

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLORIA L. ROLON and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, San Juan, PR

*Docket No. 01-1344; Submitted on the Record;
Issued May 9, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant established that she had an emotional condition causally related to compensable factors of her employment.

On September 7, 1998 appellant, then a 50-year-old personnel assistant, filed a claim for generalized anxiety with stress. She related her condition to a staff meeting that occurred on March 6, 1996 in which she felt criticized for her performance at work. At the meeting, Helen Nunci, the chief of the division in which appellant worked, stated that there would be a reorganization of the division and that she wanted to stop the gossip about the reorganization. Appellant believed that this comment was aimed at her. She stated that she had to work hard to avoid breaking down and crying at the meeting. When the meeting ended, she returned to her office and began crying.

The next day appellant talked to her supervisor and asked if there had been any complaints about her work. The supervisor responded that another supervisor had stated that appellant had not filled her expectations as a worker and did not function as a team player. She further asked the supervisor why she had not been informed of the sudden change. The supervisor stated that Ms. Nunci had wanted to stop the gossip.

On April 1, 1996 appellant was moved to a position as a personal assistant for the Employee and Labor Relations section. She later worked as a personal assistant in the Staffing and Employee Relations section. Due to continuous absences and illness and time spent training a coworker, appellant developed a backlog in her work. When she was transferred into the second position, she still worked on the backlog from the first position but did not get up to date. In the second position, appellant was learning new and technical skills, which she had difficulty learning due to poor concentration and a bad memory. She stated that her backlog of work made her become stressful and anxious. Appellant was separated from the employing establishment due to her illness. She estimated that, after the March 6, 1996 meeting, she could not do a quarter of the work she had done previously. Appellant stopped working on April 4, 1997 and

was separated from the employing establishment on September 15, 1997. She received retirement benefits.

In a June 6, 1997 report, Dr. M.A. Cubano, a psychiatrist, indicated that on March 6, 1996 appellant was informed that she would be transferred to another department. A coworker allegedly asked why she was being reassigned and was instructed to stop the "chismes." Dr. Cubano stated that appellant became increasingly restless, delusional with ideas of self-reference and persecution, especially by her supervisor and experienced paranoid ideation. He noted that appellant had crying spells, some auditory hallucinations, ideas of worthlessness and low self-esteem. Dr. Cubano diagnosed generalized anxiety disorder with depression. He concluded that appellant was not rehabilitable. Dr. Cubano indicated that appellant could not be in groups and did not tolerate supervision or assistance. He found appellant was totally disabled.

In a December 16, 1998 statement, Ms. Nunci stated that on March 6, 1996 she held a meeting with all the staff to announce and discuss a reorganization of the unit. She told the staff that one of the reasons for the meeting was to avoid gossip about what was going to happen to the unit. Ms. Nunci declared that at all times she referred to the unit and the office and did not mention any names or stare at any people. She stated that she did not insult or diminish appellant or any other employee. Ms. Nunci noted that appellant had no questions at the meeting. Appellant was reassigned because she had personal problems that were affecting her dependability. Ms. Nunci sent appellant to the staffing unit because she had previously worked there and could, therefore, return to a unit she had already worked in. Appellant received a refresher course in the unit. Ms. Nunci explained in the meeting that the personnel actions did not constitute any change in grade or salary; therefore, appellant's feeling of being demoted was a personal perception.

In a December 17, 1998 statement, appellant recounted the March 6, 1996 meeting and stated she became sick because she thought Ms. Nunci was labeling her as a gossip person in front of other employees. She noted that she received a bouquet of flowers from the workers' compensation unit on April 24, 1996. Appellant stated that when she received the flowers and read the card, she thought the flowers were a bad joke. She began crying and found it almost impossible to stop. Appellant asked Ms. Nunci if there had been any complaint about her work and was informed that there had been no complaints about her. She stated that she felt she was doing a good job before the meeting but after the meeting, she had not been the same person physically or emotionally. After the staffing unit was combined with the employee and labor relations unit and the filing and coding sections, the staff was learning to code, which was very important and technical. Appellant stated that when she asked for help from coworkers, but they said they were very busy. She addressed problems with the equipment to do typing and indicated that she missed some training due to illness. She commented that these factors caused her to have a backlog of work.

In a February 16, 1999 decision, the Office denied appellant's claim, finding that she had not established that she sustained a medical condition caused or aggravated by compensable factors of employment. The Office indicated that the personnel changes and reorganization were not compensable factors of employment. The Office found that, in the March 6, 1996 meeting, appellant was not singled out in any way for criticism or identified as a gossip. It was found that she had not established that she was treated abusively or that personnel actions taken at the

employing establishment were in error. The Office found that the only compensable factor of employment identified by appellant was that her absences from work resulted in a backlog of work for which she was responsible. The Office stated, however, that appellant had not submitted medical evidence that this factor of employment caused or contributed to her emotional condition.

In a February 12, 2000 letter, appellant requested reconsideration and submitted an April 5, 1999 report from Dr. Cubano, who again discussed the March 6, 1999 meeting. He stated that appellant developed anhedonia, lost interest in things and would not let her husband come near her. Appellant also developed suicidal ruminations, high blood pressure and became paranoid. Dr. Cubano indicated that she had crying spells, auditory hallucinations and had progressive ideas of self-reference, worthlessness and low self-esteem. He noted that appellant had a poor memory for immediate and recent events and continuous problems due to pressure in thoughts. Dr. Cubano reported that appellant had depressed affect, anxious mood and impulsive judgment. He diagnosed a generalized anxiety disorder with depression and psychotic features. Dr. Cubano concluded that appellant needed psychiatric treatment for an indefinite period of time and remained totally disabled.

Appellant submitted statements from a coworker who stated that she was extremely upset and crying continuously when she received a bouquet of flowers on Secretary's Day in April 1996 from her former coworkers. The witness indicated that appellant believed the bouquet of flowers was meant to be a reminder that she had been demoted in her reassignment.

In a May 15, 2000 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was cumulative and, therefore, insufficient to warrant review of the February 16, 1999 decision.

In an August 5, 2000 letter, appellant again requested reconsideration and submitted a July 20, 2000 report from Dr. V. Torres Carmona, who stated that he saw her on April 9, 1996 for nervousness. He indicated that appellant related her condition to a meeting at work. Dr. Carmona reported that appellant had muscle spasms, insomnia, hypertension and depression, which were aggravated by her depressive state. He diagnosed anxiety with depression and arterial hypertension. Dr. Carmona followed appellant for treatment of muscle spasms, insomnia, hypertension and depression.

Appellant submitted another witness statement from a coworker who indicated that she was discriminated against by her supervisors because of her religious beliefs. The coworker stated that when appellant returned from the March 6, 1996 meeting she was crying. Appellant began to have a backlog of work. The witness observed that appellant had a degree of depression in her work environment.

In an October 20, 2000 merit decision, the Office noted that appellant did not receive the May 15, 2000 decision because it had been incorrectly addressed. The Office denied modification of the prior decisions.

The Board finds that appellant has not met her burden of proof in establishing that she had an emotional condition causally related to compensable factors of employment.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. 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. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.¹ When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.² In these cases the feelings are considered to be self-generated by the employee, as they arise in situations not related to her assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.³

Appellant's claim centers on her contention that she was accused of gossiping at the March 6, 1996 meeting. The Board has recognized the compensability of verbal abuse under certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.⁴ Although appellant stated that she was subjected to verbal abuse and felt accused of gossiping, Ms. Nunci noted that her statements about gossiping were not directed to any specific employee and that she addressed a group meeting of workers concerning organizational changes. While appellant felt that she was personally attacked at the meeting, the evidence does not establish that Ms. Nunci accused her of gossiping or otherwise verbally abused appellant. Appellant's perception that the statement as a personal verbal attack is a self-generated response in assuming that any comments were directed at her. Therefore, the incidents surrounding the March 6, 1999 meeting are not compensable factors of employment.

Appellant noted that she asked her supervisor whether there were any complaints about her. The supervisor replied that another supervisor had stated that appellant's work did not meet expectations and that she was not a team player. Such an assessment of appellant's performance is an administrative matter and can be found compensable only if the assessment is shown to be

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

³ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁴ *Frank B. Gwozdz*, 50 ECAB 434 (1999).

erroneous or unreasonable.⁵ The comments attributed to the supervisor do not constitute verbal abuse.

The incident in which appellant was sent a bouquet of flowers by coworkers did not occur as a part of her regularly assigned duties. She perceived the gesture as a form of harassment. Appellant alleged that her emotional condition was due to harassment by her coworkers. The actions of a coworker, which an employee characterizes as harassment, may constitute factors of employment giving rise to coverage under the Act. However, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.⁶ In this case, the evidence does not establish that the flowers were sent as a form of harassment. Appellant believed that the flowers were meant as harassment; however, her reaction to the gift of flowers was self-generated. Her claim of harassment is not supported by any evidence. The evidence does not establish this incident as a compensable factor of employment.

A witness stated that appellant was discriminated against by her supervisors due to her religion. No evidence or descriptions of any specific evidence to support this claim has been submitted. This claim of discrimination, therefore, has not been shown to have occurred. It cannot be considered a compensable factor of employment.

Appellant claimed that her transfer to another division was essentially a demotion, placed her in a position where she got inadequate training and placed her with equipment that did not work properly. The evidence shows that the job change was not a demotion because appellant retained the same pay as in her previous position. Her complaints about the job change reflect her desire to work in a different job, which is not a compensable factor of employment. Job assignments are an administrative matter.⁷ There is no showing that the reassignment of appellant was erroneous or abusive. The job transfer, therefore, is not a compensable factor of employment. Matters of assignment of office equipment are an administrative matter generally related to administrative or personnel matters, not an employee's regular or specially assigned job duties. The matter does not fall within the coverage of the Act.⁸ Matters involving the training of an employee are an administrative function.⁹ There is no evidence that training was denied to appellant, only that she was not present for some training due to her illness.

Appellant claimed that her illness left her with a backlog of work. The backlog of work would be a compensable factor of employment as it relates to her assigned duties.¹⁰ However,

⁵ *O. Paul Gregg*, 46 ECAB 624 (1995).

⁶ *Joan Juanita Greene*, 41 ECAB 760 (1990).

⁷ *Anna C. Leanza*, 48 ECAB 115 (1996).

⁸ *Harriet J. Landry*, 47 ECAB 406 (1996).

⁹ *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995).

¹⁰ See *Lillian Cutler*, *supra* note 1.

appellant must still demonstrate by medical evidence that this factor caused or contributed to her emotional condition. Dr. Cubano discussed the March 6, 1996 meeting as the start of appellant's emotional condition. However, he did not address the cause of her emotional condition and, more specifically, did not identify appellant's backlog of work as a contributing cause to her emotional condition. He also noted that appellant attributed her condition to the March 6, 1996 meeting. However, Dr. Cubano did not specifically state whether the meeting or any other factor of employment was a cause or a contributing factor to appellant's emotional condition. Appellant, therefore, has not met her burden of proof in establishing that her emotional condition was causally related to compensable factors of her employment.

The decision of the Office of Workers' Compensation Programs dated October 20, 2000 is hereby affirmed.

Dated, Washington, DC
May 9, 2003

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member