



May 13, 2004 her supervisor, Kathy Lytton Lane, improperly conducted a work directive in private. Appellant stopped work that day. In an attached statement, she advised that she was not sure what she was claiming due to diminished capacity. Appellant submitted a December 17, 2003 report in which Dr. Daniel B. Thistlethwaite, a Board-certified psychiatrist, diagnosed major depression with secondary dysthymic disorder exacerbated by chronic physical pain caused by fibromyalgia and acute pain in the foot due to plantar fasciitis. Dr. Elma Z. Bernardo, a psychiatrist, noted that on May 24, 2004 appellant had been admitted to the partial hospitalization program at Thomas Memorial Hospital with a diagnosis of major depressive disorder and advised that appellant could not work. Dr. Bernardo submitted weekly reviews of appellant's continued treatment.

In a controversion dated June 7, 2004, Ms. Lane explained that on May 13, 2004 she had given appellant a written refusal for her request for reasonable accommodation for a foot condition. She explained the process the employing establishment followed in making the denial, noting that it had provided appellant assistance for her foot condition based on the restrictions provided by her podiatrist and advised that the employing establishment would explore other ways to assist appellant. She attached a copy of the denial,<sup>1</sup> a denial of appellant's request for a motorized scooter and a personal assistant, other materials regarding appellant's requests for reasonable accommodation and several statements from employees who witnessed appellant at a picnic on the day she filed her claim.

By letter dated June 24, 2004, the Office informed appellant of the evidence needed to support her claim. Appellant returned to work for four hours on July 2, 2004, but stopped again and was readmitted to the partial hospitalization program. She submitted additional medical evidence regarding her degenerative disc disease of the lumbar spine, arthritis in the hands, feet and ankles, fibromyalgia, diabetes and plantar fasciitis. In statements dated July 18 and 21, 2004, she noted that she was filing a traumatic injury claim for a specific event that occurred on May 13, 2004 when Ms. Lane denied her reasonable accommodation request. Appellant first sought reasonable accommodation in October 2002 and had filed an Equal Employment Opportunity (EEO) complaint regarding the continued denials. She stated that, on May 13, 2004, just before quitting time, Ms. Lane called her into an empty office and gave her the denial. Appellant alleged that she was going to be returned to her usual job duties which would cause working in "excruciating pain." This conversation led to a period of emotional deterioration and decompensation, advising that she returned to work briefly on May 18, 2004 and then did not return until July 2, 2004 when she worked for four hours.

By decision dated July 27, 2004, the Office denied the claim. The Office found that the incident of May 13, 2004 occurred but that the medical evidence failed to support that any medical diagnosis was caused by this incident. On August 24, 2004 appellant requested a review of the written record and submitted additional medical evidence. In an attending physician's

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<sup>1</sup> The May 13, 2004 denial noted that appellant had made several requests for accommodation and had received an initial denial on January 29, 2004. It stated that the request was denied because, after review by the employing establishment medical officer, it was determined that the conditions of foot sprain and plantar fasciitis were not considered permanent and therefore appellant would not be eligible for designation as a disabled individual under the Rehabilitation Act. The denial concluded that appellant could grieve the denial or request independent review and her that temporary alternatives had been provided to assist her at work due to her foot condition.

report dated August 6, 2004, Dr. Mark Hughes, a Board-certified psychiatrist, diagnosed bipolar disorder and checked the “yes” box, indicating that the condition was employment related, stating that appellant was very unhappy at work. Appellant also submitted publications regarding various medical conditions and an employing establishment assignment chart and parking lot map.

In a January 24, 2005 decision, an Office hearing representative modified the July 27, 2004 decision to find that appellant failed to establish a compensable factor of employment. As her emotional condition did not arise in the performance of duty, the medical evidence was not considered.

On June 27, 2005 appellant requested reconsideration, arguing that the medical evidence established that she sustained an emotional condition in the performance of duty causally related to factors of employment. By decision dated August 1, 2005, the Office denied appellant’s reconsideration request on the grounds that she did not submit any relevant evidence or raise a legal argument not previously considered. The Office noted that, as appellant failed to establish a compensable employment factor, the medical evidence need not be considered in her case.

On October 10, 2005 appellant again requested reconsideration. She noted that she had an accepted foot condition and her emotional condition was a consequence of that injury. Therefore, the employing establishment erred in its May 13, 2004 denial by not offering her reasonable accommodation. She also submitted a personal diary dating from September 2 to November 12, 2004, character references, evidence regarding her EEO complaint claim, information regarding a claim she had filed regarding a September 28, 2004 work incident and regarding an attorney’s dismissal from the employing establishment. She also submitted her continued request for a reasonable accommodation, medical evidence regarding pain management, her diagnoses of major depressive disorder and a borderline personality disorder and physical conditions, employing establishment correspondence showing that her supervisor was changed effective October 12, 2004 when Ms. Lane was reassigned on detail publications regarding medical conditions and duplicates of evidence previously of record.

In an October 25, 2005 decision, the Office denied appellant’s reconsideration request finding the evidence submitted irrelevant as to whether she established a compensable factor of employment. The Office noted that appellant should pursue the argument that her emotional condition was a consequence of the accepted foot condition under that claim.

**LEGAL PRECEDENT -- ISSUE 1**

To establish her claim that she sustained an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>2</sup>

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<sup>2</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,<sup>3</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.<sup>4</sup> There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.<sup>5</sup> When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from a emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.<sup>6</sup> On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>7</sup>

As a general rule, an employee's emotional reaction to administrative or personnel actions taken by the employing establishment is not covered because such matters pertain to procedures and requirements of the employer and are not directly related to the work required of the employee.<sup>8</sup> An administrative or personnel matter will be considered to be an employment factor, however, where the evidence discloses error or abuse on the part of the employing establishment.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met her burden of proof to establish an emotional condition causally related to factors of her federal employment. She alleged that a single event caused her emotional condition -- a meeting with Ms. Lane on May 13, 2004 when appellant received the denial of her request for reasonable accommodation. The Board finds the meeting to be an administrative function of the employing establishment which, absent error or abuse, would not be covered.<sup>10</sup> The record supports that on numerous occasions appellant had requested reasonable accommodation for her foot problems. The employing establishment responded to each of these requests. There is nothing in the record to support that the May 13, 2004 denial given to appellant was in error or done in a abusive manner. There is nothing to

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<sup>3</sup> 28 ECAB 125 (1976).

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> See *Robert W. Johns*, 51 ECAB 137 (1999).

<sup>6</sup> *Lillian Cutler*, *supra* note 3.

<sup>7</sup> *Kim Nguyen*, 53 ECAB 127 (2001).

<sup>8</sup> *Felix Flecha*, 52 ECAB 268 (2001).

<sup>9</sup> *James E. Norris*, 52 ECAB 93 (2000).

<sup>10</sup> *Id.*

show that Ms. Lane conducted the meeting in an abusive manner. In both the denial itself and in her letter of controversion dated June 7, 2004, Ms. Lane described the process covered by the employing establishment in reviewing appellant's requests, including review by the employing establishment medical director. The May 13, 2004 denial supports that the employing establishment had accommodated appellant in the past in accordance with restrictions provided by her podiatrist and would continue to do so in the future. While appellant generally alluded to the fact that, she had filed an EEO complaint claim based on this denial, the mere fact that appellant filed an EEO complaint does not substantiate that Ms. Lane committed error or abuse.<sup>11</sup> Appellant submitted nothing to show that the employing establishment committed error or abuse regarding the reasonable accommodation denial or at the May 13, 2004 meeting itself. Other than stating that she had filed a complaint and had arbitration, appellant submitted nothing regarding her EEO complaint claim. The Board therefore finds that appellant has not established a compensable factor of employment. As appellant did not establish a compensable employment factor, it is not necessary to consider the medical evidence.<sup>12</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Section 10.606(b)(2) of Office regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.<sup>13</sup> Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>14</sup> Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.<sup>15</sup> Likewise, evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>16</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that the Office properly denied appellant's June 27, 2005 reconsideration request. With that request appellant merely argued that the medical evidence of record established that she sustained an employment-related emotional condition. However, as noted, she did not establish a compensable employment factor. Therefore, it was not necessary for the Office to consider the medical evidence in rendering its denial.<sup>17</sup> Appellant therefore did not

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<sup>11</sup> See *Michael A. Salvato*, 53 ECAB 666 (2002).

<sup>12</sup> See *Kathleen A. Donati*, 54 ECAB 759 (2003). See *James W. Scott*, 55 ECAB \_\_\_\_ (Docket No. 04-498, issued July 6, 2004).

<sup>13</sup> 20 C.F.R. § 10.606(b)(2).

<sup>14</sup> 20 C.F.R. § 10.608(b).

<sup>15</sup> *Helen E. Paglinawan*, 51 ECAB 591 (2000).

<sup>16</sup> *Kevin M. Fatzer*, 51 ECAB 407 (2000).

<sup>17</sup> See *Kathleen A. Donati*, *supra* note 12.

allege or demonstrate that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).<sup>18</sup> With respect to the third above-noted requirement under section 10.606(b)(2), with her June 27, 2005 request, appellant submitted no additional evidence and thus, in its August 1, 2005 decision and the Office properly denied her reconsideration request.<sup>19</sup>

Regarding appellant's October 10, 2005 reconsideration request, while appellant noted that her emotional condition was a consequence of an accepted foot condition, the Board agrees with the Office that it would be appropriate for appellant to pursue that aspect under her foot claim. The merit issue in the instant claim is whether she sustained an emotional condition caused by the May 13, 2004 meeting with her supervisor, Ms. Lane when she was given a denial of a reasonable accommodation request. While appellant noted that in October 2004 she was transferred from Ms. Lane's supervision, the record indicates that this was done because Ms. Lane was detailed elsewhere and this happened five months after the May 13, 2004 meeting. This, too, is irrelevant to the merit issue in this case. Appellant also submitted additional medical evidence regarding her emotional and physical conditions. However, as she failed to establish a compensable factor of employment, this additional medical evidence is irrelevant.<sup>20</sup> The additional evidence submitted by appellant with her October 10, 2005 reconsideration request was either general in nature or irrelevant to the merit issue in this case. Thus, none of the new evidence submitted addressed the central issue of establishing as compensable the actions of the employing establishment on May 13, 2004. As appellant failed to submit either relevant and pertinent new evidence or a relevant legal argument not previously considered by the Office, the Office properly denied her October 10, 2005 reconsideration request.<sup>21</sup>

### CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of employment. The Board further finds that the Office properly refused to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

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<sup>18</sup> *Supra* note 13.

<sup>19</sup> *Mark H. Dever*, 53 ECAB 710 (2002).

<sup>20</sup> *See Kathleen A. Donati*, *supra* note 12.

<sup>21</sup> *Mark H. Dever*, *supra* note 19.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated October 25, August 1 and January 24, 2005 be affirmed.

Issued: April 18, 2006  
Washington, DC

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

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