

**United States Department of Labor
Employees' Compensation Appeals Board**

M.W., Appellant)	
)	
and)	Docket No. 11-836
)	Issued: December 5, 2011
)	
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS ADMINISTRATION MEDICAL)	
CENTER, Fayetteville, NC, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On February 15, 2011 appellant filed a timely appeal from a December 17, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant has established an emotional condition causally related to compensable work factors; and (2) whether OWCP properly denied her request for reconsideration without review of the merits of the claim, under 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 10, 2010 appellant, then a 44-year-old cashier, filed an occupational disease claim (Form CA-2) alleging that she suffered anxiety and panic attacks as a result of her federal employment. She stated on the claim form that her condition was due to “overwhelming workload and recent on the job problems. I also had a PTSD [post-traumatic stress disorder] flashback.”

In an undated statement received on August 31, 2010, appellant listed specific dates with a brief statement, such as “Nov[ember] 25, 2009 -- request for assistant due to overwhelming workload. No help at this time.” and “June 2, 2010 -- Requested status of the proposed Agent Cashier coverage. No help at this time.” Appellant also referred to a June 15, 2010 incident when she “Requested to a change of accountability” because she did not feel comfortable writing a check for \$70,000.00 for a change order. According to her by the end of the day she had a PTSD flashback, with a panic and anxiety attack. Appellant stated she was not required to work overtime but from September 2009 to May 2010 she worked an extra 30 minutes to an hour to keep up with the workload.

By letter dated August 11, 2010, the employing establishment’s Office of Resolution Management indicated that appellant had filed a complaint on August 3, 2010. A counselor’s report regarding the complaint indicated that appellant had received a written counseling on June 4, 2010 for leaving work on May 21, 2010.² The counselor also indicated that appellant felt she was discriminated against on the basis of reprisal (contacting the union) and disability when appellant made another request for assistance on May 21, 2010. In addition, appellant claimed discrimination when her supervisor threatened to cancel her leave on June 15, 2010.

In a September 24, 2010 statement, a supervisor indicated that in November 2009 appellant had requested help from the former fiscal officer and a coworker had been assigned to help her with cashier duties. The coworker, however, filed grievances over the reassignment and the employing establishment tried to reach a settlement. The supervisor stated that he became acting Chief Fiscal Officer in February 2010 and tried to work with appellant on reducing workload through a more efficient work process, but she was resistant. When appellant was informed on June 4, 2010 that an employee would be permanently assigned to the cashier’s office, she again became angry and left work. With respect to writing a check for \$70,000.00, the supervisor explained that appellant was required to maintain a sufficient cash supply, but she repeatedly refused to follow procedures. According to the supervisor, on June 15, 2010, just prior to appellant’s vacation, an emergency situation was created as she did not order sufficient cash supplies and her leave was cancelled until the situation could be remedied. The supervisor stated that the cashier job was not more stressful than other accounting jobs, that appellant was able to complete the assigned tasks in a normal workday. As to May 21, 2010, the supervisor stated that appellant left work without providing advance notice and received written counseling.

With respect to medical evidence, appellant submitted reports from Dr. Lynda Freeman, a psychiatrist. In a report dated April 20, 2010, Dr. Freeman noted a history of panic

² The record contains a June 4, 2010 letter advising that it was unacceptable to leave the cashier’s office unmanned on May 21, 2010.

disorder/depression, and stated that appellant had been frustrated by an incident at work with a money order. The record also contains reports from a social worker and physician's assistant.

By decision dated October 26, 2010, OWCP denied the claim for compensation. It found the medical evidence was insufficient to establish appellant's claim.

Appellant requested reconsideration of her claim. By decision dated December 17, 2010, OWCP reviewed the case on its merits. It made a factual finding that a compensable work factor was established: "You advised your supervisor on many occasions that you were feeling overwhelmed by the workload and requested assistance. You were told assistance would be forthcoming, but did not receive any." No additional compensable work factors were found, and OWCP found the medical evidence insufficient.

On January 14, 2011 appellant again requested reconsideration. She submitted a January 6, 2011 report from Dr. Robert Fleury, who stated that she came in for an opinion regarding her claim for disability related to an incident at work. Dr. Fluery provided results on examination and diagnosed major depressive disorder, recurrent, panic disorder with agoraphobia and PTSD. He stated that the adjustment problems appellant had while working at the employing establishment had improved with counseling and medication, and did not constitute a basis for a disability claim.

By decision dated February 1, 2011, OWCP declined to review the merits of the emotional condition claim. It found the reconsideration request was insufficient to require a merit review.

LEGAL PRECEDENT -- ISSUE 1

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.³ This burden includes the submission of detailed descriptions of the employment factors or conditions which she believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴ A claimant must also submit rationalized medical opinion evidence establishing a causal relationship between the claimed condition and the established, compensable work factors.⁵

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

³ *Pamela R. Rice*, 38 ECAB 838 (1987).

⁴ *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

⁵ *See Bonnie Goodman*, 50 ECAB 139, 141 (1998).

position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁶

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.⁷ 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.⁸

ANALYSIS -- ISSUE 1

Appellant has filed a claim for an emotional condition causally related to her federal employment. The initial issue is whether she has alleged and substantiated compensable work factors with respect to her claim. The Board notes that appellant did not submit a detailed statement regarding the factual background of her claim. OWCP stated that the compensable work factors were that she felt overwhelmed by the workload, requested assistance, was told assistance would be forthcoming, but none was provided. No additional explanation was provided by OWCP, other than to indicate the allegations were established as factual by the record.

As noted above, a reaction to assigned work duties is a compensable work factor. To the extent appellant was reacting to the performance of her work duties, this is a compensable work factor. But as to an excessive workload, there was no probative evidence establishing overwork itself as a compensable factor. Appellant did not describe her work duties in detail and the statement from the supervisor did not establish that the job duties were excessive. A claim of overwork must be supported by a detailed factual statement as to work duties and supporting evidence.⁹ With respect to OWCP's finding that the employing establishment did not provide assistance when requested, this is an administrative matter. As noted above, there must be evidence of error or abuse in an administrative matter to establish a compensable work factor. No evidence of error or abuse was presented. The employing establishment explained that appellant was provided assistance, but the employee filed a grievance and the issue had to be resolved before assistance could be provided.

The Board accordingly finds the only compensable work factor would be a reaction to the performance of assigned cashier duties. There is no evidence establishing a compensable work factor regarding overwork or the denial of assistance. As to other allegations, again the Board notes that appellant did not provide detailed factual statements. To the extent appellant was alleging a reaction from the requirement to keep an adequate money supply by writing a check for a large amount, there was no evidence of error or abuse by the employing establishment. The

⁶ *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

⁸ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

⁹ *See Robert Breeden*, 57 ECAB 622 (2006); *William P. George*, 43 ECAB 1159 (1992).

record indicates that appellant received a disciplinary letter for her actions on May 21, 2010 and was threatened with a cancelling of her leave in June 2010. These are also administrative actions of the employer, and there must be evidence of error or abuse.¹⁰ Appellant filed a complaint with the employing establishment's Office of Resolution Management alleging discrimination and reprisal, but there is no probative evidence of record in this regard. No additional compensable work factors have been substantiated by the evidence of record.

With respect to the medical evidence, there is no report with a rationalized opinion on causal relationship between a diagnosed condition and the compensable work factor. Dr. Freeman did not discuss appellant's work duties or provide an opinion on causal relationship with a compensable work factor. The reports of a physician's assistants or social workers do not constitute probative medical evidence as these are not physicians under FECA.¹¹ The Board accordingly finds that appellant did not meet her burden of proof in this case.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,¹² OWCP's regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either "(1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent evidence not previously considered by OWCP."¹³ Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by OWCP without review of the merits of the claim.¹⁴

ANALYSIS -- ISSUE 2

In this case, appellant did not show that OWCP erroneously applied or interpreted a point of law or advance a new and relevant legal argument. The January 14, 2011 reconsideration request did not provide additional arguments. With respect to additional evidence, appellant submitted the January 6, 2011 report of Dr. Fleury. This report provided no additional relevant evidence on the issue presented. Dr. Fleury referred to appellant filing a claim regarding an "incident at work" without providing any additional detail or a factual background. Dr. Freeman had previously noted an incident at work involving a money order, but Dr. Fluery did not provide

¹⁰ Disciplinary and leave matters are administrative functions of the employing establishment. *J.C.*, 58 ECAB 594 (2007).

¹¹ *George H. Clark*, 56 ECAB 162 (2004). 5 U.S.C. § 8101(2) provides that a physician includes, "surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law."

¹² 5 U.S.C. § 8128(a)(providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.")

¹³ 20 C.F.R. § 10.606(b)(2).

¹⁴ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

any additional relevant information. He stated that “adjustment problems” at work had improved and did not establish a basis for a disability claim. This report does not constitute relevant and pertinent evidence with respect to appellant’s claim for an employment-related emotional condition.

The Board accordingly finds appellant did not meet the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by it or submit relevant and pertinent evidence not previously considered by OWCP. Pursuant to 20 C.F.R. § 10.608, OWCP properly declined to review the merits of the emotional condition claim.

On appeal, appellant argues that she did meet her burden of proof. She stated that “the job” shows her workload had increased and she was not provided assistance and noted that she had submitted reports from Dr. Freeman and Dr. Fleury, but as the Board has indicated above, the only compensable work factor established is the performance of assigned work duties. There is insufficient evidence to establish any other compensable work factors. As to medical evidence, there must be a report with a complete history and a reasoned opinion on causal relationship between a diagnosed condition and the compensable work factor.¹⁵ For the reasons noted, appellant did not meet her burden of proof and the reconsideration request was insufficient to warrant a merit review. She may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not establish an emotional condition causally related to compensable work factors. The Board further finds that OWCP properly denied the application for reconsideration without review of the merits of the emotional condition claim.

¹⁵ See *M.D.*, 59 ECAB 211 (2007).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 17, 2010 is modified with respect to compensable work factors and affirmed as modified. The decision dated February 1, 2011 is affirmed.

Issued: December 5, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board