U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROL A. BRADLEY and DEPARTMENT OF HOUSING & URBAN DEVELOPMENT, Fort Worth, TX

Docket No. 99-2201; Submitted on the Record;
Issued March 20, 2001

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition causally related to factors of her employment

The Board has given careful consideration to the issue involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the Office of Workers' Compensation Programs' hearing representative, dated and finalized September 12, 1997, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.

By letter dated October 28, 1997, appellant requested reconsideration and submitted additional evidence in support of her allegation that her emotional condition was caused, in part, by sexual harassment from her supervisor.

By decision dated January 27, 1998, the Office denied modification of its September 12, 1997 decision.

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[1] On the other hand, the disability is not covered where it results from such factors as an

[1] 5 U.S.C. §§ 8101-8193.

employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.[2]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in 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.[3] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[4]

For harassment to give rise to a compensable disability, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions are not compensable. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.[5] To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[6]

In this case, appellant submitted a copy of a September 19, 1997 decision by the Merit Systems Protection Board (MSPB) regarding a case against appellant's supervisor for sexual harassment of five employees. In this decision, the MSPB vacated a prior recommended decision and remanded the case for further development and adjudication based on its findings of errors in the recommended decision and new evidence consisting of an affidavit from appellant. However, the MSPB order remanding the case is not a final decision finding harassment and does not establish error or abuse on the part of appellant's supervisor. Therefore, this evidence is not sufficient to establish that appellant's emotional condition was causally related to factors of her employment.

By letter dated March 25, 1998, appellant requested reconsideration but submitted no new evidence or argument.

By decision dated September 23, 1998, the Office denied appellant's request for reconsideration.

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[2] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[3] *See Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389 (1992).

[4] *Id.*

[5] *See Sheila Arbour (Victor E. Arbour)*, 43 ECAB 779, 789 (1992); *Ruthie M. Evans*, 41 ECAB 416, 425 (1990).

[6] *Ruthie M. Evans, supra* note 5.

By letter dated February 22, 1999, appellant requested reconsideration and submitted additional evidence.

By decision dated May 18, 1999, the Office denied modification of its prior decision.[7]

In support of her February 22, 1999 request for reconsideration, appellant submitted a copy of a portion of a transcript from the MSPB proceedings concerning appellant's supervisor. This portion of the transcript contained testimony from appellant's therapist, her former husband, and an employee in the employee assistance program. However, the final decision of the MSPB is not of record and the partial transcript is not sufficient to establish harassment on the part of appellant's supervisor. Therefore, this evidence is not sufficient to establish that appellant's emotional condition was causally related to factors of her employment.

The decisions of the Office of Workers' Compensation Programs dated May 18, 1999 and September 23, 1998 are affirmed.

Dated, Washington, DC
March 20, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[7] Subsequent to the issuance of the Office's May 18, 1999 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).