

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUNE DELANEY and DEPARTMENT OF DEFENSE,
MILITARY ENTRANCE PROCESSING STATION, Houston, TX

*Docket No. 03-1662; Submitted on the Record;
Issued September 22, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On February 22, 2002 appellant, then a 46-year-old health technician, filed a claim for compensation alleging that she developed high blood pressure due to her stressful employment. Appellant stopped work on February 5, 2002 and has not returned.

In support of her claim, appellant submitted several narrative statements and submitted copies of the employing establishment's monthly work schedules dating from May to January 2002. Appellant stated that her supervisors always give her the most stressful assignments because they knew she was a good worker and would do a job correctly the first time. She stated that she worked in high stress areas, such as the consult desk, day after day, month after month. Appellant asserted that military personnel were exempt from working at the consult desk because it was too stressful. She added that while the employing establishment knew she suffered from high blood pressure, no consideration was given to her, while coworkers with health problems were accommodated. Appellant also stated that on January 30, 2002 MSGT Dwight Hagenbart asked her to fill in for a coworker who was away from her station and then offended her by saying that only his military personnel worked correctly. She stated that she hated the way MSGT Hagenbart shouted her name across the common areas whenever he had a question, especially when the answer to the question was contained in his own office. She further alleged that MSGT Hagenbart worked her continuously while others sat around and did nothing. Appellant also asserted that her job assignment for February 2002, was a reprimand for speaking candidly to the inspector general. She explained that during January 29 and 30, 2002, the inspector general conducted an inspection of the employing establishment. Before she went in to be interviewed, appellant saw the work schedule and noticed she was assigned to perform hearing tests. However, after she met with the inspector general and told him how badly civilian workers were treated, she noticed that her assignment had been changed to covering the consult desk. Appellant explained that despite an employing establishment policy that whoever works the consult desk should leave it clear for the next person, she always seemed to follow someone

who had not finished all of their work, thus making more work for her. Appellant stated that on February 1, 2002 she put on a black history program which took a lot of effort and caused her regular work to pile up. Then, she was assigned to the consult desk behind someone who left a lot of unfinished work for her to do. Appellant stated that she came in on February 4, 2002 at 5:00 a.m. to finish up the work and stated that if others did not take such long smoking breaks, they would be able to get their work done more efficiently. Finally, appellant took issue with several events and telephone conversations that took place between February 5 and 23, 2002, after she stopped work.

In a decision dated December 18, 2002, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she failed to establish any compensable factors of employment. Appellant requested an oral hearing and by decision dated May 21, 2003, an Office hearing representative affirmed the prior denial.

The Board finds that appellant has failed 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 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 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 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

¹ 5 U.S.C. §§ 8101-8193.

² *Roger Williams*, 52 ECAB 468 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Ronald M. Cokes*, 46 ECAB 967 (1995).

⁴ *John Polito*, 50 ECAB 347 (1999).

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

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decisions dated December 18, 2002 and May 21, 2003, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegations that the employing establishment improperly assigned-work duties, constantly assigning her to the consult desk, the Board finds that this allegation relates to administrative or personnel matters, unrelated to the employee's regular or specially assigned-work duties and does not fall within the coverage of the Act.⁷ Although the assignment of work duties is generally related to the employment, it is an administrative function of the employer and not a duty 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 In the instant case, appellant presented no evidence to support the fact that it was unusual or improper to assign her to work the consult desk and further did not provide any evidence that the military personnel were exempt from working the desk because it was too stressful. Therefore, appellant's reaction to such conditions must be considered self-generated in that it resulted from her frustration in not being permitted to work in a particular environment or to hold a particular position.¹⁰ Thus, appellant has not established a compensable employment factor under the Act with respect to this administrative matter.

Appellant has also alleged that harassment and discrimination on the part of her supervisors and coworkers 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 her regular

⁵ *Marguerite J. Toland*, 52 ECAB 294 (2001).

⁶ *Id.*

⁷ *Reco Roncaglione*, 52 ECAB 454 (2001); 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 *James E. Norris*, 52 ECAB 93 (2000).

¹⁰ *Roger Williams*, *supra* note 2; *Tanya A. Gaines*, 44 ECAB 923, 934-35 (1993).

duties, these could constitute employment factors.¹¹ 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.¹² In the present case, appellant stated that she was assigned to the consult desk because she was being reprimanded for speaking candidly to the inspector general. However, as noted above, appellant has not submitted any evidence to establish that it was unusual or inappropriate to assign her to work the consult desk.¹³ Appellant further asserted that other coworkers who had health problems were given special treatment, while she continued to receive high stress assignments. However, appellant provided no corroborating evidence, such as witness statements, to establish that these actions actually occurred.¹⁴ Similarly, appellant provided no corroborating evidence to establish that MSGT Hagenbart actually made the claimed offensive comment to her regarding the fact that only his military personnel worked correctly.¹⁵ In addition, although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.¹⁶ Appellant has not shown how such an isolated comment would rise to the level of verbal abuse or otherwise fall within the coverage of the Act.¹⁷ Furthermore, with respect to appellant's complaint that MSGT Hagenbart shouted her name across the common area when he needed questions answered, even though the answers were easily within his own reach, the Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.¹⁸ Thus, appellant has not established any compensable employment factors under the Act with respect to the claimed harassment and discrimination.

Appellant also asserted that she always got the consult desk from someone who did not finish their work, thus adding to her work burden. The Board has held that emotional reactions to situations, in which an employee is trying to meet her position requirements are compensable.¹⁹ The Board notes, however, while appellant generally asserted that she was

¹¹ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹² *Reco Roncaglione*, *supra* note 7.

¹³ *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).

¹⁴ *See William P. George*, 43 ECAB 1159, 1167 (1992).

¹⁵ *Id.*

¹⁶ *Harriet J. Landry*, 47 ECAB 543, 547 (1996).

¹⁷ *See, e.g., Alfred Arts*, 45 ECAB 530, 543-44 (1994) and cases cited therein (finding that the employee's reaction to coworkers' comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction). *Compare Abe E. Scott*, 45 ECAB 164, 173 (1993) and cases cited therein (finding that a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

¹⁸ *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

¹⁹ *Samuel Senkow*, 50 ECAB 370 (1999).

overworked, despite a request for further information she did not explain what her actual job duties were, identify any specific employment tasks, which she alleged added to her increased stress, or otherwise explain the aspects of her position, which led to her work stoppage on February 5, 2002. While appellant cited a compensable factor of employment, overwork, her burden of proof is not discharged by the fact that she identified an employment factor, which may give rise to a compensable disability under the Act.²⁰ Appellant also has the burden of submitting sufficient evidence to substantiate her allegation. The copies of the monthly work schedules submitted by appellant are insufficient to establish that appellant was overworked, as they do not contain any description of appellant's duties or otherwise explain her workload.²¹

Finally, the Board notes that appellant alleged several additional employment incidents, including claimed offensive comments and harassment, which she identified as having occurred during telephone conversations and other contact, which took place after she stopped work on February 5, 2002. The critical issue in this case is whether appellant established that she became emotionally disabled on February 5, 2002 due to compensable factors of her employment. Therefore, the incidents which occurred after she stopped work are irrelevant to this issue.

By letter dated March 20, 2002, the Office advised appellant of the type of medical and factual evidence necessary to establish her claim. For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.²²

²⁰ *Bonnie Goodman*, 50 ECAB 139 (1998).

²¹ *Id.*; *Frank A. McDowell*, 44 ECAB 522 (1993).

²² As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *See Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

The May 21, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 22, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member