

**United States Department of Labor
Employees' Compensation Appeals Board**

ULEWELLYN FONTENEAU, Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VERERANS ADMINISTRATION MEDICAL
CENTER, Birmingham, AL, Employer**

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**Docket No. 06-342
Issued: April 11, 2006**

Appearances:
Ulewellyn Fonteneau, 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 November 28, 2005 appellant filed a timely appeal of an October 18, 2005 decision of the Office of Workers' Compensation Programs, denying her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established an emotional condition causally related to compensable work factors.

FACTUAL HISTORY

On February 7, 2005 appellant, then a 49-year-old patient services assistant, filed an occupational disease claim for compensation (Form CA-2) alleging that she sustained an emotional condition as a result of her federal employment. Appellant submitted statements dated October 4, 2004 and March 12, 2005 regarding her claim, raising the following allegations: (1) she was the only person with restricted privileges; (2) when she called for relief from the desk to use the restroom, it could take 20 minutes to relieve her; (3) a supervisor, Dr. Warren

Blackburn, Jr., shook his finger at her and told her to use the restroom in the back office; (4) on September 23, 2004 Nurse Brenda J. Bennett pointed and shook a finger in her face and she felt that Nurse Bennett might hit her; (5) on June 7, 2004 Nurse Annette C. Wyatt wanted to “write me up” and that Dr. Blackburn wanted her fired; and (6) on June 4, 2004 Nurse Wyatt gave incorrect information and as a result she was yelled at by Nurse Judy Webb. In an October 4, 2004 statement, appellant asserted that patients verbally abused her while waiting in long lines to check in and, on October 1, 2004, she was placed on administrative leave due to allegations of a hostile work environment. Appellant also asserted that she was told she could not use the restroom before her 10:00 a.m. break. In a March 12, 2005 statement, appellant indicated that she was ostracized by fellow employees. She alleged that she covered the front desk alone, that other clinics had two or more employees operating the desk and that she saw at least 350 patients during an eight-hour shift. Appellant submitted medical evidence regarding her treatment for depression and chest pain.

The employing establishment submitted a letter dated February 16, 2005 signed by Dr. Blackburn and Nurse Wyatt, noting that appellant was given a five-day suspension from November 15 to 19, 2004 for disrespectful conduct and failure to provide customer service. Appellant also received a 14-day suspension commencing February 6, 2005 for disrespectful conduct, failure to communicate with supervisors and unreasonable delay providing customer service. According to the employing establishment, there are employees that work directly with patients in the reception area that help the reception desk when needed. Supervisor Blackburn and Supervisor Wyatt stated that they had never heard a patient verbally abuse appellant and that patients did not wait in lines but signed in and then were called individually if necessary. According to the supervisors, appellant was never told she could not use the restroom, nor told to use a particular restroom. The February 16, 2005 letter acknowledged that Dr. Blackburn did shake his finger when having a discussion but never entered her space when doing so. Appellant was told she could not take a 15-minute break and then a lunch break, as her work area could not be left unattended for an extended period. The letter indicated that Nurse Bennett stated that she may have pointed at appellant but she was not in her personal space, her tone of voice was not raised or intimidating and she did not try to hit appellant. With respect to June 2004, Nurse Wyatt indicated that appellant gave out a private telephone number to a patient instead of the number she was instructed to provide.

In a statement dated March 15, 2005, the employing establishment reported that appellant left her work area for extended periods, which was unacceptable that she refused to communicate with Nurse Bennett or Janice Harris and any problems with desk relief could be resolved by proper communication. With regard to September 23, 2004, the employing establishment stated that appellant asked Nurse Bennett to go to the restroom at 9:50 a.m. and appellant was told to go on her break then instead of her usual 10:00 a.m. break. The employing establishment further indicated that in June 2004 neither Nurse Webb nor Diana Barclay yelled at appellant, but rather they told her not to give out a private telephone number.

The record contains a memorandum, dated June 2, 2005, advising appellant that her employment was terminated effective June 8, 2005. The grounds included unreasonable delay in providing customer service and failure to communicate with supervisor and coworkers.

By decision dated October 18, 2005, the Office denied appellant's claim for compensation. The Office found that she had not established a compensable work factor with respect to her claim.

LEGAL PRECEDENT

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.¹ This burden includes the submission of detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.² A claimant must also submit rationalized medical opinion evidence establishing a causal relationship between the claimed condition and the established, compensable work factors.³

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 secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his or 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.⁴

In cases involving emotional 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.⁵ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

³ *See Bonnie Goodman*, 50 ECAB 139, 141 (1998).

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *See Norma L. Blank*, 43 ECAB 389-90 (1992).

⁶ *Id.*

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.⁷ Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.⁸

ANALYSIS

Appellant has alleged that a supervisor, Dr. Blackburn, shook his finger at her and told her to use a restroom in the back office. She also alleged that another supervisor, Nurse Bennett, shook a finger at her on September 23, 2004 and she felt that Nurse Bennett might physically strike her. The Board has recognized that verbal altercations or abuse may be compensable work factors under certain circumstances.⁹ This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.¹⁰ In the absence of clear evidence that the supervisor's actions were unwarranted, a compensable factor will not be established.¹¹ Dr. Blackburn acknowledged that he may have shaken his finger at appellant, but there is no evidence the action was threatening or unwarranted, nor is there any evidence of verbal abuse. It appears that Dr. Blackburn told appellant that she could not leave her desk unattended for extended periods. There is no probative evidence of verbal abuse by him or unreasonable actions that would rise to the level of a compensable work factor. Similarly, the record indicated that, while Nurse Bennett may have pointed at appellant, there is no evidence of any physical threat or abusive language. There are no witness statements or other probative evidence establishing error or abuse by Dr. Blackburn or Nurse Bennett in this case.

With respect to an allegation that appellant was the only employee with "restricted privileges," she did not provide any probative evidence. To the extent that she is referring to restrictions on the use of restrooms, the employing establishment indicated that appellant was not restricted from using a restroom, but was instructed not to leave her work area unattended for extended periods. Although appellant alleged that it took up to 20 minutes to get help on the desk, the employing establishment indicated that she contributed to the delay by not communicating with employees who could help.

Appellant also raised allegations regarding incidents in June 2004, when she was given incorrect information and was reprimanded. The record indicates that she had improperly released a private telephone number to a patient and was instructed not to do so in the future. No probative evidence of error or abuse by the employing establishment was presented.

The record contains several disciplinary actions against appellant, including a 5-day suspension, a 14-day suspension and her removal from employment. These administrative

⁷ See *Brian H. Derrick*, 51 ECAB 417, 421 (2000).

⁸ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

⁹ See *Harriet J. Landry*, 47 ECAB 543, 546 (1996).

¹⁰ *Id.* at 547.

¹¹ *Carolyn S. Philpott*, 51 ECAB 175, 179 (1999).

actions may be compensable factors only if the evidence demonstrates error or abuse. Appellant did not submit any evidence of error or abuse with respect to a disciplinary action by the employing establishment.

The Board notes that appellant generally referred to her job duties as involving long check-in lines of patients, exposure to verbal abuse from patients and requiring her to see many patients during one day. There is no evidence supporting the allegation of verbal abuse by patients; the employing establishment indicated that no one had witnessed verbal abuse. According to the employing establishment, there are no long queues of patients as the patients sign in and then appellant can call them individually if necessary. To the extent that appellant is claiming overwork, she did not provide a detailed statement or other evidence to establish a claim of overwork.¹²

The Board accordingly finds that appellant has not alleged and substantiated a compensable work factor with respect to her claim. Since she has not established a compensable work factor, the Board will not address the medical evidence.¹³

CONCLUSION

Appellant has not met her burden of proof as she has not alleged and substantiated a compensable work factor with respect to her claim.

¹² A claim of overwork must be established on a factual basis. *Sherry L. McFall*, 51 ECAB 436, 439 (2000).

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 18, 2005 is affirmed.

Issued: April 11, 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