United States Department of Labor
Employees' Compensation Appeals Board

D.B., Appellant	)	
and	)	**Docket No. 10-560**
	)	**Issued: December 6, 2010**
U.S. POSTAL SERVICE, POST OFFICE, North Metro, GA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 23, 2009 appellant filed a timely appeal from a September 10, 2009 merit decision of the Office of Workers' Compensation Programs. 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 established she sustained an emotional condition causally related to her employment.

FACTUAL HISTORY

On December 15, 2008 appellant, a 54-year-old human resources associate, filed an occupational disease claim (Form CA-2) for job-related stress and anxiety. She alleged "indirectly" witnessing her manager communicating with her coworkers in an unprofessional manner and that, on December 5, 2008, this "negativity" was directed at her. Appellant also alleged being "consistently exposed to disparity." She first became aware of her condition and that it was caused by her federal employment on December 5, 2008. Appellant submitted a leave slip dated December 5, 2008 and stopped work that day because she felt nauseous.

Appellant submitted notes and a report signed by a licensed social worker, a note signed by a licensed nurse practitioner, notes from coworkers and a December 16, 2008 note in which Dr. Tami L. Brenton, an internist, reported treating appellant for stress-related complaints.

By letter dated December 18, 2008, the employing establishment, through Wanda Vanhorn, an acting labor relations manager, controverted appellant's claim. Ms. Vanhorn asserted that appellant had not presented any evidence demonstrating job-related stress, exposure to disparate treatment or inappropriate communication by management. She noted that "leave is not an injury."

Ms. Vanhorn explained that she denied appellant's leave request because agency policy required one human resource associate to be on duty during those dates and, further, a month before appellant filed her request, another of her coworkers, Alice Smith, requested and was approved to take leave on November 28 and December 26, 2008. She offered appellant November 26, 2008 in lieu of November 28, 2008. Allegedly, appellant rejected this proposal. Ms. Vanhorn offered appellant December 24, 2008, as a substitute for December 26, 2008. Appellant accepted this proposal. Ms. Vanhorn brought Ms. Smith into the discussion in an attempt to broker a settlement. She stated that Ms. Smith agreed to work December 24, 2008, so that appellant could take leave on Christmas and that Ms. Smith would take annual leave on December 26, 2008. Appellant allegedly agreed to the arrangement. Ms. Vanhorn reported that appellant stated she did not want the day before Thanksgiving off.

On November 21, 2008 as Ms. Vanhorn prepared to go on vacation, appellant submitted two additional leave requests for November 28 and December 26, 2008. Ms. Vanhorn reported that appellant stated she did not want to be off on December 24, 2008 and that if she could not have the dates requested then she would submit another request. Ms. Vanhorn noted that Ms. Smith offered to work December 26, 2008, so that appellant could take off work on December 24, 2008. She asked that appellant and Ms. Smith coordinate their work schedules for these dates.

Ms. Vanhorn reported that appellant did not coordinate her schedule with Ms. Smith. Rather, appellant later submitted a leave request for December 1 and 2, 2008, because she could not take off work on November 28, 2008. This request was granted.

Ms. Vanhorn reported that appellant also submitted a leave request for December 8 and 9, 2008, because she could not take off work on December 26, 2008. She denied this leave request and advised appellant that she could have two days off only if she coordinated her schedule with Ms. Smith. Ms. Vanhorn alleged that appellant would not explain why she needed to take four days when her prior leave request was for two days. Appellant thought it was not fair that Ms. Vanhorn could take a week off for the Thanksgiving holiday while she only got one day. Ms. Vanhorn advised appellant that she would not discuss her personal leave request with her and if she needed to inquire about it she should consult her manager.

In a December 24, 2008 note, appellant reported witnessing Ms. Vanhorn speaking to Patty Holmes and Cynthia Johnson Brundridge, two coworkers, in a negative manner and that this negativity was later directed at her. She alleged that on December 8, 2008 Ms. Holmes "confronted" appellant concerning this matter.

Appellant alleged being subjected to a hostile and abusive work environment. She reported that on November 12, 2008 she submitted a leave slip for November 28, 2008, the day after Thanksgiving, and December 26, 2008, the day after Christmas. Appellant stated that these leave requests were denied.

On November 21, 2008 appellant submitted two leave slips, each claiming two days. She hoped to get two days leave and a weekend together because "everyone else" took the day after Thanksgiving and the day after Christmas. Appellant reported that the first leave slip was approved.

Appellant alleged that Ms. Vanhorn denied the second leave slip because she thought "[appellant] didn't need the leave." She described the December 5, 2008 meeting and characterized Ms. Vanhorn's conduct as rude, arrogant and alleged that Ms. Vanhorn's conduct was an abuse of power. Appellant alleged the incident made her nauseous and physically shaken. She reported leaving work after this encounter and sought medical treatment for job-related stress and anxiety.

On January 7, 2009 appellant alleged she took off work because of job-related stress and anxiety. On December 17, 2007 she faxed a copy of a CA-2 form to her manager. Upon returning to work on December 22, 2008 appellant discovered her manager had not processed her claim form.

By e-mail dated February 25, 2009, Ms. Vanhorn denied appellant's allegations. She explained that she received appellant's CA-2 form on December 18, 2008 which she processed and submitted before going on vacation. When Ms. Vanhorn returned from her vacation, she learned that appellant's CA-2 form had not been received and submitted another copy.

In a January 30, 2009 letter, appellant characterized Ms. Vanhorn's attitude and manner during the December 5, 2008 meeting as rude and abusive. She reported that, while Ms. Vanhorn spoke to her, her voice was raised, her arms folded, and she would not let appellant interrupt her. Appellant reported that this discussion occurred in Ms. Vanhorn's office, behind closed doors, and other employees that were present outside Ms. Vanhorn's office overheard the confrontation.

By letter dated February 18, 2009, Ms. Vanhorn controverted the allegations contained in appellant's December 24, 2008 letter. She reported that Ms. Holmes and Ms. Brundridge work at a different facility that is approximately 33 miles from where appellant works. Ms. Vanhorn also noted that appellant was not at work on December 8, 2008, when Ms. Holmes allegedly "confronted" her.

Ms. Vanhorn explained that Ms. Smith is a bargaining unit employee while appellant is an executive and administrative schedule (EAS) employee and each have different quantities of allotted vacation leave and rules concerning when they can take annual leave. She reiterated that appellant rejected the alternative December dates.

By decision dated March 23, 2009, the Office denied the claim because appellant had not established that compensable employment factors caused a medically-diagnosed condition.

On March 27, 2009 appellant requested an oral hearing, which the Office conducted on August 3, 2009. She testified that her condition arose after her requested leave for the Thanksgiving and Christmas holidays was denied. Appellant noted that she changed her plans and requested alternate days. She stated that for these leave requests she chose two consecutive days and selected days that were not close to the Christmas holiday or holiday-related agency events.

Appellant argued that denying her leave request constitutes disparate treatment because Ms. Smith's leave requests were granted and she does the same type of work. She stated that during a December 5, 2008 meeting Ms. Vanhorn questioned her reason for requesting leave. Appellant alleged Ms. Vanhorn opined that she did not need the time off.

Appellant opined that such questioning was inappropriate and further alleged that Ms. Vanhorn verbally abused her; telling appellant not to interrupt while she was talking. She also alleged that her supervisor raised her voice during this meeting and opined that such conduct constituted a verbal attack.

Appellant also discussed her personal reaction to the denial of her leave requests and the meeting with her supervisor. She reported that she stopped work after the meeting and alleged that her "pay was messed with." Appellant stated that the second week she was off work was not approved, she was placed on leave without pay status and alleged that the employer planned to "dock half my salary … to mess with me." She further alleged that her paperwork disappeared, was not processed and her supervisor was withholding her leave slips.

By decision dated September 10, 2009, the Office affirmed its March 23, 2009 decision because appellant had not established that compensable employment factors caused a medically-diagnosed condition.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of proof to establish the essential elements of her claim by the weight of the evidence,[2] including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.[3] As part of her burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.[4] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality,

[1] 5 U.S.C. §§ 8101-8193.

[2] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[3] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *Id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[5]

To establish that she sustained an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that she has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her stress-related condition.[6] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.[7] 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.[8]

Workers' compensation law is not applicable 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. When the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[9] On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.[10]

Administrative and personnel matters, although generally related to the employee's employment are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.[11] However, the Board has held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.[12] In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.[13]

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[5] *Jennifer Atkerson,* 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

[6] *Leslie C. Moore*, 52 ECAB 132 (2000).

[7] *Dennis J. Balogh*, 52 ECAB 232 (2001).

[8] *Id*.

[9] 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

[10] *Gregorio E. Conde*, 52 ECA 410 (2001).

[11] *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990*); reaff'd on recon*., 42 ECAB 556 (1991).

[12] *See William H. Fortner*, 49 ECAB 324 (1998).

[13] *Ruth S. Johnson*, 46 ECAB 237 (1994).

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.[14] If a claimant does implicate a factor of employment, it 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.[15]

ANALYSIS

Appellant alleged that her supervisor's rude, arrogant and unprofessional conduct caused her to sustain job-related stress and anxiety. Essentially, she claims that her leave requests were improperly denied. Appellant also alleges exposure to a hostile work environment and disparate treatment. However, the Board finds that these are not compensable employment factors and therefore she has not established that she sustained an emotional claim in the performance of duty.

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 absent error or abuse.[16] Therefore, the propriety of a supervisor's decision to grant or deny leave requests is outside the scope of the Act and does not qualify as a compensable employment factor.[17]

However, an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the supervisor.[18] Whether Ms. Vanhorn erred or acted abusively is a question of reasonableness.[19] The record reflects that she worked within the established parameters of established agency policy. Appellant requested two days of leave after Thanksgiving and after Christmas. Her leave request was denied because a coworker had previously requested leave for these same days. Ms. Vanhorn offered other days of leave to appellant and attempted to negotiate an agreeable schedule for holiday leave between

[14] *Dennis J. Balogh*, 52 ECAB 232 (2001).

[15] *Id*.

[16] *Jeral R. Gray*, 57 ECAB 611 (2006) (the assignment of work is an administrative function of a supervisor); *Robert Breeden*, 57 ECAB 622 (2006) (allegations of unfair disciplinary actions 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); *Ernest J. Malagrida*, 51 ECAB 287 (2000) (as a denial of a transfer is an administrative decision, absent error or abuse in the decision making process, it is not compensable). *See also, Lillian Cutler*, 28 ECAB 125 (1976).

[17] *See Judy Kahn*, 53 ECAB 321 (2002).

[18] *See Charles D. Edwards*, 55 ECAB 258 (2004).

[19] *Janice I. Moore*, 53 ECAB 777 (2002).

appellant and her coworker. Appellant submitted no probative evidence demonstrating that Ms. Vanhorn erred or acted abusively and thus has not established a compensable employment factor with respect to this issue.

Appellant alleged that the employer planned to "dock half my salary … to mess with me." She further alleged that her paperwork disappeared, was not processed and Ms. Vanhorn was withholding her leave slips. These allegations again concern alleged actions by the supervisor, not work duties of appellant and would only be compensable if supported by evidence of error or abuse. However these allegations are completely unsupported by any evidence of record and, consequently, cannot be compensable employment factors.

Appellant argued that granting Ms. Smith's leave requests while denying hers constitutes disparate treatment. The Board notes that the evidence of record establishes that appellant submitted her leave requests after her coworker's had already been granted. Neither this nor appellant's claim that it is not fair that other employees can take more leave than her demonstrates error or abuse.[20]

Appellant also alleged that Ms. Vanhorn raised her voice at appellant and appellant's coworkers. Verbal altercations and difficult relationships with supervisors and coworkers, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. This does not imply, however, that every statement uttered in the workplace will be covered under the Act.[21] A raised voice in the course of a conversation does not, in and of itself, warrant a finding of verbal abuse.[22] Appellant provided no probative evidence supporting this allegation. Therefore, the Board finds that appellant has not shown how Ms. Vanhorn's comments or actions rise to the level of verbal abuse or otherwise fall within the coverage of the Act.[23]

As appellant failed to establish any compensable factors of employment, the Office properly denied her claim.[24]

CONCLUSION

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

[20] *Edgar G. Maiscott*, 4 ECAB 558 (1952).

[21] *Cyndia R. Harrill*, 55 ECAB 522 (2004); *Beverly R. Jones*, 55 ECAB 411 (2004).

[22] *Karen K. Levene*, 54 ECAB 671 (2003).

[23] *Harriet J. Landry*, 47 ECAB 543, 547 (1996); *see Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991).

[24] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Hasty P. Foreman*, 54 ECAB 427 (2003).

ORDER

IT IS HEREBY ORDERED THAT the September 10, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 6, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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