

**United States Department of Labor
Employees' Compensation Appeals Board**

L.B., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Los Angeles, CA, Employer**

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**Docket No. 09-932
Issued: August 11, 2009**

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 9, 2009 appellant filed a timely appeal from July 11 and December 12, 2008 decisions of the Office of Workers' Compensation Programs denying her occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On February 7, 2008 appellant, then a 55-year-old administrative officer, filed an occupational disease claim (Form CA-2) claiming that, on or before January 2, 2008, she sustained major depression, anxiety attacks, migraine headaches, impaired functioning and loss of self-esteem because the employing establishment allegedly refused to provide an ergonomic workstation in accordance with her physician's instructions.

In a March 12, 2008 letter, the Office advised appellant of the evidence needed to establish her claim, including a detailed description of the alleged work factors and rationalized medical evidence supporting a causal relationship between those incidents and the claimed conditions.

In April 1 and 3, 2008 letters, the employing establishment asserted that it followed all physician requests for ergonomic modifications to appellant's workstation. This included replacing her desk, adjusting the height of the desk and offering her a telephone headset. However, appellant refused to comply with the ergonomic specialist's recommendations. She contested in an April 13, 2008 letter that the ergonomic modifications were ineffective. Appellant submitted additional evidence.¹

Employing establishment memoranda from an ergonomic specialist demonstrate that from February 5 to November 15, 2004, appellant was provided with an ergonomically correct keyboard tray,² type stand, chair, chair cushion, footrest, document holder, two computer mice and a mouse pad. She was also instructed on proper placement of her computer, chair and desk equipment. An August 23, 2005 ergonomic survey noted appellant's refusal to comply with chair adjustments made by the ergonomic specialist.

In an August 2005 report, Dr. John T. Harbaugh, an attending Board-certified family practitioner, recommended raising the height of appellant's desk, that her monitor be straight and centered on her desk, that she keep her computer mouse close to her keyboard and use a document holder, keyboard tray and adjustable chair.

A November 29, 2007 ergonomic survey recommended raising the height of appellant's desk and repositioning her keyboard. She was given a new computer and chair cushion on December 5, 2007. In memoranda through March 24, 2008, the ergonomic specialist stated that appellant's refusal to position her computer as instructed prevented installation of a requested monitor arm.

In a March 25, 2008 letter, appellant advised her supervisor that she felt strained and twisted while sitting at her desk. She contended that the desk risers narrowed her walking space and that a monitor arm was not installed. In an April 3, 2008 memorandum, an ergonomic specialist explained that appellant felt twisted because she refused to position her computer and keyboard as instructed. Also, the blocks used to raise appellant's desk were only three quarters of an inch wider than the desk legs and did not affect her walking space.

¹ In a January 21, 2008 report, Dr. John T. Harbaugh an attending Board-certified family practitioner, diagnosed degenerative arthritis in both feet, aggravated by an accepted April 30, 2004 left foot contusion. Dr. John Barchilon, an attending Board-certified internist, released appellant to full duty as of February 28, 2008. In a March 25, 2008 report, Dr. Siva Ayyar, an attending physician specializing in occupational medicine, recommended an ergonomic evaluation and unspecified restrictions.

² Appellant had several prior claims accepted which are not before the Board on the present appeal. The Office accepted neck back and shoulder strains sustained on or before January 17, 2000, right carpal tunnel syndrome and left radial styloid tenosynovitis sustained on or before January 14, 2004, a left foot contusion sustained on April 30, 2004 when a keyboard tray fell on her foot and a lumbosacral strain sustained in April 2005.

By decision dated July 11, 2008, the Office denied appellant's claim on the grounds that she failed to substantiate any compensable factors of employment. It found that, while there were documented ergonomic deficiencies in appellant's workstation, the employing establishment made numerous modifications to correct the problems. However, the employer could not complete the modifications due to appellant's refusal to position equipment as instructed. The Office noted that appellant did not submit medical evidence regarding a psychiatric condition.

In an August 5, 2008 letter, appellant requested a review of the written record. She submitted a March 28, 2008 report from Dr. Siva Ayyar, an attending physician specializing in occupational medicine, who diagnosed chronic neck pain and cervical stenosis. Dr. Ayyar recommended unspecified adjustments to appellant's workstation. In June 11 and 16, 2008 reports, Dr. Adrian Mirea, an attending Board-certified psychiatrist, limited appellant to working four hours a day with restrictions.

By decision dated and finalized December 12, 2008, an Office hearing representative affirmed the July 11, 2008 decision, finding that appellant provided insufficient evidence that the employing establishment failed to comply with her medical restrictions. The hearing representative found that appellant's refusal to cooperate with the ergonomic specialist's instructions made it impossible for the employing establishment to provide an appropriate workstation. Therefore, the claimed emotional condition was not related to appellant's federal employment. As there were no covered work factors, the hearing representative did not consider the medical evidence.

LEGAL PRECEDENT

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 an 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 her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³ 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.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 a physician when providing an opinion on causal relationship and which working conditions are not deemed

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

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 record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

ANALYSIS

Appellant alleged that she sustained depression and anxiety as a result of the employing establishment's failure to provide ergonomically correct equipment in compliance with her physician's instructions. The Office found that the employing establishment made repeated, significant attempts to comply with her physician's directives. Therefore, the Board must review whether appellant submitted sufficient evidence to establish her allegations as factual, compensable employment factors under the terms of the Act.

The only ergonomic modifications directed by a physician were provided in August 2005 by Dr. Harbaugh, an attending Board-certified family practitioner, who recommended raising appellant's desk, use of a document holder, keyboard tray and adjustable chair, and that appellant's monitor be ergonomically centered. The assignment of office equipment is considered an administrative function of the employing establishment and not within the duties of the employee.⁷ However, the Board has 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.⁸

From February 2004 to November 2007, the employing establishment provided appellant an ergonomically correct desk, document holder, keyboard tray, adjustable chair, footrest, computer mice and mouse pad. An ergonomic specialist met with her several times to adjust the equipment and instruct appellant in its proper use. The employing establishment provided the items prescribed by Dr. Harbaugh and continued to assist appellant despite her refusal to comply with adjustments to her chair, computer and keyboard. Therefore, the Board finds that the employing establishment acted reasonably with regard to providing the prescribed ergonomic equipment.

CONCLUSION

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty as she failed to establish the alleged factor as factual. As

⁵ See *Norma L. Blank*, 43 ECAB 384 (1992).

⁶ *Id.*

⁷ *Harriet J. Landry*, 47 ECAB 543 (1996).

⁸ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

appellant has not established any compensable work factors, the medical record need not be addressed.⁹

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 12, 2008 is affirmed.

Issued: August 11, 2009
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

⁹ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).