United States Department of Labor
Employees' Compensation Appeals Board

M.W., Appellant	)	
and	)	**Docket No. 07-2174**
	)	**Issued: May 14, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Chicago, IL, Employer	)	

Appearances:
Appellant, pro se
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 August 27, 2007 appellant filed a timely appeal from a December 20, 2006 merit decision of the Office of Workers' Compensation Programs denying her emotional condition claim and nonmerit decisions, dated March 19, June 20 and July 27, 2007, denying her requests for reconsideration. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty; and (2) whether the Office properly denied her requests for reconsideration pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On June 22, 2006 appellant, then a 49-year-old customer service manager, filed an occupational disease claim alleging stress, mixed anxiety and depressed mood due to factors of her employment. She became aware of her condition on January 3, 2006 and realized it was

caused or aggravated by her work on February 27, 2006. Appellant stopped work on March 6, 2006 and did not return.

In a statement, appellant noted she was detailed to be the acting manager of the 22nd Street Station for a two-year term starting December 1, 2005; however, she was removed on March 3, 2006. She indicated that the 22nd Street Station had serious issues and, to ensure that it ran smoothly, she typically worked from 6:00 a.m. until 9:00 p.m., took work home, and came in on Sundays. Appellant felt unappreciated for her hard work. She alleged that Loretta Wilkins, her manager, began to harass her in January 2006 for not getting the job done despite the issues surrounding the station. She received a letter of warning from Ms. Wilkins for failure to follow instructions and failure to perform duties in a satisfactory manner. Appellant contended that the letter contained "several inconsistencies with bogus information." She disagreed that she was removed from her position for failure to get the job done.

Appellant stated that her husband was diagnosed one year prior with terminal stage lung cancer and, in February 2006, she told Ms. Wilkins that she needed to be off one to two weeks on Family Medical Leave Act (FMLA) to care for him. On Saturday, February 18, 2006, a day she took off work, she stated that Ms. Wilkins found several irregularities at the station and issued a letter of concern detailing the irregularities. When appellant returned to work on Monday, February 20, 2006, her explanations and assurances to Ms. Wilkins that the station was moving forward were in vain. Ms. Wilkins advised appellant on February 27, 2006 that she would be removed effective March 6, 2006. Appellant contended that her removal from the acting managerial position would prevent her from ever attaining another managerial position. She also dreaded going to the all city meeting held days after Ms. Wilkins' decision. After being removed from the acting position, appellant stopped work to care for her husband, who died on May 12, 2006.

In a June 6, 2006 report, Melissa Strick, a counselor, advised that appellant had entered therapy. She diagnosed adjustment disorder with mixed anxiety and depressed mood which she attributed, in part, to past treatment of appellant by her employer.

By letter dated July 12, 2006, the Office requested additional information from both appellant and the employing establishment.

In a July 20, 2006 letter, Ms. Wilkins controverted the claim. She noted that appellant was detailed into the position of Ad-hoc Manager of Customer Service and was issued a letter of warning on January 3, 2006 for failure to follow instructions/failure to perform duties in a satisfactory manner. Ms. Wilkins explained that appellant often reported to work late, left work early and planned days off around holidays. As appellant's attendance was erratic, Ms. Wilkins requested a weekly schedule to track her activities. Ms. Wilkins stated that appellant also failed to perform basic managerial tasks, including opening her e-mails for daily communications on upcoming meetings. She stated that appellant often deleted e-mails and relied on outdated information in providing guidance to her supervisors. Appellant would make excuses for not clearing "hot cases," failing to report delayed mail and not canvassing for overtime to cover vacant route assignments. Due to these shortcomings, Ms. Wilkins cancelled appellant's detail and returned her to her former position as a supervisor of customer service at her former station.

Ms. Wilkins noted that she granted appellant time to take care of the needs of her husband. It was only after she advised appellant that she would be returned to her former position that appellant requested two weeks of FMLA. Ms. Wilkins noted that, during the period of the detail, she often closed the station at night and made morning visits when appellant was absent.

In an undated response, appellant described the duties she was to perform as a manager and noted how the 22nd Street Station was not adequately equipped due to a shortage of personnel and a climate control problem. She contended that she was "harassed to get the unit together" and noted the ways in which she helped improve the station and how it showed progress. Appellant stated that she was mainly on the street to make sure the mail was properly delivered. She noted that Ms. Wilkins would come early to the station approximately three to four days a week and express displeasure over various matters, such as why there were not enough employees on duty, actions taken to get the mail out, and the need for more corrective actions. Ms. Wilkins would return at 6:00 p.m. and inquire as to mail that had not cleared or the location of the carriers. Appellant would then spend the remainder of the day, most times to 9:00 p.m., on the street checking on carriers. She received several e-mails, calls, a letter of warning, and a letter of concern and was returned to her original supervisor position. Appellant stated that she had not filed any Equal Employment Opportunity (EEO) complaint relating to the working conditions.

The record contains materials directed to appellant that pertained to assignments, meetings, training, and procedures for managers as well as conditions of and complaints concerning the 22nd Street Station; the January 26, 2006 letter of warning and a carrier's statement noting that appellant was checking on his route at 8:30 p.m. on January 3, 2006. Additional reports from Ms. Strick addressing appellant's condition were submitted.

In a September 6, 2006 note, Dr. Carl Meyer, an internist, advised that appellant had been a patient for several years and, beginning in January 2006, had been under stress concerning the rigors of her job. Appellant also had to deal with the care and death of her husband.

By decision dated December 20, 2006, the Office denied appellant's emotional condition claim, finding that she did not establish any compensable work factors. The Office found that appellant did not establish harassment by Ms. Wilkins concerning her job performance or error in being removed from the detail position. It was noted that the illness and death of her husband was not a compensable factor related to her work performance.

On January 15, 2007 appellant requested reconsideration. She reiterated that Ms. Wilkins removed her from the acting manager position after she requested time off for FMLA to assist her husband. Appellant e-mailed her request on February 11, 2006. Ms. Wilkins subsequently came to the station on February 18, 2006, while appellant was off, and issued the letter of concern which was used as a basis for removing appellant from the position. Appellant contended that this was harassment. She also contended that her removal for poor job performance was in error. Appellant noted that she had submitted materials to prove that she had been effective in doing her job. She indicated the real reason for her removal was based on her request for FMLA to care for her husband. Copies of documentation previously of record,

including the February 11, 2006 e-mail to Ms. Wilkins and medical documentation pertaining to appellant's husband, was submitted. A December 14, 2006 progress report from Ms. Strick was also submitted.

By decision dated March 19, 2007, the Office denied appellant's request for further review of the merits of her claim.

In letters dated April 5 and 12, 2007, appellant requested reconsideration. She reiterated her contentions her removal from the detail position, noting that it was based on her request to use FMLA and that the allegations of poor job performance were erroneous. Appellant also submitted an April 11, 2007 newspaper article, noting conditions at the 22nd Street Station.

By decision dated June 20, 2007, the Office denied further review of the merits of appellant's claim.

In a July 18, 2007 letter, appellant again requested reconsideration. She reiterated her arguments made and resubmitted evidence previously of record.

By decision dated July 27, 2007, the Office denied appellant's request for reconsideration without further merit review.

LEGAL PRECEDENT -- ISSUE 1

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 employment but nevertheless does not come within the concept or coverage of workers compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to her regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of her work or her fear and anxiety regarding her ability to carry out her work duties.[1] By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.[2]

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 the Act.[3] However, the Board

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[1] *Ronald J. Jablanski*, 56 ECAB 616 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[2] *Id.*

[3] *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.[4] In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.[5]

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.[6] A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and Equal Employment Opportunity complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.[7] The issue is whether the claimant has submitted sufficient evidence under the Act to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[8] The primary reason for requiring factual evidence from the claimant is support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.[9]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.[10] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[11]

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[4] *See William H. Fortner*, 49 ECAB 324 (1998).

[5] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[6] *See Michael Ewanichak,* 48 ECAB 364 (1997).

[7] *See Charles D. Edwards*, 55 ECAB 258 (2004); *Parley A. Clement,* 48 ECAB 302 (1997).

[8] *See James E. Norris*, 52 ECAB 93 (2000).

[9] *Beverly R. Jones*, 55 ECAB 411 (2004).

[10] *Dennis J. Balogh*, 52 ECAB 232 (2001).

[11] *Id.*

ANALYSIS -- ISSUE 1

Appellant has attributed her emotional condition primarily to the actions of her supervisor, Ms. Wilkins, in removing her from a detail position as an acting manager of the 22nd Street Station. She contends that this action constituted harassment by Ms. Wilkins as she was competently performing the duties of her detail position and the allegations of poor job performance were erroneous.[12] In addition, appellant notes that she was advised of her removal from the position by Ms. Wilkins shortly after making a request for FMLA to attend to her husband. The Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must review whether appellant has established a compensable employment factor under the terms of the Act.

Appellant alleged harassment by Ms. Wilkins, noting that the timing of a February 20, 2006 letter of concern and the frequency of her visits to the station. Appellant noted that she was performing the duties of the detail position and that her removal from the detail position based on poor job performance was based on bogus information. The evidence, however, must establish that the incidents of harassment occurred as alleged.[13] While appellant might not have approved of the manner, frequency or timing of Ms. Wilkins' evaluation of her job performance, there is no evidence substantiating appellant's allegation that such evaluation was discriminatory or harassing in nature. Instead, Ms. Wilkins provided reasonable explanations for her course of action in supervising appellant after her transfer to the detail position. Thus, she has not established a compensable employment factor.

In this case, appellant was removed from her detail as an acting manager after approximately three months and returned to her former position as a supervisor of customer service at her prior station. Regarding disciplinary action by the employing establishment, the Board notes that disciplinary actions are administrative actions of the employer, not related to the duties of the employee, and are not a compensable employment factor unless the evidence discloses error or abuse.[14] In January 2006, shortly after commencing the detail, appellant received a letter of warning for failure to follow instructions and failure to perform duties in a satisfactory manner. She subsequently received a letter of concern in February 2006, prior to being removed from her detail position on March 6, 2006. Although appellant disagreed with the reasons for her removal from the detail, she has not submitted sufficient evidence to establish that the actions taken by Ms. Wilkins were erroneous or abusive. Thus, she has not established a compensable employment factor with respect to the disciplinary action taken by the employing establishment.

Appellant further contended that her removal from the acting managerial position stopped her chances of ever becoming a postal manager. The Board has held, however, that denials by an

[12] The Board notes that appellant has not attributed her emotional condition to her regular or specially assigned duties while in the detail position. *See supra*, note 1.

[13] For harassment to give rise to a compensable disability there must be evidence that it did in fact occur. Mere perceptions of harassment are not compensable. *See Kim Nguyen*, 53 ECAB 127 (2001).

[14] *See Lori A. Facey*, 55 ECAB 217 (2004).

employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve an employee's ability to perform her regular or specially-assigned duties but rather constitute a desire to work in a different position.[15] Any emotional condition arising from appellant's desire to work in the detail position must be considered self-generated.

Appellant addressed her husband's terminal illness, noting that her removal from the detail position was made only after she requested FMLA. Generally, actions of the employing establishment in matters involving use of leave are not considered compensable employment factors as they relate to administrative functions of the employer and not the work duties of the employee.[16] The Board finds that appellant has not submitted evidence in support of her contention that her removal from the detail position was in any way premised on her request for family medical leave.[17] Requests for documentation for absence from work are administrative in nature. There is no evidence to establish that Ms. Wilkins terminated appellant's detail position due to her request for leave to attend to her husband. Appellant has not established a compensable work factor in this regard.

For these reasons, appellant has not established a compensable employment factor under the Act. She has not established an emotional condition arising in the performance of duty.[18]

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.[19] Section 10.606(b)(2) of Office regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.[20] Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[21] Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a

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[15] *See Charles D. Edwards, supra* note 7.

[16] *See David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

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

[18] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *Marlon Vera*, 54 ECAB 834 (2003).

[19] 5 U.S.C. § 8128(a).

[20] 20 C.F.R. § 10.606(b)(2).

[21] *Id.* at § 10.608(b).

case.[22] Likewise, evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[23]

ANALYSIS -- ISSUE 2

Following the denial of her claim, appellant requested reconsideration and reiterated her contentions that her removal from her detail position constituted harassment by Ms. Wilkins based on erroneous information concerning her work performance and her request to take FMLA. Appellant stated that she notified Ms. Wilkins on February 11, 2006 that she would be taking FMLA to care for her husband and argued that Ms. Wilkins's subsequent investigation at the detail station while she was off on February 18, 2006 and subsequent issuance of the letter of concern constituted harassment. It is well-established that evidence or argument which repeats or duplicates that already of record has no evidentiary value and does not constitute a basis for reopening a claim for further merit review.[24] The contentions raised by appellant and evidence submitted in support of her reconsideration requests is duplicative of that already of record and previously considered by the Office. Her materials and contentions do not advance a point of law or fact not previously considered nor constitute relevant or pertinent new evidence. For this reason, the Office properly denied further review of the merits of her claim.

CONCLUSION

Appellant did not meet her burden of proof in establishing that she sustained an emotional condition in the performance of duty. The Board also finds that the Office properly denied appellant's request for reconsideration without further merit review.

[22] *Helen E. Paglinawan*, 51 ECAB 591 (2000).

[23] *Kevin M. Fatzer*, 51 ECAB 407 (2000).

[24] *See Betty A. Butler*, 56 ECAB 545 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 27, June 20 and March 19, 2007 and December 20, 2006 are affirmed.

Issued: May 14, 2008
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