

alleged that she was subject to “[a] hostile work environment that encompasses 10 years of deception, hostility, outright lying and absence of moral and ethical practices....” Appellant alleged that other coworkers had been promoted and given preferential treatment. According to appellant, on February 24, 2004 approved training was cancelled, while another employee had been authorized to perform duties off-site. She stated that she had been given a box cutter and when appellant asked what she was supposed to do with it, was told by a Chaplain L. Alan Brown she “could slit her wrists.” According to appellant in 2002 she had taken an overdose of painkillers at work and was driven home by supervisors and left in her vehicle. She also referred to a 1996 incident in which she alleged Chaplain Brown forged her signature on a time card.

The employing establishment’s response included a March 11, 2004 memorandum from a human relations specialist, who stated that the allegations were unsubstantiated. The specialist stated that, with respect to a 2002 incident, appellant was driven home after becoming ill and walked into her house. An undated statement from Chaplain Brown reported that he did not recall giving appellant a box cutter. A March 11, 2004 letter from a management analyst stated that no one forged appellant’s signature on a time card.

Appellant alleged that, on February 25, 2004, she had been charged four hours of sick leave and although leave was reinstated, there were other instances of arbitrary charges for leave. She alleged that a coworker, Paul Villano, continually harassed her.

By decision dated August 27, 2004, the Office denied her claim for compensation. The Office found that appellant had not substantiated a compensable work factor with respect to her claim.

Appellant requested a hearing before an Office hearing representative, which was held on March 30, 2005. She alleged that she was denied training that was provided to others, that when she returned to work in April 2004 she was detailed to a position outside the organization and had her security clearance revoked and received an improper and adverse performance appraisal. According to appellant, Chaplain Charles Howell had told her she was always complaining about something and “you [a]re the worst employee.” In an April 17, 2005 letter, appellant noted that she had filed an Equal Employment Opportunity Commission (EEOC) complaint for religious discrimination.

The response from the employing establishment included a May 2, 2005 statement from Chaplain Joseph S. Batluck Sr., who denied that appellant was subject to verbal abuse or treated differently from other employees. He stated that no supervisor had told appellant that she was the worst employee. A statement from a Chaplain Howell indicated that appellant’s access to sensitive information was suspended in view of her claim that she was suffering from severe depression and had taken an overdose of painkillers at work.

By decision dated September 30, 2005, the Office hearing representative affirmed the August 27, 2004 decision. The hearing representative found that appellant had not substantiated any compensable work factor with respect to her claim.

In a letter dated February 13, 2006, appellant requested reconsideration. She indicated that additional evidence would be submitted. In a letter dated February 15, 2006, received by the

Office on February 23, 2006, appellant requested reconsideration and submitted an EEOC decision dated February 8, 2006. The EEOC decision found that appellant was subject to discrimination based on religion with respect to suspension of security clearance, placement of detail and an adverse performance appraisal.

By decision dated February 24, 2006, the Office stated that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

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 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.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

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

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

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).

ANALYSIS -- ISSUE 1

In the present case, appellant alleged that she was subject to a hostile work environment. It is her burden to submit sufficient factual evidence to establish a compensable work factor.⁶ Appellant generally alleged that she was passed over for promotions and was treated differently than other employees. There was, however, no probative evidence submitted that establishes a compensable work factor. The determination of whether an employee is promoted is an administrative matter and only if the evidence establishes error or abuse by the employing establishment is the matter compensable. Appellant provided no pertinent evidence establishing that she was erroneously denied a promotion. With respect to other administrative actions, such as the use of leave or denial of training, appellant also failed to provide specific evidence establishing error or abuse by the employing establishment.

There were specific incidents alleged with respect to actions of supervisors and coworkers. Appellant alleged, for example, that her signature was forged on a time card, she was brought home after taking an overdose of painkillers and left in her vehicle and she was told she could slit her wrists with a box cutter. None of these allegations were supported by additional factual evidence. The employing establishment denied that her signature was ever forged or that she was left in her vehicle at home following an overdose of painkillers. The Chaplain identified with respect to a box cutter incident did not support appellant's version of the incident. Appellant made allegations with respect to verbal abuse, such as a statement from a supervisor that she was the worst employee, but no supporting evidence was submitted and the employing establishment denied that a supervisor had made such a statement.

Based on the evidence of record as of September 20, 2005, appellant did not substantiate a compensable work factor with respect to her claim. In the absence of a compensable work, appellant did not meet her burden of proof and the medical evidence is not considered.⁷

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁸ 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 set forth arguments and contains evidence that either: "(1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent evidence not previously considered by the Office."⁹ Section 10.608(b) states that any application for review that does not meet at least one of the

⁶ On this issue the Board is limited to review of the evidence that was before the Office at the time of the September 20, 2005 decision.

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

⁸ 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.")

⁹ 20 C.F.R. § 10.606(b)(2).

requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.¹⁰

ANALYSIS -- ISSUE 2

On February 23, 2006 the Office received a February 8, 2006 EEOC decision with respect to a complaint filed for discrimination based on religion. The administrative judge noted that appellant had claimed that the suspension of her security clearance, placement on detail and adverse performance appraisal constituted discrimination. The decision found that appellant had proven by a preponderance of the evidence that she was discriminated against as alleged.

The evidence submitted constitutes relevant and pertinent evidence not previously considered by the Office. The February 8, 2006 EEOC decision was new evidence that was relevant to the issue of whether appellant established a compensable work factor in this case.¹¹ Pursuant to 20 C.F.R. § 10.606(b)(2)(iii), appellant met the requirements for obtaining a merit review on her claim. The case will be remanded to the Office for a proper decision on the merits.

CONCLUSION

The evidence of record before the Office at the time of the September 30, 2005 Office decision was not sufficient to meet appellant's burden of proof to establish an emotional condition causally related to compensable work factors. On reconsideration appellant submitted relevant and pertinent evidence not previously considered and she is entitled to a decision on the merits of the claim.

¹⁰ *Id.* at § 10.608(b); *see also* Norman W. Hanson, 45 ECAB 430 (1994).

¹¹ *See* Jimmy L. Day, 48 ECAB 654 (1997).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 30, 2005 is affirmed. The decision dated February 24, 2006 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: October 15, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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