



performance. Appellant described her injury as uncontrolled crying spells, difficulty concentrating, eating and sleeping. She indicated that she took another position with the employing establishment due to her fear of retribution.

Appellant submitted form reports from Dr. F. Scott Moore, an osteopath, dated May 7 and June 18, 2009. Dr. Moore indicated that appellant should be off work until May 18, 2009.

By letter dated August 3, 2009, the Office requested that appellant submit additional evidence. In an August 18, 2009 letter, appellant's supervisor stated there was no "off-site" meeting regarding appellant. The supervisor noted that the May 6, 2009 letter did not change her work duties based on unacceptable performance. Rather, her duties as the executive social worker were similar to those of the supervisory social worker and did not reflect other activities. The supervisor noted that appellant had roles as Employee Assistant Program (EAP) Coordinator and Homeless Coordinator, and the revised duties provided appellant additional time to devote to these activities.

In a September 3, 2009 statement, appellant contended that her supervisor "seemed to have made up her mind to target me." She explained, "I noticed behaviors wherein she would go around me in talking to my staff and leaving me out; or if I was present, she would fail to give me eye contact. In one staff meeting, appellant deliberately demonstrated her displeasure in my asking a question about the safety of our clerk's location without some type of safety glass." She was shocked when she read the May 6, 2009 letter. Appellant contended that her supervisor retaliated against her for three reasons: (1) an alternate dispute resolution that she requested and the supervisor allegedly resented; (2) that her failure to respond positively to her supervisor's desire to pursue a job as service line chief; and (3) that she having made others aware of a private meeting with the Homeless Program Director.

By decision dated April 14, 2010, the Office denied the claim for compensation. It found that appellant failed to establish any compensable work factors.

### **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.<sup>1</sup> This burden includes the submission of detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>2</sup>

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

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<sup>1</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

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

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.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup>

### ANALYSIS

The issue is whether appellant established a compensable work factor with respect to her emotional condition claim. Her primary allegation is that she had a reaction to a May 6, 2009 letter from her supervisor advising her that her job duties would change. This is an administrative action by the employer and, as noted, is not compensable unless there is evidence establishing error or abuse. In this case, there is no probative evidence of error or abuse. Appellant's supervisor explained the decision to alter appellant's job duties, noting that the duties of the executive social worker were extremely similar to those of the supervisory social worker. Appellant referred to an off-site meeting, but the supervisor denied that such meeting took place. She submitted insufficient evidence to establish this allegation as factual.<sup>6</sup> The Board finds no probative evidence of error or abuse with respect to the May 6, 2009 letter notifying of change in job duties.

Appellant alleged generally that she was subject to retaliation and harassment by her supervisor. She noted only that the supervisor avoided talking to her and avoided eye contact, without providing detailed description of the times of any specific incidents or parties who witnessed such actions. While appellant may have felt the supervisor was retaliating against her, her perception is not sufficient to establish a compensable work factor.<sup>7</sup> The record does not contain probative evidence of harassment, retaliation or erroneous behavior by the supervisor.<sup>8</sup>

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<sup>3</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

<sup>5</sup> *Margreate Lublin*, 44 ECAB 945, 956 (1993).

<sup>6</sup> A claimant must submit factual evidence to support allegations of stress in the workplace as opposed to mere perceptions. *See Mary J. Summers*, 55 ECAB 730 (2004).

<sup>7</sup> *J.F.*, 59 ECAB 331 (2008); *M.D.*, 59 ECAB 211 (2007).

<sup>8</sup> The Board has jurisdiction to review only evidence that was before the Office at the time of the April 14, 2010 final decision. 20 C.F.R. § 501.2(c)(1).

Since appellant has not established a compensable work factor, the Board need not address the medical evidence.<sup>9</sup>

The Board notes that, after the filing of this appeal, the Office issued an October 25, 2010 merit decision. It is well established that the Board and the Office may not have concurrent jurisdiction over the same case, and those Office decisions which change the status of the decision on appeal are null and void.<sup>10</sup> The October 25, 2010 Office decision is therefore null and void.

### **CONCLUSION**

The Board finds appellant did not establish an injury causally related to compensable work factors.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 14, 2010 is affirmed.

Issued: January 20, 2011  
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

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<sup>9</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>10</sup> *Douglas E. Billings*, 41 ECAB 880, 895 (1990).