United States Department of Labor
Employees' Compensation Appeals Board

MICHELE P. MOORE, Appellant	)	
and	)	**Docket No. 06-579**
	)	**Issued: June 7, 2006**
DEPARTMENT OF THE NAVY, NAVAL AIR DEPOT, Cherry Point, NC, Employer	)	

Appearances:
Michele P. Moore, 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 January 10, 2006 appellant filed a timely appeal from the December 13, 2005 merit decision of the Office of Workers' Compensation Programs, which denied her claim that she sustained 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 her claim.

ISSUE

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

FACTUAL HISTORY

On June 23, 2003 appellant, then a 54-year-old tool and parts attendant, filed a claim alleging that her occupational stress and major depression were a result of her federal employment. She alleged "several instances of unfair treatment by managers," including violation of published work instructions and retaliation.

On December 31, 2002 Dr. Michael K. Nunn, a psychiatrist, made a principal diagnosis of major depression, severe, very suicidal. He noted that appellant was having increased difficulty with the one-year anniversary of her husband's death. She also had a brother who was dying of cancer.

Dr. Charles D. Godwin, a psychiatrist, reported on May 21, 2003 that appellant was under his care for depression, anxiety and stress. He commented that she "should work 2[-]hour preshift in order to keep to prescribed schedule for medication administration and sleep." On June 17, 2003 he reported that appellant was under his care in May 2003 due to occupational stress, depression and anxiety.

In a decision dated January 30, 2004, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish her claim of unfair treatment and retaliation.

On January 10, 2005 an Office hearing representative found that the Office failed to consider a 26-page typed statement in which appellant identified specific events, people and details of conversations. The hearing representative also found that it failed to consider a December 17, 2002 decision of the Equal Employment Opportunity (EEO) Commission, in which the administrative judge found a coworker's conduct to be juvenile and inappropriate but not sufficient to establish a *prima facie* case of sex discrimination. The case was remanded for a *de novo* decision.

On remand, the Office informed appellant that the majority of her statement dealt with her desire to work a particular shift, which was not within the scope of workers' compensation. The Office asked her, however, to clarify seven specific matters: (1) a December 15, 1997 outburst by Robert Jackson; (2) abusive voice and actions by Craig Jones on March 4, 1999; (3) written comments made by Mr. Jones on June 30, 1999; (4) remarks made by Mr. Jones on August 24, 2000; (5) written remarks made by Mr. Jones on December 12, 2000; (6) cursing by Mr. Jones on December 19, 2000, following which appellant was escorted from the premises; and (7) appellant bringing a gun to work. The Office also asked the employing establishment to respond to these matters.

Both appellant and the employing establishment responded to the Office's request for additional information. In an undated report received by the Office on May 5, 2005, Dr. Godwin stated that appellant's major depression was work related:

> "I understand that there are unresolved issues for the specific period of time of May 2003. On May 14, 2003 I felt that [appellant's] condition was being exacerbated and was of a severity requiring her to leave work temporarily. I advised her to do so. On May 21, 2003 I faxed to her employer a completed form entitled 'Information Required for Advance Sick Leave.' This was in support of advance sick leave for the period ending with a return to work on May 29, 2003.
>
> "Let me emphasize again, that this patient's illness was work related and at the time I advised her to leave work and at the time I supported her request for advance sick leave, she was suffering from occupational stress."

In a decision dated June 16, 2005, the Office found that appellant had been a victim of abuse and a hostile work environment as a result of having to work with Mr. Jones, as corroborated by statements from witnesses to the many incidents. The Office denied her claim for compensation, however, because none of the medical evidence related her medical condition to any particular work incident. A reference to "workplace anxiety," the Office explained, was too general to establish causal relationship.

On October 19, 2005 appellant testified before an Office hearing representative: "It was not the problem with working with Mr. Jones that caused the problem. The problem was with David C. Drummond, my supervisor, when I asked to have my hours flexed so that I could work my preshift and still take my medication on time." She indicated that the assignment of work was not being fairly distributed: "Now, they allowed first shift to take preshift or postshift and when I asked for preshift or postshift, I [woul]d rather have preshift and my doctor gave them paperwork that said…." Appellant testified that all she wanted was for 78 hours of leave to be given back to her. She added that she was denied government time to appear at the hearing, which was unfair because numerous employees had been permitted "to come to dayshift and come to these [h]earings." Appellant stated that she had not yet filed any EEO complaints or grievances on this issue.

In a decision dated December 13, 2005, the Office hearing representative affirmed the denial of appellant's claim for compensation. The hearing representative found that, although the medical evidence indicated that appellant was being treated for occupational stress, there was no discussion of the accepted factors and how they caused or contributed to her emotional condition.

LEGAL PRECEDENT

The Federal Employees' Compensation Act[1] provides compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] But workers' compensation does not cover each and every illness that is somehow related to the employment. When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her duties and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment.[3] 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 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.

[1] 5 U.S.C. §§ 8101-8193.

[2] *Id*. at § 8102(a).

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

Workers' compensation does not cover an emotional reaction to an administrative or personnel action unless the evidence shows error or abuse on the part of the employing establishment.[4] As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[5] The claimant must substantiate her allegations with probative and reliable evidence.[6]

A claimant's burden of proof is not discharged by the fact that she has identified an employment factor which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, the claimant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the identified compensable employment factor.[7]

Causal relationship is a medical issue[8] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[9] must be one of reasonable medical certainty,[10] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[11]

ANALYSIS

As she made clear in her testimony before the Office hearing representative on October 19, 2005, appellant attributes her emotional condition to Mr. Drummond her supervisor. He denied her request to have her hours flexed so she could work preshift and take her medications on time. She indicated that it was unfair to allow first shift an option to take preshift

[4] *Thomas D. McEuen*, 42 ECAB 566, 572-73 (1991), *reaff'd on recon.* 41 ECAB 387 (1990).

[5] *See Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

[6] *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

[7] *John T. Russell, II*, 46 ECAB 536, 544 (1995).

[8] *Mary J. Briggs*, 37 ECAB 578 (1986).

[9] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[10] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[11] *See William E. Enright*, 31 ECAB 426, 430 (1980).

or postshift and not to permit her the same option. The Board notes that this was the subject of a grievance appellant signed on May 14, 2003:

> "Shop caused mandatory overtime—1st shift was offered option of Pre or Post Shift. 2nd Shift was given *no* option. Supervisor permitted 1 employee to work preshift. When I asked due to medication problems for pre shift, I was refused by Mr. Drummond." (Emphasis in the original.)

As a general matter, appellant's emotional reaction to such an administrative decision lies outside the scope of workers' compensation. An exception exists if Mr. Drummond's decision was erroneous, but the record does not document this. Appellant believed it was unfair not to allow her the option of working preshift. Dr. Godwin commented on May 21, 2003 that appellant should work a two-hour preshift so that she could keep to her prescribed schedule for medication administration and sleep. Although appellant pursued this matter through the grievance procedure, she has submitted no formal finding or final decision supporting the merits of her charge. Without proof that it was erroneous of Mr. Drummond not to have granted her request for preshift, appellant's claim is not one that falls within the coverage of the Act.

At the October 19, 2005 hearing, appellant indicated that all she wanted was for 78 hours of leave to be given back to her. She also indicated that she was denied government time to appear at that hearing. As with the denial of her request for preshift, an administrative decision not to return 78 hours of advanced sick leave or to deny government time to attend her hearing on October 19, 2005 is not generally covered by workers' compensation. Absent proof that these administrative decisions were erroneous, appellant may not receive compensation benefits under the Act for her emotional reaction to such matters.

Appellant's claim rests solely on her allegation or perception of unfairness with respect to these administrative decisions, with no proof that these decisions were in fact erroneous. The Board will affirm the Office's December 13, 2005 decision denying her claim for compensation benefits.[12]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty. She attributes her emotional condition to certain administrative decisions. But in the absence of proof that these decisions were in error, her emotional reaction is not something that is covered by workers' compensation.

[12] The Board need not analyze the medical evidence submitted to support appellant's claim. The Board notes, however, that no physician has directly attributed appellant's diagnosed condition to Mr. Drummond's decision to deny a two-hour preshift, to the administrative decision not to return 78 hours of advanced sick leave or to the denial of government time to attend the October 19, 2005 oral hearing in New Bern, Connecticut, nor has any physician explained on what basis it can be determined that such administrative actions caused or contributed to the conditions diagnosed. *See Kathrine W. Brown*, 10 ECAB 618 (1959) (without a recital of the particular factual circumstances, a physician's opinion was not sufficient to establish causal relationship).

ORDER

IT IS HEREBY ORDERED THAT the December 13, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 7, 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