

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PATRICIA L. GILMORE and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION,  
Birmingham, Ala.

*Docket No. 96-1510; Submitted on the Record;  
Issued April 13, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

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

The Board has duly reviewed the case record and finds that appellant has failed to establish a factual basis for her claim that she sustained an emotional condition in the performance of duty.

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.<sup>1</sup> 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.<sup>2</sup>

On September 15, 1993 appellant filed an occupational claim for compensation, Form CA-2, alleging that she sustained an emotional condition which was manifested by such symptoms as chest pain, irritability, tension, stomach upset and headaches because she was not treated with respect by the employing establishment. In a supplemental statement dated

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<sup>1</sup> *Dinna M. Ramirez*, 48 ECAB \_\_\_\_ (Docket No. 94-2062, issued January 17, 1997); see *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>2</sup> *Michael Ewanichak*, 48 ECAB \_\_\_\_ (Docket No. 95-451, issued February 26, 1977); *Lillian Cutler*, 28 ECAB 125 (1976).

September 30, 1993, appellant contended that when she returned to work following her recovery from surgery, Norman Davis, her assistant manager, harassed her by constantly watching her all day even during her break and lunch time, unplugging her telephone when she went to lunch or break, discussing her work performance with “everyone” who was interested, using profanity in conversation with her, belittling her in a module meeting, holding her hostage in the conference room, refusing to move her to another office, eventually moving her to another office that lacked a telephone, computer table and “form boxed or bookcases” and having her restroom and lunch breaks overly and unfairly monitored.

In an undated statement, appellant’s manager, Larry G. Morton, met with appellant to discuss her complaints concerning Mr. Davis and stated he would speak with him which he did. In response to appellant’s letter requesting to be moved to another office, he explained he could not move her immediately but would consider moving her when they next moved. He also explained that usually if someone is monitored more closely than others, it is because they need to be. Mr. Morton stated that his inquiry did not reveal disparate treatment of appellant by her module manager but established that appellant regularly abused her break, telephone and visitor privileges and when one tried to address the problem, she became belligerent and yelled disparate treatment or discrimination. He found that once appellant was moved to a differed module, no telephone was available but the manager made several telephones in close proximity to her available for her use and assured her that they would move her to a different module as soon as possible. A witness, Cheryl J. Adams, a first line manager, stated that she had no direct personal knowledge of appellant’s complaints, but she had never observed the module manager treating appellant differently from other employees. She stated appellant had a habit of overreacting to any comment regarding any aspect of her work habits or behavior and had exhibited this type of behavior with managers prior to Mr. Davis. Ms. Adams stated that other assistant managers, Arei McGahey and Ms. Warren, denied making any offensive comments to appellant regarding her work performance. A statement by Wayne Paul dated October 7, 1993 stated that appellant met with him to accuse Mr. Davis of inappropriate behavior but Larry Morton who investigated the charges found they were not substantiated. In an undated statement, Ms. Warren stated that she concurred with the employee’s statement, apparently referring to an incident where the assistant manager used the word “damn” in front of appellant.

In a statement dated November 22, 1993, Mr. Davis denied abusing appellant or treating her disparately from other employees. He stated at one time he gave her filing procedure and screening instructions because she was slow and deliberate in starting her work. He explained that the office had a policy of unplugging an employee’s telephone if he or she were away from their desk for too long as typically only personal calls were received at an employee’s desk and, in the employee’s absence, the continuous ringing was disruptive. Mr. Davis denied ever treating appellant in an unprofessional manner. He remembered using the word “damn” once telling Ms. Warren when appellant was visiting her that appellant could return to work as there was not a “damn” thing that Ms. Warren could do about it. He subsequently apologized to Ms. Warren. In a statement dated November 18, 1993, Ms. Warren stated that she heard the word “damn” used but described no further details.

In a letter dated March 14, 1994, Margaret Scoggins stated that Mr. Davis told her to come into his office, she heard loud voices and the door was opened and slammed.

By decision dated January 10, 1996, the Office denied appellant's request for reconsideration of its January 13, 1994 decision in which the Office found that the evidence of record failed to establish that an occupational injury was sustained as alleged.

Where an employee alleges harassment and cites to specific incidents and the employer denies that harassment occurred, the Office or some other appropriate fact finder must make a determination as to the truth of the allegations.<sup>3</sup> The issue is not whether the claimant has established harassment or discrimination under standards applied in the Equal Employment Opportunity Commission. Rather the issue is whether the claimant under the Act has submitted evidence sufficient to establish an injury arising in the performance of duty.<sup>4</sup> To establish entitlement to benefits, the claimant must establish a factual basis for the claim by supporting allegations with probative and reliable evidence.<sup>5</sup>

In the present case, none of the incidents appellant described in her September 30, 1993 statement, including management's monitoring her excessively, speaking to her disrespectfully, unplugging her telephone when she left her office and moving her to an office without the necessary equipment, were part of her regular or specially assigned duties but fall within the administrative functions of the employing establishment. They constitute compensable factors only if there is affirmative evidence that the employer erred or acted abusively in the administration of the matter.<sup>6</sup> Appellant, however, has presented no evidence to establish that management's alleged actions of harassment occurred or that management acted abusively or erroneously. Management stated that it closely monitored appellant's work performance because she started her work more slowly. The monitoring of work by a supervisor is an administrative function and is not compensable.<sup>7</sup> Moreover, disciplinary matters consisting of counseling sessions, discussions or letters of warning for conduct pertain to actions taken in an administrative capacity and are not compensable under the Act unless it is demonstrated that the employing establishment has erred or acted abusively in its administrative capacity.<sup>8</sup>

Management also stated that its policy was to unplug an employee's telephone if he or she were away from their desk for any length of time and when management realized after the move that appellant lacked certain equipment such as telephones, it made other telephones available to her and assured her they would try to relocate her. Although Mr. Davis admitted using the word "damn" before appellant and an assistance manager once, appellant has not shown that in these circumstances, it constituted harassment. The witness statements of Ms. Warren and Mr. Paul do not corroborate appellant's statements as they do show appellant was harassed by her module manager. A claim based on verbal altercations or difficult relationships

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<sup>3</sup> *Michael Ewanichak, supra note 2; Gregory J. Meisenburg, 44 ECAB 527 (1993).*

<sup>4</sup> *See Martha L. Cook, 47 ECAB \_\_\_ (Docket No. 95-429, issued December 6, 1995).*

<sup>5</sup> *Barbara E. Hamm, 45 ECAB 843, 851 (1994).*

<sup>6</sup> *Michael Ewanichak, supra note 2; Jimmy Gilbreath, 44 ECAB 555 (1993).*

<sup>7</sup> *Daryl Davis, 45 ECAB 907, 911 (1994).*

<sup>8</sup> *Barbara J. Nicholson, 45 ECAB 803, 809 (1994).*

with a supervisor must be supported by evidence of record.<sup>9</sup> Appellant's managers denied treating appellant differently from other employees and appellant has failed to support her allegations with affirmative evidence.

The Board therefore finds that appellant has failed to allege a compensable factor of employment. Since no compensable factors have been alleged, it is not necessary to address the medical evidence.<sup>10</sup>

Accordingly, the decision of the Office of Workers' Compensation Programs dated January 10, 1996 is affirmed.

Dated, Washington, D.C.  
April 13, 1998

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>9</sup> *Diane C. Bernard*, 45 ECAB 223, 228 (1993).

<sup>10</sup> *Id.*