United States Department of Labor
Employees' Compensation Appeals Board

S.T., Appellant	)	
and	)	**Docket No. 12-1043**
	)	**Issued: November 2, 2012**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Memphis, TN, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 18, 2012 appellant filed a timely appeal from a February 14, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). The record also contains a March 2, 2012 OWCP decision denying merit review of the 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 over the merits of this case.[2]

ISSUES

The issues are: (1) whether appellant sustained an emotional or physical condition causally related to compensable work factors, and (2) whether OWCP properly denied appellant's request for reconsideration without merit review of the claim.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant requested an oral argument. The Clerk of the Board mailed a letter to appellant to confirm a continuing desire for an oral argument in Washington, DC. No written confirmation was received; thus the Board has decided the appeal on the record.

FACTUAL HISTORY

On May 25, 2011 appellant, then a 47-year-old computer assistant, filed a traumatic injury claim (Form CA-1) alleging an emotional condition, heart problems and headache causally related to her employment. She identified the date of injury as March 15, 2011, stating that she received a letter that date from Michelle Jackson, an employing establishment labor relations specialist. According to appellant, she had been approved for sick leave, but received documentation dated February 9 and 11, 2011 alleging misconduct. On May 27, 2012 she submitted an occupational disease or illness claim (Form CA-2) with similar allegations.

In an e-mail correspondence dated February 9, 2011, Supervisor Sheila A. Dillard stated that on February 8, 2011, she had been directed to give appellant a letter and have appellant sign an acknowledgement of receipt. According to Ms. Dillard, appellant refused to sign. Approximately an hour later, security guards arrived and appellant confirmed that she had called 911 on her cell phone. The supervisor indicated that the security guards told her that appellant had refused medical treatment and asked to speak with the police.

On February 10, 2011 the employing establishment issued a notice that appellant was being charge with absent without leave (AWOL) for February 8, 2011. In a letter dated February 11, 2011, the employing establishment provided appellant a notice of proposed adverse action to remove her from employment, or "otherwise discipline" appellant. The letter alleged that appellant had failed to follow managerial directions, citing specific instances from March 5, 2009, when appellant was told to cease making nonemergency 911 calls. With respect to February 8, 2011, the employing establishment stated that appellant had not obtained prior approval for her absence and had been charged with six hours AWOL.

On February 11, 2011 appellant stated that on February 8 and 9, 2011 she was ill and was using sick leave and family medical leave. She was approved for family medical leave. Appellant submitted a January 3, 2011 report from Dr. Neal Presant, a Board-certified family practitioner, stating that she was experiencing a medical condition that would be considered serious under the Family Medical Leave Act. He stated that appellant may require up to 40 hours of leave per month to care for the condition.

In a letter dated March 15, 2011, the employing establishment noted that appellant had requested information and documents with respect to the February 11, 2011 notice. It noted that some information requested was not relied upon for the proposed action and release of the information could only be determined through a Freedom of Information Act request. By letter dated June 17, 2011, Ms. Dillard advised that appellant was placed on administrative leave on February 11, 2011 and was removed from employment on April 22, 2011. The supervisor stated that appellant had never explained why she had called for medical treatment, that she refused medical treatment and did not respond to any inquiry about her condition.

By decision dated August 12, 2011, OWCP denied the claim for compensation. It found appellant had not established a compensable work factor.

In a letter dated August 24, 2011, appellant requested a hearing before an OWCP hearing representative. She submitted a September 7, 2011 letter stating that the date of injury was

February 8, 2011, but OWCP had refused to change the date of injury. In a letter dated September 23, 2011, appellant stated that she had submitted a letter with names of individuals and documents that she needed to subpoena for the requested hearing.[3] By letter dated November 3, 2011, the hearing representative denied the subpoena request. The hearing representative found that appellant had not explained why subpoena was the best method of obtaining such evidence or why testimony was directly relevant to the issues presented.

A hearing was held on December 13, 2011. Appellant stated that she did not understand the questions asked, and did not provide any additional information with respect to the alleged incidents.

By decision dated February 14, 2012, an OWCP hearing representative affirmed the August 12, 2011 decision. The hearing representative found that appellant had not established any compensable work factors.

In a letter dated February 20, 2012, appellant requested reconsideration. She stated that the date of injury was February 8, 2011, but OWCP had denied her request to change the date of injury.

By decision dated March 2, 2012, appellant determined the application for reconsideration was insufficient to warrant merit review of the claim.

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 he claims compensation was caused or adversely affected by factors of his federal employment.[4] This burden includes the submission of detailed description of the employment factors or conditions which she believes caused or adversely affected the condition or conditions for which compensation is claimed.[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 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]

[3] The letter was apparently submitted under a different case file.

[4] *Pamela R. Rice*, 38 ECAB 838 (1987).

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

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

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

The issue is whether appellant has established a compensable work factor. If a compensable work factor is established, then the medical evidence is reviewed to determine if a diagnosed condition causally related to the compensable factor is established.[9]

The record indicates that on February 8, 2011 the employing establishment gave appellant a letter or document and requested appellant sign an acknowledgement of receipt, which appellant refused. Appellant then called 911 and eventually left the building. It is not clear what specific document or documents were given to appellant on February 8, 2011. As noted above, a reaction to an administrative or personnel matter is a compensable factor only if error or abuse is shown. There is no evidence of error or abuse with respect to any documents given to appellant on February 8, 2011 or a request to acknowledge receipt of such documents.

Appellant was charged to six hours of AWOL for February 8, 2011. Matters involving leave are administrative functions of the employing establishment and are not compensable work factors unless there is evidence of error or abuse.[10] Although appellant stated that leave was approved, there was no evidence that charging appellant with AWOL hours was erroneous or abusive. The employing establishment indicated that appellant had not followed established procedures for requesting sick leave. The medical evidence from Dr. Presant does not discuss a February 8, 2011 incident and does not establish that the employing establishment had approved leave for that date or erred in charging appellant with being AWOL.

On February 11, 2011 appellant was notified of a proposed adverse action that included termination of employment. The handling of disciplinary matters is also an administrative function of the employing establishment.[11] There was no evidence of error or abuse in this regard. The notice explained the basis for the proposed adverse action and identified specific instances of alleged failure to follow managerial directives and failure to follow leave procedures. The Board finds no evidence to support a compensable work factor in this regard.

Appellant also noted she received a March 15, 2011 letter from the employing establishment. This letter responded to specific requests for information and documents that

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

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

[9] *See Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

[10] *T.G.*, 58 ECAB 189 (2006).

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

appellant had apparently made in response to the February 11, 2011 letter. The March 15, 2011 letter specifically addressed appellant's requests and explained the basis for each response. No probative evidence of error or abuse was provided. The record indicates that appellant's employment was terminated on April 22, 2011. To the extent appellant is alleging a reaction to the termination itself, there is no evidence of error or abuse.

The Board finds that appellant has not established any compensable work factors.[12] The evidence of record does not substantiate a compensable work factor with respect to the claim for compensation. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.[13]

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,[14] the 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: "(i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent evidence not previously considered by OWCP."[15] 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.[16]

ANALYSIS -- ISSUE 2

In the present case, appellant submitted a letter requesting reconsideration and stating that the date of injury was February 8, 2011. She did not cite a specific point of law or show that OWCP erroneously applied or interpreted a point of law. To the extent appellant was raising a legal argument, the Board notes that the denial of the claim was not based on any specific designation of a date of injury. The claim was developed as an occupational claim based on incidents occurring on more than one workday,[17] and OWCP reviewed evidence with respect to alleged incidents commencing on February 8, 2011. The deficiency in the claim was, as noted

[12] The hearing representative also properly exercised his discretionary authority in denying appellant's requests for subpoenas. *See P.K.*, Docket No. 12-781 (issued September 14, 2012) (hearing representative properly denied a subpoena request on the grounds claimant did not establish why the testimony or evidence was relevant and could not be obtained by other means).

[13] *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

[14] 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").

[15] 20 C.F.R. § 10.606(b)(2).

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

[17] An occupational disease or illness is a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

above, that appellant did not provide any evidence establishing a compensable work factor on February 8, 2011 or any subsequent date. The reopening of a case is not required where the legal contention has no reasonable color of validity.[18]

Appellant did not submit any additional evidence with the application for reconsideration. The Board finds appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or provide relevant and pertinent evidence not previously considered by OWCP. Since it did not meet any of the requirements of 20 C.F.R. § 10.606(b), the application for reconsideration was properly denied with review of the merits of the claim.

On appeal, appellant states that the date of injury was February 8, 2011 and OWCP refused to correct the date. This argument was raised before OWCP and is discussed above. Appellant states that she requested a copy of all records used to support the denial of the claim and was denied. She may request a copy of the case file with OWCP in accord with established procedures.[19] Appellant argues she was approved for medical leave and medical records prove that her injury was an OWCP claim. For the reasons noted above, she did not establish a compensable work factor and medical evidence on the issue of causal relationship between a diagnosed condition and employment is not considered at this time.

CONCLUSION

The Board finds appellant has not established an emotional or physical condition casually related to compensable work factors.

[18] *Elaine M. Borghini*, 57 ECAB 549 (2006); *Annette Louise*, 54 ECAB 783 (2003).

[19] *See* 20 C.F.R. § 10.12.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 2 and February 14, 2012 are affirmed.

Issued: November 2, 2012
Washington, DC

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

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

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