United States Department of Labor
Employees' Compensation Appeals Board

VERLISA L. MOSLEY, Appellant	)	
and	)	**Docket No. 06-684**
	)	**Issued: June 21, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Detroit, MI, Employer	)	

Appearances:
Verlisa L. Mosley, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 2, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated December 22, 2005, which denied her request for a merit review claim under 5 U.S.C. § 8128(a), and an October 13, 2005 decision which denied her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over these issues.

ISSUES

The issues on appeal are: (1) whether appellant has met her burden of proof to establish that she sustained an emotional condition in the performance of duty; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On May 18, 2005 appellant, then a 48-year-old window clerk, filed an occupational disease claim alleging that she was depressed, anxious and easily irritated due to work-related

stress. Appellant first realized the disease or illness was caused or aggravated by her employment on April 14, 2005. She stopped work on May 9, 2005.

In a May 18, 2005 statement, appellant alleged that she began experiencing uncertainty and insecurity regarding her job. She alleged that there was a lack of variety of duties due to short staffing and that she was unable to attend "SSA [Social Security Administration] classes" which would help her know her job. Appellant alleged that her concentration and attention span decreased and that she had long and short-term memory problems that were affecting her personality and self-esteem. She believed additional training would allow her to feel more secure in her position.

Submitted with the claim was a May 16, 2005 disability certificate from Dr. Agnes Wrobel, a Board-certified psychiatrist, who diagnosed major depression and generalized anxiety. She advised that appellant was unable to work from May 16 to June 16, 2005. Also submitted was an October 27, 2004 treatment note from Jeanne Parent, a social worker, who indicated that appellant was depressed and anxious and easily irritated due to job stress and family stressors. She diagnosed generalized anxiety.

On May 23, 2005 the employing establishment controverted the claim.

By letter dated June 1, 2005, the Office advised appellant that the evidence submitted was insufficient to establish her claim and requested that she submit additional supportive factual and medical evidence. In a separate letter, also dated June 1, 2005, the Office requested that the employing establishment submit additional factual and medical evidence.

The Office subsequently received a June 14, 2005 report from Ms. Parent describing appellant's generalized anxiety order. She stated that appellant's issues were "related to family stressors as well as some ongoing job stress."

In a June 8, 2005 statement, appellant explained that due to the "SSA" classes not being offered to her, she was denied the opportunity to learn her job such that she felt insecure. She was constantly seeking answers to questions from coworkers and received different answers, which caused her to feel stress. Appellant believed that she was not given the opportunity to succeed as she was not given proper training. She listed several training classes that she wished to enroll in and explained that, since she began her position on May 29, 2004, she had not been offered access to any of the training programs. Appellant also provided a form signed by the social worker, requesting that she be off work for one month from June 13, 2005.

By letter dated September 9, 2005, the Office requested that the employing establishment provide additional factual evidence.

In an October 3, 2005 statement, Patrice Anthony, an injury compensation specialist, controverted the claim. She indicated that appellant had already worked in the same type of position before her transfer to her present position, which she bid upon and for which she passed a qualifying test. Ms. Anthony contended that appellant had received the appropriate training. She explained that, while additional training classes were offered on a periodic basis and had been arranged for appellant, appellant had often been absent when the training classes were offered. She also provided a statement from appellant's supervisor, Marcella Wells and

appellant's training record. In a September 28, 2005 statement, Ms. Wells denied that appellant was not properly trained and confirmed that appellant initially received two weeks of training before coming to her unit. She acknowledged that, although appellant was qualified, she needed additional support and had sent her for further window clerk training. Ms. Wells denied that she referred appellant to other coworkers for answers to her questions and explained that she did not do that as she knew most answers, or knew where to find them. Appellant missed some scheduled training due to absences but Ms. Wells denied that appellant was not given training when it was available, as it was mandatory. Ms. Wells indicated that certain classes which appellant wished to attend had not been offered since appellant was available for training. She further added that appellant would receive as much training as available. Ms. Wells also acknowledged that the employing establishment site where appellant was presently assigned had a "more aggressive pace [t]han most of the other [employing establishments] with window operations."

By decision dated October 13, 2005, the Office denied appellant's claim. The Office found that appellant had not established any compensable factors of employment. Although appellant alleged a lack of variety in her job duties, this was not a compensable factor of employment. The Office found that appellant had not established as factual that she was denied the opportunity to attend training classes. The Office also indicated that it was not established as factual that she was referred to multiple coworkers for answers. The Office also advised appellant that the records submitted by Ms. Parent, were of no probative value as she was not a physician or a licensed clinical psychologist.

By letter dated October 17, 2005, appellant requested reconsideration and submitted a copy of the June 14, 2005 report by Ms. Parent which was signed by Dr. Wrobel.

By decision dated December 22, 2005, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that the evidence submitted was insufficient to warrant review of its prior decision.

LEGAL PRECEDENT -- ISSUE 1

Workers' compensation law does not apply to each and every 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 concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specifically 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 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]

[1] 5 U.S.C. §§ 8101-8193.

[2] *See Thomas D. McEuen,* 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 126 (1976).

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 employment factors.[3] This burden includes the submission of a detailed description of the employment factors or conditions, which the employee believes caused or adversely affected the condition or conditions, for which compensation is claimed.[4]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in 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 the 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 the matter establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[6]

ANALYSIS -- ISSUE 1

Appellant alleged that she sustained an emotional condition as a result of stress related to her position as a window clerk. The Board must thus, initially review whether her alleged incidents and conditions of employment are compensable work factors.

Appellant alleged that she sustained job stress due to a lack of variety in her duties. The Board has held that an employee's dissatisfaction with holding a position in which he feels underutilized, performing duties for which he feels overqualified or holding a position which he feels to be unchallenging or uninteresting is not compensable under the Act.[7] Furthermore, the assignment of work is an administrative function of the employer and not a duty of the employee.[8] Administrative and personnel matters also include matters involving the training of employees.[9] However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[10] Appellant alleged that she was not afforded the opportunity to receive training,

[3] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[4] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[5] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[6] *Id.*

[7] *See Purvis Nettles*, 44 ECAB 623, 628 (1993).

[8] *See Lori A. Facey*, 55 ECAB ___ (Docket No. 03-2015, issued January 6, 2004).

[9] *Charles D. Edwards*, 55 ECAB ___ (Docket No. 02-1956, issued January 15, 2004).

[10] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

which included attending "SSA" classes to enhance her job performance. Appellant's supervisor, Ms. Wells, advised that appellant was provided opportunities for training as it was mandatory and that she would continue to be afforded training opportunities. She explained that appellant was absent on several occasions when training was provided and that certain classes were not given on a regular basis. Ms. Wells noted that they had not been rescheduled since appellant was assigned to her unit. She noted that appellant had received various types of training, and would be given the opportunity to participate in future training classes. The Board finds that the evidence shows that the employing establishment acted reasonably in its effort to provide appellant appropriate training. Thus, appellant has not established a compensable employment factor under the Act with respect to this administrative matter.

Appellant alleged frustration from being referred to coworkers when she sought guidance from her supervisor. However, Ms. Wells denied the allegation and explained that she was generally able to answer appellant's questions or knew where to obtain the answers. Once again, this essentially involves training and Ms. Wells explanation is reasonable. Appellant did not otherwise submit corroborating evidence showing any error or abuse on the part of her supervisor. The Board finds that appellant has not established this allegation as factual.

Appellant alleged that she experienced uncertainty and insecurity regarding her job and that additional training would help her perform her job more efficiently. Ms. Wells noted that appellant was qualified for her position when she bid upon it, although she acknowledged that appellant needed "support." Disabling conditions resulting from an employee's feeling of job insecurity do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act. Rather, the feelings are considered to be self-generated and are not compensable.[11] As appellant has not established a compensable employment factor, it is not necessary to address the medical evidence.[12]

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act,[13] the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

> "(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
>
> "(ii) Advances a relevant legal argument not previously considered by the Office; or

[11] *See Denise Y. McCollum*, 53 ECAB 647 (2002); *see also Gregorio E. Conde*, 52 ECAB 410 (2001).

[12] *Garry M. Carlo*, 47 ECAB 299 (1996); *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

[13] 5 U.S.C. § 8128(a).

"(iii) Constitutes relevant and pertinent new evidence not previously considered by the [the Office]."[14]

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[15]

ANALYSIS -- ISSUE 2

Appellant disagreed with the denial of her claim for an emotional condition and requested reconsideration on October 17, 2005. The underlying issue on reconsideration was whether appellant established a compensable factor of employment. The Board finds that appellant did not provide any relevant or pertinent new evidence to establish a compensable emotional condition in the performance of duty.

In her October 17, 2005 request for reconsideration, appellant provided a copy of a June 14, 2005 medical report. This was a submission of a prior document which was already received by the Office.[16] However, the version of the report submitted on reconsideration was signed, for the first time, by Dr. Wrobel such that it may be considered probative medical evidence. However, the underlying issue is whether appellant established a compensable factor of employment. Therefore, as appellant has not established a compensable factor of employment, this report is not relevant. The Board notes that no employment factors have been accepted as causing stress or anxiety. The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[17]

Consequently, the evidence submitted by appellant on reconsideration does not satisfy the third criterion, noted above, for reopening a claim for merit review. Furthermore, appellant also has not shown that the Office erroneously applied or interpreted a specific point of law, or advanced a relevant new argument not previously submitted. Therefore, the Office properly denied her request for reconsideration.

CONCLUSION

For the foregoing reasons, as appellant has not established any compensable employment factors under the Act, she has not met her burden of proof in establishing that she sustained an

[14] 20 C.F.R. § 10.606(b).

[15] 20 C.F.R. § 10.608(b).

[16] *Khambandith Vorapanya*, 50 ECAB 490 (1999); *John Polito*, 50 ECAB 347 (1999); *David J. McDonald*, 50 ECAB 185 (1998) (the submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review).

[17] *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Robert P. Mitchell*, 52 ECAB 116 (2000).

emotional condition in the performance of duty. The Board also finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 22 and October 13, 2005 are affirmed.

Issued: June 21, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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