

FACTUAL HISTORY

On August 1, 2006 appellant, then a 37-year-old postal mail handler, filed an occupational disease claim alleging severe bouts of depression, anxiety and panic attacks and persistent nervousness due to the actions of an abusive supervisor, a prior neck injury and to the Department of Labor in processing her compensation claims. She stated, "Just coming to the building, driving to this city sets off depression and panic attacks...."

In an accompanying statement, appellant attributed her emotional condition to her accepted cervical and thoracic strain and sprain which was later found to be a herniated cervical disc, for which she underwent surgery. The Office subsequently terminated her compensation in February 2006. Appellant stated that her attempts to return to work were unsuccessful and that the Office "put [her] through more mental pain and confusion." She attributed her condition to returning to the job that resulted in her physical injury, her unresolved health issues and destroyed finances. Appellant completed a description of her job duties noting that she worked four hours a day repairing damaged mail or repairing and sorting misdirected letters. She stated that she received scornful looks from the other nixie workers and supervisors.

Dr. Brendon J. Beresford completed a form report on July 19, 2006. He attributed appellant's major depression to her employment. Dr. Beresford stated that appellant's depression was caused or aggravated by her employment as she was unable to work with "many secondary problems causing depression."

The employing establishment controverted appellant's claim, noting that she returned to a suitable work position on February 27, 2006 and stopped work on February 28, 2006.

In a letter dated August 16, 2006, the Office requested additional information from appellant and allowed 30 days for a response.

By decision dated September 20, 2006, the Office denied appellant's claim noting that to the extent that she was claiming a psychiatric condition as a result of her prior neck injury that would be addressed under her original neck claim. It found that appellant had not established a compensable factor of employment and denied her claim for an emotional condition.

Appellant requested an oral hearing on September 26, 2006. She stated that, following her neck injury, her supervisor verbally and mentally tortured her. Appellant later requested a review of the written record.

Dr. Beresford completed a report on September 15, 2006 and diagnosed depression. He attributed appellant's condition to frustration due to interactions with her supervisors and her physical condition. Dr. Beresford stated that, following appellant's accepted cervical injury, her supervisor minimized her physical condition and embarrassed her in an attempt to bully her into performing regular-duty work. He stated that appellant complained about this treatment and experienced retaliation in the form of fewer work hours. Dr. Beresford stated that unnamed persons informed appellant that her claim was "bullshit," that her supervisor threatened to send her home, that unnamed persons made derogatory remarks about her attire as well as calling her lazy and spiteful. Someone informed appellant that people could see her "cootie cat." The

employing establishment also delayed in calling a union steward when appropriate. Dr. Beresford also stated that appellant was subjected to repeated confrontational attacks by her supervisor. He stated that if these events were true then appellant's depression was causally related to these incidents.

Appellant submitted an additional summary of alleged employment factors. She described the course of treatment for her neck injury and stated that the Office attempted to force her to return to work by referring her to various physicians. Appellant noted that she underwent an impartial medical examination and that the physician opined that her neck condition was not employment related. On February 26, 2006 she was scheduled to return to work and that as she was driving to work she felt "unsteady." Appellant noted that when she arrived at the employing establishment she became nervous and faint. She again felt "unsteady" driving home after she completed her work shift. Appellant attributed her emotional condition to actions of Betty Jones, her supervisor, and noted that the employing establishment building held painful memories for her. She had not seen Ms. Jones since her return to work in 2006. Appellant alleged that her date-of-injury position had been abolished.

By decision dated February 16, 2007, an Office hearing representative affirmed the September 20, 2006 decision. She found that appellant had not substantiated a compensable factor of employment.

Appellant requested reconsideration on July 13, 2007 and alleged difficult relations with Ms. Jones. She described her neck injury and treatment and stated that Ms. Jones taunted her at the nixie table. Appellant alleged that she was unable to return to the employing establishment building due to her emotional condition. She resubmitted Dr. Beresford's July 19 and September 15, 2006 reports, his treatment notes and additional medical opinion evidence. Appellant submitted a letter from the Employee Assistance Program (EAP) noting that she sought information about coping with difficult people. She also submitted information from the internet regarding job stress. Appellant resubmitted her initial statement.

By decision dated August 7, 2007, the Office declined to reopen appellant's claim for reconsideration of the merits, finding that the evidence was not relevant, new or pertinent evidence.

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 she claims compensation was caused or adversely affected by employment factors.¹ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.² Allegations alone by a

¹ *Pamela R. Rice*, 38 ECAB 838, 841 (1947).

² *Effie O. Morris*, 44 ECAB 470 473-74 (1993).

claimant are insufficient to establish a factual basis for an emotional condition claim; the claim must be supported by probative evidence.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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁴ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁵ Generally, actions of the employing establishment in administrative or personnel matters unrelated to the employee's regular or specially assigned work duties, do not fall within the coverage of the Act.⁶ While an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment, mere perceptions are insufficient. In determining whether the employing establishment erred or acted abusively, the Board determines whether the employing establishment acted reasonably.⁷

ANALYSIS -- ISSUE 1

Appellant has attributed her emotional condition to the processing of a prior neck claim by the Office.⁸ The Board has held that stress from a claimant's pursuit of a claim before the Office does not constitute a compensable employment factor.⁹ Appellant also attributed her emotional condition to driving to work and arriving at the employing establishment building. The Board has held that the stress and strain of highway travel experienced by an employee commuting to work is self-generated and arising from the hazards of the journey shared in common by all travelers.¹⁰ Therefore appellant's travel to work is not a compensable employment factor. Her desire to work in a particular environment is not considered to be a compensable factor of employment.

³ *Pamela D. Casey*, 57 ECAB 260, 263-64 (2005).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ See *Thomas D. McEuen*, 41 ECAB 387, 390-91 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁶ *James E. Norris*, 52 ECAB 93, 100 (2000).

⁷ *Bonnie Goodman*, 50 ECAB 139, 143-44 (1998).

⁸ The Board notes that the Office has stated that it will address the development of appellant's emotional condition as a consequence of her accepted cervical condition under that claim rather than in the case currently before the Board. Therefore, as the Office has not issued a final decision on that aspect of appellant's claim, the Board cannot address this for the first time on appeal. 20 C.F.R. § 501.2(c).

⁹ *John D. Jackson*, 55 ECAB 465, 474 (2004).

¹⁰ *Hasty P. Foreman*, 54 ECAB 427 (2003).

Appellant submitted a report from Dr. Beresford listing her history of actions taken by her supervisors and coworkers which she felt caused or contributed to her emotional condition. The Board has held that the manner in which a supervisor exercises his or her discretion falls outside the coverage of the Act. This principal recognizes that a supervisor or manager must be allowed to perform their duties and that employees will at times disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.¹¹ Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. Although the Board has recognized the compensability of verbal abuse in certain circumstances this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.¹² For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹³ Appellant has not submitted any evidence, such as witness statements, to establish harassment or discrimination by Ms. Jones or any coworkers. As these allegations are not substantiated, she has not established a compensable factor of employment.

The Board finds that appellant has failed to substantiate a compensable factor of employment under the Act. Therefore, she has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹⁴

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹⁵ the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.¹⁶ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.¹⁷

¹¹ *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

¹² *Marguerite J. Toland*, 52 ECAB 294 (2001).

¹³ *Reco Roncoglione*, 52 ECAB 454, 456 (2001).

¹⁴ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *See Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

¹⁵ 5 U.S.C. §§ 8101-8193, § 8128(a).

¹⁶ 20 C.F.R. § 10.606(b)(2).

¹⁷ 20 C.F.R. § 10.608(b).

ANALYSIS -- ISSUE 2

Appellant requested reconsideration of the hearing representative's February 16, 2007 decision and attempted to submit relevant and pertinent new evidence not previously considered the Office which denied her emotional condition claim on the grounds that she failed to substantiate a compensable factor of employment. As she has not met this aspect of her burden of proof, additional medical evidence is not relevant and is not sufficient to require the Office to reopen appellant's claim for consideration of the merits.

Appellant submitted a letter from the EAP and documents retrieved from the internet. These documents did not support her allegations of error or abuse by the employing establishment and did not help to substantiate any particular alleged employment factor. Furthermore, the Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value as such materials are of general application and are not determinative the particular employment factors alleged by the employee.¹⁸ For these reasons, this evidence is not relevant to the claim before the Office.

Appellant also submitted narrative statements attributing her emotional condition to the development of her neck claim by the Office, as well as difficult relations with her supervisor, Ms. Jones and returning to the employing establishment building. These statements did not offer any evidence substantiating a factor of employment previously alleged and did not implicate additional employment factors. Therefore, these statements were not relevant to the issue for which the Office denied appellant's claim and were essentially repetitive of allegations previously reviewed by the Office. As such, these statements are not sufficient to require the Office to reopen appellant's claim for further consideration of the merits. In support of her request for reconsideration, appellant also resubmitted narrative statements and medical evidence already considered by the Office. As noted above, the evidence must be new to require the Office to reopen appellant's claim for consideration of the merits.

CONCLUSION

The Board finds that appellant has not substantiated a compensable factor of employment and therefore has not met her burden of proof in establishing an occupational disease claim for an emotional condition. The Board further finds that the Office properly declined to reopen appellant's claim for further consideration of the merits.

¹⁸ *George A. Johnson*, 43 ECAB 712, 718 (1992).

ORDER

IT IS HEREBY ORDERED THAT the August 7 and February 16, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 1, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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