United States Department of Labor
Employees' Compensation Appeals Board

S.C., Appellant	)	
and	)	**Docket No. 12-14**
	)	**Issued: June 4, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Detroit, MI, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 3, 2011 appellant filed a timely appeal of a September 15, 2011 Office of Workers' Compensation Programs' (OWCP) merit decision denying her emotional condition claim. Pursuant to the Federal Employees' Compensation Act[1] (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 developed an emotional condition due to factors of her federal employment.

FACTUAL HISTORY

On June 2, 2011 appellant, then a 37-year-old mail handler, filed a recurrence of disability claim alleging that she experienced severe anxiety after her supervisor placed her in an absent without leave (AWOL) status. She alleged a recurrence of disability causally related to

[1] 5 U.S.C. § 8101 *et seq.*

her December 4, 2010 employment injury. Appellant stated that she had experienced stress since returning to work on April 24, 2011 as she was denied access to the building, not allowed to work, placed in AWOL status and not being allowed to spend necessary time with a union representative. On the reverse of the form, her supervisor noted that she returned to work on April 23, 2011 as a full-time mail handler. On June 1, 2011 Dr. Harold Joh, a psychiatrist, stated that appellant was experiencing anxieties and frequent panic attacks "most probably because she has been worrying more about her job situations." He diagnosed adjustment disorder with panic attacks. OWCP indicated that appellant's previous claims were accepted for stress-related condition due to her fear of exposure to dogs, OWCP File Nos. xxxxxx046 and xxxxxx693. It noted that her notice of recurrence would be adjudicated as a new claim and not as a consequential injury.

In a note dated June 2, 2011, appellant requested Family and Medical Leave Act (FMLA) papers and alleged that Melody Moore, her manager, was placing her in AWOL status. By letter dated June 20, 2011, OWCP requested additional factual and medical evidence in support of her claim.

On June 7, 2011 Dr. Joh stated that appellant experienced severe anxiety, helplessness and panic attacks stemming from a January 2006 work incident. He noted that her symptoms were worse with anxiety combined with panic attacks. Dr. Joh stated, "I also learned that [appellant] was harassed at work, causing a great deal of worry about her work; being locked out of the building and being threatened that she would be put on [AWOL] without giving her reasons." He concluded that these additional stresses from work increased her symptoms and caused her disability beginning May 18, 2011.

In a statement dated July 1, 2011, appellant advised that on May 5, 2011 she received notice from the employing establishment that she was AWOL since April 24, 2011. She was at work on April 24, 2011, but did not receive a time card until the second week of May. Appellant stated that no correction to her attendance was made after she explained that she was prevented from entering the building as management had not lifted the block from her name and badge. She stated that she first developed symptoms on May 14, 2011 after receiving her leave and attendance notice from her supervisor. Appellant stated that she received no pay due to the block on her badge which began in December 2010. She stated that she had a panic attack as a result and continued to have symptoms due to difficulties with her initial claim of December 4, 2010.

Appellant was to report to work on April 23, 2011 as the result of a Merit Systems Protection Board decision and that security would not allow her in the employing establishment building. Her supervisor attempted to sign her in, but security would not allow her in the building without the signature of a manager. Appellant stated that a manager signed her in on April 24, 2011, but after her scheduled days off, there was no manager on duty on April 27, 2011 to allow her into the building. Ms. Moore was not available and Aundrea Porter, of Health and Resources instructed appellant to go home. Appellant reported to work on April 28, 2011 and was not allowed to enter the building. She stated that she contacted Kenneth Bunch, Manager of Health and Resources, Ms. Porter, Felicia Rashand of Labor Relations, Mono Patel and Theresa Zigman of Human Resources and no one returned her calls. Appellant stated that only Ms. Moore was aware of her return to duty and that she was on vacation. She received a certified letter on May 5, 2011 demanding that she return to work, informing her that she was in

AWOL status and suggesting that she could lose her job. Appellant then telephoned Ms. Moore who stated that she had no knowledge of appellant's difficulties in entering the building, that her badge was not blocked and to immediately report to work.

Appellant stated that the employing establishment failed to return her to work with her seniority date of September 10, 2000 intact, but that the employing establishment was using the date of September 16, 2006 instead. She stated that her dependent care account had lapsed because she was not allowed to return to work immediately after she signed the job offer on March 27, 2011.

Appellant submitted a copy of the May 3, 2011 letter signed by Karl Sturdivant, a supervisor, who noted that she was absent from work on April 25, 2011.

On February 23, 2011 Dr. Kenneth Moss, a physician specializing in sleep disorders, completed FMLA documents supporting a diagnosis of narcolepsy.

By decision dated September 15, 2011, OWCP denied appellant's claim finding that she failed to submit the necessary factual evidence to substantiate that the employment events occurred as alleged.

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]

[2] 28 ECAB 125 (1976).

[3] 5 U.S.C. §§ 8101-8193.

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

[5] *Supra* note 2.

[6] *Id.*

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]

ANALYSIS

Appellant attributed her current emotional condition to actions by the employing establishment since she was directed to report to work on April 23, 2011. Although she was directed to report to work and did work on April 23 and 24, 2011, the employing establishment did not remove the hold on her badge and security would not allow her in the building. Appellant was not paid for the time that she worked and was not provided a time card to record the work she performed. She alleged that the employing establishment improperly found that she was in an AWOL status. Appellant stated that she contacted several supervisors and others at the employing establishment who were unable to help her.

Although appellant has alleged error or abuse in an administrative function of the employing establishment, she has submitted no insufficient evidence to substantiate her allegations. The evidence from her employing establishment consists of the May 3, 2011 letter from Mr. Sturdivant, indicating that appellant was absent from work from April 25, 2011 and informing her that she was in an AWOL status. Without corroborating evidence substantiating the alleged error or abuse by the employing establishment in leave matters, appellant has failed to meet her burden of proof. She has submitted no witness statements or other evidence supporting her allegation that the employing establishment improperly found that she was AWOL. Where a claimant has not established any compensable employment factors, the Board need not consider the medical evidence of record.[10]

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.

[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] *A.K.*, 58 ECAB 119 (2006).

CONCLUSION

The Board finds that appellant has not submitted the necessary factual evidence to substantiate her allegation that the employing establishment committed error or abuse in regards to her leave status.

ORDER

IT IS HEREBY ORDERED THAT the September 15, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 4, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board