United States Department of Labor
Employees' Compensation Appeals Board

C.F., Appellant	)	
and	)	**Docket No. 08-1102**
	)	**Issued: October 10, 2008**
DEPARTMENT OF LABOR, EMPLOYMENT STANDARDS ADMINISTRATION, OFFICE OF WORKERS' COMPENSATION PROGRAMS, Jacksonville, FL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 4, 2008 appellant filed a timely appeal of the November 29, 2007 merit decision of the Office of Workers' Compensation Programs, which denied her claim for an employment-related emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On October 11, 2007 appellant, a 53-year-old claims examiner, filed an occupational disease claim for an employment-related emotional condition. She identified January 25, 2007 as the date of injury and September 25, 2007 when she first realized that her condition was

employment related. Appellant noted that when she signed her standards in November 2006, she was assigned digit range CEJ. However, she was subsequently assigned additional work digits CEL on January 25, 2007 and CEK on June 28, 2007. The employing establishment assigned her digit range CEG on July 10, 2007 and CEE on August 29, 2007. Appellant explained that she became depressed due to the additional work assignments.

In a November 7, 2007 statement, appellant noted that she had been off work from January 23 until August 9, 2006 due to a memory loss condition. After she returned to work, she did well until the extra work assignments began upon the departure of other claims examiners and organizational realignment. Appellant explained that work became stressful and she began taking every other Monday off to try to decrease her stress level. However, with the excessive workload, her stress level just continued to increase. Appellant again referenced a July 10, 2007 temporary assignment she was expected to cover in addition to her own digit range plus the two other extra digit assignments. She stated that she received e-mails instructing her to do various things, which she found "very frustrating."

During the summer of 2007, appellant began quality case management (QCM) and periodic rolls management (PRM) training, work which was not included in her November 2006 performance standards. She described the addition of a September 5, 2007 QCM workday, which she reportedly learned of only the day before. Appellant had not previously worked in the QCM unit and she was expected to work QCM cases instead of transferring them to the QCM unit. Under the realignment, PRM cases which had previously been transferred to a separate specialty unit, would be worked by her unit. Appellant stated that her office was realigned October 16, 2007 and she was assigned to Unit F, a hybrid unit. She also noted that she had recently signed new standards that included QCM and PRM tasks, but with a decrease in her assigned digit range.

Appellant also referenced a September 25, 2007 employment incident in which she noticed that Dawn Brown, a customer service representative (CSR), had written a telephone message that the "claimant is constantly getting the runaround from the claims examiner." She became upset contending that the criticism was unjust. Appellant also noted a prior disagreement with Ms. Brown, who had wrongly accused appellant of snatching a pen from her hand and interfering with her telephone answering duties. She alleged that Ms. Brown might have embellished the claimant's remarks in the September 25, 2007 message. When appellant later spoke to the claimant, she reportedly told appellant that she did not say what was written in the telephone message.

On October 18, 2007 appellant received oral admonishment for being rude to the CSR and customers. She contended that she was not allowed to prove that she did not do what she was accused of doing. Appellant stated that she had a preexisting emotional condition that was a consequence of work-related neck and back injuries for which she took medication. She said her medication had worked successfully until she became overwhelmed at work. Appellant submitted a copy of the performance standards she signed November 28, 2006. She also submitted several e-mails from Supervisory Claims Examiner Barbara J. Glenn, which documented extra work assignments appellant received on January 25, June 22 and 28, July 10,

August 29 and October 9, 2007. On October 2, 2007 appellant advised Ms. Glenn that she wanted to file a claim for employment-related stress.[1]

Senior Claims Examiner Jim Plunkett provided a November 9, 2007 statement. He noted that the stress level was high in the Jacksonville office due to a number of factors, including a high employee turnover rate, multiple deadlines and priorities and a new computer and contractor bill payment system. Mr. Plunkett explained that, due to understaffing, management had to reassign work and make priorities as to the high volume of work. With respect to deadlines and priorities, he noted that management had reduced the amount of time for employees to respond to written and telephone inquiries. The number of documents being tracked had also increased.

On November 16, 2007 the employing establishment controverted the claim. It acknowledged that appellant received extra digit assignments in January and June 2007, as well as temporary assignments thereafter. When a position vacancy arose in appellant's unit, the digit work was distributed among the remaining unit employees. After the first extra digit assignment, the Adjudication Unit's digits were realigned in March 2007, effectively eliminating the position vacancy in Unit E that arose in January 2007. The June 2007 extra digit assignment, which was also precipitated by an examiner's departure, reportedly ended in mid-August 2007, when a newly-hired claims examiner assumed full responsibility for the CEK digit load. As to the temporary extra digit assignments, this work was reassigned when a claims examiner was absent due to sick or annual leave. Appellant's work was similarly redistributed when she was absent more than just a few days at a time. The employing establishment also confirmed that QCM and PRM training occurred during the summer and fall of 2007. The work that had previously been sent to specialized units was being realigned to be performed by all claims examiners within nonspecialized units but with a decreased workload. As to the September 5, 2007 QCM workday, all claims examiners were expected to take initial action on any QCM case they found rather than dispatch these cases to the specialized QCM unit as before. The final transition and realignment into nonspecialized units occurred on October 15, 2007.

Regarding the September 25, 2007 telephone message, Ms. Brown wrote that the "claimant indicated that she 'was getting the runaround from the [claims examiner].'" Appellant's supervisor, Ms. Glenn, contacted the claimant who advised that she had tried to be very nice to appellant when they spoke because she was fearful of retaliation from appellant. The employing establishment noted that appellant had previously been counseled about being rude to customers and she received an oral admonishment on October 18, 2007. The disciplinary action was based, in part on the October 4, 2007 faxed statement from the claimant to Ms. Glenn addressing telephone conversations she had with appellant dating back to January 2007. The claimant generally complained about the length of time appellant took to process her claim and the delay affected her financially and emotionally. She also expressed concern about sending another fax to Ms. Glenn after having received a telephone call from appellant. Appellant reportedly called the claimant to tell her off. She advised Ms. Glenn that, in each of her conversations with appellant since June 2007, appellant had promised that she had properly

[1] Appellant also submitted statements from a former coworker and a copy of the September 25, 2007 telephone message.

processed the claim. The details of the oral admonishment were reduced to writing and appellant confirmed her receipt of this memorandum.

Appellant was treated for a pain disorder and major depressive episode, the latter of which was said to be in remission as of June 2006. Virgil Wittmer, Ph.D., an attending clinical psychologist, saw her on October 3, 2007 and diagnosed major depression, severe. He attributed appellant's current condition to increased stress levels at work with a gradual progression of her workload since the prior January 2007. However, Dr. Wittmer premised his statement on causation with the qualifier "By patient self-report." Appellant advised Dr. Wittmer that she had recently filed a claim alleging that she was experiencing significant emotional problems and stress as a function of her increased workload. He advised that appellant's claim was a function of her employer adding "extra digits" since January 2007 and noted that she had additional cases to take care of, which created additional demands on her. Dr. Wittmer noted that appellant's depression was chronic and had been severe over the past month. He recommended psychological treatment for stress management as well as cognitive-behavioral treatment for depression. Dr. Wittmer allowed appellant to continue working.

Dr. Mark C. Hofmann, a Board-certified physiatrist, saw appellant on November 5, 2007. He had previously treated appellant for chronic neck and back pain. Dr. Hofmann noted that appellant reported a flare-up over the past month, which became significant the previous week. Appellant related this to an increase in "stress at work." Dr. Hofmann also noted that appellant had missed work on November 1, 2007 because of pain over her neck and the back of her head. He excused her November 1, 2007 absence, prescribed medication and a follow-up visit in three month's time.

By decision dated November 29, 2007, the Office denied appellant's claim. It found that appellant did not establish any compensable employment factors.

LEGAL PRECEDENT

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

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.[3] Disability is not compensable, however, when it results from factors

[2] *See Kathleen D. Walker*, 42 ECAB 603 (1991).

[3] *Pamela D. Casey*, 57 ECAB 260, 263 (2005).

such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.[4] Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.[5] 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.[6]

ANALYSIS

The record establishes that between January 25 and June 28, 2007, the employing establishment assigned appellant extra work digits. According to the employing establishment, the three digit CEL increase appellant received on January 25, 2007 was formally absorbed into her regular digit block in March 2007 due to a realignment of work.[7] Afterwards, appellant's regular CEJ assignment block was 405-432. On June 22, 2007 she received a four digit assignment from the recently realigned CEL digit range. This assignment was effective June 27, 2007. On June 28, 2007 the employing establishment assigned appellant three extra digits from the CEK range. Over this five-month period, appellant's assigned work range increased from 24 to 34 numbers. The employing establishment indicated that the June 2007 assignment from the CEK digit range ended as of mid-August 2007. Appellant received three more assignments between July and October 2007, which totaled 12 additional digits. Although these later extra digit assignments were designated as "temporary," only the October 9, 2007 assignment had a specific termination date.

Appellant experienced an increase in her assigned caseload between January 25 and July 10, 2007. However, the Office found that the extra digit assignments were an administrative matter and therefore noncompensable.[8] It is correct that work assignments are administrative in nature and absent evidence of error or abuse, such assignments are noncompensable.[9] Appellant, however, did not challenge the employing establishment's authority to assign additional work or allege error or abuse in reassigning the work to be performed. Rather, her emotional reaction was to her regular work and the increased assigned duties following the realignment. The evidence of record establishes a compensable work factor under *Cutler*. By assigning additional digits in January and June 2007, the employing establishment increased appellant's caseload.

[4] *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[5] *Kathleen D. Walker*, *supra* note 2.

[6] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[7] Based on an analysis of the CEL digit range, the average number of digits permanently assigned each claims examiner increased from 24 to 27 during the early months of 2007.

[8] An employee's emotional reaction to administrative or personnel matters generally falls outside the scope of the Federal Employees' Compensation Act. *Andrew J. Sheppard*, 53 ECAB 170, 173 (2001). However, to the extent 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. *Id.*

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

She also received several additional temporary assignments between July and October 2007 when other employees were on leave. Beginning in August 2007, appellant was tasked with the added responsibility of learning how to manage QCM and PRM cases which were no longer to be assigned to specialty units. Her emotional reaction was to the increase in workload she was expected to manage beginning January 25, 2007.

Appellant also alleged that her emotional condition was in response to a September 25, 2007 telephone message by Ms. Brown, who spoke with a claimant on that date about the processing of her claim. She contended that the CSR had made up the claimant's complaint about getting "the runaround." The record reflects, however, that this matter was investigated by the employing establishment and that appellant was ultimately disciplined for her conduct in this matter on October 18, 2007. The employing establishment submitted an October 4, 2007 fax in which the claimant relayed various concerns pertaining to the processing of her claim by appellant. It is well established that an investigation is generally related to the performance of an administrative function by the employer and is not a compensable factor absent evidence of error or abuse.[10] Similarly, reactions to disciplinary matters, such as oral admonishments or letters of warning, regarding conduct are also administrative in nature and not compensable unless it is established that management erred or acted abusively.[11] The evidence of record fails to establish that either the investigation by appellant's supervisors into complaints received from a claimant concerning her workers' compensation claim or the discipline imposed were abusive or erroneous. Appellant has not established a compensable work factor in this regard.

Appellant has established a compensable work factor under *Cutler*. However, she must also submit rationalized medical opinion evidence establishing that her claimed emotional condition is causally related to the compensable employment factor.[12] Dr. Hofmann, an attending physiatrist, provided a November 5, 2007 treatment note. However, he did not diagnose a physical or psychiatric condition. Dr. Hofmann merely noted that appellant recently complained of "pressure-like pain" over her neck and the back of her head. Pain is a symptom, not a compensable medical diagnosis.[13] Dr. Hofmann's brief reference to an "increase in stress at work" is too general in nature. He did not exhibit any specific knowledge or understanding of the alleged stress appellant experienced at work or of the compensable factor related to her regular and specially assigned work duties. Consequently, Dr. Hofmann's November 5, 2007 treatment note is insufficient to establish a medical condition causally related to appellant's employment.

Similarly, the October 3, 2007 report of Dr. Wittmer is also insufficient to establish appellant's claim. He was apprised of the particular working conditions appellant believed were responsible for her psychiatric condition. Dr. Wittmer diagnosed major depression and attributed her condition to appellant's "increased stress level at work with gradual progression of job load since January of this year." However, he did not discuss appellant's prior depressive episodes other than to note that she continued to take antidepressant medication. In this regard,

[10] *Ernest St. Pierre*, 51 ECAB 623 (2000).

[11] *Sherry L. McFall*, 51 ECAB 436 (2000).

[12] *Charles D. Gregory*, 57 ECAB 322, 328 (2006).

[13] *Robert Broome*, 55 ECAB 339, 342 (2004).

Dr. Wittmer failed to adequately address how the increase in appellant's work duties contributed to her preexisting emotional condition. He also appeared to have relied exclusively on appellant's "self-report" as the basis for stated opinion on causation. Dr. Wittmer did not explain how he was able to distinguish appellant's preexisting depressive disorder from her current diagnosis of major depression. Therefore, his October 3, 2007 opinion is not based on a full and accurate medical history and is of reduced probative value.[14] The Board finds that appellant failed to meet her burden of establishing that her claimed emotional condition is causally related to the accepted employment factor.

CONCLUSION

The Board finds that appellant established a compensable employment factor under *Cutler*. However, the medical evidence is insufficient to establish that her emotional condition is causally related to the accepted work factor.

ORDER

IT IS HEREBY ORDERED THAT the November 29, 2007 decision of the Office of Workers' Compensation Programs be affirmed, as modified.

Issued: October 10, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

[14] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*