

the claim form indicated that appellant's request for leave through the Family Medical Leave Act (FMLA) had been denied by the coordinator, Beatrice Schwarz.

The record contains an August 5, 2005 letter from Ms. Schwarz stating that appellant's request for FMLA leave was denied. She stated that the health care provider must provide information such as the estimated number of treatments and interval between treatments, and appellant must attempt to schedule treatment so as not to disrupt the employer's operations. The employing establishment indicated in an August 12, 2005 letter that Ms. Gregory had disapproved the FMLA leave request because Ms. Schwarz had already denied a request for leave as a result of intermittent physician's appointments.

By letter dated October 14, 2005, the Office requested that appellant submit additional factual and medical evidence to support her claim. Appellant submitted an October 28, 2005 report from Dr. Alvin Schmidt, an internist.

In a decision dated November 15, 2005, the Office denied appellant's claim for compensation. The Office found that appellant had not established a compensable work factor.

Appellant requested reconsideration by letter dated November 28, 2005 and received by the Office on December 5, 2005. The accompanying evidence included a Step 1 grievance worksheet, an employing establishment form for Equal Employment Opportunity (EEO) precomplaint counseling and a November 2, 2005 "EEO Redress Settlement." The settlement stated that appellant and management would make every effort to abide by the FMLA, that a supervisor is not permitted to contact an employee's private physician and "Management acknowledges its error in the interacting with grievant[s] physician and agrees to cease and desist from such practice...."

By decision dated December 16, 2005, the Office determined that appellant's request for reconsideration was not sufficient to warrant merit review of the claim. The Office acknowledged receipt of the Step 1 grievance worksheet and the precomplaint counseling form. According to the Office, appellant had stated that a copy of the redress settlement would follow, but such information was not received.

LEGAL PRECEDENT -- ISSUE 1

Appellant 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

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

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

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

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 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.³

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.⁴ 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.⁵

ANALYSIS -- ISSUE 1

The evidence before the Office at the time of the November 15, 2005 decision was not sufficient to establish an emotional condition causally related to compensable work factors. Appellant had alleged that she sustained stress as the result of actions by a supervisor, Ms. Gregory, regarding her request for leave for medical appointments. As noted an administrative matter will not be a compensable work factor unless there is evidence of error or abuse by the employing establishment.

The record indicated that the request for leave was denied by an FMLA coordinator because of inadequate certification by the physician regarding the nature and extent of the proposed treatments, and the need to schedule treatments with minimal disruption to the employer's operations. The employing establishment indicated that the supervisor had confirmed the denial of the leave request. No evidence was presented as to error or abuse by the employing establishment in this matter. In the absence a compensable work factor that is substantiated by the record, the Office properly denied the claim.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁶ the Office's regulations provides that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: "(i) shows that [the Office] erroneously applied or interpreted a specific

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

⁴ *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

⁵ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

⁶ 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

point of law; (ii) advances a relevant legal argument not previously considered by [the Office]; or (iii) constitutes relevant and pertinent evidence not previously considered by [the Office].”⁷ Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.⁸

ANALYSIS -- ISSUE 2

It is well established that the Office must consider all the evidence of record. Since the Board’s jurisdiction of a case is limited to reviewing the evidence which was before the Office at the time of its final decision, and the Board’s decisions are final as to the subject matter appealed, “it is critical that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.”⁹ Appellant submitted a November 2, 2005 EEO settlement on December 5, 2005. The Office did not review the evidence, as it stated in its decision that appellant had not submitted a copy of the settlement. Accordingly, the case will be remanded to the Office for a review of the evidence submitted and an appropriate decision.

CONCLUSION

The Board finds that the November 15, 2005 Office decision properly denied appellant’s claim for an emotional condition. The case is not in posture for decision regarding the December 16, 2005 Office decision, since the Office did not consider all of the evidence submitted.

⁷ 20 C.F.R. § 10.606(b)(2).

⁸ 20 C.F.R. § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

⁹ *William A. Couch*, 41 ECAB 548 (1990).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 15, 2005 is affirmed. The December 16, 2005 decision is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: June 21, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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