

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CYNTHIA J. HENRY and DEPARTMENT OF THE ARMY,
ARMY CORPS OF ENGINEERS, NEW CUMBERLAND L & D,
Stratton, Ohio

*Docket No. 95-2370; Submitted on the Record;
Issued June 12, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

On October 2, 1992 appellant, then a 44-year-old navigation project assistant, filed a claim alleging that employment factors had caused stress, ulcerative colitis, recurrent middle ear infections and acute chest pains due to mitral valve collapse. In an accompanying statement, she indicated that she was harassed by supervisory personnel in meetings held on September 15, September 22 and October 1, 1992 and that since filing a congressional complaint on July 10, 1992, she had been treated unfairly at work. She stopped work on October 2, 1992 returned to work on November 2, 1992 and stopped again on December 17, 1992. She submitted a statement dated November 2, 1992 in which she reiterated her previous allegations and also contended that she had been sexually harassed by Albert H. Rogalla, Chief, Waterways Management Branch, from August to December 1990. On December 17, 1992 she filed a recurrence claim, alleging that a memorandum given to her on November 2, 1992 restricting her telephone use caused additional stress. She reiterated that Mr. Rogalla had sexually harassed her and that she had also been sexually harassed on March 17, 1992 by Dennis Kerns, an employee at the national headquarters of the employing establishment.

In support of her claims, appellant submitted medical reports from Dr. Cherian John, a Board-certified internist, statements from coworkers, copies of a grievance and an Equal Employment Opportunity Commission (EEO) complaint. The employing establishment submitted evidence including statements from supervisory personnel. The Office of Workers' Compensation Programs developed the claim,¹ and by decision dated March 2, 1993, found that appellant had not sustained an injury in the performance of duty.

¹ The record indicates that the Office developed the claim as an occupational disease.

She requested a hearing that was held on August 4, 1993 where appellant submitted additional medical evidence including reports from Drs. John and R. Kolli, a Board-certified psychiatrist. In a decision dated November 9 and finalized November 12, 1993, an Office hearing representative affirmed the prior decision, finding that appellant did not establish any compensable factors of employment. The hearing representative further found that the medical evidence of record failed to establish a causal relationship between employment factors and her condition. The facts of this case as set forth in the hearing representative's decision are hereby incorporated by reference.

On November 2, 1994 appellant requested reconsideration and submitted additional evidence including reports and deposition testimony from Drs. John and Kolli and a copy of an EEO decision dated February 14, 1994. In a merit decision dated March 22, 1995, the Office found that appellant had not established that she sustained an injury in the performance of duty. The instant appeal follows.

The Board finds that this case is not in posture for decision.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim³ including the fact that the individual is an "employee of the United States" within the meaning of the Act,⁴ that the claim was timely filed within the applicable time limitation period of the Act,⁵ that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁶ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

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.⁸ 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

² 5 U.S.C. §§ 8101-8193.

³ See *Daniel R. Hickman*, 34 ECAB 1220 (1983); see also 20 C.F.R. § 10.110.

⁴ See *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

⁵ 5 U.S.C. § 8122.

⁶ See *Melinda C. Epperly*, 45 ECAB 196 (1993).

⁷ See *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

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.⁹

In this case, while appellant alleges many instances of error or abuse on the part of the employing establishment, to establish entitled to benefits, appellant must establish a factual basis for her claim by supporting her allegations with probative and reliable evidence.¹⁰ Here there is nothing in the record to substantiate most of appellant's claims¹¹ as, absent a showing of error or abuse, an administrative or personnel matter will not be considered an employment factor.¹² In one instance, however, she submitted substantiating evidence. With her reconsideration request to the Office, appellant submitted an EEO decision dated February 14, 1994. In that decision, although the administrative law judge found no discrimination on the part of the employing establishment, she recognized that during August, September and December 1990 Mr. Rogalla had made unwelcome sexual advances toward appellant. The record indicates that during this period appellant was on temporary duty in Nashville, Tennessee. The Board has recognized that the Act covers an employee 24 hours a day when he or she is on travel status or on a temporary duty assignment and engaged in activities essential or incident to such duties.¹³ The judge's finding constitutes evidence that harassment did, in fact, occur,¹⁴ and appellant has, therefore, established a compensable employment factor. While appellant also alleged that she was harassed by Mr. Kerns on March 17, 1992 while on temporary duty, the record indicates that the incident occurred after dinner in the hotel bar while appellant was having a nightcap with Mr. Kerns. As this was not reasonably incidental to the duties of the temporary assignment, it does not constitute a compensable factor.¹⁵

Although the medical evidence submitted is not sufficient to meet appellant's burden of proof, it gives some support to her claim as Dr. John repeatedly advised that appellant suffered from post-traumatic stress disorder with depressive disorder related to a stressful work environment which also caused increased symptoms of mitral valve prolapse and spastic colon.¹⁶ Her opinion thus raises an uncontroverted inference of causal relationship between appellant's

⁹ *Victor J. Woodhams*, *supra* note 7.

¹⁰ *Abe E. Scott*, 45 ECAB 164 (1993).

¹¹ See *Elizabeth W. Esmil*, 46 ECAB 606 (1995) (assignment of work duties and assessment of performance or conduct are administrative functions); *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995) (matters involving the discipline of employees is an administrative function).

¹² See *Elizabeth Pinero*, 46 ECAB 123 (1994).

¹³ See *Richard Michael Landry*, 39 ECAB 232 (1987) and cases cited therein.

¹⁴ See *Barbara J. Nicholson*, 45 ECAB 803 (1994).

¹⁵ See *Evelyn S. Ibarra*, 45 ECAB 840 (1994).

¹⁶ The Board notes that Dr. Kolli couched his opinion in speculative terms, and the remaining medical reports do not discuss the cause of appellant's condition.

condition and employment factors and is sufficient to require further development of the case by the Office.¹⁷

On remand, the Office should further develop the medical evidence by referring appellant and a statement of accepted facts to appropriate Board-certified specialists for rationalized medical opinions on the issues of whether appellant's emotional and physical conditions are causally related to the accepted employment factor.¹⁸

The decision of the Office of Workers' Compensation Programs dated March 22, 1995 is hereby set aside and the case is remanded for further action consistent with this decision.

Dated, Washington, D.C.
June 12, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹⁷ See *John J. Carlone*, 41 ECAB 354 (1989).

¹⁸ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d)(6) (June 1995). (A claim for an emotional condition must be supported by an opinion from a psychiatrist or clinical psychologist before the condition can be accepted.)