

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA A. COCKBURN and DEPARTMENT OF THE ARMY,
HEADQUARTERS FORCES COMMAND, Fort McPherson, GA

*Docket No. 99-1677; Submitted on the Record;
Issued May 29, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition while 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 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 his 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 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

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 employment factors.³ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

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 of Workers'

¹ 5 U.S.C. §§ 8101-8193.

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

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

Compensation Programs, 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.⁵ 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.⁶

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated January 6, 1999, the Office denied appellant's claim on the grounds that, although she established one compensable factor of employment, the medical evidence did not establish a causal relationship between her diagnosed condition and this accepted factor. The Board must, therefore, initially review whether the alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that the employing establishment engaged in improper disciplinary actions, including issuing unfair reprimands; suspensions of a security clearance; letters of warning regarding unapproved absences and improper conduct; issuing letters of proposed removal; issuing unfair performance evaluations and wrongly denied advanced sick leave. She also alleged that her supervisors unreasonably monitored her activities at work, requiring her to inform her supervisor when she was going to be away from her desk for an extended period. The Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.⁷ Although the handling of disciplinary actions, evaluations and leave requests, and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.⁸ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁹ Appellant has not submitted any evidence that the employing establishment acted unreasonably with respect to these administrative and personnel matters. While appellant did submit a copy of a decision from the Equal Employment Opportunity Commission (EEOC) finding that the employing establishment had wrongly dismissed her complaint and ordering the employing establishment to proceed with appellant's claim, this decision merely addresses a procedural matter and does not address the substance of

⁵ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

⁷ See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

⁸ *Id.*

⁹ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

appellant's claim. Therefore, this decision does not establish error or abuse.¹⁰ Appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Regarding appellant's allegation that she developed stress in part due to a February 9, 1995 notification that her name had been added to the displaced employee list, the Board has previously held that a claimant's job insecurity, including fear of a reduction-in-force, is not a compensable factor of employment under the Act.¹¹

Regarding appellant's allegations that the employing establishment mishandled her compensation claims, wrongly denied her access to her claim file and failed to pay her medical bills, the Board notes that the development of any condition related to such matters would not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties.¹²

Appellant has also alleged that harassment and discrimination on the part of her supervisors, Mr. Hendricks and Mr. Howard, the Workers' Compensation Administrator, Ms. Montana and Mr. Nickerson, the Senior Safety Specialist contributed to her claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹³ However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹⁴ In addition, the Board has recognized the compensability of verbal altercations or abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.¹⁵ In the present case, appellant submitted a lengthy statement describing altercations she had with each of these individuals, alleging that Ms. Montana verbally abused her and treated her with disrespect, that Mr. Hendricks and Mr. Howard spoke to her in a hostile and demanding tone of voice. In addition, appellant submitted an eleven page affidavit dated March 5, 1998 from Mr. Melvin Whitehead, quoting word for word all of the dialogue between appellant, Ms. Montana, Mr. Nickerson and Mr. Hendricks which took place on March 26 and April 26, 1997. This affidavit, however, does not identify who Mr. Whitehead is, and does not state that he either witnessed or overheard the described events, or otherwise explain how he came to have such detailed knowledge of the events. Therefore, the Board finds that this affidavit is not credible evidence.¹⁶ The employing

¹⁰ *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

¹¹ *See Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

¹² *See George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

¹³ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁴ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁵ *See Mary A. Sisneros*, 46 ECAB 155, 163-64 (1994); *David W. Shirey*, *supra* note 13.

¹⁶ *See Gregory N. Waite*, 46 ECAB 662 (1995).

establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors or coworkers.¹⁷ Appellant alleged that supervisors and coworkers made statements and engaged in actions which she believed constituted harassment and discrimination, but she provided no credible corroborating evidence to establish that the statements actually were made or that the actions actually occurred.¹⁸ Thus, she has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Appellant has established, however, that a verbal altercation took place on May 8, 1995 between herself and her coworker, Mr. Shull. She alleged that Mr. Shull pointed his finger in her face and addressed her with hostility and profanity. In support of her allegation, appellant submitted statements from three coworkers who witnessed the incident, as well as a copy of a written apology from Mr. Shull, admitting improper conduct. Therefore, she has established a compensable factor of employment with respect to the May 8, 1995 altercation with Mr. Shull.

Appellant's burden of proof is not discharged by the fact that she has established an employment factor, which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, appellant must also establish by medical evidence that this factor caused her emotional condition.¹⁹ 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;²⁰ (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;²¹ 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 by the claimant.²² 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,²³ must be one of reasonable medical certainty,²⁴ and must be supported by medical rationale explaining the nature

¹⁷ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁸ See *William P. George*, 43 ECAB 1159, 1167 (1992).

¹⁹ *Id.*

²⁰ See *Ronald K. White*, 37 ECAB 176, 178 (1985).

²¹ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979).

²² See generally *Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

²³ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

²⁴ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.²⁵

In a June 8, 1997 treatment note, Dr. Stuart Segerman, a Board-certified emergency physician at the Georgia Baptist Medical Center, noted that appellant presented with complaints of sharp chest pains of three weeks' duration and a productive cough. Dr. Segerman noted that appellant appeared hysterical, related to him that she was under a lot of stress due to a lawsuit with Fort McPherson and informed him that she was getting telephone calls threatening her life and her family. In addition to acute bronchitis and chest wall pain, Dr. Segerman diagnosed acute situational anxiety, but he did not offer an opinion as to the cause of this condition.

Appellant also submitted numerous reports and treatment notes from Dr. E. Clifford Beal, a Board-certified psychiatrist who has treated appellant since July 22, 1997. The majority of these reports list the physician's psychiatric diagnoses and recommendations for treatment, but do not contain a discussion of the cause of appellant's condition. In a report dated November 14, 1997, Dr. Beal reviewed appellant's medical records and stated that mental status examination revealed high anxiety levels, paranoid ideations, multiple somatic complaints, depressed mood, insomnia and suicidal and homicidal ideations. Dr. Beal listed his primary diagnoses as major depression and adjustment disorder, unspecified. The physician noted that appellant's advanced degree aspirations had been severely impaired, delayed and paralyzed due to major depression episodes because of occupational problems and stress at work. While Dr. Beal related appellant's personal belief that her problems were due to 10 years of oppression and discrimination, character assassination, physical threats, verbal abuses and degrading working conditions imposed upon her by her supervisors, Dr. Beal did not offer his own medical opinion as to the cause of appellant's diagnosed conditions.

In a report dated March 11, 1998, Dr. Beal reiterated his earlier diagnoses and appellant's belief that her problems are due to 10 years of oppression, reprisal and retaliation by her employer, for filing a 1987 Equal Employment Opportunity (EEO) claim. With regard to his medical opinion as to the cause of appellant's condition, Dr. Beal stated:

“[A]ppellant's exposure to incidents in her [f]ederal employment over several years, contributed to her psychiatric disability. Witnesses notarized affidavits and statements, etc. and [m]edical [r]ecords from [h]ospitals and [d]octors, corroborates her employer contributed to her psychiatric disability.”

Together with his report, Dr. Beal included copies of a February 11, 1998 letter from the Office requesting that appellant submit additional information, and the EEO decision and affidavit from Mr. Whitehead discussed above. The Board notes, however, that the only specific employment-related matters reported by Dr. Beal were appellant's feelings that she was verbally abused and harassed by Ms. Montana, Mr. Nickerson, Mr. Howard and Mr. Hendricks, which the Board found not to be established as factual or as compensable factors of employment. Dr. Beal failed to address whether appellant's condition was caused by the May 8, 1995 altercation with Mr. Shull, which is the only compensable factor of employment established in this case. Dr. Beal's report therefore is of diminished probative value and is insufficient to establish a

²⁵ See *William E. Enright*, 31 ECAB 426, 430 (1980).

causal relationship between appellant's compensable factors of employment and her emotional condition.

On March 28, 1998 the Office referred appellant, together with copies of the relevant medical evidence of record and a statement of accepted facts, to Dr. Marvin A. Brantley, a Board-certified psychiatrist, for a second opinion. In a report dated April 22, 1998, Dr. Brantley reviewed appellant's medical and social history, and, following his psychiatric evaluation, concluded that appellant was totally disabled due to delusional disorder, persecutory type. With respect to the cause of appellant's diagnosed condition, Dr. Brantley stated:

"In reviewing your statement of accepted facts, I find nothing to correspond to June 6, 1996 federal employment factors. However, I do not feel I can say why her delusional disorder developed nor do I understand if there were any unusual personal or professional stressors contributing. Certainly as her paranoid, delusional thinking developed it has caused stress in both her work and personal life."

As the record contains no medical evidence causally relating appellant's diagnosed psychiatric condition to the accepted employment factor, appellant has failed to meet her burden of proof to establish that she developed an emotional condition causally related to her federal employment.

The decision of the Office of Workers' Compensation Programs dated January 6, 1999 is hereby affirmed.

Dated, Washington, DC
May 29, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member