

By decision dated July 29, 2008, the Office denied the claim for compensation. It found “the evidence submitted is insufficient to establish that your emotional condition was caused by your employment factors. Furthermore, there is no medical evidence that provides a diagnosis which could be connected to your [f]ederal employment.”

Appellant requested an oral hearing in a letter dated August 10, 2008. She stated that her depression was due to being demoted to a custodian position.

On August 20, 2008 appellant submitted additional evidence regarding her claim. An employing establishment document indicated that effective January 5, 2008 she had been promoted from a “laborer custodial” position to a maintenance support clerk. In a May 1, 2008 pre-arbitration settlement, with respect to a coworker, the position awarded to one coworker was to be awarded to another coworker, and the “residual job” would be awarded to appellant. A May 7, 2008 note from a supervisor stated that the residual position from a coworker’s promotion would be assigned to appellant, “whatever that may be.” The supervisor stated in a May 15, 2008 memorandum that effective May 17, 2008 appellant would return to her old position as a laborer/custodian.

In a May 12, 2008 letter, appellant stated that she was “feeling a lot of anxiety about going to work because of the threat of getting a letter and essentially being demoted to a custodian after I was awarded a job that came open at the beginning of Jan. On Mother’s Day I had to think about the losing my job because of him discriminating/retaliating against me.” In a May 15, 2008 note, appellant advised that she became light-headed when she saw in writing that she was to be a custodian.

At the telephonic hearing with an Office hearing representative, on January 14, 2009, appellant contended that the residual job was a demotion. She filed a grievance and Equal Employment Opportunity (EEO) claim, but these matters were pending. In a February 18, 2009 letter, the employing establishment responded to the hearing transcript. It stated that the loss of appellant’s bid job was due to an agreement with the union to award the job to another employee.

By decision dated April 9, 2009, the hearing representative modified the July 29, 2008 decision to find that the claim was denied because appellant’s injury was not sustained in the performance of duty and affirmed the decision as modified. The hearing representative found no compensable work factors had been established.

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 Appellant must also

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

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

submit medical evidence with a rationalized medical opinion on causal relationship between a diagnosed condition and the identified compensable work factors.³

With respect to the determination of a compensable work factor, it is well established that 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 his or 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.⁴

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.⁵ 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.⁶

ANALYSIS

Appellant's claim for an emotional condition arises from events in early May 2008, when she was returned to her former position of laborer/custodian. She had been promoted in January 2008 to a support clerk position. Appellant characterized the return to her former position as an erroneous demotion.

The decision to return appellant to her former position is an administrative or personnel matter. It is unrelated to the performance of her assigned duties. It may be considered as a compensable work factor if the evidence of record established error or abuse by the employing establishment. The record contains a brief May 21, 2008 letter from a Mr. Asman of the employing establishment union, contending that it was error to return appellant to a "lower level custodial position." There is, however, no probative evidence of record establishing error in this personnel action. The documents of record establish that appellant received the laborer/custodian position as a result of a grievance settlement of a coworker. While she stated that she filed a grievance and an EEO claim on the issue, there are no findings or other probative

³ *Beverly R. Jones*, 55 ECAB 411 (2004).

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

⁵ *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

⁶ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

evidence to establish error or abuse. Appellant referred briefly to discrimination and retaliation, but no supporting evidence was provided.⁷

In the absence of supporting evidence, the Board finds appellant has not established a compensable work factor with respect to her return to a laborer/custodian position in May 2008. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.⁸

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty. Appellant did not submit sufficient evidence to establish a compensable work factor.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 9, 2009 is affirmed.

Issued: March 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

⁷ Appellant's perception that the actions of the employing establishment constituted discrimination or retaliation is not enough, as these allegations must be substantiated by probative and reliable evidence. *See, e.g., David Cuellar*, 56 ECAB 626 (2005); *Mary J. Summers*, 55 ECAB 730 (2004); *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁸ *See Margaret S. Krzycki*, 43 ECAB 496 (1992).