

Appellant indicated that there had been a grievance settlement (a last chance employment agreement or LCEA)¹ and her supervisor was trying to provoke her. She alleged that she was treated differently from other employees, perhaps because she was Mexican or because she was on light duty. Appellant also alleged that on March 15, 2005 she had returned from lunch and was told to “clock in” again. She asked for an extended lunch period but this was denied.

In a statement dated May 25, 2005, appellant reported that on May 4, 2005 she experienced chest pain. She went to a restroom to lie down. Appellant was asked by a supervisor in a sarcastic manner what she was doing there and was told to get up from the floor. She was taken to the emergency room.

On April 19, 2005 the employing establishment issued a notice of removal from employment for: (1) violation of the June 25, 2003 LCEA and (2) unacceptable conduct on March 15, 2005 with respect to a lunch period. Appellant’s grievance regarding the notice of removal was denied by the employing establishment on May 25, 2005.

With respect to the March 15, 2005 incident, an employing establishment postmaster indicated that appellant told her supervisor that she was still at lunch when she had already clocked in from lunch. According to the supervisor, appellant stated that she did not understand what her supervisor had asked regarding lunch. Regarding the March 17, 2005 incident, the postmaster stated that it was appellant who made inappropriate comments to her supervisor and the supervisor tried to calm her down when she began crying. The postmaster also stated that on May 4, 2005 appellant was found on the locker room floor crying and was taken to the hospital. In a July 26, 2005 letter, the postmaster explained that appellant had been working in a limited-duty position. According to the postmaster, the employing establishment tailored appellant’s work assignments to the medical restrictions and she did not work more than eight hours per day.

In a statement dated August 1, 2005, appellant alleged that her supervisors were constantly harassing her and treating her in a disrespectful manner. She was subject to numerous disciplinary actions, including a letter of warning in June 2004 and a notice of removal in 1993. The record indicates that appellant filed an Equal Employment Opportunity (EEO) Commission complaint for discrimination based on race, gender and religion. The alleged incidents of discrimination included the April 19, 2005 notice of removal, the June 2004 letter of warning, and a January 8, 2005 incident in which appellant alleged that a supervisor told her that she could not use a cell phone while on break.

By decision dated February 8, 2005, the Office denied the claim for compensation. The Office found that appellant had not established a compensable work factor.

Appellant requested a hearing before an Office hearing representative, which was held on August 23, 2006. She alleged that she was required to work outside her medical restrictions.

¹ The record contains a “last chance employment agreement/step A grievance settlement” dated June 25, 2003 with respect to a May 29, 2003 notice of removal. The agreement required appellant to meet with a counselor and follow the counselor’s recommendations. According to the agreement, the employing establishment did not admit any wrongdoing.

In a decision dated November 2, 2006, the hearing representative affirmed the February 8, 2005 decision.

Appellant requested reconsideration by letter dated December 9, 2006. She reiterated that she was treated improperly by her supervisors since 1993. The evidence submitted included a January 27, 2004 settlement agreement that supervisors treat all employees fairly and equally.

In a decision dated March 16, 2007, the Office reviewed the case on its merits and denied modification.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment.² 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.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 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

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.⁵ 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.⁶

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

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

⁵ *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

⁶ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

ANALYSIS

Appellant has made general allegations of harassment, discrimination and retaliation by the employing establishment in this case. The record indicated that appellant filed an EEO complaint of discrimination based on several factors, including race, gender and religion. No probative evidence of discrimination, such as a finding of discrimination by the EEO or detailed witness statements supporting incidents of discrimination, was submitted to the record. Appellant alleged retaliation based on her status as a limited-duty employee, without providing any supporting evidence. The Board finds no evidence of record sufficient to establish a claim based on harassment, discrimination or retaliation.

The record contains a number of disciplinary actions taken against appellant, including an April 19, 2005 notice of removal and a June 2004 letter of warning. A specific disciplinary action is an administrative action of the employing establishment, and may be a compensable work factor only if error or abuse is established. Appellant apparently filed a grievance regarding the 2005 notice of removal, but there was no finding of error, no admission of error or any evidence of record establishing error with respect to a disciplinary action taken.

Appellant did discuss specific incidents with respect to her claim; on March 15, 2005 involving her lunch break and on March 17, 2005 when she was asked about drinking coffee. These incidents are not compensable work factors unless there is probative evidence of error or abuse by the employing establishment. The postmaster indicated that appellant had incorrectly told her supervisor that she was on lunch break when at the time her lunch period had ended. No evidence of error or abuse was presented. On March 17, 2005 the postmaster indicated that appellant arrived late for work and she made inappropriate comments to her supervisor. Again, no evidence establishing error or abuse by the employing establishment was presented. There was also a reference to a January 8, 2005 incident involving cell phone use, but appellant did not provide any probative evidence of error or abuse.

Based on the evidence of record, therefore, the Board finds no pertinent evidence that is sufficient to establish a compensable work factor in this case. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.⁷

CONCLUSION

Appellant has not established that she sustained an emotional condition causally related to compensable factors of her federal employment.

⁷ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 16, 2007 and November 2, 2006 are affirmed.

Issued: November 27, 2007
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board