U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of YOLANDA M. MARTINEZ and DEPARTMENT OF THE TREASURY, U.S. CUSTOMS SERVICE, Los Angeles, Calif.

Docket No. 97-1192; Submitted on the Record;
Issued March 23, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof to establish that she has an emotional condition causally related to factors of her federal employment.

On September 12, 1995 appellant, then a 35-year-old entry specialist, filed a claim for mental stress and other complaints which she related to harassment at work by her supervisor. In support of her claim appellant submitted an attending physician's report, Form CA-20, dated October 16, 1995 on which her treating physician, Dr. Maureen Terrazano, a psychiatrist, diagnosed major depression with psychotic features, and indicated by checking a box marked "yes" that the diagnosed condition was causally related to appellant's employment.

In a letter dated December 7, 1995, appellant's supervisor, Ms. Maddalena Beltrami refuted appellant's allegations. No response was received from appellant. Consequently, in a January 9, 1996 decision, the Office of Workers' Compensation Programs rejected appellant's claim on the grounds that the fact of injury was not established.

Appellant requested reconsideration of the Office's decision and, in support of her request, submitted a narrative statement, together with a medical report from Dr. Terrazano.

In a merit decision dated February 14, 1996, the Office found that the evidence submitted by appellant was insufficient to establish that appellant's diagnosed emotional condition arose in the course of the performance of her federal employment duties.

On March 3, 1996 appellant, through counsel, requested an oral hearing before an Office representative. In a decision dated April 9, 1996, appellant's request was denied on the grounds that she had previously requested reconsideration of her claim.

On July 29 and August, 28, 1996 appellant requested reconsideration of the Office's prior decision and submitted additional evidence in support of her request. In decisions dated August 21 and December 3, 1996, respectively, the Office found that the evidence submitted

with each of appellant's requests was immaterial and therefore insufficient to warrant merit review of her claim.

The Board finds that appellant has not met her burden of proof to establish that her emotional condition is causally related to compensable factors of her employment.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. 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 his frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.[1] When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.[2] In these cases the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.[3]

In her narrative statement, appellant stated that beginning in 1995, there was a shortage of staff in her office, and that there was a very heavy work load. She added that management expected all work to be completed without errors and that there was constant friction between management and the employees. Appellant stated that on one occasion she was pressured by the management to do a broker interview despite the fact that she had never done one and was not trained to do so. She explained that the situation was exacerbated by the fact that there wasn't sufficient office coverage and she felt that management expected her to do the interview and to complete the work load in the Office. In addition, appellant stated that when she was off work on sick leave, management had questioned the validity of her physician's excuses and had denied her leave. She further stated that her supervisor, Ms. Beltrami constantly harassed her and scrutinized her work to find error in it and that she did not subject others in the office to the same scrutiny. Appellant stated that she tried to explain to her supervisor that if there were errors in her work, it was due to the lack of staffing and the volume of the work. She concluded

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

[2] *Artice Dotson,* 41 ECAB 754 (1990); *Allen C. Godfrey,* 37 ECAB 334 (1986); *Buck Green,* 37 ECAB 374 (1985); *Peter Sammarco,* 35 ECAB 631 (1984); *Dario G. Gonzalez,* 33 ECAB 119 (1982); *Raymond S. Cordova,* 32 ECAB 1005 (1981); *John Robert Wilson,* 30 ECAB 384 (1979).

[3] *Thomas D. McEuen,* 41 ECAB 387 (1990), *reaff'd on recon.,* 42 ECAB 566 (1991).

that she believed her condition was the result of continued stress and harassment from management.

In support of her claim, appellant submitted statements from Mr. Frank Newman, Chapter President of the National Treasury Employees' Union and Mr. Roberto Mota, a coworker, in addition to a copy of an Equal Employee Opportunity Commission (EEOC) claim which was resolved in her favor. In his statement dated July 23, 1996, Mr. Newman stated that members of appellant's team "felt" that they had a constantly excessive amount of work which created backlogs, that the team "gained a perception" that Ms. Beltrami examined their team for mistakes more often than the other teams, and that appellant "began to feel she was being singled out" because her supervisor called her at home when she was out of work on jury duty, but had not called other employees who were also out on jury duty. In an undated statement, Mr. Mota stated that Ms. Beltrami had threatened, overworked, retaliated against, harassed and singled out appellant for having testified on Mr. Mota's behalf in his own EEOC claim. Mr. Mota further stated that appellant had filed an EEOC claim against the employing establishment, and that the claim had been resolved in her favor.

The EEOC decision referenced by Mr. Mota, dated sometime in 1994, was submitted by appellant in support of her claim and indeed reflects that the employing establishment was found to have engaged in reprisals and discrimination against appellant between 1991 and 1993.

By letter dated December 7, 1995, Ms. Beltrami contested appellant's allegations. She specifically stated that she had been appellant's supervisor since April 3, 1995, and that during her initial weeks as supervisor she spent considerable time "restructuring work assignments and procedures, eliminating backlogs through overtime, equitable distribution of work and streamlined process." Ms. Beltrami added that she had also issued voluminous written instructions on procedures and policies, that all employees had received training as needed and that no employee has ever been expected to perform a task for which they have not been trained. She noted that during the past summer the performance standards for the position of entry specialist had been rewritten and that the plans, including work assignment deadlines and acceptable levels of performance were agreed upon by management and the employees. Ms. Beltrami explained that all employees were instructed that any problems or backlogs were to be brought to her attention, and that although it was later discovered that appellant had backlogs in virtually all of her work assignments she failed to notify her supervisor of this fact. She stated that, contrary to appellant's assertions that she did not do anything about the office backlogs, she stated that when another employees' backlog was brought to her attention, she took steps to ensure that this did not negatively effect the other employees. Regarding appellant's assertion that she improperly declined to approve her leave requests, Ms. Beltrami explained that appellant was granted the requested advanced sick leave once the employing establishment received medically acceptable certification to support her absence from work. Ms. Beltrami concluded that appellant's work had been subjected to the same guidelines as all other employees and that her work was not subjected to any more scrutiny than any other employee.

While the actions of a supervisor which an employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Federal Employees' Compensation Act, there must be some evidence that such implicated acts of harassment did, in

fact, occur. Mere perception of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.[4] In this case, appellant has not established that her supervisor harassed her or subjected her work to undue scrutiny. The review of an employees work performance and matters concerning the use of sick leave are administrative matters and therefore are not considered to be a compensable factors of her employment unless the employing establishment was in error or abusive in these administrative matters. There is no evidence of record that the actions of appellant's supervisor or the employing establishment were in error or abusive to appellant. Ms. Beltrami, appellant's supervisor, specifically refuted these allegations, and neither Mr. Newman nor Mr. Mota provided any information which established these allegations as factual. There is also no evidence in the record that appellant was ever required to perform a task for which she was not properly trained. In addition, the events that gave rise to the EEOC claim which was resolved in appellant's favor took place prior to the time frame of events in the instant case.

Appellant, however, has established that beginning in 1995 she had a very heavy work load and that she had difficulty dealing with this. Appellant's supervisor, Ms. Beltrami, confirmed that when she first began her supervisory duties the office in which appellant worked had a backlog of work which she, as supervisor, made a great effort reduce by "restructuring work assignments and procedures, eliminating backlogs through overtime, equitable distribution of work and streamlined process." Ms. Beltrami also confirmed that appellant had backlogs in virtually all of her work assignments. While appellant has not established that she received disparate treatment, the Board has held that where a claimant demonstrates a heavy work load or overwork as part of their job requirements, reactions from the heavy work load are compensable.[5]

Even though appellant has established that there was at least one compensable factor of employment in her case, she must still establish by medical evidence that this factor caused her emotional condition. To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;[6] (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[7] and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified

[4] *Joan Juanita Greene*, 41 ECAB 760 (1990).

[5] *O. Paul Gregg*, 46 ECAB 624 (1995) (where the Board held that appellant demonstrated that changes in the employing establishment procedures resulted in an increased work load in appellant's regular day-to-day duties and constituted a compensable factor of employment).

[6] *See Ronald K. White*, 37 ECAB 176, 178 (1985).

[7] *See Walter D. Morehead*, 31 ECAB 188, 194 (1979).

by the claimant.[8] The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. 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,[9] must be one of reasonable medical certainty,[10] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[11]

In a November 20, 1995 report, Dr. Maureen Terrazano indicated that she first saw appellant on September 11, 1995, for complaints of depressed mood, fearfulness, insomnia, lack of energy, difficulty focusing and concentrating, and auditory hallucinations. With respect to the causes of appellant's condition, Dr. Terrazano stated:

> "Her symptoms appeared to be in response to a threat at work that she might not get to keep a promotion at work that she felt she had earned though was unable to get until she had filed a discrimination case. [Appellant] felt that she was being watched very closely and that her performance ratings on her new job were unfairly reflecting minor errors. She felt her work was being scrutinized too closely due to resentment at the discrimination claim she had made ... the stress of trying to do an adequate job without the benefit of appropriate training and repeated criticism led to self-reproach and denigration which led to profound depression with mood congruent psychotic features that was manifested by the symptoms noted above."

However, the only specific employment-related matters reported by Dr. Terrazano were appellant's feelings that she was being watched too closely, unfairly scrutinized and required to perform work for which she was not adequately trained, which are not compensable factors of employment in this case. She failed to address whether appellant's condition was caused by her increased work load, which is the only compensable factor of employment established in this case. Dr. Terrazano's report therefore is of diminished probative value and is insufficient to establish a causal relationship between appellant's compensable factors of employment and her emotional condition.

[8] *See generally Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

[9] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[10] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[11] *See William E. Enright*, 31 ECAB 426, 430 (1980).

The decisions of the Office of Workers' Compensation Programs dated December 3, August 21, April 9 and February 14, 1996 are hereby affirmed.

Dated, Washington, D.C.
March 23, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member