

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENISE A. HOOVER and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Youngstown, OH

*Docket No. 02-742; Submitted on the Record;
Issued September 10, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant's emotional condition was causally related to employment factors.

On March 15, 1999 appellant, then a 35-year-old clerk in a rehabilitation position, filed an occupational disease claim alleging that her stress, anxiety and depression resulted from employment factors.¹ She explained that she felt "diminished" by the rehabilitation position she held as a security room camera monitor on the midnight shift. Appellant's depression and stress stemmed from her attempts to find meaningful work within the employing establishment and from the remarks and hostile attitudes of the union and coworkers.

In response to an Office of Workers' Compensation Programs inquiry, appellant submitted statements from a supervisor, Marian L. Wilson, and a manager, William R. Pagan. She also detailed an incident involving a coworker's harassment stemming from a temporary detail to which she was assigned. The employing establishment responded to appellant's statements, indicating that her desire to work days with weekends off and her reaction to the security room work were not work related.

In a May 6, 1999 report, Dr. Thomas M. Robb, an osteopathic practitioner in psychiatry, diagnosed job-related major depressive episode and anxiety. He stated that appellant's panic and depression were "exaggerated" by her job as a monitor on the midnight shift and that her physiological symptoms were related to "the threats at work."

By letter dated July 29, 1999, the Office sent Dr. Robb a detailed statement of accepted facts and asked him to provide a comprehensive narrative report explaining how the diagnosed depression and anxiety were related to the accepted employment factor of a coworker's harassment about appellant's temporary detail job. The Office also listed 18 separate incidents

¹ The Office accepted appellant's claims for bilateral epicondylitis and paid appropriate compensation in 1992 and 1994. Appellant returned to a limited-duty assignment on March 23, 1995.

or allegations by appellant, which were either not in the performance of duty or not established as factual.

Dr. Robb replied that appellant's depression began and increased while working the night monitor job. Appellant's depression responded to the change in her job when she took the detail as an administrative assistant in 1998, working during the day, but increased greatly when she had to return to her rehabilitation job. Dr. Robb added that the accepted work factor -- the verbal confrontation with a coworker -- did not aggravate a preexisting emotional condition, because appellant did not report such a condition prior to this incident. He stated that appellant had "more aggravation" when working the midnight monitoring job.

On September 9, 1999 the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that the accepted employment factor was the cause of her depression. The Office found that other incidents and allegations related by appellant constituted self-generated perceptions or had not been factually established.

Appellant requested a hearing, which was held on January 24, 2000. On April 6, 2000 the hearing representative denied appellant's claim, finding that Dr. Robb's report confirmed that appellant's depression was primarily related to her return to the night monitoring job from the administrative detail. On November 15, 2001 the Office reissued this decision.²

The Board finds that appellant has failed to establish that her diagnosed depression was causally related to work factors.

In an emotional condition claim, appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the mental condition for which she claims compensation was caused or adversely affected by factors of her federal employment. To establish 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.³

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.⁴ 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.⁵ These injuries occur in the course of the

² Appellant appealed the April 6, 2000 decision to the Board, but included an erroneous file number for one of her previous claims. The Board issued an order remanding the case to the Office for further development because the record sent by the Office was incomplete. Docket No. 00-1729 (issued June 27, 2000). Subsequently, the Office reissued the April 6, 2000 decision to preserve appellant's appeal rights.

³ *Wanda G. Bailey*, 45 ECAB 835 (1994); *Kathleen D. Walker*, 42 ECAB 603, 608-09 (1991).

⁴ *Samuel Senkow*, 50 ECAB 370, 373 (1999).

⁵ 5 U.S.C. §§ 8101-8193.

employment but nevertheless are not covered because they are found not to have arisen out of the employment.⁶

Disability that results from an employee's frustration over not working in a particular environment, holding a particular position, or securing a promotion is not covered.⁷ On the other hand, disability due to an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by management or the work itself is covered under the Act.⁸

Noncompensable factors also include administrative and personnel actions, which are not generally considered to be within the performance of duty.⁹ Error or abuse by the employing establishment in such administrative or personnel actions may be covered under the Act, but the record must establish that the employing establishment acted erroneously or unreasonably in its managerial functions.¹⁰ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹¹ Unless the evidence discloses error or abuse on the part of the employing establishment, administrative or personnel matters will not constitute compensable employment factors.¹²

The Board has held that a claimant's allegations alone are insufficient to establish compensable work factors without probative and reliable evidence corroborating the allegations.¹³ The claimant must substantiate such allegations by submitting a detailed description of specific employment factors or incidents that she believes caused or adversely affected her condition.¹⁴ Personal perceptions and feelings alone are not compensable under the Act.¹⁵

In emotional condition cases, the Office 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 to be factors of employment and may not be considered.¹⁶ Therefore, the initial

⁶ *Frank B. Gwozdz*, 50 ECAB 434, 436 (1999).

⁷ *Blondell Blassingame*, 48 ECAB 130, 131 (1996).

⁸ *Bonnie Goodman*, 50 ECAB 139, 143 (1998). See generally *Lillian Cutler*, 28 ECAB 125 (1976).

⁹ *Peggy Ann Lightfoot*, 48 ECAB 490, 493 (1997).

¹⁰ *Virgina Dorsett*, 50 ECAB 478, 480 (1999); citing *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹¹ *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹² *Anna C. Leanza*, 48 ECAB 115, 121 (1996).

¹³ *Joe E. Hendricks*, 43 ECAB 850, 857-58 (1992).

¹⁴ *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991).

¹⁵ *Earl D. Smith*, 48 ECAB 615, 650 (1997).

¹⁶ *Margaret Kryzcki*, 43 ECAB 496, 502 (1992).

question is whether appellant has alleged compensable factors of employment that are substantiated by the record.¹⁷

In this case, the Office found that only one of appellant's allegations of work factors was compensable -- the confrontation with a coworker over her administrative detail. Appellant alleged that the coworker shouted at her, accused her of doing his job and stalked her in a grocery store in December 1998.

While appellant found this encounter "unsettling," Dr. Robb specifically stated in his May 19, 1999 report that this work factor did not aggravate a preexisting emotional condition. He attributed the cause of appellant's depression, anxiety and panic attacks to her reaction to working in the security camera room as a monitor on the midnight shift. In his earlier report, Dr. Robb noted that appellant's panic and depression were exaggerated by her monitoring job and that a change in job status would most likely alleviate her symptoms. He concluded that therapy would "focus on her management of her feelings."

Appellant's treating physician, Dr. Joseph P. Ambrose, who referred her to Dr. Robb, stated in his March 1999 reports that appellant was "very emotional" about returning to the monitoring job and should remain on the administrative detail, where she was "much more productive." Dr. Ambrose did not mention the December 1998 incident but referred generally to the "tumultuous two years" that appellant had spent "battling ... the emotional roller coaster of accusation and innuendo in the workplace."

Rather than establishing the requisite causal connection between the accepted work factor and appellant's depression, the medical evidence in this case shows that appellant's emotional condition was not caused by the December 1998 incident. Rather, her reactions to incidents and situations in her work environment that produced anxiety and stress are not covered under the Act or were not established as factual.

Appellant considered the monitoring work demeaning and degrading and felt that she was being "punished" for being injured on the job.¹⁸ She complained that coworkers resented her "cushy" job, made sarcastic comments about her and started nasty rumors about alleged goings on in the security monitoring room. The Board has held that an employee's fear of or reaction to gossip is a personal frustration not related to work factors.¹⁹ Appellant's feelings about her job and what other employees thought of her and her rehabilitation position are self-generated and therefore not compensable work factors. Also, appellant offered no corroborative evidence of the comments and rumors.

Appellant stated that she was treated differently than other injured employees because at least two of them were assigned to work during the day and she was not. The assignments of coworkers were not part of appellant's regular duties and she has provided no evidence of disparate treatment. Further, appellant herself stated that returning to the midnight shift "didn't really bother her" because she knew that obtaining daytime hours depended on seniority.

¹⁷ *Donald E. Ewals*, 45 ECAB 111, 122 (1993).

¹⁸ Appellant's rehabilitation position was on the same tour as her date-of-injury job.

¹⁹ *Mary A. Sisneros*, 46 ECAB 155, 162 (1994).

Appellant noted that her job was not covered when she was absent, that she was forced to work all holidays, that her request for consecutive days off was denied, and that her vacation time was governed by a craft list. All these situations are administrative matters within the purview of the employing establishment. Appellant has submitted no evidence showing that the employing establishment acted unreasonably or erroneously in making these decisions.

Finally, appellant related that her attempts to do other work, including several bid positions and a permanent administrative job, were blocked by the employing establishment and the union. However, there is no evidence in this record that the employing establishment committed error or abuse in processing the pertinent jobs.

While appellant has generally alleged that her work environment was hostile and that management acted abusively, there is no evidence in the record supporting these allegations. Appellant has failed to provide any specific details of managerial actions relating to administrative or personnel matters that could be shown to be error or abuse. Therefore, she has failed to establish a compensable factor in this regard.²⁰

The November 15, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
September 10, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

²⁰ See *William Karl Hansen*, 49 ECAB 140, 144 (1997) (finding that appellant's frustration with the policies and procedures of management do not constitute compensable work factors absent a showing of error or abuse).