

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GWENDOLYN CHATMAN and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Biloxi, MS

*Docket No. 03-606; Submitted on the Record;  
Issued May 13, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issues are: (1) whether appellant met her burden of proof to establish an aggravation of her preexisting high blood pressure condition due to factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a).

On August 10, 2001 appellant, then a 47-year-old patient services assistant, filed a notice of occupational disease alleging that on July 26, 2001 she experienced "elevated blood pressure and TIA" as a result of her federal employment duties. Appellant alleged that her supervisor, Molly M. Gremmels, tried to coerce her into signing a "report of contact" (a patient complaint against an employee at the medical center) for another employee that she did not feel comfortable doing. Appellant alleged that Ms. Gremmels became angry and informed appellant that she also had a report of contact on her. Appellant allegedly asked Ms. Gremmels why she had not been notified of this earlier since it was over four months old and Ms. Gremmels "blatantly insisted" that appellant remember the incident. Next, appellant alleged that Ms. Gremmels slammed a door in a doctor's face when he tried to enter the room to speak to appellant. Appellant stated that she got "scared" and felt a "rush of blood go straight up to her brain." Appellant claimed that she informed Ms. Gremmels that she did not feel well and wanted to go to the health clinic, but Ms. Gremmels allegedly yelled at her and told her that she was "not going to talk about this in the hallway" and walked away. Appellant stated that her "head was pounding" and the right side of her face was numb. She went to the health clinic and was later brought to the emergency room. The record indicates that appellant had a history of high blood pressure.

In a report dated August 27, 2001, Dr. Bharat H. Sangani, a Board-certified internist, indicated that appellant's blood pressure would be "better controlled" if she did not work. He noted that "recently" appellant had an elevation in her blood pressure at work and went to the emergency room for evaluation and was put on antihypertensive medication. He asked that the

Office consider appellant “disabled” due to her high blood pressure. Appellant also submitted various diagnostic tests, which indicated normal results.

Appellant’s supervisor, Ms. Gremmels, submitted a statement with her version of the events on July 26, 2001. Ms. Gremmels claimed that she met with appellant on July 26, 2001 to discuss appellant’s performance review. She stated that she told appellant that she gave her a rating of “2” on her ability to communicate courteously, clearly and concisely both orally and in writing and also reminded appellant that they had previously discussed the need for improvement in these areas. Ms. Gremmels also explained that she asked appellant to sign a report of contact for another employee because she believed it was important and helpful to have a fellow employee’s input to improve the “telephone triage process” in the women’s care center. Lastly, Ms. Gremmels stated that she did not inform appellant sooner of her report of contact because she had to prioritize her duties and had to seek advice from personnel on “how to handle the situation.” She claimed that after she told appellant about the report, appellant immediately picked up the telephone and called the union representative and paged another supervisor. She also allegedly ignored Ms. Gremmels’ remarks that she was interested in hearing appellant’s version of the events with the patient.

By letter dated September 11, 2001, the Office informed appellant that the factual and medical information submitted was insufficient to establish her claim.

By decision dated November 14, 2001, the Office found that appellant failed to establish that she sustained an injury while in the performance of duty. Specifically, the Office noted that appellant did not establish any compensable factors of employment.

Appellant disagreed with the Office’s decision and requested an oral hearing. At the hearing appellant also alleged that she was also overworked during a detail assignment and that this contributed to her stress and high blood pressure condition.

By decision dated October 9, 2002, the Office hearing representative affirmed the November 14, 2001 decision.

By letter dated October 21, 2002, appellant requested reconsideration. She stated: “The grounds upon which I am requesting reconsideration is the legal argument whereby I did establish the existence of factors of employment which caused me illness, this factor of employment was submitted on August 28, 2001 to [the Office].” Appellant stated that she was “predisposed” to develop a high blood pressure condition but did not actually have the condition until the incident with her supervisor on July 26, 2001. She also claimed that she was a “high-risk candidate” for a life-threatening heart attack, stroke, or heart failure, as a result of her being overworked on her detail.

By decision dated December 24, 2002, the Office denied appellant’s request for reconsideration on the grounds that she did not submit any new evidence or raise any new legal arguments.

The Board finds that appellant has failed to establish an aggravation of her preexisting blood pressure condition due to factors of her federal employment.

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 to 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>1</sup>

In cases involving stress-related conditions, the Board has held that, when working conditions are alleged as factors causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>2</sup> Therefore, the initial question presented in the instant case is whether appellant has alleged compensable factors of employment that are substantiated by the record.<sup>3</sup>

Appellant contends, in this case, that her elevated blood pressure was a result of certain administrative actions and the mistreatment and abuse by her supervisor, Ms. Gremmels. Specifically, appellant alleged that the incidents on July 26, 2001 contributed to her high blood pressure condition. The Board has reviewed the case record and finds that the incidents on July 26, 2001 were administrative matters and were not compensable factors of employment. Generally, reactions to actions taken in an administrative capacity are not compensable. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage.<sup>4</sup>

In this case, Ms. Gremmels was attending to various administrative matters on July 26, 2001 when she was speaking to appellant. As appellant's supervisor, she met with appellant to discuss her performance review and the two reports of contact for her and a fellow employee. Ms. Gremmels explained that she discussed appellant's rating in the area of her ability to communicate clearly and courteously, both orally and in writing, and reminded her that she needed to improve in these areas. She also explained that she discussed another employee's report of contact with appellant because she thought it would improve the women's care center. Lastly, Ms. Gremmels stated that she told appellant about the report of contact filed against her and explained the reasons for her delay in informing appellant of the complaint.

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<sup>1</sup> *Marie Boylan*, 45 ECAB 338 (1994); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>2</sup> *See Margaret Kryzcki*, 43 ECAB 496, 502 (1992); *Lillian Cutler*, *supra* note 1.

<sup>3</sup> *Donald E. Ewals*, 45 ECAB 111 (1993).

<sup>4</sup> *Jan Abrams*, 48 ECAB 499 (1997).

There is no evidence in the case record that Ms. Gremmels committed an error or abuse in her administration of these personnel matters on July 26, 2001. Appellant alleged that Ms. Gremmels tried to “coerce” her into signing the report of contact for the other employee; however, there is no evidence of record to support her allegation. Appellant did not submit any evidence such as a witness statement, to show that some type of coercion did in fact occur. Appellant submitted no evidence suggesting that Ms. Gremmels acted inappropriately. Regarding appellant’s performance appraisal, there is no evidence that Ms. Gremmels acted abusively in her position as a supervisor in explaining the ratings of appellant’s performance review. She explained her reasons for giving appellant a “2” on a particular element and indicated that appellant was aware that she needed to improve in this area. Again, appellant did not submit any evidence indicating that Ms. Gremmels acted abusively when she met with appellant to discuss her performance review. Appellant also claimed that Ms. Gremmels did not inform her of the report of contact that a patient had filed four months earlier. Ms. Gremmels explained her reasons for the delay, noting that the administration of contact reports was only one of her duties as a supervisor and that she had to prioritize her work. She also stated that she had to seek advice from the personnel division on “how to handle the situation.” There is no evidence that Ms. Gremmels acted inappropriately in informing appellant of the report of contact four months after it was filed. Appellant also contended that Ms. Gremmels walked away from her when she told her that she was not feeling well and ignored her requests to go to the employee health unit. This is an unsubstantiated allegation as there is no evidence to confirm that this actually occurred. Appellant did not submit any corroborating evidence, such as a witness statement, or any other type of evidence, to substantiate her allegation that Ms. Gremmels ignored her request to go to the health unit.

Further, appellant contends that she was overworked during her detail assignment and that this caused her stress and contributed to her high blood pressure condition. The Board has held that overwork may be a compensable factor of employment.<sup>5</sup> The evidence in this case, however, is insufficient to establish that appellant was in fact overworked. Appellant stated in her request for reconsideration:

“I forwarded a copy of the detailed statement proving that I was detailed out of my ‘original position’ in July 2000. And all of these factors of employment overwork me, aggravated, precipitated and accelerated my high blood pressure which I had a predisposition to get the high blood pressure condition, but did not actually have the condition before the job incidents and exposure of being put in a position of having to do so many more assignments than my original (orientated) assigned position.”

Appellant alleged that she had “many more assignments” during her detail than in her originally assigned position. However, she did not submit any proof to substantiate that she was working outside her job requirements. Appellant did not submit evidence, such as a witness statement or personnel document, to corroborate her allegation that she was overworked. Since appellant did not submit any evidence to substantiate her claim, the Board finds that she failed to establish overwork as a compensable factor of employment.

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<sup>5</sup> *William P. George*, 43 ECAB 1159 (1992); *Georgia F. Kennedy*, 35 ECAB 1151 (1984).

As the evidence of record fails to establish that appellant's high blood pressure condition was aggravated by factors of her federal employment, it is unnecessary to discuss the probative value of the medical evidence.<sup>6</sup> Appellant did not meet her burden of proof in this case and the Office properly denied her claim for compensation.

The Board also finds that the Office acted within its discretion in refusing to reopen appellant's case for merit review.

To require the Office to reopen a case for merit review, section 10.606 provides that a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and setting forth arguments or submitting 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.<sup>7</sup> When a claimant fails to meet at least one of the above standards, the Office will deny the application for review without reviewing the merits of the claim.<sup>8</sup>

In connection with her October 21, 2002 reconsideration request, appellant expressed her belief that she had established a compensable factor of employment and stated that this was her "legal argument." This statement is not a legal argument because it does not identify a rule of law. This statement is appellant's own personal belief that she did establish a compensable factor of employment. This statement alone, without any supporting probative evidence, is insufficient to reopen appellant's case for a merit review. Appellant also submitted documents concerning her claimed employment factors and work duties, but the same or similar documents had previously been submitted and considered by the Office.

Since appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent new evidence not previously considered by the Office, she did not establish that the Office abused its discretion in denying her request for reconsideration.

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<sup>6</sup> See *Margaret S. Krzycki*, *supra* note 2 (noting that, if appellant fails to substantiate with probative and reliable evidence a compensable factor of employment, the medical evidence need not be discussed).

<sup>7</sup> 20 C.F.R. § 10.606(a). See generally 5 U.S.C. § 8128.

<sup>8</sup> 20 C.F.R. § 10.608(a).

The decisions of the Office of Workers' Compensation Programs dated December 24 and October 9, 2002 are hereby affirmed.

Dated, Washington, DC  
May 13, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member