United States Department of Labor
Employees' Compensation Appeals Board

L.K., Appellant	)	
and	)	**Docket No. 08-2045**
	)	**Issued: March 25, 2009**
U.S. POSTAL SERVICE, POST OFFICE, San Francisco, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 21, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated January 4, 2008 and a nonmerit decision dated April 22, 2008. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit and nonmerit issues of this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she developed stress and coronary artery disease due to her federal employment; and (2) whether the Office properly refused to reopen appellant's case for further consideration of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 6, 2007 appellant, then a 49-year-old letter carrier, filed a traumatic injury claim alleging that on July 2, 2007 she developed tightness in her chest while sorting mail. She noted that medical testing confirmed that she was having a heart attack and submitted medical evidence

diagnosing a myocardial infarction. In a letter dated July 18, 2007, the Office requested additional factual and medical evidence in support of appellant's claim and allowed 30 days for a response. Appellant responded on August 17, 2007 and stated that her claim was actually for an occupational disease. She attributed her heart attack to harassment by her supervisor. Appellant stated that on February 15, 2007 her supervisor called the postal police on the grounds that appellant refused to go home. She requested leave for February 15 and 16, 2007 which was denied. Appellant informed her supervisor that she would not work overtime but was assigned more than eight hours of work for February 15, 2007. Her supervisor also stood over her and, after "an extended period of time," appellant shouted and asked her supervisor to leave her alone. Appellant then threatened to leave the building.

On March 17, 2007 appellant's supervisor ordered her to take out catalogs which other carriers were allowed to leave. Appellant did so, but felt this order was unfair. On March 21, 2007 she sought medical treatment and received a diagnosis of coronary spasms. On July 25, 2007 Dr. Christina Yu Ting, a physician specializing in preventative medicine, diagnosed coronary artery disease and work stress.

By decision dated January 4, 2008, the Office denied appellant's claim on the grounds that she had not substantiated a compensable factor of employment as causing her stress and coronary artery disease.

Appellant requested reconsideration. In a February 2, 2008 statement, she again alleged that her stress and coronary conditions were work related due to harassment by her supervisor. Appellant submitted articles from fellow employees complaining about supervisors and other conditions at the employing establishment.

By decision dated April 22, 2008, the Office denied appellant's request for reconsideration on the grounds that she failed to submit relevant new evidence or argument in support of her claim.

LEGAL PRECEDENT -- ISSUE 1

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of a disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[1]

Workers' compensation law does not apply to each and every injury or illness that is somehow related 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

[1] *Solomon Polen*, 51 ECAB 341, 343-44 (2000).

coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular of specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[2] 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.[3]

Although the handling of leave requests and attendance matters are generally related to employment, they are administrative functions of the employer and not duties of the employee. As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Act. However, to the extent that the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.[4]

The Board has held that the manner in which a supervisor exercises his or her discretion falls outside the coverage of the Act. This principal recognizes that a supervisor or manager must be allowed to perform their duties and that employee's will at times disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.[5]

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[6] A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.[7] A claimant must establish a factual basis for his or her allegations of harassment or discrimination with probative and reliable evidence.[8]

ANALYSIS -- ISSUE 1

Appellant submitted medical evidence diagnosing coronary artery disease and stress from her employment. She alleged specific actions by her supervisor caused or contributed to her

[2] 5 U.S.C. §§ 8101-8193.

[3] *See Thomas D. McEuen*, 41 ECAB 387, 390-91 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[4] *James P. Guinan*, 51 ECAB 604, 607 (2000).

[5] *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

[6] *Reco Roncoglione*, 52 ECAB 454, 456 (2001).

[7] *Penelope C. Owens*, 54 ECAB 684, 686 (2003).

[8] *Beverly R. Jones*, 55 ECAB 411, 417 (2004).

conditions. The Board must determine whether these actions constitute compensable factors of employment.

Appellant requested leave for February 15 and 16, 2007, which were denied. As noted, the denial of leave requests is an administrative matter. Appellant has not submitted any evidence to establish error or abuse on the part of her supervisor in denying leave. She has not established this as a compensable factor of her employment.

Appellant informed her supervisor that she would not work overtime on February 15, 2007. In response, her supervisor allegedly assigned more than eight hours of work. Appellant stated that her supervisor also watched her work. She shouted and asked her supervisor to leave her alone. Appellant also threatened to leave the building. Eventually her supervisor called the postal police on the grounds that appellant refused to go home. On March 17, 2007 appellant's supervisor directed her to take out catalogs which other carriers were allowed to leave. Appellant did so, but felt this order was unfair. These allegations relate to the supervisor's discretion. As noted, the mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.[9] Appellant has not submitted any evidence to establish error or abuse by her supervisor to assign work, to observe her working or to direct her to take out catalogs. She has not explained or offered evidence that it was inappropriate for her supervisor to react to appellant's shouts by directing her to go home and calling the postal police when she failed to do so. As appellant has not established error or abuse on the part of her supervisor in these actions, these implicated actions are not compensable factors of employment.

Appellant has also alleged incidents that constituted harassment. However, she has not provided any witness statements or other evidence to substantiate her allegations of harassment with probative and reliable evidence. Appellant's mere perception that she was harassed is not sufficient to establish a compensable factor of employment.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.[10]

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[11] the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously

[9] *Linda J. Edwards-Delgado*, *supra* note 5.

[10] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *See Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

[11] 5 U.S.C. §§ 8101-8193, § 8128(a).

considered by the Office.[12] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[13]

ANALYSIS -- ISSUE 2

Appellant requested reconsideration on February 2, 2008 and again alleged that her stress and coronary conditions were work related due to harassment from her supervisor. Her factual statements were repetitive of those she had presented before the Office issued the January 4, 2008 decision. These statements were not relevant and pertinent new evidence and were not sufficient to require the Office to reopen appellant's claim for consideration of the merits.

Appellant submitted articles regarding the employing establishment. Excerpts from publications regarding the employing establishment are not relevant to appellant's claim as these documents did not directly address the factual scenarios implicated by appellant and therefore cannot constitute corroborative evidence substantiated appellant's alleged employment incidents.

Appellant failed to submit any relevant new evidence in support of her request for reconsideration and the Office properly declined to reopen her claim for consideration of the merits.

CONCLUSION

The Board finds that appellant failed to substantiate a compensable factor of employment as causing or contributing to her diagnosed stress or coronary artery disease and therefore failed to meet her burden of proof in establishing her claim for an occupational disease. The Board further finds that the Office properly declined to reopen appellant's claim for consideration of the merits on April 22, 2008.

[12] 20 C.F.R. § 10.606(b)(2).

[13] 20 C.F.R. § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the April 22 and January 4, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 25, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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