

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAMELA JACKSON and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Jamaica, N.Y.

*Docket No. 96-870; Submitted on the Record;
Issued January 21, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

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

On November 28, 1994 appellant, then a 27-year-old file clerk, filed a claim for schizoaffective disorder which she related to harassment, including sexual harassment, at the employing establishment. In a June 5, 1995 decision, the Office of Workers' Compensation Programs rejected appellant's claim on the grounds that the fact of an injury had not been established. In an October 19, 1995 merit decision, the Office denied appellant's request for modification of the prior decision.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

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 Federal Employees' Compensation Act. Where the 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 such factors 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 the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.¹ 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

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

injury sustained in the performance of duty within the meaning of the Act.² 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.³

Appellant contended that she was subjected to harassment by coworkers and supervisors. She stated that beginning in May 1991 several female coworkers began to harass and abuse her. Appellant claimed that on one occasion, one coworker made threats of physical abuse while they were in the bathroom. She indicated that in February 1992 a team leader ridiculed her and used profane language when appellant asked for help. Appellant stated that a supervisor criticized her work without any substantiating evidence. She reported that in October 1993 a male coworker began to sexually harass her, at one time exposing himself to her and requesting sexual activity and on another occasion assaulting appellant by touching her buttocks and breasts. Appellant indicated that even after she was transferred to another floor of the employing establishment, the male coworker would approach her and let her know he was in the area. Appellant stated that the employing establishment made inadequate efforts to investigate and end the harassment. She stopped working after September 8, 1994 when she was reported to have been acting strangely while at work.

Appellant made a general allegation that her emotional condition was due to harassment. The actions which an employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act. However, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.⁴ Appellant has not done so here. She did not submit any statements from witnesses or other workers of the employing establishment which described in specific detail the incidents which appellant claimed caused her emotional condition, particularly the ridicule and abuse in public by a supervisor or the sexual harassment by a male coworker. These factors would be considered compensable factors of employment if shown to have occurred as alleged. The employing establishment, however, indicated that it had been unable to establish that appellant was subjected to sexual harassment as she alleged. Appellant therefore has not substantiated that the incidents of harassment she alleged occurred as she alleged. She therefore has not shown she sustained an injury in the performance of duty.

Appellant submitted medical reports from Dr. Bimalendu Ganguly, a Board-certified psychiatrist, who diagnosed schizoaffective disorder and related the condition to harassment of

² *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

³ *Thomas D. McEuen*, 41 ECAB 387 (1990) *reaff'd on recon.*, 42 ECAB 566 (1991).

⁴ *Joan Juanita Greene*, 41 ECAB 760 (1990).

appellant at work and the failure of the employing establishment to resolve the problem. However, as the evidence of record has not substantiated that the harassment occurred as alleged by appellant, these reports are insufficient to establish appellant's emotional condition was causally related to her employment.

The decisions of the Office of Workers' Compensation Programs, dated October 19 and June 5, 1995, are hereby affirmed.

Dated, Washington, D.C.
January 21, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member