

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRENDA J. McDONALD and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Hampton, Va.

*Docket No. 97-2622; Submitted on the Record;
Issued May 7, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an emotional condition causally related to compensable factors of her federal employment.

On January 28, 1997 appellant filed a claim alleging that she sustained an emotional condition causally related to being removed from her position as head nurse on December 20, 1996. In a narrative statement, appellant indicated that she had been removed as head nurse of the spinal cord injury unit and reassigned to work in a different office. By decision dated March 28, 1997, the Office of Workers' Compensation Programs denied the claim on the grounds that appellant had not established a compensable factor of employment as contributing to her condition. By decision dated June 26, 1997, the Office denied modification of the prior decision.

The Board has reviewed the record and finds that appellant has not established an emotional condition causally related to factors of her federal employment.

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.¹ 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 she 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

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

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. 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 secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³

In this case, the employing establishment confirmed that appellant had been reassigned from her position as head nurse of spinal cord injury to the office of extended care. It is well established that reassignments and other similar personnel actions relate to administrative matters of the employing establishment rather than the regular or specially assigned duties of appellant.⁴ Unless the evidence discloses error or abuse on the part of the employing establishment, administrative or personnel matters will not constitute compensable work factors.⁵

Therefore, appellant may only establish a factor of employment if she submits probative evidence that the reassignment was erroneous or abusive. There is no such evidence of record. Appellant has referred to an Equal Employment Opportunity proceeding, but no findings were submitted. The employing establishment supervisor provided an explanation for the reassignment decision and the Board cannot find any probative evidence establishing error or abuse by the employing establishment in this case.

In addition to the decision to reassign her, appellant indicated in a narrative statement dated April 18, 1997, that she continued to be subject to stress after the reassignment. She stated that initially she was afraid she would be demoted to a lower paying job or lose her job outright.⁶ The fear of being terminated from employment or demoted is not sufficient to constitute a personal injury in the performance of duty.⁷ According to appellant, she did not receive an official published job description for her reassigned position; even if this were accepted as factual, there is no evidence presented that the employing establishment acted unreasonably.

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *James W. Griffin*, 45 ECAB 774, 778 (1994).

⁵ See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991). In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably. *Anne L. Livermore*, 46 ECAB 425 (1995).

⁶ Appellant received a memorandum dated February 11, 1997 indicating that she would retain her pay and her title.

⁷ *Lorraine E. Schroeder*, 44 ECAB 323 (1992); *Artice Dotson*, 41 ECAB 754, 759 (1990) (a condition resulting from an employee's feeling of job security *per se* is not sufficient to constitute a personal injury sustained in the performance of duty).

The employing establishment indicated that appellant's reassignment duties were discussed with her, and she has not indicated how the lack of a job description caused her stress. Appellant also stated that she did not receive support from the chief nurse. To the extent that appellant is implicating administrative actions of a supervisor, she must establish error or abuse for the action to constitute an employment factor. Appellant has not submitted probative evidence of error or abuse by the chief nurse in this case.

Accordingly, the Board finds that appellant has not established a compensable factor of employment. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.⁸

The decisions of the Office of Workers' Compensation Programs dated June 26 and March 28, 1997 are affirmed.

Dated, Washington, D.C.
May 7, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).