

actions on productivity, they retaliated against her and subjected her to a hostile work environment. The employing establishment denied appellant's allegations.

By letter dated December 12, 2008, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It requested a chronological account of all the actions that she considered responsible for her condition, specifically identifying persons, dates, locations, practices and incidents. The Office also requested a rationalized medical report from an attending physician, which described appellant's symptoms, results of examination and tests, diagnosis, treatment provided, the effect of treatment and opinion with medical reasons regarding the cause of her emotional condition. It further requested that the employing establishment respond to appellant's allegations. Appellant was allowed 30 days to submit such evidence. She did not respond.

In an October 20, 2008 disability certificate, Dr. Kathryn M. Simon, an attending Board-certified family practitioner, advised that appellant could return to work on October 27, 2008.

By decision dated February 23, 2009, the Office denied appellant's claim, finding that she did not sustain an emotional condition in the performance of duty. Appellant failed to submit sufficient evidence to establish that the claimed events occurred as alleged or that she sustained a medical condition causally related to the claimed events.¹

LEGAL PRECEDENT

A claimant 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.² To establish that she sustained an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.³

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁴ the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁵ There are situations where an injury or an illness has some connection with the employment but

¹ On appeal, appellant submitted new evidence. However, the Board cannot consider evidence that was not before the Office at the time of the final decision. See 20 C.F.R. § 501.2(c)(1); *J.T.*, 59 ECAB ____ (Docket No. 07-1898, issued January 7, 2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

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

³ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ 28 ECAB 125 (1976).

⁵ 5 U.S.C. §§ 8101-8193.

nevertheless does not come within the concept or coverage under the Act.⁶ When an employee experiences emotional stress in carrying out her employment duties and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of her work.⁷ 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 under the Act.

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.⁸ 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.⁹

Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. 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.¹⁰ Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act.¹¹ However, 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.¹²

ANALYSIS

The Board finds that appellant has failed to establish that she sustained an emotional condition in the performance of duty. The Office's December 12, 2008 developmental letter specifically requested that she submit a chronological account of all the incidents that she considered responsible for her condition, specifically identifying persons, dates, locations, practices and incidents. Appellant did not submit such evidence. The Board finds, therefore,

⁶ See *Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

⁷ *Lillian Cutler*, *supra* note 4.

⁸ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁹ *Id.*

¹⁰ *Lillian Cutler*, *supra* note 4.

¹¹ *Michael L. Malone*, 46 ECAB 957 (1995).

¹² *Charles D. Edwards*, 55 ECAB 258 (2004).

that she failed to establish a factual basis for her allegations or any compensable factor of employment. Appellant failed to meet her burden of proof.

Regarding appellant's contention on appeal, that her psychiatric medical evaluation was not considered by the Office, the Board finds that it was not necessary for the Office to address the medical evidence of record since she failed to establish a compensable employment factor.¹³

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the February 23, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 19, 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

¹³ *Marlon Vera*, 54 ECAB 834 (2003).