

described the nature of her illness as “anxiety/stress.” She further indicated that “the constant pressure of doing more and more had elevated [her] stress level to the point of being unable to concentrate or function” and that she had been “sensitized by the workload assignments.”

In conjunction with the claim form, the Office received a statement from appellant’s supervisor, Daniel Aderman, chief of pharmacy services, dated April 29, 2003,¹ in which he described events preceding August 14, 2002, the date appellant stopped working. The supervisor reported that he was informed by the pharmacist that, on both August 12 and 13, 2002, appellant had left work one hour early, after having taken a 20- to 25-minute break; that on the morning of August 14, 2002 he informally told appellant that her breaks should be limited to 15 minutes and should only be taken if she works the “whole tour;” that at “about 9:00 a.m.” on August 14, 2002 appellant informed him that she had just made an appointment with her doctor at noon and was uncertain if she would return; and that, after lunch on August 14, 2002, he received a “slip” from appellant’s doctor ostensibly excusing her from entering the workplace. In addition to the supervisor’s report, the Office also received a copy of a handwritten note dated August 20, 2003 and signed by Dr. James A. Batti, a Board-certified family practitioner, which stated: “[Appellant] is disabled from work because of severe anxiety due to job and fibromyalgia from Sept[ember] 30 thr[o]u[gh] Nov[ember].”

By letter dated November 17, 2003, the Office notified appellant that the information previously submitted was insufficient for the Office to make a determination. The Office advised appellant to provide additional evidence to support her claim within 30 days from the date of its letter, including a comprehensive medical report from a clinical psychologist or psychiatrist which described her symptoms; results of examinations and tests; diagnosis; the treatment provided; the effect of the treatment; and the doctor’s opinion, with medical reasons, on the cause of her condition. The letter specifically advised appellant to provide a detailed description of the employment-related activities which appellant believed contributed to her condition, including the dates, required duties and witnesses, and to secure from her physician an explanation as to how exposure or incidents in her federal employment contributed to her alleged condition.

In response to its request, the Office received *inter alia* a narrative statement from appellant dated December 5, 2003, in which she responded to questions posed by the Office in its letter of November 17, 2003. In an attempt to clarify her original claim, appellant stated that “the pressure of expecting and doing more and more with less support along with the added workload contributed to my adjustment disorder with mixed anxiety and depressed mood.” In support of her assertion that her condition was exacerbated by the work situation and the effect of “continuous added workload,” she specified several incidents that contributed to the illness, including “working unit dose” while she was also expected to “make intravenous [IV] meds when the jobs were two separate positions;” “filling ward-stock orders, labeling, filing I.V.’s for

¹ According to the official supervisor’s report, signed October 24, 2003, the above-referenced supervisor’s statement was previously sent to the Office on April 29, 2003 in response to a prior claim made by appellant for recurrence of disability (file No. 092002420), alleging a recurrence on August 14, 2002. Pursuant to the Office’s notice of decision in the instant case dated May 4, 2004, appellant’s claim in the recurrence case was accepted for adjustment disorder with mixed anxiety and depressed mood, but was denied as the recurrence of disability was not causally related to a January 24, 2000 work injury under that claim.

the floors, labeling, and delivering to the different floors; and increased workload due to light[-]duty status.” Appellant was unable to articulate any specific dates but indicated that most duties were daily. She also identified two individuals who could allegedly verify her claim.

The Office also received a variety of documents from appellant’s treating physician, Dr. James A. Batti, including a disability slip dated November 19, 2003; signed treatment notes from August 15, 2002 through August 20, 2003; and a letter dated “April 2003” stating that appellant had been under his medical care for 20 years and has been diagnosed with “fibromyalgia, hypertension, anxiety, GERD,² asthma, chronic fatigue syndrome and elevated cholesterol.” In his letter, Dr. Batti opined that appellant’s condition was “chronic, was exacerbated by her duties” as a federal employee and had “rendered her incapacitated for performing any of her duties as of August 15, 2002 extending to the present date.” Dr. Batti further stated that appellant’s medical condition would be aggravated by any repetitive tasks required by her employment, that “the stress factor complicates any further relief from her anxiety disorder/depression,” and that her condition was “highly unlikely to improve if she were to return to her employment.” In a subsequent letter dated June 11, 2003, Dr. Batti submitted that appellant continued to exhibit “work-related stress and anxiety and fibromyalgia” and, therefore, “is unable to perform her work duties and is off work until September 30, 2003.” Dr. Batti provided no medical explanation as to how the alleged incidents in appellant’s federal employment contributed to her condition.

The Office also received from Dr. Angela Seiter, a licensed psychologist, a signed psychological medical report dated December 6, 2002, numerous unsigned treatment notes from October 17, 2002 through September 17, 2003, and a letter dated August 14, 2002 to Dr. Batti. The December 6, 2002 medical report reflected that appellant was depressed and anxious about conflict at work, as well as unfair treatment, favoritism and unrealistic workload. The stated diagnosis was “adjustment disorder with mixed anxiety and depressed mood”

Dr. Seiter’s unsigned notes documented appellant’s stress, which was allegedly often job related, and indicate that, on August 14, 2002, she was distraught, tearful and “feeling hopeless about the job situation” after discovering that “she didn’t get the job.” None of the letters, reports or notes submitted by Dr. Seiter provide a medical rationale explaining the nature of the relationship between appellant’s diagnosed condition and the implicated employment factors.

In a decision dated May 4, 2004, the Office denied appellant’s claim for compensation on the grounds that the work incidents cited did not arise in the scope of the performance of appellant’s work duties. Stating that appellant had failed to provide any evidence to support her allegations of being subjected to an increased workload, the Office referred to a statement by appellant’s “[employing establishment]” to the effect that “there was no increased workload.”³

² *Attorneys’ Dictionary of Medicine* (1999) defines “GERD” as: “the abbreviation for gastroesophageal reflux disease.”

³ There appears no document or other indication in the record that appellant’s “[employing establishment]” responded in writing or otherwise to appellant’s allegations.

The Office determined that it had no obligation to perform any further review, including that of the medical evidence. Having so determined, the Office then referred to Dr. Seiter's unsigned notes of August 14, 2002, which reflected appellant's distress due to the fact that she did not receive the job for which she had applied. Included in the basis for its decision, the Office noted that, according to her supervisor, appellant became upset when he admonished her for abusing her break privileges.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.⁴ The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."⁵

To establish her occupational disease claim that she has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.⁶ Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.⁷

Where the medical evidence establishes that the disability results from an employee's emotional reaction to her regular or special assigned employment duties or to a requirement imposed by the employing establishment, the disability is generally regarded as due to an injury arising out of and in the course of employment and comes within coverage of the Act. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of her work or her fear and anxiety regarding her ability to carry out her duties.⁸ By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out

⁴ 5 U.S.C. § 8102(a).

⁵ This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB ____ (Docket No. 04-1257, issued, September 10, 2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

⁶ *Claudio Vazquez*, 52 ECAB 496, 498 (2001).

⁷ *Id.*

⁸ *Lillian Cutler*, 28 ECAB 125, 129 (1976).

of employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.⁹ Similarly, an employee's emotional reaction to his or her failure to receive a job or promotion does not constitute an injury within the meaning of the Act,¹⁰ but rather is considered to be self-generated in that it is not related to assigned duties.¹¹ Moreover, although administrative and personnel matters are generally related to employment, they are functions of the employer and not duties of the employee. Thus, the Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.¹²

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment which may be considered by a physician when providing an opinion on causal relationship, and which are not deemed factors of employment and may not be considered. When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.¹³ As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.¹⁴ The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace, as opposed to mere perceptions of the claimant, is to establish a basis in fact for the contentions made, which in turn may be fully examined and evaluated by the Office and the Board.¹⁵ Further, Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition was caused or adversely affected by her employment. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.¹⁶ A claimant may obtain a hearing to review an adverse decision from the Office

⁹ *Id.* See also *Gregory N. Waite*, 46 ECAB 662, 671 (1995).

¹⁰ *Lillian Cutler*, *supra* note 8 at 131.

¹¹ *Gregorio E. Conde*, 52 ECAB 410, 412 (2001); see also *Roger Smith*, 52 ECAB 468, 473 (2001).

¹² *Ernest J. Malagrida*, 51 ECAB 287, 288 (2000).

¹³ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

¹⁴ *Charles E. McAndrews*, *supra* note 5; see also *Arthur F. Hougens*, 42 ECAB 455 (1991) and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence corroborated such allegations).

¹⁵ *Mary J. Summers*, 55 ECAB ____ (Docket No. 04-704, issued September 29, 2004); see also *Paul Trotman-Hall*, 45 ECAB 229 (1993) (Groom, M.E., concurring).

¹⁶ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

by submitting a request within 30 days of the date of the decision.¹⁷ In addition to the evidence of record, the employee may submit new evidence to the hearing representative.¹⁸

ANALYSIS

The Board finds that appellant has identified no compensable work factors that are substantiated by the record.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition was caused or adversely affected by her employment.¹⁹ Allegations alone are insufficient to establish a factual basis for an emotional condition claim.²⁰ Appellant alleged in her claim and her supplemental statement that her emotional condition was exacerbated by the fact that the employing establishment was short-staffed and that, therefore, she was subjected to an increased workload. However, because appellant failed to present specific allegations regarding past staffing levels and workload or any corroborative evidence that either the agency was short-staffed or that her workload had been increased, it is impossible for the Board to determine whether the contentions are merely perceptions of appellant or facts, which in turn could be fully examined and evaluated by the Board.²¹

In its letter to appellant dated November 17, 2003, the Office notified appellant that the evidence she submitted in conjunction with her claim was insufficient and specifically advised her to provide a detailed description of the employment-related activities which appellant believed contributed to her condition, “including the dates, required duties and witnesses.” Appellant’s response offered a generalized description of such activities, rather than the details requested by the Office. Appellant stated that “the pressure of doing more and more with less support along with the added workload contributed to my adjustment disorder with mixed anxiety and depressed mood.” She alleged several other contributing factors, including working “unit dose” while also “making intravenous meds when the jobs were two separate positions,” and an increased workload due to short-staffing. Appellant also stated that “another duty that added to my stress was filling ward-stock orders, labeling, filing I.V.’s for the floors, labeling, and delivering to the different floors;” however, it is unclear whether the aforementioned “duty” was related to appellant’s regular employment or her alleged increased workload. Furthermore, appellant has not offered any explanation as to why performance of these duties caused her stress. Work duties are not compensable employment factors just because they are work duties. Appellant must establish why the specific duties alleged caused her emotional condition. Appellant identified two individuals who could allegedly verify her claims; however, because witness statements were not provided, this information cannot serve as corroboration. Under 20 C.F.R. §§ 10.615 and 10.616, appellant had the right to obtain a hearing to review the Office’s

¹⁷ 20 C.F.R. § 10.616.

¹⁸ 20 C.F.R. § 10.615.

¹⁹ *Roger Williams*, 52 ECAB 468, 472 (2001).

²⁰ *Charles E. McAndrews*, *supra* note 5.

²¹ *Mary J. Summers*, *supra* note 15.

decision, where she could have submitted new evidence, such as witness statements; however, appellant did not avail herself of this opportunity.

In its decision dated May 4, 2004, the Office denied appellant's claim. In keeping with its obligation to determine whether the working conditions alleged by appellant were compensable factors of employment, the Office found that appellant had not provided any evidence to support her allegations and, therefore, that the work incidents cited did not arise in the scope of the performance of her work duties to be covered under the Act. In the section of the decision entitled "INCIDENTS WHICH DID NOT OCCUR IN THE PERFORMANCE OF DUTY," the office highlighted its finding that appellant had not provided any evidence to support her allegation and referred to a statement allegedly made by appellant's agency to the effect that "there was no increased workload." (Emphasis in the original.) It must be noted that nowhere in the record, including the statement by appellant's supervisor, is there evidence of such an agency statement. However, because appellant has failed to submit corroborative evidence, the employing establishment's alleged denial is not necessary to refute her claim.

The Office's decision letter points out, but does not rely upon, the fact that appellant became distraught because she did not obtain an employment position for which she had applied and because she received a reprimand from her supervisor regarding abuse of break privileges. The Office implies that these two circumstances were the true cause of appellant's stress. The law is clear that an employee's emotional reaction to his or her failure to receive a job does not constitute an injury within the meaning of the Act, but rather is considered to be self-generating.²² Therefore, appellant's emotional reaction to her failure to get the job is not compensable under the Act. Moreover, although administrative and personnel matters are generally related to employment, they are functions of the employer and not duties of the employee, and the Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.²³ In the instant case, the supervisor's admonishment of appellant was clearly an administrative matter about which no allegations of abuse have been made or established. Thus, appellant's emotional reaction to the reprimand is not compensable under the Act.

Because the factual information presented by appellant does not establish any event or circumstance arising out of the performance of duty, no further review is required. Appellant failed to satisfy the first prong of the three-part requirement to establish her occupational disease claim that she sustained an emotional condition in the performance of duty,²⁴ to-wit, she failed to submit factual evidence identifying and supporting employment factors or incidents alleged to

²² *Lillian Cutler*, *supra* note 8 at 131.

²³ *Ernest J. Malagrida*, *supra* note 12 at 288.

²⁴ *Claudio Vazquez*, *supra* note 6 at 498.

have caused or contributed to her condition. Therefore, it is unnecessary to address the medical evidence.²⁵

CONCLUSION

Appellant has failed to meet her burden of proof that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 28, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

²⁵ *Roger Williams, supra* note 19 at 473; *see also Margaret S. Krzycki, supra* note 13 at 502 (noting that, if appellant fails to substantiate with probative and reliable evidence a compensable factor of employment, the medical evidence need not be discussed).