

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

B.P., Appellant)

and)

DEPARTMENT OF THE TREASURY,)
INTERNAL REVENUE SERVICE,)
Richmond, VA, Employer)

Docket No. 09-1479
Issued: April 23, 2010

Appearances:

Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 26, 2009 appellant filed a timely appeal from the September 11, 2008 and May 5, 2009 merit decisions of the Office of Workers' Compensation Programs denying her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On June 2, 2008 appellant, then a 47-year-old tax-examining assistant, filed an occupational disease claim alleging that she sustained depression, anxiety and panic attacks due to various incidents and conditions at work. She indicated that she first became aware of her claimed condition and its relationship to her work on June 7, 2005.

In an attached statement, appellant asserted that after she was promoted from the position of case processor to the position of tax-examining assistant around December 2003, she did not receive the same level of training that her coworkers had received. Her coworkers received training for about six months on a one-on-one basis from Rosemary Burnett, a senior tax examiner and they only had to focus on case closing during this period. Appellant claimed that these coworkers were exposed to a variety of cases during their training and were able to consult with Ms. Burnett on a frequent basis. She indicated that when she was promoted to the position of tax-examining assistant she had to make adjustments to taxpayers' accounts, a complicated function which had previously been handled by tax auditors. Appellant asserted that when she had problems in her new position she was told to have her coworkers help her. She claimed that she did not know anything about processing cases and that she was given a large amount of different types of cases. These cases involved such matters as adjustments to taxable income, earned income credits, child tax credits, self-employment income, self-employment taxes, Medicare, credit and debit interest transfers, restricted interest, penalty appeals, innocent spouse matters, trust fund recovery and debt collection processes. Appellant indicated that these matters involved different rules, regulations and procedures and she claimed that she was given short timeframes to close these cases. She also had to perform mail and new receipt carding duties and take telephone calls to answer questions from taxpayers and different offices.

Appellant indicated that she sustained stress because she faced discipline, including removal, if she made mistakes in calculating tax liabilities or penalties. She asserted that Marilyn Birgans-Brame, the lead tax-examining assistant and the other senior tax-examining assistants did not have this responsibility. Appellant told Ms. Birgans-Brame that she was confused about the various cases she worked on, but that Ms. Birgans-Brame kept telling her to get her coworkers to assist her. She claimed that her coworkers also had large caseloads and could provide very little assistance to her.¹ Appellant indicated that on June 6, 2005 she had just completed a restricted interest case with the assistance of a tax-examining assistant, a task which should have been performed by a higher-grade tax-examining assistant who had received special training. She stated that she broke down on June 6, 2005 due to the stress of performing this task and had to leave work. Appellant returned to work on July 25, 2005 and claimed that she had difficulty performing her work because she could not take her anti-depression medication due to its sleep-inducing side effects. She claimed that Ms. Birgans-Brame ignored her stated concerns about this circumstance and asserted that she was not advised of her right to apply for workers' compensation. Appellant asserted that Steve McAlum, her manager, mistreated her in connection with her attempts to receive benefits and claimed that she did not receive any benefits for a month due to the negligence of Mr. McAlum.

Appellant submitted several medical reports concerning her treatment for emotional problems, including hospitalization, in June and July 2005. On June 18, 2008 the Office requested that she submit additional factual and medical evidence in support of her claim. In a June 23, 2008 statement, appellant asserted that when she worked as a case processor she only had to focus on closing cases by performing such tasks as assembling the case files and inputting information into the computer. Her coworkers handled the complex task of making adjustments

¹ Appellant claimed that another tax-examining assistant told her, "You should n[o]t be getting these different types of cases."

to tax accounts. Appellant claimed that when she was promoted to tax-examining assistant she became stressed because she had to perform these adjustment duties for the first time. She provided a detailed description of work duties which she considered stressful, including carding new receipts when taxpayers filed appeals, determining what adjustments to make to taxpayers' accounts and calculating the tax effects of such adjustments, inputting the proper computer codes for adjustments and determining if statutes of limitation applied to cases. The rules for determining adjustments and statutes of limitations were unusually complicated and appellant had to make determinations quickly due to various deadlines. She indicated that she had to make an appointment with a coworker in order to receive help with these matters and stated that she became stressed because this process caused her to hold onto cases which were subject to deadlines. Appellant claimed that when she asked Ms. Birgans-Brame for help she would respond, "Just do what you can." She indicated that she received two weeks of training in March 2005 for the tax-examiner job but that the training was inadequate.²

In a July 28, 2008 statement, Ms. Birgans-Brame stated that she was appellant's supervisor from May 2003 to January 2007. She asserted that Ms. Burnett was available to help appellant perform her tax-examining assistant job and that appellant participated in monthly training sessions and even taught a few classes. Ms. Birgans-Brame stated that in "response to the stress level" tax-examining assistants were assisted by management in setting their workload priority. The workload for tax-examining assistants increased as the Chicago Appeals Office had been identified to process case closures from other offices within the area, but these extra cases were distributed equitably, according to grade, among the tax-examining assistants. Ms. Birgans-Brame indicated that appellant expressed concern about her ability to process the variety of cases she was assigned, but noted that a number of cases she was assigned, including trust fund recovery cases, were considered to be "low-graded cases." Appellant performed mail and carding duties on a rotational basis which were considered to be low-graded duties. Ms. Birgans-Brame indicated that after appellant voiced her concerns innocent spouse cases were no longer assigned to her and she was assigned less complex cases. When appellant indicated that she could not work a particular type of case, it was immediately reassigned. She asserted that there were no staffing shortages that would have affected appellant's workload or caused any extra demands. Overtime was offered to all tax-examining assistants on a voluntary basis and appellant frequently worked overtime.

In a July 28, 2008 statement, Ms. Burnett stated that she was appellant's coworker from January 2004 to July 2007 and that she served as her acting manager since April 2008. She indicated that as a higher-grade employee she was assigned to help appellant with her duties. Ms. Burnett stated that some aspects of the tax-examining assistant could be considered stressful including determining the application of statutes of limitation and meeting processing timeframes. She indicated that additional training was available to appellant in monthly workshops and she was available on a day-to-day basis to assist her. Ms. Burnett stated that she was not aware of appellant's inability to perform her day-to-day duties or of any personnel shortage during the period she was claiming work-related stress.³

² In an August 16, 2008 statement, appellant asserted that in 2006 she had a conflict with a coworker at work and that the coworker's daughter came to the workplace and threatened her with bodily harm.

³ The record contains a job description of the tax-examining assistant position.

In a September 11, 2008 decision, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. It indicated that the evidence showed that she received proper training and that adjustments were made to her casework when she expressed concerns. The Office found that appellant was not subjected to harassment by supervisors or coworkers.

Appellant requested a hearing before an Office hearing representative. At the January 16, 2009 hearing, she further discussed her job duties and her belief that she did not receive adequate training. In a February 19, 2009 statement, Ms. Birgans-Brame and Ms. Burnett asserted that appellant received proper training.⁴ In a May 5, 2009 decision, the Office hearing representative affirmed the Office's September 11, 2008 decision.

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.⁵ 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.⁶

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 employment factors.⁷ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁸

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 factors of employment and may not be considered.⁹ If a claimant does implicate a factor of

⁴ Appellant submitted a March 23, 2009 statement in which she further discussed her claim that she received inadequate training.

⁵ 5 U.S.C. §§ 8101-8193.

⁶ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁸ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁹ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

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.¹⁰

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. The Office denied her emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant claimed that the employing establishment did not provide adequate training to perform the duties of her tax-examining assistant position, that she was assigned job duties for which she was unprepared and that managers ignored her requests for help with her job duties. Regarding these allegations, the Board finds they relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.¹¹ Although the handlings of these matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹² 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. The Board examines whether the employing establishment acted reasonably.¹³

The Board finds that appellant did not submit sufficient evidence to establish that the employing establishment committed error or abuse with respect to these matters. Ms. Birgans-Brame, appellant's supervisor during most of the period in question, and Ms. Burnett, a higher-grade coworker, both testified that they were available to help appellant on a day-to-day basis with her work duties. They also indicated that appellant attended monthly work sessions designed to provide training on a wide variety of work topics and even taught several of these sessions. Ms. Birgans-Brame stated that she responded to appellant's concerns by adjusting some of her work duties. Appellant has not submitted any evidence, such as the finding of a favorable grievance decision, to show that the employing establishment committed error or abuse with respect to such training, support and work assignment matters.¹⁴ Thus, appellant has not established a compensable employment factor under the Act with respect to these administrative matters.

¹⁰ *Id.*

¹¹ See *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹² *Id.*

¹³ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁴ The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act. See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

Appellant generally alleged that she was mistreated by Mr. McAlum, a supervisor, in connection with her attempts to receive benefits and claimed that she did not receive any compensation benefits for a month due to the negligence of Mr. McAlum. The Board has generally found that the development of any condition related to such matters would not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties.¹⁵ Although the handling of a compensation claim is generally related to the employment, it is an administrative function of the employer and not a duty of the employee and thus, not compensable absent evidence of error or abuse by the employer.¹⁶ Appellant has not shown any error or abuse by management with respect to these matters.

Appellant also indicated that she feared being disciplined or fired if she made mistakes in her work duties. Regarding her allegation that she developed stress due to insecurity about maintaining her position, the Board has previously held that a claimant's job insecurity is not a compensable factor of employment under the Act.¹⁷

Appellant alleged that she sustained stress due to performing the duties of her tax-examining assistant position. She indicated that beginning around January 2004 she was responsible for making adjustments to taxpayers' accounts and calculating the tax effects of such adjustments, inputting the proper computer codes for adjustments and determining if statutes of limitation applied to cases. Appellant had to make these determinations quickly due to various applicable deadlines and making these adjustments to taxpayers' accounts required familiarity with a variety of different types of cases, including those for trust fund recovery and innocent spouse cases. She also had to perform mail and new receipt carding duties and take telephone calls to answer questions from taxpayers and different offices.

The Board has held that emotional reactions to situations in which an employee is trying to meet her regular assigned duties are compensable. In *Antal*, a tax examiner filed a claim alleging that his emotional condition was caused by the pressures of trying to meet the production standards of his job and the Board, citing the principles of *Cutler*, found that the claimant was entitled to compensation. In *Kennedy*, the Board, also citing the principles of *Cutler*, listed employment factors which would be covered under the Act, including an unusually heavy workload and imposition of unreasonable deadlines.¹⁸

The Board finds that appellant established compensable employment factors with respect to the above-described work duties as a tax-examining assistant. The employing establishment statements and the job description of record do not contradict appellant's description of her job duties.¹⁹ As appellant has established compensable employment factors, the Office must base its

¹⁵ See *George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

¹⁶ See *Terry L. Ross*, 53 ECAB 570, 577 (2002).

¹⁷ See *Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

¹⁸ See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

¹⁹ While appellant's supervisors and coworkers might have disagreed with her assessment of the difficulty of the work as a tax-examining assistant, they did not take issue with appellant's basic description of the work duties of a

decision on an analysis of the medical evidence. As the Office found that there were no compensable employment factors, it did not analyze or develop the medical evidence. The case will be remanded to the Office for this purpose.²⁰ After such further development as deemed necessary, the Office should issue an appropriate decision on this matter.

CONCLUSION

The Board finds that appellant has established employment factors in connection with her claim for an employment-related emotional condition and that the case is remanded to the Office to consider whether the medical evidence shows she sustained an emotional condition due to these factors.

ORDER

IT IS HEREBY ORDERED THAT the May 5, 2009 and September 11, 2008 merit decisions of the Office of Workers' Compensation Programs are set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: April 23, 2010
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

tax-examining assistant. Ms. Birgans-Brame acknowledged that the workload for tax-examining assistants increased as the Chicago Appeals Office had been identified to process case closures from other offices within the area. She also noted that appellant worked overtime at times and was subject to various deadlines.

²⁰ See *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).