United States Department of Labor
Employees' Compensation Appeals Board

MARTHA ROBERTS, Appellant	)	
and	)	**Docket No. 05-1999**
	)	**Issued: April 10, 2006**
ADMINISTRATIVE OFFICE OF U.S. COURTS, Washington, DC, Employer	)	

Appearances:
Martha Roberts, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 28, 2005 appellant filed a timely appeal of a June 20, 2005 merit decision of the Office of Workers' Compensation Programs that found she did not sustain an injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty.

FACTUAL HISTORY

On March 21, 2005 appellant, then a 59-year-old program analyst, filed a claim for compensation for an occupational disease. She stated that she was informed on March 3, 2005 that her agreement to work at home had been revoked, which upset her emotionally, causing an increase in her blood pressure, exacerbation of her fibromyalgia, an emotional breakdown and an asthma attack. In an April 7, 2005 statement, appellant stated that on or around January 20, 2005 she became ill with bronchitis. She was not released to return to work until March 7, 2005. On

March 3, 2005 she was informed that beginning March 7, 2005 her written agreement to work at home was being terminated, which resulted in shaking, vomiting and an increase in her blood pressure to 180/110. She returned to work on March 7, 2005 and on March 10, 2005 the chief of her office told her that poor performance had prompted their decision to end her work at home and that she was no longer wanted at the employing establishment.

In an undated statement, appellant's supervisor stated that on March 2, 2005 she told appellant that her work-at-home schedule had expired in October 2003, and that it could not be renewed. Appellant was needed in the office five days a week to work on the credentials program and take on additional duties. The supervisor continued that she later learned that appellant, through a special agreement with the employing establishment, had a work-at-home schedule of two days a week that would not expire until she left or retired.[1] This agreement was subsequently confirmed by personnel, whose attempts to place appellant in another office were unsuccessful. She stated that new tasks for appellant to perform at home were found, that appellant outlined these new duties with appellant on March 14, 2005, but that she had not performed these duties and had been out of the office since March 15, 2005.

Appellant submitted medical evidence. In a March 25, 2005 report, Dr. Stephen Schechter, a Board-certified rheumatologist, diagnosed fibromyalgia and hypertension, and stated that her hypertension had been aggravated by stress at work and that she was totally disabled beginning March 22, 2005. In an April 5, 2005 report, Dr. Charles M. Benner, a Board-certified internist, diagnosed fibromyalgia and hypertension, and indicated that these conditions were not related to her employment, and that a respiratory infection in January exacerbated her chronic condition and rendered her disabled. In an April 1, 2005 report, Dr. Rosalind Goldfarb, Ph.D., a psychologist, diagnosed generalized anxiety and resultant changes in bodily functions as a result of stressors at work. In a May 30, 2005 report, Dr. Goldfarb stated that the employing establishment's notification to appellant in March 2005 that her telecommuting agreement would not be renewed added to her anxiety and exacerbated her fibromyalgia.

By decision dated June 20, 2005, the Office found that the evidence was insufficient to establish an injury in the performance of duty, as her reassignment to work in the office five days a week on March 3, 2005 was a personnel or administrative action which was not compensable in the absence of error or abuse, which was not established.

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 his 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. On the other hand, the disability is not covered where it results from such

[1] The record indicates that, in response to an action brought in 2003, the employing establishment agreed to allow appellant to telecommunicate on Tuesdays and Thursdays.

factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.[2] Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.[3]

ANALYSIS

The employing establishment's March 2 or 3, 2005 instruction to appellant that she must return to work at the office five days a week on March 7, 2005 was an administrative function of the employing establishment, as it involved the assignment of a work schedule.[4] Appellant's supervisor later admitted that she had erred in issuing this instruction, as appellant had a special agreement with the employing establishment that she could work at home two days a week as long as she worked there. As the employing establishment has acknowledged that it erred in its administrative function of assigning appellant's work schedule, this is a compensable factor of employment under the Act. As the Office found there were no compensable factors, it did not analyze the medical evidence to determine whether the compensable factor contributed to the claimed conditions. The case will be remanded to the Office for such an analysis.

CONCLUSION

The Board finds that the evidence establishes a compensable factor of employment, namely the employing establishment's erroneous instruction to return to work at the office five days a week.

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

[3] *Michael Thomas Plante*, 44 ECAB 510 (1993).

[4] *Alice M. Washington*, 46 ECAB 382 (1994).

ORDER

IT IS HEREBY ORDERED THAT the June 20, 2005 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for action consistent with this decision of the Board.

Issued: April 10, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board