

administrative judge who decided to dismiss her case. On the reverse of the form, appellant's supervisor disputed her claim, noting that her reaction to disappointing news from a judge had no relationship to the performance of her federal job duties.

Appellant submitted medical evidence from the Talbert Medical Group dated October 25 and November 6, 2003 diagnosing depression, anxiety and stress resulting from a discrimination suit appellant filed.

The Office requested additional factual and medical evidence by letter dated December 9, 2003. Appellant responded on December 24, 2003 and stated that her condition was the result of the dismissal of her Equal Employment Opportunity (EEO) claim on the basis of untimely submission. She stated that she was already in a fragile state due to other traumatic incidents or communications relative to systematic discriminatory denial of a well-deserved promotion. Appellant felt betrayed, disappointed and frustrated with her union stewards, Jheryl Robinson and Samuel Young, who she felt failed to provide her with the necessary aid to meet deadlines and prepare documents. She was also troubled by the cancellation of a mediation order without proper notice. Appellant also mentioned the employing establishment's final order supporting the EEO decision. She submitted additional medical evidence.

By decision dated January 9, 2004, the Office denied appellant's claim finding that she failed to substantiate a compensable factor of employment as causing or contributing to her emotional condition.

Appellant requested an oral hearing on January 28, 2004. On July 28, 2004 she testified and attributed her emotional condition to the denial of her EEO claim, the failure of her union representatives to aid her in the development of her EEO claim, and the delay of her promotion by the employing establishment. Appellant stated that she had to remain at Grade 6 for two years before the employing establishment promoted her to Grade 7.

By decision dated November 3, 2004, the hearing representative denied appellant's claim on the grounds that she failed to establish a compensable factor of employment.

LEGAL PRECEDENT

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ On the other hand, the disability is not covered where it results from such factors as an

¹ 5 U.S.C. §§ 8101-8193.

employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.²

The Board has held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform her regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.³

The Board has adhered to the general principle that union activities are personal in nature and are not considered to be within an employee's course of employment or performance of duty.⁴ The Board has also held that the processing of an EEO claim is not, of itself, compensable.⁵

ANALYSIS

Appellant attributed her emotional condition to the denial of her EEO claim as untimely filed. The Board has noted that the processing of an EEO claim is not, of itself, compensable.⁶ Appellant has submitted no evidence supporting that the employing establishment required her to participate in the processing of her EEO claim and she has not established any compensable relationship between the denial of her EEO claim and her federal employment duties.

In attributing her emotional condition to her federal employment, appellant asserted that her union representative failed to adequately assist her in processing her EEO complaint. The Board notes that this allegation has no connection to appellant's job duties. Appellant is complaining about the quality of the assistance provided by the union, not that she was denied any employment right to an opportunity to process her claim. This allegation also lacks any relationship to appellant's regular job duties and is not a compensable factor of employment.

The basis for appellant's EEO claim was her allegation that she failed to receive a timely promotion from the employing establishment. As noted above, the Board does not consider the desire for a promotion to be sufficiently related to a claimant's regular or specially assigned work duties, but instead to be a desire to work in a different job environment or position. Therefore this allegation does not constitute a compensable factor of employment.

² See *Thomas D. McEuen*, 41 ECAB 387, 390-91 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

³ *Andrew J. Sheppard*, 53 ECAB 170, 173 (2001); *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

⁴ *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997); *Larry D. Passalacqua*, 32 ECAB 1859, 1862 (1981).

⁵ *Isabel R. Pumpido*, 51 ECAB 326, 329 (2000).

⁶ *Id.*

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.⁷

CONCLUSION

The Board finds that appellant has failed to establish a compensable employment factor as causing or contributing to her emotional condition. Therefore, appellant has failed to meet her burden of proof in establishing an emotional condition arising from her federal job duties.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 3 and January 9, 2004 are affirmed.

Issued: May 16, 2005
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *See Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).