U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JENNIE ANNE ROOTH and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Melbourne, Fla.

Docket No. 97-2394; Submitted on the Record;
Issued May 24, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether appellant has established that she sustained an emotional or physical injury causally related to factors of her federal employment.

On July 24, 1996 appellant filed an occupational disease claim (Form CA-2), and in an accompanying statement appellant alleged that her federal employment had caused stress and aggravated previous injuries involving her neck, back and vision. She stated that injuries suffered in a March 27, 1995 motor vehicle accident had been aggravated by "stress of my position, stress placed upon me by management on a constant basis and the physical requirements of the job." With respect to her job duties, appellant noted that she had to work 50 hours per week, that there were physical requirements for the position of special agent and her job duties included surveillance, execution of search warrants, and service of summons and subpoenas. Appellant also alleged that she had been subjected to disparate treatment from management, inappropriate comments relative to her competency and harassment to relocate at her own expense.

In a decision dated November 4, 1996, the Office of Workers' Compensation Programs determined that appellant had failed to establish an injury in the performance of duty.[1] By decision dated May 22, 1997, the Office denied modification of the prior decision.

The Board has reviewed the record and finds that appellant has not established an emotional or physical injury causally related to her federal employment.

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

[1] Although the decision included findings with respect to an injury on March 27, 1995, appellant's claim was for an occupational disease, not a traumatic injury. The record indicates that appellant has filed a separate claim for injuries in the performance of duty on March 27, 1995; this issue is not before the Board on this appeal.

adversely affected by factors of her federal employment.[2] To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.[3]

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 the Federal Employees' Compensation Act.[4]

The Board notes that the Office did make findings in this case with respect to those factors of employment that did occur in the performance of duty, and those incidents that either have not been established as occurring as alleged, or which are outside the scope of coverage under the Act.[5] The Office found that, based on an August 14, 1996 decision of a grievance examiner, the employing establishment had erred in three instances: (1) a 1995 performance evaluation contained a statement as to career development that was inappropriate; (2) the employing establishment erred in repeatedly urging appellant to relocate without offering moving expenses; and (3) the employing establishment improperly denied appellant's requests to be detailed to other units. All of these are properly found to be incidents occurring in the performance of duty. It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.[6] The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by

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

[3] *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

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

[5] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statements of Accepted Facts*, Chapter 2.809.13(b) (June 1995), which provides that the claims examiner must distinguish between those workplace activities and circumstances that are factors of employment and those which are outside the scope of employment for purposes of compensation.

[6] *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

the employing establishment.[7] In this case there was evidence of error in the specific administrative matters noted above, and these are properly found to be factors of employment.

The Office also accepted that appellant was required to work a 50-hour work week, without providing further detail. The Board notes that appellant has discussed her job duties, not just the length of the work week. She noted the physical requirements of the position and the performance of such activities as execution of warrants. Since these activities directly relate to her job duties, they clearly are compensable employment factors.

With respect to incidents that are not considered factors of employment, the Office's May 15, 1997 statement of accepted facts, incorporated into the May 22, 1997 decision, does provide a detailed enumeration of the alleged incidents. As noted above, the general rule is that administrative matters are not factors of employment unless there is evidence of error or abuse. The only probative evidence or error or abuse was provided the grievance examiner on August 14, 1996, as noted above. The grievance examiner specifically found no direct evidence that pointed to a campaign of harassment or reprisal by the employing establishment. The record also contains a portion of a settlement agreement reached in an action before the Merit Systems Protection Board, in which the employing establishment agreed to convert appellant's pay status to administrative leave and pay any back pay owed for the period June 28 to September 14, 1996. There is no admission or acknowledgment of error by the employing establishment, and the mere fact that an administrative action is later modified or rescinded does not, in and of itself, establish error or abuse.[8] Although appellant had alleged error by the employing establishment when she was relieved of all duties on June 27, 1996, the record does not contain probative evidence of error or abuse in this matter.

The Board accordingly finds that the Office accurately distinguished compensable and noncompensable incidents, with the additional modification that to the extent appellant implicated the performance of her duties as contributing to an injury, these would be factors of her federal employment.

Although appellant has alleged compensable work factors, to establish her claim she must provide medical evidence establishing causal relationship between a diagnosed condition and her federal employment. In this case, appellant has not submitted probative medical evidence on the relevant issues presented. In a brief report dated August 9, 1996, a Dr. David P. Myers stated that appellant "was experiencing increased stress reaction from employment-related situations", without providing further explanation. In a report dated June 20, 1996, Dr. Gary M. Weiss, a neurologist, stated that appellant's symptoms of blurred vision were exacerbated by stress and the pain in her neck and back, again without discussing the specific nature of the identified stress. The record also contains reports from treating chiropractors, Dr. J.G. Eplett and Dr. Jay Gutierrez. Section 8101(2) of the Act provides that the term "'physician' … includes chiropractors only to the extent that their reimbursable services are limited to treatment

[7] *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

[8] *See Michael Thomas Plante*, *supra* note 7; *Richard J. Dube*, *supra* note 6 (reduction of a disciplinary letter to an official discussion did not constitute abusive or erroneous action by the employing establishment).

consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist."[9] While there is a form report dated March 27, 1995 from Dr. Eplett diagnosing a subluxation based on x-rays, there is no opinion relating a subluxation to the factors of employment identified by appellant in this claim.[10]

In order to be of probative value, the medical evidence must contain a complete and accurate background, including an understanding of the specific factors of employment identified by appellant, and a reasoned opinion as to causal relationship between a diagnosed condition and the identified factors. The Board is unable to find such evidence of record, and therefore the Office properly determined that appellant had not met her burden of proof in this case.

The decisions of the Office of Workers' Compensation Programs dated May 22, 1997 and November 4, 1996 are modified to reflect that the identified job duties would be compensable factors of employment, and are affirmed as modified.

Dated, Washington, D.C.
May 24, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[9] 5 U.S.C. § 8101(2).

[10] As noted earlier, there is a separate claim for injuries in the performance of duty on March 27, 1995.