United States Department of Labor
Employees' Compensation Appeals Board

L.J., Appellant	)	
and	)	**Docket No. 09-1625**
	)	**Issued: March 9, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Las Vegas, NV, 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 June 4, 2009 appellant filed a timely appeal from a May 6, 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 an emotional or physical condition causally related to a compensable work factor.

FACTUAL HISTORY

On April 7, 2008 appellant, then a 52-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that she sustained an injury on April 5, 2008. She described the nature of the injury as "left shoulder pushed, anxiety, trauma due to bullying." In a narrative statement dated April 7, 2008, appellant alleged that she was pushed on the left shoulder by Lola McGee, a supervisor. She stated that, after she had questioned the supervisor regarding

instructions for carriers to pull down their routes, Ms. McGee pushed with her right hand and told appellant to get back to her case.

Ms. McGee submitted an April 7, 2008 statement indicating that appellant had told her there were still 17 trays of mail that had not been spread. The supervisor told appellant that was not true and "as I walked forward I touched her on her left shoulder and said you go back to your route and I'll see what's going on over there."

In a statement dated April 9, 2008, Jeffery N. Loftus, a coworker, stated that appellant had asked him to accompany her when she talked to the supervisor on April 5, 2008. According to him, appellant told the supervisor there were still 15 trays of mail and the supervisor "pushed" her and told her to go to her case.

By statement dated April 19, 2008, appellant discussed an April 15, 2008 incident. She stated that Robert Reynoso, another supervisor, told her to come into a room but she refused because she wanted union representation. Appellant stated that she did not feel safe and began hyperventilating. She left work and received medical treatment. The record also contains grievance forms regarding incidents on September 4, 2007 and January 10, 2008.

With respect to the medical evidence, appellant submitted duty status reports (Form CA-17) from Dr. Douglas Hermansen, a chiropractor, commencing April 7, 2008. The diagnosis was left shoulder sprain. In a report dated April 9, 2008, Karen Huffer, M.S., a family therapist, noted that appellant became upset over an April 5, 2008 work incident. In a form report dated April 15, 2008, an osteopath, whose name is illegible, diagnosed stress. By report dated May 6, 2008, Dr. Hermansen diagnosed left cervical and shoulder strain.

In a June 6, 2008 decision, the Office denied appellant's claim for compensation. It accepted that appellant was pushed on the left shoulder on April 5, 2008, but found the evidence was not sufficient to establish an injury.

Appellant requested a hearing before an Office hearing representative, which was held on March 3, 2009. In a May 9, 2008 report, Dr. Patricia Brassfield, Ph.D. a clinical psychologist, described an April 5, 2008 incident involving appellant being pushed on the left shoulder. Appellant was treated by Dr. Hermansen for a shoulder injury. Dr. Brassfield noted that, despite the trauma, appellant was responsible for filling out appropriate forms. Appellant attributed the action of the supervisor as retaliation for work activities. On April 15, 2008 when asked to go to a supervisor's office alone she felt at risk and intimidated. Dr. Brassfield stated that appellant was diagnosed with post-traumatic stress disorder (PTSD) on April 15, 2008, and her current diagnoses were adjustment disorder, with anxiety and depression, and PTSD. She described the characteristics of PTSD and adjustment disorder, recommending appellant continue therapy to recover from "these traumatic experiences."

By decision dated May 6, 2009, the hearing representative affirmed the June 6, 2008 Office decision. The hearing representative found a compensable work factor on April 5, 2008, but found the medical evidence was insufficient to establish the claim.

LEGAL PRECEDENT

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 factors of her federal employment.[1] 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.[2]

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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where 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]

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.[4] Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.[5]

ANALYSIS

Appellant filed a traumatic injury claim for an injury on April 5, 2008 resulting from an incident with her supervisor. While the record contains grievance documents regarding earlier incidents, she did not attribute her condition to these incidents. Appellant did provide allegations with respect to an April 15, 2008 incident, stating she was called into an office by a supervisor. This incident did not occur on April 5, 2008 but the Office addressed the allegation with respect to the present traumatic injury claim.[6] In this regard, as noted above, an administrative action of the employing establishment is not compensable absent evidence of error or abuse. Appellant's allegation regarding Mr. Reynoso was simply that he called her in for a discussion. There is no

[1] *Pamela R. Rice*, 38 ECAB 838 (1987).

[2] *Roger Williams,* 52 ECAB 468 (2001); *Anna C. Leanza,* 48 ECAB 115 (1996).

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

[4] *See Brian H. Derrick,* 51 ECAB 417, 421 (2000).

[5] *Margreate Lublin,* 44 ECAB 945, 956 (1993).

[6] A traumatic injury is a condition caused by events occurring within a single workday or shift. 20 C.F.R. § 10.5(ee).

evidence of record to establish error or abuse by the supervisor. The Board finds no compensable work factor is substantiated as occurring on April 15, 2008.

The Office did accept a compensable work factor on April 5, 2008. Although the supervisor described the contact as inadvertent and that she only touched appellant on the shoulder, appellant and a witness described the incident as a push. The record does support that physical contact occurred. The issue is whether the medical evidence established an injury causally related to the compensable work factor.

With respect to an emotional claim, the Board finds the medical evidence is not sufficient to establish the claim. The reports from Ms. Huffer, a family therapist, are of no probative medical value as she is not a physician as defined under the Act.[7] The psychologist, Dr. Brassfield, does not provide an opinion supported by medical rationale on causal relationship between a diagnosed condition and the April 5, 2008 incident. In her May 9, 2008 report, she discusses both the April 5 and 15, 2008 incidents. As noted, the April 15, 2008 incident is not established as a compensable work factor. Dr. Brassfield did not provide a clear opinion on causal relationship between the April 5, 2008 incident and the diagnosed conditions of adjustment disorder and PTSD, explaining the nature of the relationship (such as aggravation or direct causation) and supporting her opinion with medical rationale. She related the initial diagnosis of PTSD to the April 15, 2008 incident, not the April 5, 2008 incident.[8] Dr. Brassfield noted that appellant drove herself to a quick care clinic on August 15, 2008 where the diagnosis was made.

The Board finds that the medical evidence does not contain a medical opinion, based on a complete background and supported by rationale, establishing a diagnosed emotional condition causally related to the April 5, 2008 employment incident. For this reason appellant has not met her burden of proof.

As to a physical injury, the record establishes that appellant received treatment for her left shoulder from Dr. Hermansen, a chiropractor, who diagnosed a left shoulder and cervical sprain. 5 U.S.C. § 8101(2) provides that the term "'physician' … includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a spinal subluxation as demonstrated by x-ray to exist."[9] Dr. Hermansen did not diagnose a spinal subluxation as demonstrated by x-ray and therefore he is not a physician under the Act. The record does not contain a rationalized medical opinion regarding a left shoulder or cervical injury causally related to the April 5, 2008 employment incident. Appellant has not met her burden of proof to establish an injury in the performance of duty.

[7] *See Joe L. Wilkerson,* 47 ECAB 604 (1996); 5 U.S.C. § 8101(2).

[8] The Board notes that the medical evidence of record for April 15, 2008 provided a diagnosis of stress, not PTSD.

[9] 5 U.S.C. § 8101(2).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish an emotional or physical injury causally related to an April 5, 2008 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 6, 2009 and June 6, 2008 are affirmed.

Issued: March 9, 2010
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