

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DEBRA L. BERG and DEPARTMENT OF THE NAVY,  
NAVAL DENTAL CENTER, Norfolk, VA

*Docket No. 00-11; Submitted on the Record;  
Issued December 1, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
VALERIE D. EVANS-HARRELL

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

On January 18, 1999 appellant, then a 45-year-old computer specialist, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that her traumatic stress was due to a letter received on January 7, 1999 from a former supervisor who had ordered switching her biopsy tissue to indicate cancer. She went on to state that if the statements were true that her mastectomy and subsequent two years of pain could have been avoided.

In an unsigned note from the employing establishment's commanding officer dated October 23, 1998, he stated:

"Since I write, I also learn [appellant] [sic] supervisor at the Naval Hospital Guantanamo Bay was responsible for this bad lie. I was told by one of the lab technicians that LT had ordered him to mislabel the biopsy contents so that her tumor say my friend's name. It is good fortune my friend (who ask[ed] me to not say [her] name so her medical care from the Navy would not be stopped) had been told and was able to start her shots a few months later. [Appellant] had to get the chemotherapy shots anyway. I was also told that she later had many surger[ies], including a mastectomy.

"I am very worried that [appellant] know [sic] that she [is] not really sick."

In a report dated January 20, 1999, Dean Vines, a licensed social worker, stated he first saw appellant on January 14, 1999 and based upon his observation of appellant, he opined that appellant had "been psychologically unable to attend work due to the trauma reported as a result of the letter and the emotional upheaval caused by its content."

By decision dated August 16, 1999, the Office found that appellant had failed to establish an emotional condition in the performance of duty. The Office found that the writing of an anonymous letter regarding an unsubstantiated statement regarding an alleged mislabeling of appellant's biopsy results was not a factor occurring in the performance of duty.

The Board finds that appellant failed to meet her burden of proof in establishing that her emotional condition was caused by work actors.

Under the Federal Employees' Compensation Act,<sup>1</sup> 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 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.<sup>2</sup>

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.<sup>3</sup> There are distinctions regarding the type of work situation giving rise to an emotional condition which will be covered under the Act.

For example, disability resulting from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employing establishment is covered.<sup>4</sup> However, an employee's emotional reaction to an administrative or personnel matter is generally not covered,<sup>5</sup> and disabling conditions caused by an employee's fear of termination or frustration from lack of promotion are not compensable. In such cases, the employee's feelings are self-generated in that they are not related to assigned duties.<sup>6</sup>

The initial question presented is whether appellant has identified compensable employment factors as contributing to her condition. In reviewing appellant's statements, witness statements and the histories provided to her psychologist, the Board concludes that appellant has not identified any compensable factors of employment substantiated by the record.

With regard to appellant's reaction to the anonymous letter left on her desk on January 7, 1999 alleging that her biopsy results had been switched and that her biopsy results showed no breast cancer, this would not constitute a compensable employment factor. As noted above,

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Vaile F. Walders*, 46 ECAB 822, 825 (1995).

<sup>3</sup> *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>4</sup> *Jose L. Gonzalez-Garced*, 46 ECAB 559, 563 (1995).

<sup>5</sup> *Sharon J. McIntosh*, 47 ECAB 754, 756 (1996).

<sup>6</sup> *Barbara E. Hamm*, 45 ECAB 843, 850 (1994).

disability resulting from an emotional reaction will come within the coverage of the Act only if the disability results from an emotional reaction to regularly or specially assigned work duties or to a requirement imposed by the employment.<sup>7</sup> The reaction of appellant to an anonymous letter left on her desk containing unfounded allegations that her biopsy results had been switched does not relate to appellant's job duties or requirements and is therefore not compensable.<sup>8</sup>

Accordingly, the Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty causally related to compensable factors of her federal employment. Since no compensable factor of employment has been established, the Board will not address the medical evidence.<sup>9</sup>

The decision of the Office of Workers' Compensation Programs dated August 16, 1999 is hereby affirmed.

Dated, Washington, DC  
December 1, 2000

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Valerie D. Evans-Harrell  
Alternate Member

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<sup>7</sup> *Lillian Cutler*, *supra* note 3.

<sup>8</sup> *See Gracie A. Richardson*, 42 ECAB 850 (1991).

<sup>9</sup> *See Margaret S. Krzycki*, 43 ECAB 496 (1992).