

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GERARDA J. SHULL and DEPARTMENT OF THE AIR FORCE,
MC CLELLAN AIR FORCE BASE, Calif.

*Docket No. 95-2275; Submitted on the Record;
Issued January 27, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

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

On July 20, 1993 appellant, then a 58-year-old industrial engineering technician, filed a traumatic injury claim for emotional stress. Appellant indicated that she had received a letter of reprimand and became tense, had a headache and felt stress in her neck and stomach. Appellant stopped work. On the same day, appellant went to the employing establishment's medical unit. Dr. Upendra J. Kharod, a Board-certified psychiatrist, diagnosed appellant with situational stress, excused her from work and advised her to consult her personal medical physician and an Equal Employment Opportunity (EEO) counselor, if necessary.

In a note dated July 20, 1993, Dr. Donald E. Edgar, a general practitioner and surgeon, indicated that appellant should be excused from work for a week due to illness and recommended that she be transferred from working with her supervisor, Michael Boward. In a separate note of the same date, he wrote "CBL COP24/ acute anxiety."

On July 21, 1993 appellant's supervisor, Mr. Boward, filled out a supervisor's preliminary report of mishap and indicated that appellant was given a counseling letter and requested to go to the medical unit due to stress. He reported that the counseling request for attitude and conduct was a probable cause of the mishap.

In an attending physician's form report dated August 5, 1993, Dr. Edgar provided a history of injury of "stress over job situation and conflict with foreman." He diagnosed anxiety and depression which he indicated was caused or aggravated by an employment activity by checking a box. Dr. Edgar advised that appellant would be able to return to light-duty work on October 1, 1993.

In a decision dated September 30, 1993, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence failed to establish that her medical condition arose out of the performance of duty. In the memorandum accompanying the decision, the Office found that appellant's reaction to her supervisor's counseling was not a compensable injury under the Federal Employees' Compensation Act¹ as there had been no determination by a fact-finding body that the employing establishment had erred or acted abusively.

On October 21, 1993 appellant filed a request for an oral hearing before an Office hearing representative and included a new report from Dr. Edgar with evidence that had been previously submitted to the Office. In a report dated January 14, 1994, Dr. Edgar indicated that when he first treated appellant on July [2]0, 1993, she "was feeling extremely stressed out on the job" and had multiple symptoms of "depression, anxiety, etc." She exhibited multiple feelings and problems concerning her work situation where she was in a primarily male field. He reported that by October 7, 1993, appellant was feeling basically normal, but requested that her leave be extended. Dr. Edgar concluded that appellant advised him that she wanted to return to work on or about January 10, 1994 and her prognosis was good.

At her hearing, appellant reported that the incident on July 20, 1993 had arisen due to her refusal to approve the hours, for electrical work submitted by the supervisor of flight preparation, in the week prior to her meeting with Mr. Boward. She also stated that she had had problems from "day one" as the "first female infiltrated in a total male world." Appellant noted that she returned to work on January 14, 1994 with a different supervisor. She indicated that she had not filed an EEO complaint because the man she had attempted to file a complaint with went out on leave for a kidney transplant, and when he returned, it was too late to file.

In a decision dated April 18, 1995 and finalized April 19, 1995, the Office hearing representative found that appellant had not established that she sustained an emotional condition in the performance of duty on the grounds that the July 20, 1993 incident did not constitute a compensable factor of employment.

On May 12, 1995 appellant requested reconsideration, alleging that stress was the major cause of her extended use of sick leave and the episode with her supervisor was "just the final straw." In a supplemental letter dated August 18, 1995, she clarified that she had filed an EEO complaint in light of Mr. Boward's letter of reprimand, but it was not timely filed due to the illness of her EEO representative. She concluded that she had been improperly appraised by Mr. Boward, out of the time period for evaluation, had not been counseled although her evaluation was lower than in the past and could not grieve the evaluation since it was entered when she was not available to sign it.

In a merit decision dated August 25, 1995, the Office denied appellant's request for modification on the grounds that the incidents identified by appellant were not compensable under the Act as there is no evidence that the employing establishment erred or abused its discretion.

¹ 5 U.S.C. §§ 8101-8193.

The Board finds that appellant did not sustain an emotional condition in the performance of duty.²

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 Act. Where 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 factors such as an employee's fear of a reduction-in-force or his 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 desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.³ 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.⁴ In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his 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.⁵

Appellant initially alleged that she suffered from stress arising out of an incident wherein her supervisor gave her a counseling letter concerning her conduct and attitude. With her final request for modification, appellant generally alleged stress prior to the July 20, 1993 incident and urged that her appraisal was not in conformance with her agency's guidelines. The Office noted in all of its decisions, that with respect to appellant's allegation that the letter of counseling caused her stress and depression, such counseling was an administrative action and, therefore, absent a showing of error or abuse by the employing establishment, it did not constitute a compensable factor of employment.⁶ The Board finds that this supervisory counseling was indeed an administrative action not related to appellant's assigned duties. The Board has held that generally an appellant's emotional reaction to an administrative or personnel matter such as this is not covered under the Act, unless there is evidence establishing error or abuse on the part

² The Board's jurisdiction to consider and decide appeals from a final decision of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed her appeal with the Board on June 5, 1995, the only decision before the Board is the Office's August 25, 1995 decision. The Board has no jurisdiction to consider the Office's September 23, 1993 and April 19, 1995 decisions. *See* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985).

⁵ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on reconsideration*, 42 ECAB 566 (1991).

⁶ *Id.*

of the employing establishment or evidence that the employing establishment acted unreasonably.⁷ In this case, appellant has presented no objective evidence that the employing establishment acted unreasonably or committed error or abuse in its issuance of the letter of counseling. While appellant has alleged that she attempted to file an EEO complaint, but due to circumstances beyond her control it was untimely, she has not presented any documentation to support her allegations, in this regard nor has she demonstrated that she is pursuing the untimeliness issue with the EEO office at her agency or the EEO Commission. Thus, there has not been nor is there likely to be an objective decision indicating that the employing establishment acted improperly in its issuance of a letter of counseling. Insofar as appellant's allegation that her performance appraisal was not issued in accordance with her agencies guidelines and her implicit contention that this action by her supervisor is related to her emotional condition, once again her supervisor's action is not compensable under the Act unless there is demonstration of error, abuse or that the employing establishment acted unreasonably. Therefore, the Board finds that this is not a compensable factor within the scope of appellant's performance of duty in light of the absence of such evidence. Finally, appellant's general allegation that she suffered from stress prior to the July 20, 1993 incident is nonspecific as she has not identified any specific incidents which she felt caused her stress. Thus, her allegation is insufficient to establish that her emotional condition was sustained while in the performance of duty. Consequently, the Board finds that the Office properly determined that appellant did not sustain an emotional condition in the performance of duty.

The decision of the Office of Workers' Compensation Programs dated August 25, 1995 is affirmed.

Dated, Washington, D.C.
January 27, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁷ *Anthony A. Zarcone*, 44 ECAB 751 (1993).