

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROL R. HOTTE and DEPARTMENT OF THE AIR FORCE,
DOVER AIR FORCE BASE, Dover, Del.

*Docket No. 96-736; Submitted on the Record;
Issued March 10, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof to establish that she sustained an emotional condition while in the performance of duty.

The Board has duly reviewed the case record in the present appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained an emotional condition while in the performance of duty.

On March 6, 1995 appellant, then an aircraft engine mechanic, filed a claim alleging that she first became aware that her emotional condition was caused or aggravated by her employment on March 31, 1994. Appellant stopped work on March 31, 1994. Appellant's claim was accompanied by narrative statements, medical evidence, a police report, correspondence from the employing establishment and the employing establishment's March 30, 1995 letter controverting appellant's claim.

By letter dated April 18, 1995, the Office of Workers' Compensation Programs advised the employing establishment to submit additional factual evidence. By letter of the same date, the Office advised appellant to submit additional factual and medical evidence.

The employing establishment submitted its May 19, 1995 response to the Office's April 18, 1995 letter. Appellant submitted her April 23, 1995 response to the Office's April 18, 1995 letter.

By letter dated September 22, 1995, the Office advised appellant to submit additional factual and medical evidence. By letter dated September 6, 1995, appellant submitted medical evidence and bills.

By decision dated October 23, 1995, the Office found the evidence of record insufficient to establish that appellant sustained an injury while in the performance of duty. In an

accompanying memorandum, the Office found that appellant failed to establish compensable factors of employment.¹

In a letter dated November 6, 1995, appellant disagreed with the Office's decision and requested information regarding her appeal rights. In a January 3, 1996 response, the Office advised appellant to exercise her appeal rights which accompanied its October 23, 1995 decision.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment. To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.²

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 the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. On the other hand, where disability results from an employee's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.³

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors 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.⁴ Therefore, the initial question presented in

¹ The Board notes that subsequent to the Office's October 23, 1995 decision, appellant submitted additional evidence. The Board, however, cannot consider this evidence, inasmuch as the Board's review of the case is limited to the evidence of record which was before the Office at the time of its final decision. See 20 C.F.R. § 501.2(c).

² *Wanda G. Bailey*, 45 ECAB 835 (1994); *Kathleen D. Walker*, 42 ECAB 603, 608-09 (1991).

³ *Marie Boylan*, 45 ECAB 338 (1994); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ See *Margaret S. Kryzcki*, 43 ECAB 496, 502 (1992); *Lillian Cutler*, *supra* note 3.

the instant case is whether appellant has alleged compensable factors of employment that are substantiated by the record.⁵

Appellant has alleged that harassment by her supervisors, Technical Sergeant James R. Morgan and Master Sergeant Steven E. Mathis, caused her emotional condition. Appellant stated that she believed that Technical Sergeant Morgan's intentions were to demoralize her, diminish her professional image, challenge her technical abilities, and to insult her intelligence regarding an incident involving loose screws on an Aft Fairing which belonged to a TF-39 engine. Appellant also stated that Technical Sergeant Morgan sought to counsel her in writing. Appellant further stated that on January 24, 1995, Master Sergeant Mathis told her that she had a bad attitude and that it was catching on to other people. The Board has held that actions of an employee's supervisor which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.⁶ Mere perceptions of harassment and discrimination, however, are not compensable under the Act.⁷ To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations of harassment with probative and reliable evidence.⁸ Appellant failed to provide any such probative and reliable evidence in this case.

In a March 16, 1995 narrative statement, Master Sergeant Mathis noted the January 24, 1995 incident and explained that he found appellant sobbing uncontrollably in a dock area and that he asked her to tell him what was bothering her. He stated that appellant kept telling him that people were going to kill themselves over the amount of overtime that was rumored to happen, but never occurred. Regarding his comment about appellant's attitude, Master Sergeant Mathis stated that he told appellant that she could come to him if she needed someone to talk to rather than talking out loud to herself because it negatively affected the morale of his crew.

Technical Sergeant Morgan submitted a March 17, 1995 narrative statement which indicated that he talked to appellant, as well with his other employees. He stated that he talked to appellant about her duties and responsibilities and what he expected from her. Technical Sergeant Morgan also stated that appellant seemed irritated and hot tempered when asked questions about her knowledge of an engine, that appellant was very short with her answers as if she rebutted authority, that appellant was argumentative with most crew members and that he had to talk to her on several occasions about her attitude. He further stated that appellant became irritated whenever her work underwent a follow-up inspection due to major errors, specifically, noting that appellant became upset to the point where she would throw a fit, start cursing and walk away from the discussion. Technical Sergeant Morgan noted the incident where he conducted a follow-up inspection of appellant's work and found several loose screws and other

⁵ Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence; see *Margaret S. Kryzcki*, *supra* note 4.

⁶ *Donna Faye Cardwell*, 41 ECAB 730, 741 (1990); *Pamela R. Rice*, 38 ECAB 838, 843 (1987).

⁷ *Wanda G. Bailey*, *supra* note 2; *William P. George*, 43 ECAB 1159 (1992); *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁸ *Ruthie M. Evans*, *supra* note 7.

minor problems. He stated that as a result he wrote an admonishment on appellant's duty performance, and that appellant threw the biggest fit he had ever seen and that she left the room having to be asked to return to the room.

In response to appellant's allegations of harassment, the employing establishment stated in its March 30, 1995 letter controverting appellant's claim, that appellant was unable to get along with her coworkers and that appellant refused to participate and cooperate with a course instructor while enrolled in a communications class to improve her attitude and interpersonal skills. The employing establishment stated that appellant was asked to leave the course and return to work. In its May 19, 1995 letter, the employing establishment stated that appellant did not like to provide assistance to her coworkers. Appellant has failed to submit any corroborating evidence that she was being harassed by her supervisors. Rather, appellant has merely presented her perception that her supervisors were harassing her and has not established that harassment did, in fact, occur.

Appellant has also alleged that her emotional condition was caused by working with an inexperienced crew which had a propensity for horseplay and intimidation from her coworkers. Appellant stated that on February 6, 1994 Sergeant Nobell Rick Bradshaw and Sergeant Mark Durst were involved in such activity. She further stated that Sergeant Bradshaw jokingly dropped a jet light down off a catwalk onto her. Appellant also stated that Sergeant Durst enjoyed slamming TF-39 inlet doors in whenever she was working inside the inlet and that he pushed a fan tool cart, an exceptionally heavy apparatus, towards her in a center aisle. She then stated that Staff Sergeant Ray Smith, appellant's crew chief, witnessed the latter incident. Appellant stated that Sergeant Bradshaw made derogatory and inflammatory statements about her hair color, his belief that women should not be employed in nontraditional fields, and that her house would burn down. Regarding Sergeant Durst, appellant stated that he enjoyed mocking people including herself, and shouting out that they were losers. Further, appellant stated that she was stalked by Airman Ron Alexander and that she reported the incident to the employing establishment. She also stated that she received several noxious phone calls after she reported Airman Alexander to the employing establishment and then filed a police report. Appellant further stated that Airman Alexander was transferred to Japan shortly after she filed the police report and that she did not press charges against him.

In its May 15, 1995 response to appellant's allegation of horseplay, the employing establishment stated that since Master Sergeant Mathis had observed that appellant had problems with interpersonal relationships, crew members had been privately told to be more sensitive to what was said and how they conducted themselves when working with appellant. The employing establishment further stated that in no instance had equipment or horseplay jeopardized appellant's safety or the safety of other workers. There is no probative evidence of record to support appellant's allegations against Sergeants Bradshaw and Durst regarding horseplay and their statements of intimidation. In addition, there is no probative evidence to support appellant's allegations that she was being stalked by Airman Alexander.

Appellant has further alleged that the denial of her requests for a transfer due to her relationship with Sergeant Bradshaw by the employing establishment caused her emotional condition. The Board has previously held that denials by an 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 appellant's ability to perform her regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.⁹ However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the handling of administrative matters, coverage may be afforded.¹⁰ Appellant's request for a transfer relates to her desire to work in a particular environment or to hold a particular position and is not a compensable employment factor.¹¹ In addition, there is no evidence of record establishing that the employing establishment committed an error in denying appellant's request for a transfer. Thus, appellant has not established a compensable employment factor under the Act.

Additionally, appellant has alleged that her emotional condition was caused by a March 1993 incident where Technical Sergeant Morgan told her that he was going to rate her negatively on her appraisal for expressing a comment about the employing establishment's production quota. The Board has frequently explained that frustration over performance evaluations relates to administrative or personnel matters.¹² There is no evidence of record that Technical Sergeant Morgan gave appellant a negative performance appraisal and assuming *arguendo*, that appellant did receive a negative performance appraisal, she has failed to establish that the employing establishment committed an error. Therefore, appellant has failed to establish a compensable factor of employment.

Appellant has alleged that her emotional condition was caused by an increase in her work load, which included overtime work and production surges due to the downsizing of the employing establishment's staff, and additional work responsibilities as a result of absent coworkers. The Board finds that these allegations constitute compensable employment factors which arose in the performance of appellant's employment duties.

While a heavy work load may be a compensable factor of employment, there must be sufficient evidence to substantiate an allegation of overwork.¹³ The Board finds that the compensable factors of employment as alleged by appellant are not established as having occurred by evidence present in the case record. Appellant alleged that she worked extended periods of overtime, specifically, 10 hours per day for 5 days per week. Regarding this allegation, the employing establishment's May 19, 1995 letter revealed that during 1993 mandatory overtime was approved and worked during March, October and November. However, the employing establishment's letter revealed that civilian employees were given the option of working a compressed schedule, which involved working 10 hours per day, 4 days per week, and that appellant selected this option. The employing establishment additionally stated that this schedule was expected to continue until October 1995 to enable the work center to meet

⁹ *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

¹⁰ *Id.*

¹¹ *Minnie L. Bryson*, 44 ECAB 713 (1993).

¹² *James E. Woods*, 45 ECAB 556 (1994).

¹³ *Frank A. McDowell*, 44 ECAB 522 (1993).

its mission requirements. In his March 16, 1995 narrative statement, Sergeant Mathis stated that appellant worked Monday through Friday from 7:00 a.m. until 3:30 p.m., which included one-half hour for lunch, and no duty on the weekend and no overtime. Whether appellant worked the compressed schedule or 40 hours during a 5-day work week, the record does not establish that she worked overtime due to the downsizing of the employing establishment's staff.

Appellant also alleged that a production surge occurred during the fall of 1993 when overtime lasted for a period of 2 months, whereby 40 TF-39 engines were produced in a shop which usually turned out an average of 10 engines per month. Appellant then stated that a similar surge occurred during the previous year, but that she could not remember the dates. Regarding this allegation, the employing establishment stated in its May 19, 1995 letter that, it had implemented a new maintenance operation and that while this new process had created some backlog, the amount of work being accomplished during any given workday remained the same. The employing establishment further stated that appellant's work load was not increased due to a reduction-in-force, rather active duty military members were on temporary duty from Travis Air Force Base to assist, that there were still three crews and that the shop continued with only a two-shift operation. The employing establishment then stated that appellant would remain on the day shift and that there would be no change to her work schedule. Thus, the Board finds that appellant has failed to establish that her production increased due to the downsizing of the employing establishment's personnel.

Appellant further alleged that she had to perform the work responsibilities of her coworkers because they did not report to work, they took lengthy lunch breaks and they worked on a Christmas party all day. Additionally, appellant alleged that Staff Sergeant Smith commented that she was the only one on a crew of eight that did any work. Appellant then alleged that her complaints were ignored by management. Regarding this allegation, the employing establishment stated in its May 19, 1995 letter, that Master Sergeant Mathis did not witness an abuse of government time, that employees usually took no more than one week of annual leave at a time, that when military personnel were required to be away from their permanent duty stations for an extended period of time, appellant was always assigned adequate assistance. The employing establishment also stated that Master Sergeant Mathis believed that the change in team members/helpers caused appellant to become upset, but that their mission requirements dictated how assignments were made. Therefore, the Board finds that appellant has failed to establish that she had additional work responsibilities due to the absence of her coworkers.

The October 23, 1995 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
March 10, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member