United States Department of Labor
Employees' Compensation Appeals Board

A.R., Appellant	)	
and	)	**Docket No. 10-1929**
	)	**Issued: May 18, 2011**
DEPARTMENT OF HOMELAND SECURITY, FEDERAL AVIATION ADMINISTRATION, FEDERAL AIR MARSHAL FIELD OFFICE, Philadelphia, PA, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 20, 2010 appellant filed a timely appeal of a January 21, 2010 Office of Workers' Compensation Programs' merit decision denying her claim for an emotional condition. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 7, 2009 appellant, then a 56-year-old program assistant, filed an occupational disease claim, alleging that she developed high blood pressure and stress "due to concerns with my job." She stated, "I am responsible for the major duties in the office but the guidelines are not followed and the burden is on me."

Dr. Timothy L. Rhyme, a Board-certified family practitioner, diagnosed stress and hypertension. He indicated with a checkmark "no" on the attending physicians report (Form CA-20) that appellant's condition was not caused or aggravated by an employment activity. On August 12, 2009 Dr. Rhyme reported a finding of emotional labiality and diagnosed stress, depression and uncontrolled hypertension. He responded with a checkmark "no" to the question of whether these conditions were caused by employment but remarked "work stress may be a factor." Dr. Rhyme completed a narrative statement on the same date and found that appellant was totally disabled due to depression anxiety and uncontrolled hypertension. He noted, "[b]ecause of her condition she is unable to handle work situations because of her mental state and possible side effects from the medications."

In a letter dated August 28, 2009, the Office requested that appellant describe in detail the employment-related conditions or incident which she believed contributed to her illness. It asked that she be as specific as possible identifying any relevant dates, locations, coworkers or supervisors involved. The Office allowed 30 days for a response.

Appellant responded on September 2, 2009 and stated her duties as the property custodian were made impossible by the failure of coworkers to follow procedures and guidelines. She stated that she expressed her concern to her supervisor, but with no change. Appellant noted that she was given the additional responsibility of purchaser for the field office. She stated that her supervisor informed her that she would be relieved of one of her other duties, but this did not occur. Appellant stated, "The purchaser role required a great deal of time and detail because of the Federal Guidelines and requirements." She also included input and maintenance of a database for the field office within her duties. This required adding new employees, changing information for employees and quarterly check of accuracy of information currently within the system. Appellant was also required to act as custodian for the field office vehicles. She requested a respite from this duty until she could learn management procedures, but received the assignment without delay. Appellant stated that she received criticism from a supervisor as she was unable to comply with orders to provide information regarding the vehicles before she had received any training. She noted that Robert Rogers, her supervisor, expressed concern regarding her leave balance. When appellant returned from vacation, her supervisors informed her that while she was out someone used her name and information to issue fraudulent checks. Her supervisors also placed her on leave restriction stating that appellant had agreed to use no leave during the previous meeting. Appellant stated that the leave restriction was noting more than punishment for constant complaining and questioning. She alleged that the other administrative personnel stopped speaking to her, but discussed her within hearing. Appellant stated that she was denied training and that items were removed from her inbox to make her appear incompetent. She stated that her stress and high blood pressure began in 2008.

Appellant submitted a letter dated June 26, 2009 addressed to Kirsti Early, supervisory administrative officer at the employing establishment and noting that she had filed a grievance regarding her placement on leave restriction. She stated that all her leave requests had been approved, that her leave had not had adverse affects on operations and that the counseling on May 18, 2009 was in the context of a meeting regarding another issue. Appellant stated that she believed that this discussion was "an informal chat." She stated that she agreed to try to accumulate 40 hours of sick leave, but at the same time requested to use 36 hours of her 40-hour time off award. Appellant stated on June 8 and 11, 2009, she took her lunch break at the end of the day and combined this 30-minute period with her leave request for 1 and 1.75 hours respectively.

Appellant provided a letter dated June 30, 2009 addressed to Ms. Early, the supervisory administrative officer and mentioned the problems with her granddaughter. She noted that Ms. Early advised her in March 2009 that she would be responsible for the office motor fleet as part of her duties. Appellant stated that she had expressed concern and requested an informatory meeting prior to the date this duty would begin. She noted that on March 30, 2009 she received the paperwork dated March 27, 2009 regarding her vehicle fleet responsibilities. Appellant stated that she was verbally reprimanded for failing to respond to supervisory e-mails requesting information regarding vehicles. Appellant stated that she asked for help as she did not know anything about the vehicles and was trying to gather information because no one had provided her with the procedures. She stated that she received the appropriate governing directive on May 18, 2009. Appellant stated that these procedures were not being followed and that she had not received all the information for the fleet including keys or logs and was informed what vehicles were used and by whom.

Appellant expressed concern regarding property leaving the office without her knowledge as she was property custodian. She noted that another coworker was allowed to use unapproved leave and asked Mr. Rogers if this was a double standard. Appellant alleged that he replied, "If you want to call it double standards then call it that." She also alleged that she was being singled out and punished because she complained that things were not handled correctly.

Appellant stated that change in her work schedule and leave restriction was jeopardizing her health due to the need for extensive dental work, the need for magnetic resonance imaging (MRI) scan as the result of a motor vehicle accident and her inability to transport her granddaughter to appointments. She noted that she had custody of her 15-year-old granddaughter who was battling mental illness, drug and alcohol problems. Appellant noted that she filed a step one grievance regarding her leave restriction which was denied.

In a letter dated September 8, 2009, the employing establishment stated that appellant had not provided any written statements, but had documented stress due to family issues related to her granddaughter. The employing establishment stated that she provided notification on June 30, 2009 that she had concerns about her ability to perform the assigned collateral duty as the fleet manager and that this duty was reassigned to the office secretary on July 23, 2009 after training. The employing establishment stated that appellant had no performance or conduct problems although she was placed on leave restriction on June 18, 2009 and removed from an alternate work schedule. The employing establishment provided a copy of her position description.

On September 14, 2009 the employing establishment disagreed with appellant's allegations of overwork and difficulty in maintaining the property standards. Ms. Early stated that although appellant repeatedly reported that proper procedures and guidelines regarding her property custodian duties, the annual inventory was 100 percent complete noting that this duty required little time and that appellant was not required to perform property duties on a daily or weekly basis. She stated that while appellant was purchaser for the office, there was another cardholder and that appellant made less than 40 percent of the office purchase, 40 purchases in total beginning October 1, 2008. Ms. Early noted that appellant was the Office coordinator for her office and that since October 2007 only 38 claims had been filed. She noted that appellant was responsible for time and attendance for 20 persons while other program assistants were responsible for three squads rather than just one. Ms. Early stated that appellant processed two to three travel vouchers a day requiring approximately 20 minutes. She asserted that other program assistants had a heavier workload and that appellant frequently requested additional projects as she liked to be busy. Ms. Early stated that although appellant was assigned as vehicle custodian, this activity was reassigned due to appellant's concerns about her ability to perform this task. She noted that appellant was placed on leave restriction on June 18, 2009 and removed from an alternate work schedule. Ms. Early stated that appellant was not denied requested leave.

Ms. Early provided a June 18, 2009 Letter of Leave Restriction stating that appellant had a pattern of leave abuse which was disruptive and adversely affected the operations of the office. She stated that requesting leave on the day required was a recurring issue and disruptive to the office.

Appellant submitted an additional form report from Dr. Rhyme diagnosing labile hypertension and indicating with a checkmark "yes" that the condition was caused or aggravated by an employment activity.

In a letter dated December 7, 2009, the employing establishment stated that appellant was interviewed regarding a fraudulent check scheme and that she was found to be a victim of the fraudulent activity and not in violation of any policy.

Appellant provided an additional statement on December 7, 2009 addressing her release to return to work on September 30, 2009.

By decision dated January 21, 2010, the Office denied appellant's claim on the grounds that she failed to provide the necessary factual evidence to substantiate that she developed an emotional condition due to concerns of her job.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,[2] the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Act.[3] There are situations where an injury or

[2] 28 ECAB 125 (1976).

[3] 5 U.S.C. §§ 8101-8193.

illness has some connection with the employment but nevertheless does not come within coverage under the Act.[4] When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.[5] In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a person injury sustained in the performance of duty within the meaning of the Act. Thus disability is not covered when it results from an employee's fear of a reduction-in-force, nor is disability covered when it results from such factors as an employee's frustration in not being permitted to work in a particular environment or to hold a particular position.[6]

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.[7] Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.[8] A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.[9]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.[10]

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[4] *See Robert W. Johns*, 51 ECAB 136 (1999).

[5] *Cutler, supra* note 2.

[6] *Id.*

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

[8] *Kim Nguyen*, 53 ECAB 127 (2001). *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[9] *Roger Williams*, 52 ECAB 468 (2001).

[10] *Lourdes Harris*, 45 ECAB 545, 547 (1994).

ANALYSIS

Appellant submitted medical evidence from Dr. Rhyme diagnosing stress, depression and uncontrolled hypertension. Dr. Rhyme indicated that employment factors contributed to her diagnosed conditions.

Appellant attributed her high blood pressure and stress to several events occurring at the employing establishment. She stated that her duties as the property custodian were made impossible by the failure of coworkers to follow procedures and guidelines. However, Ms. Early disputed this allegation noting that the annual inventory was 100 percent complete. She stated that based on this success there was no indication that employees were not complying with the system. Although appellant has implicated a compensable factor of employment, her specific duty of property custodian as causing stress, the employing establishment has disputed her allegation finding that there was no support for her asserting that her coworkers failed to comply with the procedures and guidelines. She has not submitted any independent evidence of a failure of members of the employing establishment to comply with the property guidelines and has therefore failed to substantiate this factor of employment.

Appellant also attributed her emotion condition to her role as office purchaser, stating that this activity required a great deal of time and detail because of the Federal Guidelines and requirements. Ms. Early disputed appellant's allegation stating that appellant made only 40 purchases throughout the year which was less than 40 percent of the total number of purchases made by the employing establishment. Again, although appellant has attributed her condition to a specific employment duty alleging that this duty required extensive time, Ms. Early has disputed appellant's allegation and opined that appellant was not required to spend a large percentage of her work time completing this aspect of her work duties. Appellant has not provided any witness statements or other evidence to substantiate her allegation that this work duty claimed an excessive amount of time and thus contributed to her emotional condition. Without evidence substantiating her allegation she has failed to meet her burden of proof to substantiate this alleged factor of employment.

Appellant attributed her emotional condition to an investigation conducted by the employing establishment into fraudulent checks mailed with her return address. Ms. Early noted that appellant was interviewed, but was found to be the victim of a fraudulent check scheme and not found to have violated any policies. Investigations are considered to be an administrative function of the employer as they are not related to an employee's day-to-day duties or specially assigned duties or to a requirement of the employment. The employing establishment retains the right to investigate an employee if wrongdoing is suspected. An employee's fear of being investigated is not covered under the Act, absent a showing of error of abuse on the part of the employing establishment.[11]

Appellant also attributed her emotional condition to the employing establishment actions in placing her on leave restrictions and allegedly denying her requests for leave. Ms. Early stated that appellant was placed on leave restriction and returned to a conventional work schedule.

[11] *K.W.*, 59 ECAB 271 (2007).

However, she denied that any appropriately made leave requests from appellant were denied. Although the handling of leave requests is generally related to employment, they are administrative functions of the employer and not duties of the employee. An administrative or personnel matter will be considered to be an employment factor only where the evidence discloses error or abuse on the part of the employing establishment.[12] Appellant has failed to provide any evidence or documentation supporting that she was inappropriately placed on leave restriction or that she was denied leave. As she has not submitted evidence substantiating her allegation of error of abuse on the part of the employing establishment, she has failed to establish a compensable factor of employment in this regard.

Appellant alleged that she was discriminated against through leave practices as a coworker was regularly allowed to use unscheduled leave without discipline. For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[13] Appellant has submitted no evidence substantiating her allegation of discrimination in regard to leave usage or restriction and has not established discrimination as a compensable factor of employment.

Appellant was also required to act as custodian for the field office vehicles. She requested a respite from this duty until she could learn management procedures, but received the assignment without delay. Appellant stated that she received criticism from a supervisor as she was unable to comply with orders to provide information regarding the vehicles before she had received any training. Ms. Early agreed that appellant was assigned this task and stated that, after appellant expressed concerns on June 30, 2009, the duties were removed from appellant and reassigned on July 23, 2009 after the office secretary underwent training. To the extent that appellant alleged that she experienced stress due to carrying out the duties of field office vehicle custodian, this would constitute a compensable employment factor. The Board has held that where the claimed disability results from an employee's emotional reaction to her regular or specially assigned duties, the disability comes within the coverage of the Act.[14]

As the Office found that there were no compensable employment factors, it did not address the medical evidence. The case therefore will be remanded to the Office to address the medical evidence and determine whether it establishes that appellant's emotional condition is causally related to the compensable factor of employment. After such further development as is deemed necessary, the Office should issue a *de novo* decision on her claim.

[12] *C.S.*, 58 ECAB 137 (2006).

[13] *Alice M. Washington*, 46 ECAB 382 (1994).

[14] *Jeral R. Gray*, 57 ECAB 611, 616 (2006).

CONCLUSION

The Board finds that the case is not in posture of a decision.

ORDER

IT IS HEREBY ORDERED THAT the January 21, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this decision of the Board.

Issued: May 18, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board