

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHEILA R. WALKER and DEPARTMENT OF THE NAVY,
MARINE CORPS AIR GROUND COMBAT CENTER,
Twentynine Palms, CA

*Docket No. 00-2078; Oral Argument Held October 11, 2001;
Issued December 19, 2001*

Appearances: *Linda L. Harper*, for appellant; *Miriam D. Ozur, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

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

On March 6, 1998 appellant, then a 33-year-old secretary/office manager, filed a claim for an occupational disease alleging that, on March 27, 1997 she first realized that her major depression, anxiety and hypertension were caused or aggravated by factors of her employment. Appellant stated that she became very sensitive to the ongoing abusive treatment she was subjected to while in the performance of her duties. She further stated that while she was pregnant, the treatment became worse to the point where her obstetrician/gynecologist threatened to intercede on her behalf.

By letter dated April 7, 1998, the Office of Workers' Compensation Programs advised appellant to submit factual and medical evidence supportive of her claim.

In response, appellant submitted employment records, medical records regarding an ankle injury she sustained on October 16, 1997 while working at the employing establishment¹ and her emotional condition, correspondence from her congressional representatives, the National Association for the Advancement of Colored People and the employing establishment, narrative statements from her coworkers and documents regarding a complaint she filed with the Equal Employment Opportunity Commission (EEOC), alleging harassment and discrimination due to her race, sex and color by her supervisor, Dr. Robert R. Braswell, a psychiatrist.

¹ The record reveals that appellant filed a traumatic injury claim on October 16, 1997 regarding a left ankle injury she sustained on that date. The record does not reveal that the Office accepted this injury.

By decision dated February 24, 1999, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition in the performance of duty. On March 8, 1999 appellant, through her representative, requested an oral hearing before an Office representative.

In a November 8, 1999 decision, the hearing representative affirmed the Office's decision.

The Board finds that appellant has failed to establish that she sustained an emotional condition in the performance of duty.

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 the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.²

Perceptions and feelings alone are not compensable. 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.³ To establish her claim that she sustained an emotional or physical condition in the performance of duty, appellant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (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 the diagnosed condition.⁴

In this case, appellant has alleged that she was harassed and discriminated against by Dr. Braswell. Specifically, appellant has alleged that Dr. Braswell created a hostile environment at the employing establishment by threatening to remove her from her flex-time schedule, refusing to sign her request for leave due to the upcoming birth of her child in a timely manner, requesting that she break up her maternity leave, harassing her when he requested that she cover the front desk during certain time periods and clear the paper from the shredder, requiring her to submit medical documentation to support her absence from work due to the October 16, 1997 left ankle injury, denying her request to have a witness present during a counseling session,

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838 (1987).

⁴ *Ruby I. Fish*, 46 ECAB 276 (1994); *Mary A. Sisneros*, 46 ECAB 155 (1994).

issuing a letter of caution due to her failure to follow his instructions and lowering her performance appraisals.

Actions of an employee's supervisor, which the employee characterizes as harassment may constitute a compensable factor of employment. However, 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 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 her allegations with probative and reliable evidence.⁸

The change in appellant's work schedule,⁹ the use of leave,¹⁰ the assignment of work,¹¹ requests for medical documentation,¹² disciplinary matters involving counseling sessions and the issuance of a letter of reprimand,¹³ request to have a witness present, unsatisfactory performance appraisals¹⁴ and the filing of grievances¹⁵ involve administrative or personnel matters. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the handling of administrative matters, coverage may be afforded.¹⁶

In support of her allegations, appellant submitted a narrative statement from Victoria White, her coworker. Ms. White indicated that Dr. Braswell harassed appellant. Ms. White's statement, however, failed to specifically identify any incidents where Dr. Braswell harassed appellant.

Further, appellant submitted a narrative statement from her husband, Joseph Walker, III, noting that she changed after her mid-year review with Dr. Braswell and the subsequent

⁵ *Shelia 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).

⁹ *See Peggy R. Lee*, 46 ECAB 527 (1995).

¹⁰ *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Michael Thomas Plante*, 44 ECAB 510 (1993).

¹¹ *James W. Griffin*, 45 ECAB 774 (1994).

¹² *Thomas J. Costello*, 43 ECAB 951 (1992); *Thomas D. McEuen*, 41 ECAB 389 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹³ *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

¹⁴ *Harriet J. Landry*, 47 ECAB 543 (1996).

¹⁵ *Diane C. Bernard*, 45 ECAB 223 (1993).

¹⁶ *James W. Griffin*, *supra* note 11.

behavioral changes in appellant. In another statement, Mr. Walker indicated his attempts to contact the employing establishment regarding appellant's absence from work.

A narrative statement from Johnetta Myers, appellant's coworker, indicated that she informed Dr. Braswell that appellant was out of work on workers' compensation and not on sick leave. Ms. Myers stated that she informed Dr. Braswell about appellant's extended absence from work and that he said it was okay.

In her narrative statement, Jamie Alexander, appellant's coworker, noted Dr. Braswell's decision to change appellant's work schedule, his accusation that appellant failed to turn down her radio when he requested her to do so and his questioning of the amount of leave requested by appellant to have her baby.

Corporeal Meriwether, appellant's coworker, described the incident where Dr. Braswell asked appellant to cover the front desk in a narrative statement. She stated that while she was talking to appellant, Dr. Braswell asked appellant to cover the front desk. Corporeal Meriwether further stated that when appellant responded that she was on her way, Dr. Braswell asked appellant when was she going to be ready. When appellant reiterated her previous response, Corporeal Meriwether stated that Dr. Braswell asked appellant to give him a direct answer.

Similarly, Hermelinda Reid, another coworker, described the same incident. Ms. Reid indicated that appellant initially refused to cover the front desk because she was busy. She further indicated that after Dr. Braswell's insistence, appellant went to cover the front desk. Ms. Reid stated that when Dr. Braswell saw that appellant had returned to her desk to retrieve something, he questioned her about being away from the front desk and demanded that she return to it. Ms. Reid further stated that after appellant returned to the front desk, Dr. Braswell explained to her why front desk coverage was important and that he was not picking on her.

The statements of Mr. Walker, Ms. Myers, Ms. Alexander, Corporeal Meriwether and Ms. Reid fail to establish error or abuse by Dr. Braswell in handling any of the above administrative matters. Although the statements from Corporeal Meriwether and Ms. Reid indicated that Dr. Braswell demanded that appellant cover the front desk, they do not establish error or abuse by him in doing so since it appears that appellant did not respond to Dr. Braswell's request in a timely manner and Dr. Braswell explained the urgency of his request to Ms. Reid.

Further, Ms. Reid's affidavit revealing that she did not have firsthand knowledge of the incidents alleged by appellant, including the untimely manner of approval of her request for leave and whether appellant provided any information to the employing establishment during her absence for work on October 28 and 29, 1997 fail to establish error or abuse by Dr. Braswell because she did not witness any of the alleged employment factors.

In his affidavit filed in response to appellant's EEOC grievance, Dr. Braswell specifically addressed appellant's allegations. He stated that he proposed a change in appellant's work schedule so that she could utilize her time better and provide administrative support. Regarding appellant's request for leave, Dr. Braswell stated that he thought the time requested was unreasonable. He further stated that based on his experience, six weeks was requested for maternity leave. Dr. Braswell denied appellant's allegation that he approved her leave in an

untimely manner explaining that he did not want to be without a secretary for a long period of time and that he wanted to check with human resources as to whether appellant's request was normal. He acknowledged that he requested that appellant break up her leave to return to work, but noted that appellant's request was granted. Dr. Braswell denied that he treated appellant differently than her coworker, Lieutenant Kelly Murray, who used more than six weeks of leave when she had her baby noting that Lieutenant Murray experienced medical difficulties with her pregnancy.

Further, Dr. Braswell explained that he requested medical documentation from appellant because she did not inform him about her medical condition and absence from work after her October 16, 1997 injury. He also explained that once he received medical documentation from appellant, he did not request that he be informed on a daily basis about her condition. In addition, Dr. Braswell explained that contrary to appellant's allegation, he did not threaten Dr. Jackelene Sutton, an internist and appellant's treating physician, about appellant's request that she backdate medical documents to cover her absence from work during a two-day period. Rather, Dr. Braswell stated that he cautioned Dr. Sutton about doing so.

Regarding his request that appellant cover the front desk, Dr. Braswell stated that appellant did not go to her assigned area in a timely manner and that she made a profane comment to him in response to his request. He noted that he told appellant that her comment was inappropriate and that if she did not stop he would have to go to the "higher ups" about it. Dr. Braswell explained that he did not allow appellant's coworker, Ms. Reid, to witness the counseling session he had with appellant regarding this incident because he wished to respect appellant's privacy and he believed a more appropriate witness would have been a union representative or someone from human resources.

Concerning his request that appellant clear the shredder, Dr. Braswell stated that appellant agreed to do so. In addition, he stated that when he asked appellant to also empty the shredder when it became full, he might have raised his voice because appellant had walked away from him with her back towards him and it appeared that she was ignoring him.

Finally, Dr. Braswell stated that the letter of caution was not issued to harass appellant, rather, it was issued because appellant failed to report to the front desk in a timely manner. He indicated that he did not threaten appellant with disciplinary action if she did not open, read or sign the letter when he asked her to remove it from the community inbox. Dr. Braswell stated that he only wanted her to remove the letter because it was confidential and he did not want it to end up somewhere it did not belong.

Regarding the proposed change in appellant's work schedule, the employing establishment explained in a September 16, 1997 letter to appellant's union representative, that the change was due to appellant's responsibilities, which required her presence on a daily basis during conventional hours and the impact of appellant's absence on Friday afternoon on the employing establishment.

Eileen Horner, Dr. Braswell's supervisor, stated in her affidavit that she agreed with Dr. Braswell's proposal to change appellant's work schedule noting that Dr. Braswell informed her that he had to answer the telephone frequently in appellant's absence and he needed someone

to perform administrative duties. Ms. Horner stated that she did not know whether Dr. Braswell delayed in approving appellant's leave, but that she was not aware of any time limits for responding to leave requests. She further stated that Dr. Braswell was within his rights as a supervisor in requiring appellant to submit medical documentation and account for her whereabouts. Ms. Horner explained that appellant had a right to union representation during a counseling session, but that coworkers as witnesses may not be appropriate because the department was small and there was an attempt to balance the need for privacy and confidentiality while trying to be fair. She stated that Dr. Braswell's request that appellant clear the shredder was reasonable because he explained that doing so involved a clerical function. Ms. Horner further stated that the allegations in the letter of caution issued to appellant and the letter itself were justified based on the information she received from employees that appellant had problems in the office which needed to be addressed and corrected. She concluded that a hostile environment did not exist at the employing establishment, rather, the environment was tense due to appellant's poor response to a change in supervisors and to Dr. Braswell's requests. Ms. Horner noted that the hands on approach of supervision by Dr. Braswell and the laid back style of supervision by appellant's former supervisor, James Fowler.

Appellant has failed to establish that Dr. Braswell erred or acted abusively in handling administrative matters regarding appellant. Therefore, the Board finds that appellant has failed to establish a compensable employment factor under the Act. In addition, appellant's allegation of harassment by Dr. Braswell is not substantiated by the record. Thus, the Board finds that appellant has failed to establish that harassment actually occurred.

As appellant has not established any compensable factors of her federal employment that she implicates in causing or contributing to the development of her emotional condition, she has failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.¹⁷

¹⁷ As appellant has not submitted the necessary evidence to substantiate a compensable factor of employment, the medical evidence need not be addressed. *Gary M. Carlo*, 47 ECAB 299, 305 (1996).

The November 8, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 19, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member