566 (1991), *reaffirming* 41 ECAB 387 (1990).

[12] *Ruthie M. Evans*, 41 ECAB 416 (1990).

who receives an adverse decision. 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.''[13]

An employee 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 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.[14]

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/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 application for reconsideration without reopening the case for a review on the merits.[15]

To support her request for reconsideration, appellant submitted evidence relating to the approval of disability benefits by the Social Security Administration. This argument has been addressed previously. In the case of *Hazelee K. Anderson*, 37 ECAB 277 (1986), the Office rejected the employee's claim on the grounds that the medical evidence of record failed to establish that she was disabled after March 13, 1979 as a result of her November 14, 1978 employment injury. The employee requested reconsideration and provided a copy of a September 24, 1984 decision awarding her Social Security benefits. The Office found that the evidence was insufficient to warrant modification of its prior decision. On appeal, the Board stated:

> "Appellant submitted a copy of a decision of the Social Security Administration which awarded her benefits. In this regard, it appears that appellant is under the impression that because she was awarded disability benefits for retirement purposes she is *ipso facto* disabled for compensation purposes under the Act. This is not so and, as the Board has stated, entitlement to benefits under one Act does not establish entitlement to [benefits under] the other. The findings of other administrative agencies have no bearing on proceedings under the Act, which is administered by the Office and the Board and a determination made for disability retirement purposes is not determinative of the extent of physical impairment or loss of wage-earning capacity for compensation purposes. The two relevant statutes (Social Security Act and the Act) have different standards of medical proof on the question of disability; disability under one statute does not prove disability under the other. Furthermore, under the [Act], for a disability determination, appellant's conditions must be shown to be causally related to her

[13] 20 C.F.R. § 10.605 (1999).

[14] *Id*. at § 10.606.

[15] *Id*. at § 10.608.

federal employment. Under the Social Security Act, conditions which are not employment related may be taken into consideration in rendering a disability determination."[16]

In this case evidence of disability benefits under the Social Security Act is no proof that appellant's claim is compensable under the Federal Employees' Compensation Act. The Office correctly found that this evidence was immaterial to the August 27, 2001 denial of appellant's claim for compensation benefits. Because appellant's request for reconsideration failed to meet at least one of the standards for obtaining a merit review of her claim, the Board will affirm the Office's September 18, 2001 decision denying her request.

The September 18 and August 27, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
June 17, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

[16] 37 ECAB 277, 282-83 (1986) (citations omitted).