

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DWENDOLYN V. WILSON and DEPARTMENT OF THE ARMY,
U.S. ARMY TRAINING CENTER, Fort Jackson, S.C.

*Docket No. 96-2280; Submitted on the Record;
Issued August 11, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

The Board has duly reviewed the case record and finds that appellant did not establish that she sustained an injury in the performance of duty.

The facts in this case indicate that on March 13, 1996 appellant, then a 54-year-old supply clerk, filed a claim alleging that sexual harassment at work caused depression and anxiety. She had stopped work on February 22, 1996. In a statement dated February 20, 1996, appellant stated that on that day Mr. Griffin Kemp, a coworker, touched her buttock as she was leaving her office. She described earlier incidents, in which Mr. Kemp tried to touch her arm, complimented her, made suggestive comments and cupped his penis in her presence. In support of her claim, appellant submitted several statements in which a coworker, Tomorrow Mitchell, advised that on February 20, 1996 appellant was upset and repeated that Mr. Kemp had touched her buttock. While they were talking, Mr. Kemp came up and asked appellant to forgive him. In another statement, Ms. Mitchell reported that she saw Mr. Kemp follow appellant out the office but did not know what happened after that other than what appellant told her.

In a February 26, 1996 statement, Mr. Kemp stated that he inadvertently bumped into appellant on February 20, 1996, for which he apologized. In a March 14, 1996 statement, an employing establishment supervisor, Cassandra Ward, related that while she was on leave appellant called her at home on February 21, 1996 and told her that the day before, Mr. Kemp had touched her on her buttock, that appellant wanted to call the military police but Ms. Ward dissuaded her. Appellant then left on sick leave.

On April 10, 1996 the Office of Workers' Compensation Programs informed appellant of the type information needed to support her claim. In an April 30, 1996 statement, appellant

stated that Mr. Kemp lied about the February 20, 1996 incident and intentionally touched her buttock.

Appellant also submitted reports from Dr. Aziz Mohiuddin, a Board-certified psychiatrist, who completed a psychiatric evaluation on March 1, 1996, in which he noted a history of flashbacks to sexual harassment at work and diagnosed a major depressive episode and post-traumatic stress disorder. Appellant received outpatient psychiatric treatment from March 1 to March 27, 1996, at which time Dr. Mohiuddin advised that she could return to work, 20 hours per week.

By decision dated June 25, 1996, the Office denied the claim finding that, while the touching incident occurred on February 20, 1996, appellant had not been injured therefrom. In the attached memorandum, the Office noted that Mr. Kemp denied that he intentionally touched appellant and that she submitted no corroborating evidence that he intentionally touched her or sexually harassed her in any way.

To establish that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.¹ Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.²

Workers' compensation law is not applicable 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. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.³ On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.⁴

¹ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² *Victor J. Woodhams*, 41 ECAB 345 (1989).

³ 5 U.S.C. § 8101 *et seq.*

⁴ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

For harassment to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur.⁵ Mere perceptions or feelings of harassment do not constitute a compensable factor of employment,⁶ and an employee's charges that he or she was harassed or discriminated against is not determinative of whether or not harassment or discrimination occurred.⁷ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁸ In the present case, appellant has not submitted evidence corroborating her various allegations of sexual impropriety by Mr. Kemp. The Office, therefore, properly found that appellant failed to establish that she sustained an emotional condition in the performance of duty.

The decision of the Office of Workers' Compensation Programs dated June 25, 1996 is hereby affirmed.

Dated, Washington, D.C.
August 11, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ *Sheila Arbour (Vincent E. Arbour)*, 43 ECAB 779 (1992).

⁶ *See Lorraine E. Schroeder*, 44 ECAB 323 (1992); *Sylvester Blaze*, 42 ECAB 654 (1991).

⁷ *William P. George*, 43 ECAB 1159 (1992).

⁸ *See Anthony A. Zarcone*, 44 ECAB 751 (1993); *Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).