

On May 17, 2000 appellant, then a 52-year-old identification records supervisor, filed a claim alleging that her adjustment disorder, with anxiety and major depression, recurrent, was a result of her federal employment. She explained that this emotional condition was caused or aggravated by her unwilling job relocation from Washington, DC, to Clarksburg, West Virginia.

She stated: “This illness, disorder was caused or aggravated in my life, because the Federal Bureau of Investigations (FBI) gave better living conditions, a more peaceful life style and successful opportunities for new employees than for me and my son this close to the end of my Bureau career.” She questioned how, with her qualifications, background and history, she was not provided a job in the DC area. Appellant added: “[t]his illness started with stress, pressure from dealing with the fact that my job was affected in relocation from Washington, D.C. to another area of the U.S.”

Appellant explained that shortly after relocating to West Virginia she became very sick. She could not keep food down, and she coughed and gagged a lot. A physician asked her if she was doing anything in her life over the past months that she had never done before. When she answered that she was trying to adjust to a job relocation from Maryland to West Virginia, “He stated that’s it, stress.” Appellant continued: “I just want to put all this behind me and get on with my life. Life is so short. I am very tired of thinking about the move and wishing I had never had to relocate to West Virginia so late in my career.”

On December 9, 1997 appellant went to the Employee Assistance Program office and was referred to Nancy A. Rush, a licensed certified social worker and licensed professional counselor. Ms. Rush reported that appellant complained of depressed mood, anxiety, rapid speech process, inability to sleep, difficulty performing at work, difficulty getting along with her 15-year-old son, inability to eat with diagnosis of allergic reaction to milk products, hopelessness and helplessness. “She reports all these symptoms are the result of her recent forced transfer to WV from Washington, DC, where she has been employed at the FBI Center for over a 30-year period. She reports this has been a period of multiple adjustments as well as difficulty in performing her work because of these issues, along with multiple physical problems.” On February 3, 1998 Ms. Rush again described appellant’s stressors:

“[Appellant] began treatment with me on December 8, 1987, [sic] for adjustment disorder, mixed with anxiety, depression, and depressive mood disorder.

“This is associated with her move to West Virginia from Washington, D.C. She has never been able to adjust as all of her support group (family) is in Washington.

“In addition to being alone, she has endured some financial problems stemming from not being able to sell her existing house in Washington.

“Furthermore, her son’s father has recently suffered a heart attack and she has lost income from him, thus complicating her financial situation.

“If lateral employment and income could be found for her in Washington, I would recommend her return, as she does continue to have adjustment disorder.”¹

¹ In an undated report, Ms. Rush stated that she believed that most of appellant’s depression was work related due to the lack of a cultural and emotional support system.

Ms. Rush referred appellant to Dr. Toni B. Goodykoontz, a Board-certified psychiatrist, for further evaluation. On March 26, 1998 Dr. Goodykoontz reported that appellant had a significant recurrence of depressive symptoms, along with physical difficulties, following her move to West Virginia. Appellant had indicated that she was having significant problems coping with the move. Dr. Goodykoontz diagnosed major depressive disorder, recurrent and severe. She reported that appellant was the first individual she had treated who was in need of a transfer based upon hardship.

Appellant applied for a hardship transfer on April 26, 1998. She cited health-related problems due to her relocation. Appellant also cited the financial burden created by the relocation. She summarized how strongly she felt about the relocation: "If I knew that[,] after serving with the bureau for more than 29 years, at age 47, that I would have to relocate to West Virginia and suffer the hardships that my family and I have had to endure, I would never have accepted the job to begin with."

On May 20, 1998 a fellow supervisor in West Virginia echoed the stressors previously described:

"From what [appellant] has indicated to me, she has never adjusted to her move to West Virginia. She has experienced one financial hardship after another, [her] health has progressively diminished since her transfer to West Virginia, and she misses her family and friends terribly. Because she doesn't have any family living in this area, she has had to rely on herself or total strangers when a need for help arises.

"[Appellant] is also a single mother to her 16[-]year[-]old son, Brandon. Brandon's father lives in the Maryland/Virginia area and has ... experienced health problems of his own. This and the distance involved, has made it difficult for him to keep in touch with Brandon other than by [tele]phone.

"I have seen [appellant] experience times when she was very depressed about all of the before mentioned issues. She has tried to make the best of a difficult situation. However, I truly believe that [she] would be happier, in better health and more productive both personally and professionally if she were able to transfer back to the Washington, D.C. area."²

On August 25, 1999 appellant presented for her first hospitalization:

"The patient was referred by Dr. Toni Goodykoontz. According to the patient, she works for the FBI and has been working there for more than twenty years now. Recently, within the past three years she was transferred from Maryland/ Washington, DC to Morgantown near Clarksburg. The patient says that this has been a major cultural shock for her and she had to breakup with her long-time boyfriend in order to come here. She says that[,] since she was transferred, she has been feeling more depressed and feels that she is in a bottomless pit. She also

² Other statements consistently report the difficulty appellant faced relocating to West Virginia.

lost all her social support that she had in DC and has not come to terms with living here in Clarksburg. The patient gives all the neuro-vegetative signs of depressive phase. She says she is unable to sleep at night and keeps on thinking about her problems and takes four to five hours to go to sleep. She also has decreased concentration and anadenia and says that she wants to cry but is not able to do that because she thinks the medicine is making her not to cry. She denies any suicidal ideation but says that she has no energy left and also that she cannot go on any longer like this. The patient is here basically for evaluation and getting electroconvulsive therapies that were recommended by Dr. Goodykoontz and also by Dr. Adamski. The patient also has severe financial problems, says that she has a house in DC and now she is paying rent here and also the mortgage on the house in DC, so she says she is financially tied down. There are also a lot of health problems going on in her family. Her two sisters have died of cancer within the past couple of years and also her mother died of cancer. The patient says that she gets nightmares because of this and the last time she saw her family, her sisters and her parents, they were asking her to come and join them. The patient denies any suicidal ideations or any suicidal plans.”

On August 27, 1999 Charlene Pitcher, a social worker, reported: “[Appellant’s] current stressors in [her] life is break-up with boyfriend, loss of sisters and mother due to cancer, financial stressors and moving to a new place.” Appellant’s discharge on September 22, 1999 related the same history of present illness.

On February 3, 2000 Dr. Kelly R. Nelson, Board-certified in family medicine, reported: “[Appellant] feels and her treating psychiatrist and psychologist feel that a good deal of her depression has been secondary to situational problems, particularly the move from Washington, DC to the rural West Virginia area.”

On March 30, 2000 appellant submitted an additional statement to support her claim for compensation. She noted that she had used a large amount of leave since relocating. She experienced financial difficulties after the move. She discussed her temporary-duty assignment at the Washington, DC, field office and her inability to find a job in the area.

In a decision dated November 20, 2000, the Office denied appellant’s claim for compensation on the grounds that the evidence failed to establish that the claimed injury occurred in the performance of duty. The Office noted that appellant attributed her condition to not being selected for a particular position and to being reassigned from one facility to another. The Office found that this was an administrative action without evidence demonstrating that the employing establishment erred or acted abusively in the matter.

On November 15, 2001 appellant, through her attorney, requested reconsideration. She reiterated the stress arising from her forced relocation to West Virginia. But she added that this was not the sole basis for her claim. The stress, she explained, was intensified by the circumstances of her employment, that is, by new subordinates, the new job, the new location

and the circumstances of her move. In a statement dated September 19, 2001, appellant noted the following:

“Since the division has relocated to WV, there have been several employees quit or transfer out because they could not adjust to living in the area. I had an employee assigned to me during this time who had a lot of personal problems. Her estranged husband was stalking her. He ended up stabbing her 36 times and only got 10 years. I was subjected to this stressful situation because of my position as a supervisor. He would call for her or would get the children to call for her. When I would tell him she wasn’t there he would get rude and yell. She would call and make excuses for not coming in and management would tell me to get her to work harder. She required a lot of my time. Something was always going on with her at home. Management would tell me to make her and the other employees perform better. I would tell him that I couldn’t make anybody do something that they don’t want to do. My manager made me meet with him and everyone of my employees individually. He then said that I had to get them to be minimally acceptable. I said the only thing I could do was monitor their performance, document it, talk with them and refer them to the Employee Assistance Program.

“Another situation that I was subjected to during this time was when an unruly employee was transferred to my unit. She wasn’t able to get along with her coworkers so they gave her to me. She was very aggressive. She had actually gotten into a fistfight at work. I had to try to get her to perform well. She ended up getting killed in a car accident. There were many other situations that I had to face during this long ordeal proceeding the relocation, during the relocation and afterwards. All of the stress and pressure caused a delayed discovery on the toll it was taking on my physical and mental health. I am a shell of the person I was before I was forced to move to WV. Once, I arrived in WV I was exposed to many high stress situations that had an effect on my health.”

In reports from 1998, Dr. G. David Leveaux, specializing in family medicine, indicated that appellant was taking Prozac for situational depression “related to her relocation here from Maryland.” He stated:

“This relocation represents a major hardship for the patient, creating both financial and emotional burdens that have caused and worsened her depression. In spite of pharmacotherapy and counseling her depression remains unimproved and unless the stress associated with this relocation can be corrected, the prognosis for improvement is poor. I believe a return to her former worksite would correct this stress and her depression should improve.”

On October 3, 2001 one of appellant’s employees in West Virginia, Mary L. Zannino, added the following:

“As previously stated, as the Team Leader I assumed [appellant’s] duties in her absence. Though [she] was a very knowledgeable and capable supervisor, her

health problems interfered with her ability to perform her normal responsibilities. In order to assist her, I not only assumed her duties in her absence, I also helped with her work when she was present.

“The job function we performed required the work to be completed within a set time frame. At times, [appellant] was unable to keep up with the work flow. She would miss deadlines. It would take her hours to perform a small task. Due to her inability to concentrate, she directed the other employees to come to me if they required assistance pertaining to their job. I assumed many of [her] responsibilities, including preparing reports and attending meetings. She was becoming more withdrawn. She was uncomfortable speaking to her unit as a group. When she did hold unit meetings, her voice was very low; she frequently lost her train of thought; she usually read from her notes; and, it was apparent she was very nervous.

“Another employee assigned to [appellant] had also originally worked for the FBI in Washington, DC. She and her husband had asked to be transferred to the CJIS Division in Clarksburg, WV. They had two small children. After being in West Virginia a short period of time, they began having marital difficulties. The employee and her husband eventually divorced. Though [appellant] was having difficulties of her own, she was able to put her own problems aside and counsel this employee.”

In a decision dated January 29, 2004, the Office reviewed the merits of appellant’s claim and denied modification of the November 20, 2000 decision. The Office found that appellant had presented no probative evidence to establish that her emotional condition arose out of her regular or specially assigned work duties. The Office also found that appellant had presented no evidence to support that she sustained an emotional condition while trying to meet a requirement imposed by the employment or her manager.

On appeal, counsel for appellant contends that she was implicating more than the relocation to West Virginia: she was implicating her new work environment. Appellant had to learn an entirely new job and new duties. She had to learn a new system. Appellant had new subordinates. She did not get along with other supervisors. Appellant encountered racial remarks. Her managers pressured her. Appellant also had to deal with the added stress of supervising some difficult and needy employees, in particular a woman who was stabbed to death by her husband. Counsel explained that, given the nature of the injury alleged, the best evidence about the stressors that appellant faced at work came from appellant herself.³

LEGAL PRECEDENT

The Federal Employees’ Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the

³ To the extent that appellant has made allegations on appeal that do not appear in the evidence that was before the Office at the time of its March 31, 2004 decision, the Board has no jurisdiction to consider them. 20 C.F.R. § 501.2(c).

performance of duty.⁴ The phrase “sustained while in the performance of duty” is regarded as the equivalent of the coverage formula commonly found in workers’ compensation laws, namely, “arising out of and in the course of performance.”⁵ “In the course of employment” relates to the elements of time, place and work activity. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in her employer’s business, at a place where she may reasonably be expected to be in connection with her employment and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto. The employee must also establish an injury “arising out of the employment.” To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration.⁶

When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her duties and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee’s disability resulted from her emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of her work. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers’ compensation law because they are not found to have arisen out of employment, such as when disability results from an employee’s fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.⁷

Workers’ compensation law does not cover an emotional reaction to an administrative or personnel action unless the evidence shows error or abuse on the part of the employing establishment.⁸ The Board has held, for example, that actions of an employer which the employee characterizes as harassment or discrimination may constitute a factor of employment giving rise to coverage under the Act, but there must be some evidence that harassment or discrimination did in fact occur. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.⁹ The claimant must substantiate such

⁴ 5 U.S.C. § 8102(a).

⁵ This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers’ compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

⁶ See *Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp* (*Joseph L. Barenkamp*), 5 ECAB 228 (1952).

⁷ *Lillian Cutler*, 28 ECAB 125 (1976).

⁸ *Thomas D. McEuen*, 42 ECAB 566, 572-73 (1991), *reaff’d on recon.*, 41 ECAB 387 (1990).

⁹ See *Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant’s allegations of unfair treatment to determine if the evidence corroborated such allegations).

allegations with probative and reliable evidence.¹⁰ The primary reason for requiring factual evidence from the claimant in support of her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.¹¹

ANALYSIS

When appellant filed her claim for compensation benefits on May 17, 2000, she submitted a lengthy statement addressing her relocation to West Virginia and all of the attendant difficulties she faced in having to make that move, particularly at that point in her career. Her emotional reaction to this administrative or personnel action, however, falls outside the scope of the Act. It is not compensable. She may well have experienced stress in her unsuccessful attempt to remain in Washington, DC, having to uproot herself and her family to move to an unfamiliar location, having to deal with culture shock and not being able to maintain a long-distance relationship with her boyfriend. But none of this is covered by workers' compensation. The directed relocation of her office from Washington, DC to West Virginia was an administrative action.

An exception may arise only if the record demonstrates error or abuse by the employing establishment in requiring or administering the relocation. The record before the Board contains no evidence of such. Appellant has suggested error or abuse by questioning how she did not get another job in the DC area with her qualifications, background and history. But she has submitted no probative evidence of error or abuse of any kind in the matter, nor has she established error or abuse by the employing establishment in instructing her, after the relocation, to direct her subordinates to work harder and perform better. Absent proof of error or abuse by her superiors, appellant's emotional reaction to the relocation or to her superiors' instructions is not compensable.

After the Office denied her claim for not having established an injury in the performance of her duties, appellant argued that her stress was intensified by having a new job and new subordinates. She stated that she was assigned an employee who had a number of personal problems. This employee's estranged husband was stalking her, and ended up stabbing the employee 36 times. "I was subjected to this stressful situation because of my position as a supervisor," she stated. "There was always something going on with her at home." Appellant added that an unruly employee was transferred to her unit, a very aggressive employee who got into a fistfight at work and who ended up being killed in a car accident.

The Board notes that appellant's implication of these stressors comes quite late. The record prior to the Office's November 20, 2000 decision denying her claim, shows that appellant made no mention to the Office, to Ms. Rush, to Dr. Goodykoontz, to her fellow supervisor or to

¹⁰ *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

¹¹ *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

any of her medical care providers that she was experiencing stress as a result of having to learn a new job or supervise certain employees. A claimant is allowed to expand and clarify his or her claim in the course of its development.¹² But it is well established that a claimant's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. The claimant has not met his or her burden of proof when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.¹³ In this case, appellant offered no explanation in her request for reconsideration for her previous failure to allege stress stemming from having a new job or having new subordinates.

Appellant did not attribute any anxiety regarding her ability to supervise or counsel these employees. As she noted, she could not make anybody do something that they did not want to do. The only thing she could do as a supervisor was to monitor their performance, document it, talk with the employees and refer them to the Employee Assistance Program. In discussing these particular employees, appellant focused instead on their troubles and on their subsequent deaths. But any reaction she may have had to learning about their deaths is not a reaction to her regular or specially assigned duties at work and is not compensable.¹⁴

An October 3, 2001 statement from one of her employees in West Virginia, Ms. Zannino, tends to support that appellant's health problems interfered with her ability to perform her normal responsibilities. Appellant was apparently unable to keep up with the work flow, would miss deadlines and would take hours to perform a small task. But there is a significant distinction between an emotional condition that interferes with appellant's ability to fulfill her normal responsibilities and duties that cause or aggravate an emotional condition. Appellant made no clear and specific allegation of the latter under *Cutler*. Moreover, Ms. Zannino explained that, although appellant was having difficulty of her own, she was able to put aside her own problems and counsel an employee who was having marital difficulties and who eventually divorced with two small children. This does establish that appellant experienced anxiety regarding her ability to supervise and counsel certain troubled employees.

¹² *Nestor Nieves*, Docket No. 97-2680 (issued December 9, 1999); *see also Dallas Marlatt*, Docket No. 00-609 (issued March 16, 2001) (a claimant may submit additional evidence and expand his or her claim for factors that occurred during the same time period of the current claim).

¹³ *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984). *See also George W. Glavis*, 5 ECAB 363 (1953).

¹⁴ *See Kathryn S. Graham Wilburn*, 49 ECAB 458 (1998) (where the claimant heard a blast at approximately 9:00 a.m. on April 19, 1995, left her office to find smoke rising some four blocks away from the Murrah Federal Building in Oklahoma City, Oklahoma, and later learned that her grandsons, who were in the federal building's day-care center, had not survived, the Board affirmed the Office's denial of compensation, holding that the claimant's emotional reaction arose from the knowledge of the deaths of her grandchildren, deaths of other individuals and from the knowledge of the devastation as a whole of the Murrah Federal Building and was not the result of the performance of her federal employment); *Carla E. Phillips*, 39 ECAB 1040 (1988) (where the claimant, a postal employee, sustained an emotional condition after learning that her husband, also a postal employee in another post office, had been shot to death during his employment, the Board held that the claimant's emotional condition was not compensable, as it resulted from her reaction to knowledge of the shootings and to the subsequent revelation that her husband was among the dead, rather than from her day-to-day duties, specially assigned duties or any other requirement imposed by her employment).

As noted, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim. Appellant attributed her emotional condition almost exclusively to the noncompensable factor pertaining to the relocation of her office. The evidence submitted fails to establish a factual basis for any compensable claim. The Board will affirm the Office's January 29, 2004 decision.¹⁵

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the March 31, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 3, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

¹⁵ Where the factual evidence fails to establish a factor of employment that falls within the scope of the Act, there is no need to review whether the medical opinion evidence soundly explains how that compensable factor of employment caused or aggravated or otherwise contributed to a diagnosed emotional condition. The medical opinion evidence in this case attributes appellant's emotional condition to a noncompensable factor: her relocation to West Virginia, which created both financial and emotional burdens.