United States Department of Labor
Employees' Compensation Appeals Board

V.N., Appellant	)	
	)	**Docket No. 09-2004**
and	)	**Issued: June 29, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Macon, GA, Employer	)	

Appearances:
John M. Poti, Esq., for the appellant
Office of Solicitor, for the Director

Oral Argument March 2, 2010

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 3, 2009 appellant filed a timely appeal from a February 2, 2009 decision of the Office of Workers' Compensation Programs denying her claim for an emotional condition. 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 met her burden of proof in establishing that her emotional condition is causally related to a compensable employment factor.

On appeal, appellant contends that the employing establishment acted abusively and in error by sending an April 9, 2008 letter requesting updated medical documentation.

FACTUAL HISTORY

On April 16, 2008 appellant, then a 51-year-old safety specialist, filed a claim for an emotional condition. She alleged that on April 10, 2008 she received a letter from J.R. Pope, her

supervisor, requesting updated medical documentation. The letter purportedly threatened to place appellant on absent without leave (AWOL) and remove her from her position if she did not provide documentation within five business days.

In a March 5, 2008 disability certificate, Dr. Craig Underset, an attending general practitioner, stated that appellant was seen that day for stress and anxiety. He opined that she was unable to work and her status was still undetermined. On March 26, 2008 Dr. Underset stated that appellant had been unable to perform her duties since August 9, 2007. Appellant's return to work status continued to be undetermined.

By letter dated April 9, 2008, Mr. Pope noted that the most recent medical documentation concerning appellant's disability for work was dated March 5, 2008 and did not meet the Employee and Labor Relations Manual (ELRM) requirements. He requested medical documentation for her continued absence from work, including a prognosis indicating when she could return to work and an explanation of her illness sufficient to establish that she would be unable to perform her normal duties for the entire period of her absence. Medical statements such as "under my care" or "received treatment" were not acceptable evidence of incapacitation for work. Any portion of absence not properly substantiated within five business days could be charged as AWOL or result in disciplinary action, up to and including removal. Mr. Pope advised appellant to call him if she had any questions about the letter.

In an April 29, 2008 e-mail to Maxine Wilson, appellant's former supervisor, Mr. Pope noted that appellant previously filed a claim on August 29, 2007 for an August 3, 2007 emotional condition and had not worked since. The claim was denied by the Office on February 28, 2008. Mr. Pope stated that his April 9, 2008 letter to appellant was in compliance with normal procedures and was sent to all employees in the same status. There was nothing unusual about the letter; it was simply a request for updated medical documentation to support her continued absence. Mr. Pope attached an April 28, 2008 e-mail in which Julie Neal, a labor relations manager, quoted language from section 513 of the ELRM regarding acceptable medical documentation and the failure to provide such documentation, essentially the same language used in Mr. Pope's April 9, 2008 letter to appellant. Section 513 provided that employees who were on extended sick leave were required to submit, at appropriate intervals but not more frequently than once every 30 days, satisfactory evidence of continued incapacity for work unless some responsible supervisor had knowledge of the employee's continuing situation.

By letter dated May 1, 2008, the Office asked appellant to submit additional evidence in support of her allegation that Mr. Pope's letter was threatening, bullying, demeaning and intimidating.

In an April 11, 2008 letter, Dr. Underset stated that appellant had been under his care since August 9, 2007. On April 10, 2008 appellant requested an emergency appointment and showed him the letter from Mr. Pope. She was upset by the letter because she had regularly advised the employing establishment of her work status. Dr. Underset stated that she continued to have work-related stress and anxiety and was unable to perform any work. A return to work date was still undetermined.

On May 15, 2008 David W. Aycock, Ph.D., a licensed clinical psychologist, stated that he began treating appellant on October 1, 2007 for anxiety and depression. On April 10, 2008 appellant received Mr. Pope's April 9, 2008 letter and sought an emergency appointment. She advised that the letter was threatening, bullying, demeaning and intimidating and had aggravated her emotional condition. Mr. Aycock stated that she had post-traumatic stress disorder (PTSD) and an anxiety disorder caused by the employing establishment's handling of an Equal Employment Opportunity (EEO) complaint in 2004, work overload, strict deadlines, mistreatment by her manager and events that occurred on August 3, 2007.[1] He opined that her PTSD and anxiety disorder were aggravated by her reaction to the April 9, 2008 letter from Mr. Pope, rendering her totally disabled. In a May 19, 2008 letter, Dr. Underset stated that appellant continued to be upset by Mr. Pope's letter when he saw her on April 23, 2008. He reiterated that the letter caused an aggravation of her PTSD and anxiety disorder and disability for work.

On May 30, 2008 appellant contended that the employing establishment erred by asking for medical documentation more often than once every 30 days as specified in the ELRM. The employing establishment also erred in asking for a prognosis from her physician. Appellant contended that Mr. Pope acted abusively because the intent of the April 9, 2008 letter was to inflict emotional harm in an employee with an anxiety and stress disorder.[2] Appellant felt demeaned, depressed and fearful by the threat of being charged with AWOL and possible removal.

By decision dated June 12, 2008, the Office denied appellant's claim on the grounds that she failed to establish that her emotional condition was causally related to a compensable employment factor.

On July 8, 2008 appellant requested an oral hearing that was held on October 22, 2008. A June 22, 1995 employing establishment memorandum submitted at the hearing titled "Documentation Requirements" was issued to clarify the substance of medical information needed by a supervisor to approve leave pursuant to section 513.36 of the ELRM. The memorandum, issued by Dr. David H. Reid, the National Medical Director for the employing establishment, included language that medical documentation should include an explanation of the employee's illness or injury sufficient to indicate that the employee was or would be unable to perform his or her normal duties during the period of absence. Normally, statements such as "under my care" or "received treatment" were not acceptable as evidence of incapacitation. The memorandum noted that a medical diagnosis and prognosis were not necessary for leave approval. A health care provider could provide an explanation of medical facts sufficient to indicate that an employee was or would be incapacitated for duty without giving a specific diagnosis or medical prognosis.

In a November 20, 2008 statement, appellant noted that her previous emotional condition claim under OWCP File No. xxxxxx177 had been approved for an anxiety disorder. She

[1] Ms. Wilson was appellant's supervisor when she filed her previous emotional condition claim.

[2] At the time appellant received the April 9, 2008 letter from Mr. Pope, her previous claim for an emotional condition had not been accepted by the Office.

contended that the April 9, 2008 letter from Mr. Pope had aggravated her accepted anxiety disorder.

On November 21, 2008 Mr. Pope stated that he had worked in close proximity with appellant and talked and laughed a lot. He considered her a friend and believed that she should know that the April 9, 2008 letter was simply a part of his job and not intended as harassment or a threat. In drafting the April 9, 2008 letter, Mr. Pope used a format provided by employing establishment labor specialists in determining an employee's status when he or she was absent without sufficient reason. Since appellant's prior emotional condition claim had been denied, he needed to determine if or when she would return to work. In a November 21, 2008 letter, Valerie Myers, a human resources manager, stated that Mr. Pope sent appellant a standard form letter provided by the local labor relations department.

By decision dated February 2, 2009, an Office hearing representative affirmed the June 12, 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 employment but nevertheless does not come within the coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned work 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]

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. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.[5]

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment, which may be considered by a physician when providing an opinion on causal relationship, and which are not deemed compensable factors of employment and may not be considered.[6] When an employee fails to establish a compensable factor of employment, the Office should make a specific finding in that regard. If an employee

[3] 5 U.S.C. §§ 8101-8193.

[4] *Lillian Cutler*, 28 ECAB 125 (1976).

[5] *Michael Thomas Plante*, 44 ECAB 510 (1993); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

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

does establish a compensable factor of employment, the Office should then determine whether the evidence of record substantiates that factor.[7] As a general rule, allegations alone by an employee are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by other evidence.[8] Where the employee alleges compensable factors of employment, he must substantiate such allegations with probative and reliable evidence.[9] When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.[10]

ANALYSIS

Appellant alleged that Mr. Pope acted abusively by sending an April 9, 2008 letter requesting further medical documentation to support her absence from work. She stated that her supervisor was abusive in sending a threatening letter in light of her anxiety and stress disorder. Appellant felt demeaned, depressed and fearful by the threat of being charged with AWOL and possible removal. Her allegation involves an administrative or personnel matter, a request by her supervisor for updated medical documentation regarding her absence from work. The Board has held that an administrative or personnel matter will be considered an employment factor only where the evidence discloses error or abuse on the part of the supervisor.[11] In determining whether Mr. Pope erred or acted abusively, the Board has examined whether management acted reasonably.[12] The April 9, 2008 letter requested updated medical documentation for appellant's continued absence from work, including a prognosis indicating when she could return to work and an explanation of her illness sufficient to indicate that she would be unable to perform her normal duties for the entire period of her absence. The letter advised that an absence not properly substantiated within five business days could be charged as AWOL and result in disciplinary action, up to and including removal. Mr. Pope advised appellant to call him if she had any questions about the letter.

It is a supervisory function to request documentation from an employee regarding his or her absence from work. Complaints regarding the manner in which a supervisor performs his duties generally fall outside the scope of the Act, absent error or abuse.[13] Mr. Pope noted that appellant had filed a claim for an August 3, 2007 emotional condition and had not worked since. The April 9, 2008 letter to appellant was in compliance with established procedures and was sent to all employees in the same status. It was a request for updated medical documentation to support appellant's continued absence. In drafting the April 9, 2008 letter, Mr. Pope used a

[7] *Margaret S. Krzycki*, 43 ECAB 496 (1992).

[8] *See Charles E. McAndrews*, 55 ECAB 711 (2004).

[9] *Joel Parker, Sr.*, 43 ECAB 220 (1991).

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

[11] *Id.*

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

[13] *See Marguerite J. Toland*, 52 ECAB 294 (2001).

format provided by labor specialists at the employing establishment to determine her status and whether appellant was absent without sufficient reason. Since appellant's prior emotional condition claim had been denied, he needed to determine if or when she could return to work. An employing establishment labor relations manager advised that language in section 513 of the ELRM regarding acceptable medical documentation and the failure to provide such documentation was essentially the same as used in Mr. Pope's April 9, 2008 letter to appellant The human resources manager stated that Mr. Pope sent appellant a standard form letter provided by the local labor relations department. A June 22, 1995 employing establishment memorandum regarding the medical information needed by a supervisor to approve leave pursuant to section 513 of the ELRM also included the language Mr. Pope used in his letter to appellant, *i.e.*, that medical documentation should include an explanation of the employee's illness or injury sufficient to indicate that the employee was or would be unable to perform his or her normal duties during the period of absence. Normally, statements such as "under my care" or "received treatment" were not acceptable evidence of incapacitation.

The Board finds that appellant has not established that Mr. Pope acted abusively in sending the April 9, 2008 letter. The evidence establishes that the letter was essentially a standard document sent to employees who were on extended sick leave. There is no evidence as alleged by appellant to establish that her supervisor sent the letter as a means to harass or demean her. Appellant submitted no supporting evidence, such as witness statements or other documentation, for her allegation that Mr. Pope's intent in sending the letter requesting medical documentation was to upset her. She did not establish that the standard language in the letter regarding possible penalties for failure to provide medical documentation in a timely manner was included to inflict emotional harm. Appellant's allegation involves an administrative or personnel matter and she failed to establish that Mr. Pope acted abusively. Employees may sometimes dislike administrative or personnel actions taken but a supervisor or manager must be able to perform his duties. Mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent error or abuse.[14] Appellant failed to establish error or abuse in this administrative matter.

Appellant contended that the employing establishment erred in sending the April 9, 2008 letter because management was permitted to request medical documentation no more frequently than once every 30 days as specified in the ELRM. Prior to the April 9, 2008 letter, she submitted disability certificates from her physician dated March 5 and 26, 2008. Mr. Pope referenced the March 5, 2008 certificate in his letter but not the March 26, 2008 certificate. The copies of these two medical certificates in the record are dated as received by the Office on June 4, 2008. They do not appear in the record prior to the date of Mr. Pope's April 9, 2008 letter but it is established that he saw the March 5, 2008 medical certificate because he mentioned it in his letter. It appears that he was aware of only the March 5, 2008 disability certificate. Mr. Pope did not err by sending the April 9, 2008 letter which was more than 30 days after the March 5, 2008 medical documentation. Appellant also alleged that the Mr. Pope erred in asking for a prognosis from her physician in the April 9, 2008 letter. The June 22, 1995 employing establishment memorandum noted that it was not necessary for medical documentation to include a diagnosis and prognosis for leave to be approved. The 1995

[14] *Id.*

memorandum did not state that a request by a supervisor for a prognosis was prohibited, only that it was not necessary for leave approval. In the April 9, 2008 letter, Mr. Pope asked appellant to call him if she had any questions about the letter. Considering the evidence of record Mr. Pope's request for a medical prognosis does not constitute abuse or error.

Appellant failed to establish that her emotional condition was causally related to a compensable factor of employment. Therefore, the Office properly denied her emotional condition claim.[15]

CONCLUSION

The Board finds that appellant failed to establish that her emotional condition was causally related to a compensable factor of employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 2, 2009 is affirmed.

Issued: June 29, 2010
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

[15] *See supra* note 9 (in the absence of compensable factors of employment, there is no need to address the medical evidence).