

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WANDA G. HOUSE and DEPARTMENT OF AGRICULTURE, FOREST SERVICE, SOUTHEASTERN EXPERIMENT STATION, Asheville, N.C.

*Docket No. 96-2300; Submitted on the Record;
Issued August 10, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

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

The Board has duly reviewed the case record and finds that appellant did not establish that she sustained an injury in the performance of duty.

The facts in this case indicate that on August 27, 1995 appellant, then a 50-year-old personnel clerk, filed a claim alleging that verbal harassment at the employing establishment caused stress, back spasms and panic attacks. She had transferred to another job at a different location, the Schenck Civilian Conservation Center, on May 13, 1995 and stopped work on June 4, 1995. Following an Office of Workers' Compensation Programs' request for information in an undated statement, appellant made general allegations of verbal harassment by her supervisor, Cynthia Arnette, and made specific allegations that she had been harassed by a coworker, Carmen Everton, who yelled at her and threw a folder on her desk, that she was made to keep a daily log or tracking record when no one else was, that she overheard Ms. Arnette use a racial epithet in speaking about her, that she overheard Ms. Arnette discussing her personal life, that her computer password was changed when she transferred, and that her computer files were accessed and deleted at that time. Also submitted was an Equal Employment Opportunity (EEO) Commission counselor/mediator offer that was refused by appellant.¹ She also submitted a number of statements from family and friends.

In an October 26, 1995 report, Amy J. Burgess, administrative officer at the Schenck Center, advised that following appellant's transfer in May 1996, she still had to maintain contact with Ms. Arnette and that following telephone conversations, appellant would be very nervous

¹ The report stated that there were no witnesses to the alleged harassment although Ms. Everton had been observed to be "abrupt" or "curt" with appellant at times. It provided that the employing establishment would make a lump-sum payment of leave and \$2,500.00 in compensatory damages if appellant would resign.

and agitated. In describing a particular telephone conference call regarding donated leave, Ms. Burgess stated:

“I visibly noticed [appellant] becoming very agitated and upset when [Ms. Arnette] would talk with her. After the telephone conversation ended, [appellant] mentioned to me that she felt that [Ms. Arnette] was ‘talking down to her.’ I understand that [Ms. Arnette] was patiently explaining the leave procedures to [appellant], but that this could come across to [her] as ‘being talked down to.’”

In a December 7, 1995 statement, Ms. Arnette advised that appellant worked at the employing establishment from January 21 to May 13, 1995, that she was frequently absent, inattentive and hard to train. Ms. Arnette stated that she and Ms. Everton suggested that appellant have a book where she could keep notes, instructional memoranda, etc. for reference. She indicated that appellant was responsible for work in three areas, did almost none in two of these, and that in all areas her error rate was very high.

By letter dated April 3, 1996, the Office inquired about the status of appellant’s EEO complaint and informed her that more information was needed regarding the specific work factors she believed contributed to her condition and that she needed to submit a medical report stating that her condition was precipitated or aggravated by specific employment factors. In response, appellant submitted duplicates of evidence that had previously been submitted. In an accompanying letter, she reiterated that she was the only employee required to keep a tracking book. She indicated that her EEO complaint had not been resolved and that she was also working through her union and other organizations about her complaints.

By decision dated June 12, 1996, the Office denied appellant’s claim, finding that the evidence of record failed to establish that an injury occurred in the performance of duty. The instant appeal follows.

To establish that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.² Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.³

² *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.⁴ On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.⁵

Regarding appellant's contention that she was the only employee required to keep a work tracking book and that her computer password was changed when she was transferred, as a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of coverage under the Act.⁶ An administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment.⁷ To determine whether the employing establishment erred or acted abusively, the Board ascertains whether the employing establishment acted reasonably.⁸ Here the employing establishment indicated that appellant was frequently absent, inattentive and hard to train. The fact that appellant filed an EEO complaint, by itself, does not establish that work-place harassment or unfair treatment has occurred.⁹ In this case, the only EEO resolution of record was an offer rejected by appellant. Furthermore, the findings of other administrative agencies are not determinative with regard to proceedings under the Act.¹⁰

Regarding appellant's allegations of harassment and verbal abuse, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur.¹¹ Mere perceptions or feelings of harassment do not constitute a compensable factor of employment,¹² and an employee's charges that he or she was harassed or discriminated against is not determinative of whether or not harassment or discrimination occurred.¹³ To establish entitlement to benefits, a claimant must establish a factual basis for the

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *See Michael L. Malone*, 46 ECAB 957 (1995).

⁷ *Id.*

⁸ *See Frederick D. Richardson*, 45 ECAB 454 (1994).

⁹ *See Parley A. Clement*, 48 ECAB ____ (Docket No. 95-566, issued January 17, 1997).

¹⁰ *See Donald E. Ewals*, 45 ECAB 111 (1993).

¹¹ *Sheila Arbour (Vincent E. Arbour)*, 43 ECAB 779 (1992).

¹² *See Lorraine E. Schroeder*, 44 ECAB 323 (1992); *Sylvester Blaze*, 42 ECAB 654 (1991).

¹³ *William P. George*, 43 ECAB 1159 (1992).

claim by supporting his or her allegations with probative and reliable evidence.¹⁴ Here, appellant has not submitted any evidence corroborating that such harassment occurred, nor did she submit corroboration that her personal computer files were accessed. She has, therefore, failed to demonstrate error abuse on the part of the employing establishment and, for these reasons, the Office properly found that appellant failed to establish that she sustained an emotional condition in the performance of duty.¹⁵

The decision of the Office of Workers' Compensation Programs dated June 12, 1996 is hereby affirmed.

Dated, Washington, D.C.
August 10, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

¹⁴ See *Anthony A. Zarcone*, 44 ECAB 751 (1993); *Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹⁵ The Board notes that appellant submitted medical evidence from Drs. Pamela A. Dunkin, William D. Sandborn and I.N. Kutty, Board-certified psychiatrists, who diagnosed major depression, post-traumatic stress disorder and panic disorder. As appellant did not establish a compensable factor of employment, the medical evidence need not be addressed. See *Diane C. Bernard*, 45 ECAB 223 (1993).