

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ANDREA S. RAMOS and U.S. DEPARTMENT OF TREASURY,  
INTERNAL REVENUE SERVICE, Fresno, CA

*Docket No. 01-2045; Submitted on the Record;  
Issued October 4, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

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

On September 15, 1997 appellant, then a 49-year-old file clerk, filed a notice of occupational disease alleging that she developed an emotional condition as a result of harassment by her supervisors who yelled at her in front of her coworkers. In a narrative statement attached to her CA-2 claim form, appellant explained that her supervisor had raised her voice to appellant "in a most rash manner" on July 24, 1997 asking why appellant was performing research on certain documents. A union steward subsequently arranged a meeting between appellant and her supervisor to discuss the incident. Following the meeting, appellant apparently became sick with a headache, stomach pains and vomiting. She sought medical treatment at the emergency room. Appellant was off work from July 24 to July 28, 1997.

In a second narrative statement, appellant alleged that she was harassed by Karen Hall, who told appellant not to order transcripts because there was a cut on supplies because of the budget. Appellant later noticed that her coworkers were still obtaining these materials. Ms. Hall is alleged to have next yelled at appellant for doing research on certain documents such as W2 forms. Appellant was told that she was to route them to DRU. Appellant explains that she was never informed of the change in routing policy and that her first knowledge of the policy change was when Ms. Hall yelled at her. Appellant later obtained a copy of the routing guide and learned that she had been assigned new procedures and job duties that were outside of her medical restriction such as, lifting 50 pounds, scooping and bending. Because of the new changes appellant had a meeting with Debbie Okray. At the meeting she learned that she was being moved to Criminal Investigation (CI) and was very distraught with being moved without prior notice. Appellant told Ms. Okray that she could not be moved to CI because she was a bargaining unit employee and CI was a nonbargaining unit. She states that the matter was brought to the attention of the union and eventually settled. Appellant noted that through all of the above-referenced incidents she felt as though someone was always looking over her shoulder.

Appellant alleged that she frequently had to get the union involved with dealings with her supervisor. She related that Ms. Okray verbally threatened to change her evaluation with no explanation for the remark. The following year appellant received a lower rating and filed a union grievance, which was eventually settled.

In a statements dated November 3 and September 17, 1997, Ms. Okray advised that she had never yelled or harassed appellant. Ms. Okray acknowledged that she had questioned appellant's actions in handling some documents on July 24, 1997 and that she later met with appellant, the Branch chief and a union steward. She indicated that appellant was very emotional in the meeting and asked for leave for the rest of the day. Ms. Okray denied that appellant was removed from her position. She stated that appellant had only been transferred to another position because her medical restrictions required that she be involved in a job with less physical demands. Ms. Okray stated that appellant had been counseled on several occasions regarding the nature of her job duties but that appellant had a difficult time receiving any type of feedback on her job performance. She denied singling out appellant for observation. Ms. Okray opined that appellant had a misperception of harassment because she refused to follow directions and had to be told repeatedly not to perform certain duties.<sup>1</sup>

A statement from Maggie Velez, a union steward noted that appellant had been very upset during a meeting with her supervisor on July 24, 1997. Appellant also submitted documentation concerning a claim she filed with the Equal Employment Opportunity (EEO) Commission that was apparently withdrawn.

In a decision dated February 11, 1998, the Office of Workers' Compensation Programs denied appellant's claim for compensation on the grounds that she failed to allege a compensable factor of employment.

Appellant requested a hearing, which was held on August 19, 1999. She submitted additional narrative statements in conjunction with the hearing, indicating that her supervisor gave her a memorandum on September 5, 1997 setting forth inconsistent instructions for dealing with loose papers. Appellant noted that she was instructed to keep only the work she could finish in one day on her desk but that other employees were not expected to comply with that rule. She also alleged that her request for a stapler was ignored.

In a decision dated November 4, 1999, an Office hearing representative affirmed the Office's February 11, 1998 decision.

Appellant requested reconsideration and submitted additional evidence, including a table of contents outlining 10 tabbed exhibits. The evidence is outlined in the Office's decision and is incorporated as follows:

1. List of information 1993 [to] September 1996 -- Appellant states that her supervisor in 1993, Ms. Hall, instructed other employees to monitor appellant's [tele]phone conversations for personal telephone calls and that shelves were

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<sup>1</sup> The Office received a statement from a prior supervisor of appellant's who likewise denied having yelled at her. She indicated that she counseled appellant in the same manner as all of the other employees.

removed from appellant's office even though she needed them for administrative files. There is documentation of meetings held between Ms. Okray, a union representative and appellant regarding appellant's desk space and her need for shelving.

2. List of information October 1996 -- May 6, 1997 -- Contains documentation of several meetings held with the union representative concerning appellant's change of work position and her EEO complaint. Appellant states that Ms. Okray yelled at her on several occasions during this period for a messy desk, piles and bundles on her desk. She also states that she was unjustly accused of abusing her lunch break.

3. List of information May 8, 1997 to July 6, 1998: On July 24, 1997 appellant confronted Ms. Okray concerning a problem with some documents. Ms. Okray told appellant she was not to research the documents. Appellant called a meeting with her NTEU representative, Maggie Valez. Ms. Ramos felt dizzy and light headed after the meeting. In December 1997, she took the month off for neck surgery. On April 28, 1998 appellant met with her union representative regarding abolishing her position. In June 1998, she was sent to work in the photocopy unit. A statement from Ms. Valez, union steward, is also contained in this part of the reconsideration.

4. List of information July 7, 1998 to January 18, 1999: On September 28, 1998 appellant attended a meeting with a union representative and Ms. Okray concerning space for her desk and computer table. Top shelves were not supplied to appellant.

5. List of information February 9, 1999 to April 4, 2000: Effective October 5, 1999, appellant had a new supervisor, Darren James, who initially allowed appellant to perform research but later he assigned the work to another employee as of October 5, 1999. Appellant states that in December 1999 her supervisor was informed that appellant needed a new table and new computer to comply with medical restrictions imposed on appellant due to a wrist condition. In January 2000, appellant met with an EEO representative to discuss her dissatisfaction with her supervisor's work assignments. In April 2000, she met with another union representative, Mr. Douglas, about this same issue.

6. List of information May 22 to October 4, 2000 -- Appellant was off work for her left[-]hand surgery in September 2000 and met with Mr. Douglas concerning her job description.

7. Notes of witnesses: Carmen Perez states Ms. Okray was talking to appellant in a high-pitched tone on March 11, 1997 and that appellant was crying; Julie Duncan states she heard Ms. Okray talking rude and loud to appellant on March 11 and July 24, 1997, but she did not know what was said between the two; Hope Martinez states on July 14, 2000, she heard Ms. Okray yelling at appellant for researching loose forms, letters and W2s; Ms. Martinez states on

February 5 and July 24, 1997, she heard Ms. Okray shrill voice yelling at appellant about her desk; Union steward Ms. Velez states that she spoke with appellant on July 2, 1997 because her evaluation was lowered. She was also called on July 24, 1997 for another meeting with Ms. Okray. She expressed her opinion that appellant was picked on by Ms. Okray based on the statements of other employees noted above; Ms. Martinez related that on July 24, 1997 she observed Ms. Okray speaking very loudly to appellant although she did not specify what was said.

8. Doctors' reports and a P.T. report -- This section includes medical evidence.

9. Four OWCP case reports: This section includes a copy of Ms. Ramos' November 23, 2000 notice of occupational disease for pain in her right wrist; a copy of the Office's May 22, 1991 acceptance letter for right[-]thumb tenosynovitis; several reports from Dr. Troy Smith regarding tenosynovitis; copy of a notice of recurrence, a copy of a notice of traumatic injury for September 9, 1997.

10. Supervisor statements and the rebuttals: In a September 26, 1996 Employee Counseling Record signed by Ms. Okray, appellant was directed to sequence a box of Alpha files. In a March 12, 1997 memorandum, appellant was directed to keep only work on her desk work that could be finished in a day; she was told she could not collect work from other units; she should not take prints on IDRS for each documents; initial sort would not be giving her work; appellant was directed that she could help employees with research but should not do the work for them. The memorandum was signed by Ms. Okray and appellant. In a March 12, 1997 memorandum, appellant noted that she had witnessed others in the unit keeping work on their desk that remained unfinished. She noted that she took IDRS printouts to her desk because of lack of space. In an October 9, 1997 memorandum, Ms. Okray asked appellant not to tell employees from other areas how to do their work, to be careful with routing back documents and stop researching W2s and 1099's. In a July 21, 1998 memorandum, Ms. Okray explained procedures on researching documents. Employee counseling record signed by Darren James indicates that he had several complaints from employees that appellant came to work on September 3, 1999 to solicit witness statements. A September 23, 1999 letter from appellant to Mr. James indicates that she was advised by her attorney and the hearing representative she had 20 days to obtain certain witness statements. She spoke to witnesses during their break in order not to interfere with work.

In a decision dated April 23, 2000, the Office denied modification of its prior decision.

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

In order to establish that an employee sustained an emotional condition in the performance of duty, the employee must submit the following: (1) medical evidence establishing

that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the emotional condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.<sup>2</sup> 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 employee'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 employee, must be one of reasonable medical certainty 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 employee.<sup>3</sup>

Workers' compensation law is not applicable 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. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.<sup>4</sup> On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.<sup>5</sup>

As a general rule, an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee.<sup>6</sup> However, the Board has also held that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with appellant claimant.<sup>7</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>8</sup>

A claimant's own feeling or perception that a form of criticism or disagreement is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under the Act absent evidence that the interaction was, in fact abusive. This recognizes that a supervisor in general must be allowed to perform his or her duty and that, in the performance of

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<sup>2</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Joel Parker, Sr.*, 43 ECAB 220 (1991).

<sup>6</sup> See *Michael L. Malone*, 46 ECAB 957 (1995); *Gregory N. Waite*, 46 ECAB 662 (1995).

<sup>7</sup> See *Elizabeth Pinero*, 46 ECAB 123 (1994).

<sup>8</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

such duties, employees will at times dislike actions taken. However, mere disagreement or dislike of a supervisor's management style or actions taken by the supervisor will not be compensable without a showing through supporting evidence that the incidents or actions complained of were unreasonable.<sup>9</sup>

In this case, the majority of appellant's allegations concern administrative functions of the employing establishment: she was not allowed to order supplies, she was not advised of a routing guide change, she was informed that she would be moved to a new position, she was given a lower performance evaluation and her supervisor took work away from her and gave it to another employee. However, because there is no evidence of abuse of error on behalf of the employing establishment in the handling of its administrative and personnel matters, the Board finds that appellant has not alleged compensable factors of employment.

Appellant attributes her emotional condition to having been repeatedly yelled at by her supervisor. Although she has submitted several witness statements to verify that Ms. Okray "spoke in a shrill voice" or raised her voice at appellant on at least two occasions, the Board does not find that this behavior rises to the level of abuse. Moreover, none of the witness related exactly what was said by Ms. Okray that was so offensive, other than she felt that appellant was not following directions. The fact that appellant may have cried during a meeting does not support or establish that her supervisor acted in an unreasonable manner.<sup>10</sup>

The Board also finds no factual support in the record for appellant's allegation that she was assigned work outside of her medical limitations.<sup>11</sup> The record indicates that the employing establishment attempted to transfer appellant to a unit where the work was more sedentary but she refused the transfer. The employing establishment denies that appellant was required to perform any duties that were outside of her work restrictions.

For harassment 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 are not compensable under the Act.<sup>12</sup> Because appellant did not establish any compensable employment factors, it is unnecessary for the Board to consider the medical evidence of record.

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<sup>9</sup> *Constance I. Galbreath*, 4 ECAB 401 (1998).

<sup>10</sup> *Id.*

<sup>11</sup> Being required to work beyond physical limitations, if substantiated, can constitute a compensable work factor. *Ronald Martinez*, 49 ECAB 326 (1998).

<sup>12</sup> *Ronald C. Hand*, 49 ECAB 113 (1997).

The decision of the Office of Workers' Compensation Programs dated April 23, 2001 is hereby affirmed.

Dated, Washington, DC  
October 4, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member