

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

A.H., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SAFETY)
ADMINISTRATION, Redmond, OR, Employer)

Docket No. 11-1365
Issued: January 5, 2012

Appearances:

Alan J. Shapiro, Esq., for the appellant
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 May 16, 2011 appellant, through her attorney, filed a timely appeal of a March 8, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) 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 met her burden of proof to establish that she sustained an emotional condition injury in the performance of duty on April 8, 2010.

FACTUAL HISTORY

On April 13, 2010 appellant, then a 45-year-old transportation screener, filed a claim alleging that on April 8, 2010 she experienced panic, shortness of breath and palpitations when

¹ 5 U.S.C. § 8101 *et seq.*

she was informed that her pay was going to be withheld due to time inaccurately logged and approved by payroll. She stated that her symptoms increased until she was no longer able to work or function. Appellant submitted a note from Dr. Mark J. Hughes, an osteopath, diagnosing adjustment disorder with anxiety on April 13, 2010.

Jennifer Androy, the employing establishment's administrative officer, responded to appellant's allegations. She stated that appellant utilized continuation of pay from December 31, 2009 through January 15, 2010. Appellant returned to light-duty work on January 17, 2010. Ms. Androy stated that appellant's supervisor, Jane Christensen, met with her on March 10, 2010 to explain that her 45-day continuation of pay period expired on March 2, 2010. Ms. Christensen informed appellant that leave used on March 4, 7 and 8, 2010 would not be covered by continuation of pay. At that point, appellant still had time to adjust her time sheet. She did not agree with the continuation of pay calculation and did not adjust her time sheet.

Ms. Androy stated that appellant used leave on March 16, 18, 23, 25 and 26, 2010 attributing the usage to her work injury. Appellant did not return to work until April 6, 2010 and Ms. Christensen used leave without pay to cover her absences as appellant had not requested another paid leave category. Ms. Androy noted that appellant did not believe that the period of continuation of pay had expired. She drafted a letter to appellant on March 25, 2010 but was unable to deliver it until April 8, 2010, as Ms Christensen locked the letter in her office and she and appellant were not in the office together until April 8, 2010. Ms. Androy stated that appellant had never received a written official reprimand; instead she received counseling.

Ms. Christensen completed a memorandum on March 29, 2010 and stated that in a previous discussion she had informed appellant that March 2, 2010 was the last date that she could use continuation of pay. Although appellant disagreed with this statement, Ms. Christensen researched the regulations and determined that her continuation of pay ended on March 2, 2010. Ms. Christensen noted that appellant was approved to use leave without pay for her absences after March 2, 2010.

In a letter dated April 28, 2010, OWCP informed appellant that her claim would be adjudicated as a new traumatic injury with a date of injury of April 8, 2010. On May 12, 2010 it requested additional factual and medical evidence in support of her claimed injury of April 8, 2010.

Appellant's attorney requested damages in the amount of \$440.00 to compensate appellant for emotional distress, humiliation and lost wages as a result of actions by her supervisors. He alleged disrespectful conduct, questioning her physician's advice and contacting him without appellant's permission. Counsel also alleged disciplinary actions, denied leave, threaten leave sanctions, withheld pay and forbidding her to speak to coworkers.

On March 28, 2010 appellant responded to OWCP's request contending that continuation of pay was inaccurately calculated. She stated that she should have been notified in order to process her claims for compensation in a timely fashion. Appellant stated that she received notification of the issue in a memorandum dated March 25, 2010 and received on April 8, 2010.

In a memorandum dated March 25, 2010, Ms. Androy informed appellant that she had received continuation of pay after her period of 45 days entitlement had expired. She stated that appellant's claim for continuation of pay on March 4, 7, 8, 10 and 11, 2010 was denied and that appellant must utilize paid or unpaid leave on these dates. Ms. Androy stated that appellant could select leave options including filing a claim for compensation for leave buyback. She stated that appellant should submit her leave forms by March 30, 2010.

In an April 6, 2010 e-mail, appellant reiterated that her pay was incorrectly entered as it was all injury leave and was submitted with appropriate documentation. She stated that the incorrect coding resulted in underpayment of \$200.00. In an e-mail dated April 8, 2010, appellant thanked her supervisor for correcting the payroll. She submitted an earnings and leave statement for the period March 14 through 27, 2010 indicating that she utilized 19 hours of leave without pay. Appellant added a handwritten note that her leave was approved as continuation of pay and later changed to leave without pay without her authorization or notification.

On April 14, 2010 appellant stated that her direct deposit on April 6, 2010 was \$300.00 less than normal. She stated that time due to her injury was listed as leave without pay and she was not provided the option of utilizing annual or sick leave. Appellant had contacted her supervisor who believed that the shortfall was due to timekeeper error and changed the codes. On April 8, 2010 she received the March 25, 2010 memorandum explaining that continuation of pay had been incorrectly applied since March 2, 2010. Appellant became very upset because her paychecks were incorrect and she would have to repay more than two pay periods of continuation of pay. She stated that the difference in her pay resulted in a late loan payment and affected her travel plans. Appellant also received a second letter which suggested that she was responsible for the error. The second letter made her upset. On April 9, 2010 appellant visited her employer to complete the forms and documents to amend her time sheets. She stated that she was not fit for duty. Appellant reported for duty on April 10, 2010 and stated that she was light headed and had a difficult time focusing. She received two reprimands for inattentiveness. Appellant sought medical treatment on April 12, 2010.

In a note dated April 12, 2010, Dr. Hughes diagnosed severe anxiety symptoms which appellant attributed to stress at work. He stated that she had a severe anxiety episode or panic attack the previous week requiring medication. Appellant had difficulty performing routine daily functions such as driving and she was very anxious and tremulous with slightly pressured speech. Dr. Hughes diagnosed adjustment disorder with severe anxiety component and panic disorder which appeared to be exacerbated by work stressors.

By decision dated July 1, 2010, OWCP denied appellant's claim finding that the employing establishment had calculated continuation of pay accurately. The failure to provide appellant with written notice of the end of continuation of pay prior to April 8, 2010 was not a compensable work factor.

Appellant requested an oral hearing on July 7, 2010 that was held on November 5, 2010. She stated that she was first advised in April that her continuation of pay had ended in the beginning of March. Appellant's employer selected leave without pay rather than another paid leave status for leave used after March 2, 2010. Appellant stated that this was a payroll error as the payroll clerk entered continuation of pay after this option had ended.

In a decision dated March 8, 2011, the hearing representative found that appellant had not established a compensable work factor and her emotional reaction resulted from administrative actions. He further found that the employing establishment did not blame her for the attempted use of continuation of pay and that her reaction was self-generated.

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 FECA.³ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.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 personal injury sustained in the performance of duty within the meaning of FECA. 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 FECA.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

² 28 ECAB 125 (1976).

³ 5 U.S.C. §§ 8101-8193.

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).

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.¹⁰

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of employment incidents regarding her leave and pay. OWCP denied her emotional condition on the grounds that she did not establish any compensable factors of employment. The Board must review whether these alleged incidents are covered employment factors under FECA.

Appellant has not alleged that she developed an emotional condition due to the performance of her regular or specially assigned duties or out of a specific requirement imposed by her employment under *Cutler*. She contended that the employing establishment improperly altered her earnings and leave statements to reflect leave without pay rather than continuation of pay, resulting in reduced earnings.

Actions of the employing establishment in matters involving the use of leave are generally not considered compensable factors of employment as they are administrative functions of the employer and not duties of the employee.¹¹ Appellant alleged that the employing establishment erred by altering her earnings and leave statements. The Board finds that the record does not support appellant's contentions. Ms. Androy, the employer's administrative officer, submitted a statement noting that Ms. Christensen, appellant's manger, met with her on March 10, 2010 to explain that the 45-day continuation of pay period had expired on March 2, 2010. Appellant did not agree and requested such leave, which she attributed to her on-the-job injury. When she received her earnings and leave statement, she requested that her supervisor correct it to reflect continuation of pay rather than leave without pay. The record establishes that the employing establishment informed appellant that her continuation of pay had ended, that she disagreed with this notification and requested continuation of pay for dates that she did not work. As appellant's continuation of pay period had expired, the employing establishment utilized leave without pay as she had not authorized a paid leave category. The record does not support any error or abuse on the part of the employing establishment in addressing her leave request.

The Board further finds that appellant's allegation that the employing establishment blamed her for utilizing continuation of pay when it was not available is not supported by the record. Ms. Christensen reiterated to appellant on March 29, 2010 that March 2, 2010 was the last date that she could use continuation of pay. She noted that appellant had disagreed with this statement. Ms. Christensen noted that appellant was approved to use leave without pay for her absences after March 2, 2010. There is no evidence of error or abuse in these statements. Appellant has not substantiated a compensable factor of employment in regard to leave and

¹⁰ C.S., 58 ECAB 137 (2006).

¹¹ T.G., 58 ECAB 189, 197 (2006).

payment issues. Where a claimant has not established any compensable employment factors, the Board need not consider the medical evidence of record.¹²

Appellant 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 has not substantiated a compensable factor of employment. Appellant has not met her burden of proof in establishing an emotional condition occurring in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the March 8, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 5, 2012
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

¹² A.K., 58 ECAB 119 (2006).